

DATE: May 30, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

RE: Certain Hot-Rolled Carbon Steel Flat Products from India (Period
of Review: December 1, 2005, through November 30, 2006)

SUBJECT: Issues and Decisions for the Final Results of the Fifth
Administrative Review

Summary

We have analyzed the case and rebuttal briefs submitted by domestic interested parties and respondents.¹ As a result of our analysis, we have made changes from the preliminary results in the margin calculations. We recommend that you approve the positions described in the Discussion of Issues, sections, infra. Outlined below is the complete list of the issues in this review for which we received comments from the interested parties.

I. Background

On February 2, 2007, the Department of Commerce (the Department) published a notice of initiation of the administrative review of the antidumping duty order on hot-rolled carbon steel flat products from India, covering the period December 1, 2005, to November 30, 2006. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 72 FR 5005 (February 2, 2007). On December 31, 2007, the Department published the preliminary results of the antidumping duty administrative. See Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results of Antidumping Duty Administrative Review, 72 FR 74267 (December 31, 2007) (Preliminary Results). On April 7, 2008, the Department published a notice extending the deadline for the final results of review to no later than May 14, 2008. See Certain Hot-Rolled Carbon Steel Flat Products from

¹ Case briefs and rebuttal briefs were submitted by the following domestic interested parties and respondents: On April 4, 2008, United States Steel Corporation (U.S. Steel) and Nucor Corporation (Nucor) (collectively, petitioners) filed case briefs. On April 4, 2008, Essar Steel Limited (Essar) and JSW Steel Limited (JSW) filed case briefs. On April 11, 2008, petitioners filed rebuttal briefs. Also, on April 11, 2008, Ispat Industries Limited (Ispat), Essar, JSW, and Tata Steel Limited (Tata) (collectively, respondents) filed rebuttal briefs.

India: Extension of Time Limits for the Final Results of Antidumping Duty Administrative Review, 73 FR 18753 (April 7, 2008). On May 15, 2008, the Department published a second notice extending the final results to no later than May 30, 2008. See Certain Hot-Rolled Carbon Steel Flat Products from India: Extension of Time Limits for the Final Results of Antidumping Duty Administrative Review, 73 FR 28100 (May 15, 2008). This review covers four manufacturers and exporters of the subject merchandise: Ispat, Tata, JSW, and Essar.

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III. Discussion of Issues

Tata Steel Limited

Comment 1: Application of Partial Adverse Facts Available (AFA) to Tata's Reported Costs

Petitioners argue that the Department should reject the cost data reported by Tata and apply partial AFA because Tata's reporting of its total cost of manufacturing (TCOM) and variable cost of manufacturing (VCOM) is defective. Petitioners claim that at verification the Department found that Tata improperly used sales quantities instead of production quantities to weight its costs, and that Tata had production quantity information available. Petitioners assert that the fact that Tata decided not to use production quantity to weight its cost demonstrates that Tata failed to act to the best of its ability to comply with the Department's request for information. Petitioners also argue that the use of AFA is warranted for another reason: Tata failed to properly report its fixed and variable costs by including in VCOM certain costs that should have been part of its fixed overhead, resulting in overstating its VCOMs. Petitioners rebut Tata's claim that its SAP accounting system prevents it from separately reporting the components of materials, labor, and other VCOM costs, as the antidumping questionnaire instructs, and that Tata's overstated VCOMs did not have any effect on the Department's calculations. Petitioners assert that artificially increasing the value of VCOMs distorts the Department's application of its 20-percent test in selecting non-identical matches, and therefore, it interferes with the Department's ability to make an accurate determination.

With respect to both of these defects, petitioners urge the Department to reject Tata's reported costs and to apply partial AFA, pursuant to sections 776 and 782 of the Tariff Act of 1930, as amended (the Act). According to petitioners, the Department's antidumping questionnaire specifically instructed Tata to weight TCOM by production quantities, and to report its VCOM and TCOM for each control number (CONNUM) by listing separately derivation of the cost of materials, labor and overhead. However, Tata failed to act to the best of its ability in supplying information in the form and manner requested. Accordingly, petitioners argue, the Department must reject Tata's VCOM reporting and select the highest non-aberrant margin from Tata's identical matches and use that margin as AFA for Tata's non-identical matches.

Tata contends that its reported costs are accurate and were fully verified by the Department. Tata argues that its use of sales quantities to weight average VCOMs and TCOMs is reasonable, absent a cost investigation. According to Tata, in the context of a Section B and C response, there is no specification of whether cost-averaging should be done on the basis of sales quantities or production quantities. Tata claims that only sales quantity, and not production quantity is available on a CONNUM-specific basis to the company, and that sales quantities were reported in the Section B and C sales files prepared for submission to the Department. Tata contends that Tata's accounting system does not track production quantities by CONNUM, and that requesting Tata to extract and weight average the cost of production for each of its several hundred reported

CONNUMs over the period of review (POR) would be unreasonable, in light of the availability and reliability of a sales-based calculation.

Tata claims that the Department's survey of three sample CONNUMs at verification shows that the two methods, *i.e.*, weight averaging by production quantity vs. sales quantity, were broadly consistent. Tata states that the Department's recalculation of Tata's costs based on the production quantity information collected at verification shows that in two of the three samples, the production quantity method yielded a slightly lower cost, while in the other sample, the Department's exercise yielded a slightly higher cost. Tata claims that the rough equivalence of production and sales quantities is to be expected, because the great majority of Tata's products are made to order. Tata claims that the Department has accepted weighting by sales quantity in the calculation of VCOM and TCOM in other cases, citing Stainless Steel Bar From India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review, 65 FR 48965 (August 10, 2000), and accompanying Issues and Decision Memorandum at comment 2.

Tata also rebuts petitioners' critique of its reporting methodology in segregating VCOM from TCOM. Tata claims that, given the fact that its SAP system does not separately identify fixed overhead from other variable overhead expenses, Tata has presented a reasonable means of allocating depreciation and thereby quantifying the difference between VCOM and TCOM. Accordingly, Tata contends that there is no justification for any adverse inference.

Department's Position:

We disagree with petitioners that the use of AFA is appropriate in this instance because we do not find that Tata failed to cooperate. With regard to the weighting of costs, our preferred methodology is to weight cost by production quantity. The Section D questionnaire instructs respondents to calculate reported cost of production figures on a weighted-average basis using the CONNUM-specific production quantity. However, as pointed out by Tata, the Department's Questionnaire at Sections B and C does not explicitly instruct respondents to weight TCOM and VCOM by production quantity,² and Tata was not required to respond to Section D of the antidumping questionnaire. As such, we do not find that Tata failed to cooperate. We confirmed at verification that the majority of Tata's sales are made to order, meaning that the steel is produced after receipt of a customer's purchase order. According to Tata, the turnaround time for home market sales is around four to six weeks from order to delivery. See Tata Section A questionnaire response at A-19, dated April 13, 2007. Because the majority of Tata's sales were made to order, sales quantity should be roughly the same as production quantity. Therefore, we find the information Tata provided can serve as a reliable basis for calculating the adjustments for physical differences in merchandise, and do not find Tata's use of sales quantity as a weighting factor, in this instance, has distorted the reported costs. Moreover, we tested the weighting of the reported TCOMs by comparing weighting by production quantities and by sales quantities and found comparatively minor differences. While we acknowledge that weighting cost by sales quantity is not our preferred methodology, we do not find that Tata's methodology distorts its reported VCOM and TCOM information. See, e.g., Stainless Steel Bar From India;

² See Section B field 41.0 and Section C fields 55.0 and 56.0.

Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review, 65 FR 48965 (August 10, 2000), and accompanying Issues and Decision Memorandum at Comment 2.

Secondly, we do not find Tata's allocation methodology in segregating VCOM from TCOM unreasonable, given the fact that Tata's SAP system does not separately identify fixed overhead from other variable overhead expenses. We examined Tata's allocation methodology and depreciation data at verification. As stated in the verification report, "we did establish that the total cost (TCOM) reported was accurate." This finding was based on the fact that it matched the information in the SAP system. See Verification of the Sales Response of Tata Steel Limited in the Antidumping Review of Certain Hot-Rolled Carbon Steel Flat Products from India, dated March 12, 2008 (Tata's Verification Report) at page 29. We found that the depreciation costs included in the fixed overhead were treated properly and that the impact on the VCOM is immaterial and should not be adjusted. Accordingly, we do not find that Tata failed to cooperate in its allocation of VCOM and TCOM.

Comment 2: Sales of Overruns in the Home Market

Petitioners argue that the Department should disregard Tata's sales of overruns in the home market as outside the ordinary course of trade. Petitioners maintain that under sections 771(15) and 773 of the Act the Department may disregard home market sales that are made "outside the ordinary course of trade." Petitioners state that in determining whether particular sales are outside the ordinary course of trade, the Department evaluates the following factors: "(1) whether the merchandise is 'off-quality' or produced according to unusual specifications; (2) the comparative volume and number of buyers in the home market; (3) the average quantity of an overrun sale compared to the average quantity of a commercial sale; and (4) price and profit differentials in the home market," citing Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Administrative Review in Part, 72 FR 65701, 65703 (November 23, 2007) and Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review 71 FR 2018, 2020 (January 12, 2006). Petitioners claim that, when applied to Tata's home market sales of overruns, these factors show that such sales are outside the ordinary course of trade. Petitioners support their argument by comparing volumes and prices of Tata's overruns and non-overrun products. Petitioners allege that Tata's sales of overruns constituted small volumes and that the price of overrun product was lower than the average price of non-overruns.

Tata, in its rebuttal brief, argues that its identification of a sale as an overrun does not require that it be excluded. With regard to the aforementioned four factors, Tata claims that (1) Tata's overruns are not "off-quality" products, but are first-quality, prime goods; (2) Tata's overrun sales constitute a significant part of its home market sales, and the purchasers of overruns are not an aberrational category, but are many of the same companies that purchase made to order merchandise; (3) the average sales volume per sale is somewhat larger for the typical overrun sale than the typical non-overrun sale; and (4) the pricing of overruns provides no clear pattern requiring exclusion. Tata contends that for some CONNUMs in petitioners' analysis, the average overrun price is lower, but for others the average overrun price is higher than non-

overrun merchandise with the same CONNUM. According to Tata, this can only mean that other market factors dictate the prices of overruns, just as market factors dictate the prices of non-overruns. Tata argues that petitioners' analysis is misguided and does not support their claim that overrun sales should be excluded.

Department's Position:

We disagree with petitioners, in part. We do not find that Tata's sales of prime overrun products are outside the ordinary course of trade. Section 771(15) of the Act defines the term "ordinary course of trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind." The Statement of Administrative Action (SAA) clarifies this portion of the statute further when it states that "Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market." See SAA accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1, at 834 (1994). Additionally, the Department will normally consider the totality of the circumstances, including the following factors, in evaluating whether sales in a given market are not ordinary when compared to other sales generally made in the same market: 1) whether there are different standards and product uses, 2) the comparative volume of sales and number of buyers in the home market, 3) price and profit differentials in the home market, and 4) whether sales in the home market consisted of production overruns or seconds. See Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part, 70 FR 7237 (February 11, 2005), and accompanying Issues and Decision Memorandum at Comment 14.

Considering the totality of the circumstances, we find Tata's sales of prime overruns to be in the ordinary course of trade because these sales have characteristics that are comparable to those of sales generally made in the home market. Specifically, the quality of the merchandise sold, the quantity of individual sales, the profit and net unit sales price, and the lack of a concentrated customer base, are similar for Tata prime overrun and non-overrun sales. Due to the proprietary nature of this information, see the Final Calculation Memorandum for Tata for further discussion.³

However, we agree with petitioners in part for certain overrun sales. As described in Tata's Verification Report, not all overrun products that Tata sold were prime product; Tata also sold some non-prime product as overruns in the home market. See Tata's Verification Report at page 9. The non-prime merchandise, which is identified in the material description of Tata's database, is "off-quality" product, and was reported as overruns by Tata. We find that the sales of such non-prime products are outside the ordinary course of trade and, therefore, should be disregarded. See Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 2018 (January 12, 2006), unchanged in final, Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping

³ See the Memorandum from Joy Zhang, Case Analyst, to James Terpstra, Program Manager, concerning the Calculations for Tata Steel in the Final Results, dated May 30, 2008 (Final Calculation Memorandum for Tata).

Duty Administrative Review, 71 FR 40694 (July 18, 2006), and the Final Calculation Memorandum for Tata for further discussion.

Comment 3: U.S. Credit Expense Calculations

U.S. Steel states that in the Preliminary Results, the Department accepted Tata's U.S. credit expense (CREDITU) reporting methodology, which is based on the date of invoice rather than the date of shipment from India to the United States. In so doing, U.S. Steel argues, the Department deviated from its normal practice. U.S. Steel argues that for constructed export price (CEP) sales, when the subject merchandise is not warehoused in the United States and the date of sale pre-dates the date of invoice, the Department's normal practice is to determine CREDITU beginning on the date the merchandise is shipped from the home country to the date of payment by the customer, citing Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review, 72 FR 18204 (April 11, 2007) (Carbon Flat Products from Romania), and accompanying Issues and Decision Memorandum at Comment 3. U.S. Steel maintains that since Tata ships directly to the unaffiliated U.S. customer and the date of sale pre-dates the date of invoice, the Department should follow its normal practice and calculate a credit expense to account for the time the subject merchandise is on the water rather than an inventory carrying cost.

Tata contends that it properly reported its credit expense for the U.S. sales. Tata distinguishes two imputed selling expenses intended to reflect the opportunity cost of making sales. Tata defines the inventory carrying cost as the manufacturer's opportunity cost of investing its assets into its finished goods prior to sale. It defines imputed credit as the opportunity cost to the seller of the invoice value of the merchandise sold. Tata asserts that until there is an invoice issued and a debt created, the seller cannot be said to be extending credit as to the invoice value of the merchandise. Rather, Tata states, the seller is only missing the opportunity cost of the value of the merchandise to the seller, *i.e.*, the seller's inventory value of the merchandise, not the seller's future selling price (invoice value). Tata claims that it has appropriately reported an inventory carrying cost from the time of shipment to the time of resale invoice in the United States to the U.S. customer, and that the imputed credit expense begins from the time of the re-sale and invoice to the U.S. customer. Tata cited Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review, 72 FR 62824 (November 7, 2007) (Carbon and Alloy Steel Wire Rod from Trinidad and Tobago 2007). Tata argues that the Department should use the date of the invoice issued by the U.S. reseller to the U.S. customer as the beginning of the calculation of the respondent's U.S. credit expense.

Department's Position:

We agree with U.S. Steel that U.S. credit expense should be calculated from the date the merchandise left India to the date of payment by the U.S. customer. The Department distinguishes credit expense from inventory carrying costs in Carbon and Alloy Steel Wire Rod from Trinidad and Tobago 2005, where we state that: "Credit expense is the interest expense incurred (or interest revenue forgone) between shipment of merchandise to a customer and receipt of payment from the customer. Inventory carrying costs are the interest expenses incurred (or interest revenue forgone) between the time the merchandise leaves the production

line at the factory to the time the goods are shipped to the first unaffiliated customer.” See Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review, 70 FR 12648 (March 15, 2005) (Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago 2005), and accompanying Issues and Decision Memorandum at Comment 6. As U.S. Steel points out, the U.S. sale is not sold from the warehouse of Tata Inc., Tata’s U.S. affiliate, to the U.S. customer. Instead, Tata Inc. just arranges for inspection and inland freight upon arrival of the shipment. See Tata’s April 13, 2007, Section A questionnaire response at A-21. Tata reported the order date as the date of sale for its U.S. sales. At the CEP verification, we verified that the date of order was the date that established the material terms of sale and there were no changes afterwards. Under the circumstances of a direct shipment of a CEP sale to the unaffiliated U.S. customer and the date of sale pre-dating the date of invoice, our normal practice is to calculate credit expense from the date the merchandise is first shipped to the customer to the date of payment by that customer. See Carbon Flat Products from Romania, at Comment 3; see also Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago 2005 at Comment 6. Tata’s reliance on Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago 2007, is misplaced. In that case, we calculated credit expenses from the date of invoice, rather than the date of shipment because the material terms of sale were not set until the date of invoice, which was after shipment in that case. See also Mittal Steel Point Lisas Ltds. v. United States, 502 F. Supp. 2d 1345 (Ct. Int’l Trade 2007). This is different from the instant case, where Tata’s U.S. date of order was the date that established the material terms of sale and pre-dated shipment. Accordingly, we have calculated Tata’s U.S. credit expenses from the date the merchandise left India to the date of payment by the U.S. customer.

Comment 4: Procurement Expenses

U.S. Steel states that in calculating U.S. indirect selling expenses (INDIRSU), Tata excluded certain expenses associated with Tata Inc.’s procurement activities, on the basis that Tata Inc.’s procurement function is not associated with sales of subject merchandise. U.S. Steel alleges that the procurement service is a selling function, and should be included in INDIRSU. U.S. Steel also alleges that Tata’s INDIRSU allocation goes against the Department’s normal practice of allocating all indirect selling expenses by relative sales value.

Tata argues that Tata Inc.’s procurement does not involve any selling, and therefore, should not be included in the calculation of U.S. selling expenses. Tata maintains that because there is no sales revenue from Tata Inc.’s procurement business to use as an allocation basis, it used the relative salary amount of the two employees who do procurement work solely to allocate its general expenses between the sales and procurement business. Tata contends that this allocation is reasonable, citing Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 61 FR 20216, 20217 (May 6, 1996). Tata also rebuts U.S. Steel’s allegation that using salary as the allocation key somehow overstated the relative activities of the procurement business. Tata argues that, if anything, expenses were over-allocated to sales, because several support staff may divide their time between Tata Inc.’s sales and procurement function, yet all employees other than the two who work entirely on procurement are included in the “selling” category. Thus, Tata contends that its allocation is a reasonable and conservative methodology.

Department's Position:

We disagree with U.S. Steel that Tata Inc.'s procurement expenses should be included in the INDIRSU calculation. At the CEP verification, we interviewed one of the employees who does procurement work, and did not find that Tata Inc.'s procurement business, or its two procurement employees, are involved in Tata Inc.'s sales of subject merchandise. Thus, none of these expenses relates to sales of subject merchandise. See Tata's Verification Report at page 23. Because we find Tata Inc.'s procurement activities were unrelated to sales of subject merchandise, we do not find Tata Inc.'s exclusion of its procurement expenses from INDIRSU unreasonable. The Department has found previously that where the U.S. subsidiary of a foreign producer incurs expenses unrelated to sales of subject merchandise, we do not include such expenses in the calculation of INDIRSU. See Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 72 FR 13086 (March 20, 2007), and accompanying Issues and Memorandum at Comment 21.

In addition, we do not find Tata Inc.'s U.S. indirect selling expense allocation methodology unreasonable, where Tata Inc. allocated its overall expenses between selling and procurement by reference to the relative salaries of the two employees who do nothing but procurement work, and all other employees. As Tata points out, the Department has previously accepted relative salaries as an appropriate allocation key, as long as the allocation is reasonable. See, e.g., Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 61 FR 20216, 20217 (May 6, 1996). Accordingly, no recalculation of INDIRSU is appropriate.

Comment 5: Deduction of DINDIRSU from CEP

U.S. Steel states that in calculating CEP pursuant to section 772(d) of the Act, the Department will deduct indirect selling expenses associated with commercial activities in the United States that relate to the sale to the unaffiliated U.S. purchaser.⁴ Such expenses are deducted from CEP "no matter where or when paid."⁵ Accordingly, the Department deducts indirect selling expenses incurred in the home market (DINDIRSU) when such expenses relate to the sale to an unaffiliated U.S. purchaser. Under the Department's regulations, the respondent has the burden to demonstrate that the selling functions captured in the DINDIRSU field relate solely to affiliated party sales so as not to be deducted from CEP. U.S. Steel alleges that Tata did not demonstrate that the expenses reported in DINDIRSU related solely to affiliated party sales. Therefore, the Department should deduct DINDIRSU from CEP consistent with the statute and the Department's regulations.

Tata contends that U.S. Steel's demand that the Department deduct the indirect selling expenses Tata incurred in India from the U.S. price is unjustified. Tata maintains that throughout the proceeding Tata has made clear that it sells exclusively to Tata Inc., which in turn resells to its

⁴ See section 772 of the Act; 19 CFR 351.402(b) (2007).

⁵ See 19 CFR 351.402(b) (2007).

U.S. customers. Tata argues that in accordance with the Department's regulations, no adjustment should be made for any expense that is related solely to the sale to an affiliated importer in the United States.⁶ Accordingly, Tata urges the Department to confirm its previous decision not to deduct Indian indirect selling expenses from the U.S. price.

Department's Position:

Pursuant to section 772(d) of the Act, the Department will make an adjustment for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser no matter where or when paid. However, Tata's questionnaire response shows that there were no selling expenses incurred in India on behalf of U.S. sales to unaffiliated parties, as reported in Tata's selling expense chart. See Tata's April 13, 2007, Section A questionnaire response at 12-16, 20-22 and Exhibit A-5. We verified the response and noted no discrepancies. See Tata's Verification Report. Thus, no deduction of Indian indirect selling expenses from the U.S. price is necessary.

Comment 6: Deduction of CEP Profit

U.S. Steel states that in its margin calculation in the Preliminary Results the Department erroneously set the CEP profit calculation to zero for all U.S. sales. U.S. Steel contends that since all of Tata's U.S. sales are CEP sales, a CEP profit is a required deduction from U.S. price pursuant to section 772(d)(3) of the Act. U.S. Steel argues that the Department should correct the margin program to deduct CEP profit.

Tata argues that because there is no constructed value database containing interest and general and administrative (G&A) expenses, an accurate CEP profit calculation cannot be made from the sales files. Tata states that if the Department prefers not to omit the CEP profit entirely, it can estimate it by using the profit figure from Tata's financial statement. Specifically, Tata states that the Department can calculate profit by dividing the profit after taxes figure by the total cost of sales figure.

Department's Position:

We agree with U.S. Steel that we should calculate a CEP profit for Tata. We do not agree with Tata's CEP profit calculation methodology, which uses the profit after tax figure. In determining total expenses Tata incurred, we have relied on the TCOM information provided by Tata and calculated a G&A and an interest expense ratio based on Tata's financial statement and applied the ratios to calculate a CEP profit. See Final Calculation Memorandum for Tata.

Comment 7: Home Market Indirect Selling Expense Calculations

According to U.S. Steel, in the Preliminary Results, the Department applied the revised home market indirect selling expense ratio only to the home market gross unit price (GRSUPRH). U.S. Steel asserts that this ratio should be applied to the adjusted gross price.

⁶ 19 CFR 351.402(b).

Tata has made no comment on this issue.

Department's Position:

We agree with U.S. Steel, and have applied the revised ratio to the adjusted home market price in the calculation of Tata's home market indirect selling expense.

JSW Steel

Comment 8: Revised Home Market Database and Deduction of Taxes

JSW argues that the Department's preliminary margin calculation failed to deduct certain value added taxes (VAT) from the home market invoice prices. JSW claims that these taxes are not part of the purchase price of the merchandise, but instead are government taxes which JSW is required to collect on behalf of the Indian government. Thus, JSW contends that in accordance with section 773(a)(6)(B)(iii) of the Act, these taxes should be deducted from the home market invoice price. In addition, JSW agrees that the Department should continue to include Dharmada, which is an internally imposed charitable assessment that JSW includes on all of its invoices in the home market.

U.S. Steel counters that JSW failed to meet its burden of providing evidence to demonstrate that the excise tax, education cess, and VAT/central sales taxes were remitted to the Indian taxing authority, and hence should be deducted from the home market prices. Therefore, U.S. Steel argues that the Department should reject JSW's request for an adjustment under section 773(a)(6)(B)(iii) of the Act.

Nucor asserts that JSW's argument is premised on the Department accepting and calculating the final margin using the new databases that were submitted after verification, which Nucor argues the Department should disregard because the databases provide untimely significant corrections. Nucor also argues that given the statutory and regulatory prohibition against calculating a margin based on factual information submitted after the deadline, the Department should calculate the final margin based on the databases that were on the record before verification.

Nucor also asserts that in previous cases where respondents have, at verification, submitted revisions to previously submitted databases, the Department has rejected such revisions as untimely. Nucor states that given the Department's past precedent, it would be inappropriate to include these corrections in the final margin calculation. Accordingly, the Department should reject these new databases and use the databases previously submitted by JSW in calculating the final margin.

JSW counters that the revised home market and U.S. sales databases are not new information, but clarification of information that was previously submitted.

Department's Position:

We disagree with Nucor that the revised home market and U.S. sales databases are new

information under 19 CFR 351.301. As stated in the verification outline, we asked that respondent present minor corrections found during preparation for verification on the first day of verification.⁷ Hence, the minor corrections in the databases were presented on the first day of verification. Although the purpose of verification is not to collect or accept new information, the Department normally accepts minor corrections discovered by the respondent during verification preparation. The revised databases presented at verification provide a breakdown of the originally reported tax items, and thus, are not new information. The text in JSW's questionnaire response indicated that the gross unit price (GRSUPRH) reported included various items including taxes. See June 30, 2007, questionnaire response, field number 17.0 at page B-79. However, the databases submitted for the preliminary margin calculation did not provide a breakdown of the items and amounts included in the home market invoice prices. Therefore, we calculated the preliminary results margin using a gross unit price inclusive of taxes.

We also disagree with U.S. Steel that record evidence show that JSW did not properly account for the taxes and that the Department should not deduct the taxes from the home market prices. Record evidence includes invoices for both purchases and sales that reflect the payment of relevant taxes, the relevant government regulations and tax rates, and other documentation. At verification we also reviewed various accounting records covering JSW's treatment of taxes. All this evidence shows that JSW's handling of taxes was consistent with its accounting records. There is no evidence that JSW failed to remit these taxes to the government. It is the Department's practice not to include taxes that are collected on behalf of a foreign government in the home market price. Therefore, for purposes of the final margin calculation, we have used the revised databases that provide a breakdown of the total price and the gross unit price, and have deducted the excise tax, education cess, and VAT from the home market prices. See section 773(a)(6)(B)(iii) of the Act, requiring deduction of VAT and other taxes included in the invoice price in calculating normal value.

We agree with JSW that the Dharmada is not a charge like an excise or VAT tax that we are required to deduct, in accordance with section 773(a)(6)(B)(iii) of the Act. Rather these amounts are collected by JSW for its own purposes, i.e., charity. Anyone purchasing subject merchandise from JSW has to pay this charge, which is in addition to the price of the merchandise. Therefore, this additional charge is not a tax that is collected on behalf of the Indian government; rather, it is a charge levied by the seller that is part of the purchase price paid by the buyer.

Comment 9: Deduction of Antidumping and Countervailing Duty Deposits

JSW argues that in the preliminary margin calculation the Department incorrectly deducted antidumping (AD) and countervailing duty (CVD) deposits that were reported in the U.S. Customs Duty (USDUTYU) field from the reported U.S. price.

Nucor contends that JSW's argument rests on the Department accepting and calculating the final margin from the new databases that were submitted after verification. Nucor also contends that JSW presented newly revised databases, including new fields of information and new calculations. Nucor argues that given the Department's past precedent, it would be inappropriate to include these purported corrections in the final margin calculation. Therefore, the Department

⁷ See Department's letter to JSW dated January 9, 2008, cover letter at page 2 and page 1 of the Agenda.

should use the databases previously submitted by JSW in calculating the final margin.

Nucor argues that because JSW was not forthcoming with information that is significant to the review, the Department does not have the information necessary to calculate the correct margin. Thus, Nucor suggests that the Department apply facts available.

JSW counters that the Department should calculate JSW's final antidumping margin based on its reported and verified data and should not resort to AFA for any part of the calculation. JSW asserts that it has fully cooperated to the best of ability, thus there is no justification for finding that JSW failed to respond or that it has impeded the Department's efforts in this proceeding.

Department's Position:

We agree with JSW. As stated in Comment 8, we find that the revised home market and U.S. sales databases do not present new information under 19 CFR 351.301. JSW provided a breakdown of its USDUTYU field number 36.0 in the text of its June 30, 2007, questionnaire response on page C-30. However, the data submitted provided a total amount in the USDUTYU field that included AD and CVD deposits. Thus, the entire amount in the USDUTYU field was deducted from the U.S. price in the preliminary results. The new database provides a breakout of the customs duty in the USDUTYU field from the AD and CVD deposits. In accordance with section 772(c)(2)(A) of the Act, we have deducted U.S. customs duties from the starting price. See Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 10669, 10674 (March 9, 2007), unchanged in the final, Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065 (September 12, 2007). However, there is no provision for the Department to make deductions for AD and CVD deposits. Thus, for purposes of the final margin calculation, we have used the revised database which provides a separate field for USDUTYU that does not include AD and CVD deposits.

Comment 10: Application of AFA for JSW

Petitioners argue that in accordance with section 776(a)(2) of the Act, the Department is required to use facts available, and apply an adverse inference when selecting such facts available to apply to JSW because it (1) withheld information, (2) failed to provide requested information by the deadlines, (3) significantly impeded this proceeding, and (4) failed to cooperate to the best of its ability.

Petitioners assert that throughout the review, the Department has requested JSW to provide information regarding its agreements and affiliations, including its relationship with its U.S. customer and the U.S. customer's affiliates, but that JSW has either failed to provide the requested information or provided incomplete responses. Petitioners also assert that JSW failed to provide some of the requested information by the Department's deadlines. According to petitioners, JSW's refusal to detail its relationship with its U.S. customer and the U.S. customer's affiliates impeded the review process and the Department lacks the information it needs to conduct the administrative review. Petitioners argue that the advance payment and supply

agreements JSW provided at verification are new and were provided too late in the proceeding to be accepted by the Department. According to petitioners, this late information prevents them as well as the Department from fully investigating this new information. Thus, this late information should be rejected.

Nucor argues that JSW and its U.S. customer are affiliated under section 771(33) of the Act, as evidenced in the previously undisclosed “Advance Payment and Steel Supply” agreements discovered at verification. According to Nucor, the agreements indicate the existence of a long-standing debt financing relationship between JSW and its U.S. customer’s affiliates that is sufficient for the Department to determine that the entities are affiliated. Nucor contends that because the agreements were not presented until the Department’s verification, the Department should apply AFA under section 776 of the Act. Nucor also contends that even if the Department elects not to apply AFA for JSW’s refusal to provide the agreements prior to verification, these dealings, along with other evidence on the record, indicates affiliation within the meaning of the statute.

Nucor claims that because JSW failed to identify its U.S. customer as an affiliated party, the Department does not have the information necessary to calculate a correct margin based on CEP. Nucor argues that AFA is appropriate because the structure of the payment between JSW and its U.S. customer render the transaction between them unusable. Therefore, Nucor argues that the Department should disregard JSW’s questionnaire responses as permitted under section 782 of the Act, and should apply facts available section 776 of the Act. Moreover, Nucor posits that the Department should apply total AFA in accordance with 19 CFR 351.308(a)(b), and assign JSW the highest calculated rate of 43.07 percent from the original investigation. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot Rolled Carbon Steel Flat Products from India, 66 FR 50406, 50408 (October 3, 2001).

JSW argues that it should not be punished for delayed submissions or incomplete responses as characterized by petitioners. JSW states that operating *pro se*, without the assistance of counsel that could help it interpret the Department’s questionnaires, it expended every effort to provide complete and accurate responses. However, JSW claims that delays were due to its lack of knowledge and experience in the review process and its misunderstanding of the information requested by the Department. JSW states that where it understood the Department’s intent in a question, and where the information was within its knowledge, it answered fully and completely. JSW claims that it acted to the best of its ability in responding to the Department’s requests for information, did not withhold information, and invited the Department to conduct verification to confirm the accuracy and completeness of its responses. Thus, JSW contends that the Department should not apply AFA as argued by petitioners.

JSW counters that the only relationship between JSW and the other companies in the O.P. Jindal Group and JSW’s U.S. customer and the U.S. customer’s affiliates, apart from their commercial dealings, is that one of the U.S. customer’s affiliates has a shareholding in JSW that is less than the Department’s five-percent ownership threshold for affiliation under section 771(33) of the Act. Thus, JSW contends that no actual affiliation arising out of equity, control, or common ownership exists between JSW and the other companies in the O.P. Jindal Group and JSW’s U.S. customer and the U.S. customer’s affiliates.

Department's Position:

We disagree with petitioners that the application of AFA to JSW is appropriate. We do not find that JSW withheld information, significantly impeded the investigation, or failed to cooperate to the best of its ability. As detailed below, in the original questionnaire and in numerous supplemental questionnaires, we asked for a significant amount of information from JSW. JSW responded to each of these questionnaires and supplied a significant amount of information on the record.

The Department found that JSW's initial questionnaire response and data submissions were deficient and unusable. We clearly indicated so in the supplemental questionnaire we sent to JSW. The second response, while usable, still required clarification and additional information from JSW. Therefore, the Department issued additional supplemental questionnaires to JSW. The Department had to make several requests for clarification of the questionnaire responses and databases and more fulsome responses from JSW. This is the first time that JSW has participated in an administrative review and the company did not have legal representation until verification. Throughout the proceeding, it appeared that the company did not fully understand the questions, administrative process or filing requirements.⁸

Although there were deficiencies in JSW's responses which necessitated supplemental follow-up questionnaires, as a result of the process and the company's willingness to participate in the process, the Department believes that it has a complete record of the information relevant to JSW's operations. Accordingly, we are able to calculate an accurate margin for this company and adequately evaluate all related relevant factual issues, including possible affiliation. Nucor's argument that the Department lacks the information necessary to calculate a margin based on CEP sales is premised on an alleged affiliation between JSW and its U.S. customer. A comprehensive review of all record evidence clearly shows that there is no credible evidence that JSW is affiliated with a certain steel company, as alleged by petitioners, or that JSW attempted to withhold evidence from the Department. If the information collected at verification had been on the record at the preliminary results, it would not have changed our analysis or conclusions. Therefore, the Department finds that there is no affiliation between these parties and that the transactions were negotiated at arm's length. Thus, we also find that the first sale is to an unaffiliated purchaser in the United States, and that JSW's sales are EP sales.

We also disagree with Nucor's argument that the structure of the payment terms between JSW and its U.S. customer somehow invalidates the transaction. The price, quantity and payment terms between JSW and its U.S. customer were negotiated at arm's length. Moreover, Nucor does not cite to any statutory basis for rejecting the transaction. Because much of this argument contains business proprietary information, the issue is more fully addressed in the Final Calculation Memorandum for JSW.⁹

We requested information regarding the potential affiliation between JSW and the O.P. Jindal

⁸ See the Department's letters to JSW dated October 9, 2007, December 7, 2007, and December 12, 2007.

⁹ See the Memorandum from Stephanie Moore, Case Analyst, to James Terpstra, Program Manager, concerning the Calculations for JSW Steel in the Final Results, dated May 30, 2008 (Final Calculation Memorandum for JSW).

Group, and between JSW and the O.P. Jindal Group, and JSW's U.S. customer and its affiliates.¹⁰ In its October 15, 2007, questionnaire response JSW provided detailed information regarding the agreement it reached in 2005 to take over Euro Coke & Energy Pvt. Limited (ECEL), which was owned by Duferco Coke Investments Limited (DCIL). In exchange every shareholder in DCIL received one share of JSW's stock, which accounts for the 3.21 percent share of JSW allotted to DCIL. However, JSW did not fully address its corporate structure and affiliations with the O.P. Jindal Group. See JSW's October 15, 2007, questionnaire response at page 5.

In the Department's November 9, 2007, supplemental questionnaire, we pointed out to JSW the definition of corporate structure and affiliations in accordance with section 771(33) of the Act, and the Department's regulations at CFR 351.102(b) and 351.401(f), and requested JSW to provide clarifying or additional information. JSW repeated its claims that it had difficulty providing information because: (1) the O.P. Jindal Group is not a legal entity, (2) all of the companies in the O.P. Jindal Group are independently operated and controlled, and (3) JSW did not have any information regarding sales from the other companies in the O.P. Jindal Group to JSW's U.S. customer or its affiliates. See JSW's December 13, 2007, questionnaire response at page 8. In the November 9, 2007, supplemental questionnaire we also cited to newspapers articles that had been provided by petitioners regarding transactions between JVSL (Jindal Vijaynagar), now known as JSW, and JSW's U.S. customer's affiliates. JSW responded that in August 2004, it had entered into an "Advance Payment against Steel Supply Agreement" with its U.S. customer's affiliate. See id., page 11. However, JSW did not provide information pertaining to the other supply agreements until verification, when we asked if the agreement in 2004 was the only agreement between JSW and the U.S. customer's affiliates. Although this information could have been provided in response to the Department's November 9, 2007, questionnaire, we do not believe that JSW significantly impeded the review. The agreements themselves do not provide any information that shows a close supplier relationship that would lead to control of one company over the other or a significant debt financing arrangement for JSW that would cause us to find that JSW and its U.S. customer's affiliates are affiliated under section 771(33) of the Act.

Furthermore, we note that both JSW and its U.S. customer's affiliates are large diversified companies with a wide range of operations; the fact that they may be engaged in a variety of business transactions does not render one in control of the other; moreover, none of the other statutory criteria for affiliation are present. There is no evidence to indicate that there were transactions or data relevant to the dumping analysis that JSW failed or refused to provide. To understand the overall relevance of this data, we compared the agreements presented at verification with the overall operations of the company and found that they did not form a basis for a finding of control because the agreements represented a relatively small portion of JSW's financing. We determine, based on the evidence on the record, that JSW has been a cooperative respondent, is not affiliated with its U.S. customer or its affiliates, and that application of a total AFA rate of 43.07 percent ad valorem is not warranted. See the Department's Position for Comment 27, below. See also See Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan, 73 FR 1202 (January 7, 2008), and accompanying Issues and Decision Memorandum at

¹⁰ Because the identity of the U.S. company and its affiliates is business proprietary information, we refer to JSW's U.S. customer and the U.S. customer's affiliates.

Comment 1.

Comment 11: Finding Affiliation Based on Facts Available for JSW

Petitioners argue that even if the Department does not apply total AFA, the Department should find that JSW and its U.S. customer are affiliated, in accordance with section 771(33)(G) of the Act, which provides that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.” Thus, petitioners argue that section 771(33)(G) of the Act is applicable because the business relationship between the parties has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. Finally, petitioners argue that the Department should find that JSW and its U.S. customer are affiliated; therefore, the Department cannot base U.S. price on the sale to that customer.

JSW counters that petitioners’ argument that the commercial dealings between JSW and its U.S. customer, and the U.S. customer’s affiliates are so significant and intertwined that the relationship constitutes a de facto affiliation is false. JSW claims that the record shows that while JSW and its U.S. customer’s affiliates have had numerous business dealings over the years the business transactions do not constitute a “close supplier relationship.”

JSW claims that pricing under the financing arrangements between JSW and its U.S. customer’s affiliates are market-based because repayment is secured by means of sales of JSW products, according to an agreed schedule; JSW has the option of repaying the advance by making sales or by monetary payments; there is no guaranteed sales quantity; and the agreements do not establish selling prices. Further, JSW asserts that the financing arrangements do not have the potential to impact company decisions because JSW is not dependent on this form of financing and the financing that is provided under these agreements does not account for a disproportionate amount of JSW’s total financing. Thus, JSW asserts that the loan arrangements do not have the potential to impact decisions concerning the production, pricing, or the cost of the subject merchandise or foreign like product, as required by the Department’s regulations in order to impute affiliation under 19 CFR 351.102(b).

Department’s Position:

In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Department will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Department will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or the cost of the subject merchandise or foreign like product. See 19 CFR 351.102(b).

In the Preliminary Results we noted that Nucor alleged that JSW has a close supplier and debt financing relationship with another steel producer that rises to the level of control, and that the two companies are affiliated pursuant to section 771(33) of the Act. The Department preliminarily determined that JSW is not affiliated with the other steel producer as alleged by Nucor. See Preliminary Results at 74269. In accordance with 19 CFR 351.102(b), the

Department preliminarily determined that neither JSW nor the other steel producer is legally or operationally in a position to exercise restraint or direction over the other and that the relationship did not have the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. This finding was based on a detailed analysis of Nucor's allegations and supporting documentation.

Nucor now points to the advance supply agreements provided at verification as further indication of a "close supplier relationship" or a "debt financing relationship" between JSW and the other steel producer that allegedly rises to the level of control. In reviewing the agreements between the parties, while there is a long-standing business relationship, we still do not find a level of control such that one person is legally or operationally in a position to exercise restraint or direction over the other person and that the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. As stated in the Preliminary Results, the standard is not whether one company might be in a position to become reliant upon another by means of their supplier-buyer relationship; rather the Department must find that a situation exists where the buyer has, in fact, become reliant on the seller, or vice versa. See 72 FR 74269. Only if we make such a finding can we address the issue of whether one of the parties is in a position to exercise restraint or direction over the other. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404, 18417 (April 15, 1997). None of the information on the record shows that JSW is reliant upon the other steel producer, or vice versa.

During the verification process, we met with JSW's Director of Finance, who explained that while a supply agreement between JSW and the other steel producer had been cancelled, JSW had, in fact, entered into other such agreements. However, nothing about the agreements provided at verification changes the analysis from the preliminary results. At verification, we examined JSW's records and databases for information related to business transactions between JSW and the other steel producer. This detailed review of accounting records showed that, other than the new agreements presented at verification, there are no additional business dealings between JSW and the other steel producer that were not already on the record. Thus, there is no other evidence of affiliation through control.

Although information regarding these other agreements could have been provided in response to our supplemental questionnaires, we do not find that JSW significantly impeded the review. The reason for this is that the agreements themselves do not provide any information that shows a close supplier relationship that would lead to control of one company over the other or a significant debt financing arrangement for JSW that would cause us to find that JSW and its U.S. customer or the U.S. customer's affiliates and JSW are affiliated under section 771(33) of the Act. Thus, it does not appear that JSW attempted to withhold this information; rather, that the failure to provide this information is that JSW narrowly interpreted the Department's questions.

It is important to note that both JSW and its U.S. customer's affiliates are large diversified companies with a wide range of operations. The fact that they may be engaged in a variety of business transactions does not render one in control of the other. Moreover, none of the other statutory criteria for affiliation are present.

Comment 12: Collapsing of the O.P. Jindal Group

Petitioners contend that although the Department also requested JSW to provide information concerning whether other companies in the O.P. Jindal Group had agreements, transactions, purchases, sales, financing, or other relationships with JSW and with JSW's U.S. customer's affiliates, JSW failed to provide this information. Nucor maintains that members of the O.P. Jindal Group have facilities that can easily be retooled to produce merchandise similar or identical to subject merchandise, and that there is a significant potential for manipulation of price or production among the producers. Petitioners claim that although JSW provided untimely information at verification, the company continues to withhold information and documentation that is critical to this proceeding, particularly with respect to the relationships between JSW and the other companies in the O.P. Jindal Group and between all of the companies in the O.P. Jindal Group and JSW's U.S. customer's affiliates. Therefore, petitioners argue that JSW continues to fail to cooperate to the best of its ability.

JSW counters that the Department should not collapse JSW with the other companies in the O.P. Jindal Group because only JSW produces, or has the capability to produce, subject merchandise, and there is no intertwining of operations or management, such that there is a risk of manipulation of price or production. JSW counters that there is no basis for petitioners' allegation that one of the companies in the O.P. Jindal Group has the capability to convert a stainless mill into a hot-rolled carbon mill and such an endeavor would be cost prohibitive. JSW argues that none of the other companies in the O.P. Jindal Group has produced the subject merchandise and that verification of the entire group would not change the outcome because the sales files would still consist only of sales of subject merchandise produced and sold by JSW; selling expenses and manufacturing costs incurred by JSW; and the margin would still be based only on the sales and activities of JSW.

Department's Position:

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, the Department will consider (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) whether the operations of the affiliated firms are intertwined. See Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review, 63 FR 12764, 12774-75 (March 16, 1998). Based on a totality of the circumstances, the Department will collapse affiliated producers and treat them as a single entity where the criteria of 19 CFR 351.401(f) are met.

In the Preliminary Results, we found that JSW was affiliated with the O.P. Jindal Group in accordance with section 771(33) of the Act. See 72 FR 74268. Information on the record indicates that the O.P. Jindal Group is comprised of nine different businesses, headed by four

brothers, including one of the brothers who owns JSW. Thus, by virtue of the familial relationships of the companies' owners, JSW is affiliated with the O.P. Jindal Group under sections 771(33)(A) and (F) of the Act, as they are under the common control of a family group.

While we find that JSW is affiliated with the O.P. Jindal Group, there is no evidence on the record that indicates that any of the other companies in the group produces the subject merchandise at its own facility or could produce the merchandise without substantially retooling their facilities, or that any other company in the group besides JSW sells the subject merchandise. For these reasons, despite the affiliation between JSW and the O.P. Jindal Group, we have not collapsed JSW with the group under 19 CFR 351.401(f). See Affiliation Memo.¹¹ See also Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden, 63 FR 40449, 40452-54 (July 29, 1998), where we found affiliation, but did not collapse the entities because there was no evidence that the merchandise could be produced at the other companies' facilities without substantial retooling.

Ispat Steel Limited

Comment 13: Date of Sale

U.S. Steel argues that the Department should treat the sales contract date as the date of sale for Ispat's U.S. sale. U.S. Steel states that the date of sale is when the material terms of sale are established. U.S. Steel contends that because various documents related to the U.S. sale reference the original sales contract, and there were no subsequent changes to the material terms of sale, the contract date sets the material terms of sale.

U.S. Steel maintains that Ispat acknowledges that the terms of sale did not change between the issuance of the sales contract and the issuance of the letter of credit. Further, U.S. Steel maintains that the Department has found that terms of a letter of credit are subject to change, and thus are not a reliable basis for determining the date of sale.¹²

U.S. Steel argues that documentation provided by Ispat with respect to sales to third countries where the sales contracts were changed and documented in the related letters of credit do not support using the letter of credit as the date of sale in the U.S. market. Instead, U.S. Steel maintains that the documentation only demonstrates that a letter of credit may establish the terms of sale for Ispat's sales to third countries. Thus, U.S. Steel contends that the Department should ignore the documentation provided by Ispat with respect to sales to third countries in the instant case.

Ispat argues that the Department should use the letter of credit date as the date of sale.¹³ Ispat states that "while the terms of sale did not change between contract date and letter of credit date for the one U.S. sale, for export sales the sales contract is considered final only after the letter of

¹¹ See Memorandum to Melissa Skinner, Office Director, Import Administration, through James Terpstra, Program Manager, Import Administration, from the Team, Regarding JSW Affiliation, dated December 19, 2007.

¹² See Certain Steel Concrete Reinforcing Bars from Turkey, 72 FR 62630 (November 6, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

¹³ See Letter from Ispat Industries Limited to the Department (Ispat's rebuttal brief), dated April 11, 2008, at page 3.

credit is executed.”¹⁴ Further, Ispat maintains that the Department verified that the letter of credit freezes the quantity and price in international sales, and thus, should be used as the date of sale. Ispat urges the Department to continue to use the letter of credit as the date of sale.

Department’s Position:

The Department agrees with Ispat that the letter of credit should be used as the date of sale. The Department’s regulations at 19 CFR 351.401(i) state “[i]n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.” In Hornos Electricos de Venezuela, S.A. (Hevensa) v. United States, 285 F. Supp. 2d 1353, 1367 (2003) (Hevensa), the CIT held that “even if the material terms of sale are not subject to change, the Department has the authority to nonetheless use invoice date as the date of sale; discretion in this instance means that the Department may use a date of sale other than invoice date, but is not required to do so.” Indeed, in the underlying investigation, the Department used the date of the letter of credit or amended letter of credit as the date of sale for Ispat.¹⁵

In the instant review, the factual basis for our finding is similar to that in the investigation.¹⁶ Ispat reported the date of the letter of credit as the date of sale.¹⁷ Ispat reported that in its negotiations with international customers, it does not normally reach binding commitments on the material terms of sale (primarily price and quantity) prior to the letter of credit.¹⁸ While the material terms are often referenced in contracts and other communication, these terms can and do change up to the issuance of the letter of credit.¹⁹ The most important aspect of this, according to Ispat, is that without a letter of credit, there is no guarantee of payment, and until the letter of credit is issued, Ispat does not consider the terms of sales final.²⁰

At verification, we examined a variety of documentation reflecting communications between Ispat and various customers regarding price, quantity, and aspects of the transactions and found that that the letter of credit was normally the first binding statement of the price and quantity.²¹ In reviewing this documentation we note that the typical sequence is that first there is communication with a customer, next a contract is issued, followed by a letter of credit, and then an invoice.²² These documents show that the material terms are finalized at the letter of credit

¹⁴ See id.

¹⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 50406 (October 3, 2001), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁶ See “Verification of the Sales Response of Ispat industries Limited in the Antidumping Review of Hot-Rolled Carbon Steel Flat Products from India” dated March 12, 2008 (Ispat’s Verification Report), at exhibit 9.

¹⁷ See Ispat’s April 13, 2007, Section C questionnaire response at page C-23.

¹⁸ We disagree with petitioners that we should not consider third country sales in our analysis. Because Ispat had only one U.S. sale, we examined all of Ispat’s export sales to better understand its selling practices.

¹⁹ See id., at exhibit 24.

²⁰ See id. at pages 30, 31.

²¹ See Ispat’s Verification Report at pages 7 and 8.

²² See id.

and never change when the invoice is issued. The Department agrees with petitioners that, in some instances, the material terms did change after the letter of credit was issued; however, in all of these instances a revised letter of credit may be amended. The materials terms never changed between the letter of credit and the invoice. Thus, consistent with the antidumping duty investigation, the Department will use the date of the letter of credit as the date of sale.

Comment 14: Freight Charges in Home Market Sales

U.S. Steel states that the Department based normal value on the reported gross unit price, GRSUPRH, and made various adjustments in the calculation of normal value in the home market. U.S. Steel maintains that the Department failed to include the freight expenses Ispat charged to its home market customers, contained in variable GRSUPR3H. Thus, U.S. Steel contends that the Department should add GRSUPR3H to GRSUPRH for calculating normal value (NV).

Ispat states that “in the case of delivered term “FOR” Ispat recovers freight charges from its customer as a separate line item on the invoice. In those cases, Ispat has reported the additional freight charges in field 17.2 (GRSUPR3H).”²³ Ispat argues that section 773 of the Act directs the Department to reduce the starting price by “the amount, if any, included in the price described in paragraph (1)(B), attributable to any additional costs, charges, and expenses incident to bringing the foreign like product from the original place of shipment to the place of delivery to the purchase.”²⁴ Ispat maintains that freight costs were not included in the price, but were a separate line item on the invoice and therefore no deduction is required.

Department’s Position:

The Department agrees with U.S. Steel. The Department made a clerical error in the preliminary results by not adding freight expenses charged to customers. Consistent with section 773(a)(6)(C)(iii) of the Act, the Department’s practice is to add revenue collected from customers.²⁵ In the instant case, Ispat collected freight charges as a separate line item on the invoice.²⁶ Accordingly, the Department considers that line item as revenue and includes the same in gross unit price. Further, Ispat stated that GRSUPR3H should be added to GRSUPRH to determine the invoice price for a given sale.²⁷ Thus, for the final results, we will add GRSUPR3H to GRSUPRH to determine NV pursuant to section 773(a)(6)(C)(iii) of the Act.

Comment 15: Treatment of Inland Freight

Petitioners state that Ispat treats freight expenses for transportation of material from Ispat’s factory to unaffiliated service centers as movement expenses. Petitioners argue that it is the Department’s practice to treat freight expenses between the plant and an outside processor as

²³ See Ispat’s rebuttal brief, at page 4.

²⁴ See *id.*

²⁵ See Stainless Steel Sheet and Strip in Coils from Italy: Final Results of Antidumping Administrative Review, 68 FR 6719 (February 10, 2003), and accompanying Issues and Decision Memo at Comment 7.

²⁶ See Ispat’s April 13, 2007, Section B questionnaire response at page B-35.

²⁷ See *id.*

direct material costs, rather than movement expenses.²⁸ Thus, petitioners contend that the Department should include freight expenses for transportation of material from Ispat's factory to unaffiliated service centers in the calculation of the cost of manufacturing, and not as part of the movement expenses.

Ispat contends that the inland freight expenses in question are a post sale expense, and should be classified as a selling expense, not a cost of production.²⁹ Ispat explains that for certain sales, it is required to slit the coils before shipment to Ispat's customers.³⁰ Ispat maintains that these slitting expenses are post sale expenses which have been correctly reported on an invoice-specific basis as selling expenses. Further, Ispat asserts that the Department verified these slitting expenses.

Department's Position:

We agree with petitioners that it is the Department's practice to treat freight expenses between the plant and an outside processor as a cost of manufacturing, rather than movement expenses.³¹ Ispat reported that "a portion of the items sold by Ispat are sold after finishing operations performed by unaffiliated subcontractors prior to delivery to the customer. The finishing operations involved are cutting & slitting services performed at plant/un-affiliated service centers."³² Ispat further states that those cutting and slitting services are billed to Ispat, and have been included in the cost of manufacture. Thus, for the final results, the Department will include the freight expenses between the plant and outside processor for cutting and slitting in the cost of manufacture, and not a post-sale movement expense. For details on the inclusion of freight expenses to the outside processor in the cost of manufacture, see the Final Calculation Memorandum for Ispat at section XII.

Comment 16: Calculation of Indirect Selling Expense

U.S. Steel contends that Ispat did not appropriately multiply the stated indirect selling expense ratio³³ for home market sales to the gross unit price to calculate the indirect selling variable, INDIRSH, in the home market sales database. Thus, U.S. Steel urges the Department to re-calculate and correctly apply INDIRSH in the home market using Ispat's indirect selling expense ratio.

Ispat did not comment on this issue.

²⁸ See e.g., Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 62 FR 18476, 18484 (April 15, 1997), Certain Hot-Rolled Steel Flat Products, Certain Cold Rolled Carbons Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Canada, 58 FR 37099 (July 9, 1993), and accompanying Issues and Decision Memorandum at Comment 61.

²⁹ See Ispat's rebuttal brief, at page 5.

³⁰ See id.

³¹ See Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final results of Antidumping Duty Administrative Review, 62 FR 18476, 18484 (April 15, 1997).

³² See Ispat's April 13, 2007, Section D questionnaire response at page D-29.

³³ See Ispat's April 13, 2007, Section B questionnaire response at Exhibit B-18.

Department's Position:

The Department agrees with U.S. Steel that Ispat did not appropriately multiply the stated indirect selling expense ratio by the gross unit price in the home market sales database. Thus, the Department was re-calculated and correctly applied the revised INDIRSH in the home market using Ispat's indirect selling expense ratio. For details on the re-calculation of INDIRSH, see the Final Calculation Memorandum for Ispat at section XII.

Comment 17: Calculation of General and Administrative Expenses

Nucor states that G&A expenses are those expenses related to the general operations of the company. Nucor argues that directors' and general managers' salaries relate to the operations of the company as a whole, and should be part of G&A expenses. Nucor maintains that Ispat reported directors' and general managers' salaries as fixed overhead, and thus, incorrectly calculated G&A expenses for the purposes of the preliminary results. Nucor argues that the Department should re-classify directors' and general managers' salaries as G&A expenses, and re-calculate the G&A expense ratio for the final results.

Ispat states that they classify directors' remuneration as fixed overhead, as verified by the Department. Ispat reasons that if the Department re-classifies directors' and general managers' salaries as a G&A expense, then this expense should be excluded from the fixed overhead ratio.³⁴ Ispat argues that failure to make these adjustments would overstate the costs because the same expense would be included in fixed overhead and G&A.

Department's Position:

The Department agrees with Nucor that directors' and general managers' salaries relate to the operations of the company as a whole, and should be part of G&A expenses. It is the Department's consistent practice to calculate G&A expenses based on the producing company as a whole and not on a divisional or product-specific basis.³⁵ Ispat chose to report the directors' and general managers' salaries on a divisional basis, and to allocate their salaries between fixed overhead and G&A expenses.³⁶ However, the salaries in question are not associated with the production or manufacture of a product, but are rather general and administrative in nature. Thus, it is more appropriate to treat directors' and general managers' salaries as G&A expenses.

The Department also agrees with Ispat that if the directors' and managers' salaries are classified as G&A, then they should be excluded from the fixed overhead ratio. Otherwise, the directors' and managers' salaries will be counted twice. Therefore, the Department has reclassified the directors' and general managers' salaries as G&A and removed these salaries from fixed overhead. For details on the re-calculation of the directors' and managers' salaries, see the Final Calculation Memorandum for Ispat section XII.

³⁴ See Ispat's rebuttal brief at page 2.

³⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden, 63 FR 40449, 40459 (July 29, 1998).

³⁶ See Ispat's October 31, 2007, Supplemental Section D Questionnaire response at Exhibit 2.

Essar Steel

Comment 18: Duty Drawback

Essar asserts that the Department should increase Essar's U.S. price by the amount of duty drawback claimed by Essar. For the preliminary results, the Department denied Essar's duty drawback claim because it did not provide sufficient evidence on the record to demonstrate that it received rebates from the Government of India (GOI) for duty drawback.

Specifically, Essar asserts that the Department should use its claimed duty drawback for its Advance License Program for the final results. Essar claims that it reported a direct link between its import duties and the claims drawback for its Advance License Program.³⁷ Moreover, Essar argues that it sufficiently met the Department's two-prong test. Essar explains that the Department grants a duty drawback adjustment, if 1) the import duties and rebates are directly linked to, and are dependent upon, one another, and if 2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw material to account for the duty drawback received on exports of the manufactured product.³⁸ Essar asserts that it provided record evidence of the quantity of raw materials on which remission for exports is available and that it accounted for the imports of raw materials to account for the duty drawback on exports of the subject merchandise to the United States. Essar stated that it provided for each advance license a summary of each bill of entry, actual bills of entry, and certification of these bills of entry by the GOI for Essar's import of inputs.

Petitioners argue that Essar has failed to meet the Department's two-prong test: first, the proponent must provide evidence demonstrating that payment of import duties and receipt of duty drawback are directly linked to, and dependent upon, one another;³⁹ second, the proponent of the adjustment must demonstrate that there were sufficient imported raw materials to account for the duty drawback received on the exports.⁴⁰ Petitioners assert although Essar claims to have provided copies of the advance licenses pursuant to which it exported merchandise,⁴¹ these licenses are incomplete. In particular, the petitioners point to the lack of requisite information on export. Moreover, petitioners state that even if Essar had supplied all of the underlying shipment documents, Essar has not established that is the same information that it submitted to the GOI in conjunction with its advance license requirements, or that it even made any such submission at all.

Petitioners claim that Essar has neither established exports pursuant to its advance license, nor demonstrated that its exempted imports are directly linked to and dependent upon those remitted exports. Thus, petitioners argue that the Department was correct in preliminarily denying Essar's offset claim, and should continue this decision into the final results.

³⁷ See Essar's April 13, 2007, Section C questionnaire response (Section C Response) at Exhibit C-18.

³⁸ See Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative Review, 63 FR 46753, 46755 (September 2, 1998) (citing to Far East Mach. v. United States, 699 F. Supp. 309, 311 (CIT 1988)).

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ See Essar's Case Brief at 3.

Department's Position:

In the preliminary results, the Department concluded that Essar did not provide sufficient evidence on the record to demonstrate that it received rebates from the GOI for duty drawback. We find that we incorrectly concluded that Essar's application for an adjustment for duty drawback was under the Duty Free Remission Certificate (DFRC) program, rather than the advanced license program. The Department has found that previous applications for duty drawback adjustments filed under this program have failed the two-prong test. For example, during the most recent completed administrative review of Essar, the Department disallowed Essar's claimed duty drawback adjustment under the DFRC program because Essar failed to demonstrate that it received a duty drawback from the GOI under the DFRC program.⁴² Specifically, the Department found that Essar failed to provide evidence that it used imports of raw materials for which duties were paid under under the DFRC program.

In contrast to the DFRC program, the Department has found that applications for an adjustment for duty drawback filed under the advanced license program meet the two-prong test, *e.g.*, in the underlying investigation we granted a duty drawback adjustment for Essar which was filed under this program.⁴³ In this review, Essar is claiming duty drawback under the advanced license program. Therefore, we reanalyzed the record evidence⁴⁴ and found that Essar's advance license program used SION (the standard the GOI uses to calculate the quantity of imports that are eligible for duty drawback based on a specified quantity of exports), and that this meets the requirements of the Department's two-prong test: 1) the import duties and rebates are directly linked to, and are dependent upon, one another, and 2) the company claiming the adjustment can demonstrate that there are sufficient raw material imports to account for the duty drawback received on exports of the manufactured product.⁴⁵ Essar's reported SION of import duties and rebates were directly linked to, and are dependent upon, one another.⁴⁶

Unlike Nucor's allegation where it cites to Rajinder Pipes,⁴⁷ there was sufficient information on the record to show that Essar had adequate amounts of raw material imports to account for the duty drawback received on exports. Thus, for the final results, pursuant to section 772 (c)(1)(B) of the Act, the Department has granted Essar its U.S. duty drawback adjustment under the advance license program.

⁴² See Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 2018, 2021 (January 12, 2006), unchanged in the final results, Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review, 71 FR 40694 (July 18, 2006).

⁴³ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 50406 (October 3, 2001), and accompanying Issues and Decision Memorandum at Comment 5.

⁴⁴ See Essar's Section C Response at Exhibit C-13 and Essar's August 15, 2007, Supplemental Response (Supplemental Response) at C-18.

⁴⁵ See Carbon Steel Wire Rope From Mexico: Final Results of Antidumping Duty Administrative Review, 63 FR 46753, 46755 (September 2, 1998) (citing from Far East Mach. v. United States, 699 F. Supp. 309,311 (CIT 1988)).

⁴⁶ See Essar's Section C Response at Exhibit C-13 and Supplemental Response at C-18.

⁴⁷ See Rajinder Pipes Ltd. v. United States, 23 CIT 656, F. Supp. 2d 1350, 1359 (CIT 1999) (Rajinder Pipes).

Comment 19: Level of Trade

Essar asserts that the Department for the preliminary results failed to match the U.S. export price (EP) sales with the appropriate home market level of trade (LOT). Essar argues that it reported three LOTs in the home-market; 1) direct mill sales, 2) downstream sales by Essar's affiliate, Click for Steel (CFS), and 3) stockyard sales. Essar further explains that the comparable LOT to its EP sales was the home market direct mill sales and for the preliminary results the Department failed to correctly match the LOTs. Moreover, Essar claims that the average tonnage sold during the POR to customers within these three LOT's are different and the prices paid by the customers vary depending on the channel of distribution.

Nucor claims that the Department examined Essar's three home market channels of distribution, found them to be largely the same in term of selling functions, and accordingly considered them as one LOT for comparison purposes with U.S. EP sales. Additionally, petitioners explain that Essar's facts do not establish the required showing of substantial differences in selling functions among home market channels. Petitioners state that Essar does not appear to make any argument that there are differences in selling functions among home market channels. It simply assumes that different home market LOTs exist and states that, on the basis of its evidence, one is clearly more comparable to U.S. sales than the others.

Consistent with the preliminary results, Nucor argues that Essar has not provided the requisite evidence of substantially different selling functions among its home market channels of distribution. Thus, for the final results, petitioners maintain that the Department should continue to find that the three home market channels represent a single LOT for comparison with U.S. EP and CEP sales.

Department's Position:

We agree with Nucor. Pursuant to section 773 of the Act, where there are multiple channels of distribution in the home market, the Department will determine whether these channels of distribution constitute separate LOTs, and if so, determine which is most comparable to the U.S. LOT. In this case, the Department continues to find that, because the selling functions are comparable between the three channels of distribution, they constitute a single home market LOT. Moreover, the average tonnage sold, or the prices paid, are not factors we normally consider relevant in our LOT analysis and Essar's assertions about same do not change our analysis. Thus, we treated Essar's home market channels of distribution as the same LOT for purposes of comparison with its U.S. sales. Next, we examined the selling functions related to Essar's U.S. sales and found that all U.S. sales in the single reported channel of distribution were made at the same LOT. We then compared the selling functions in Essar's home market LOT to the selling functions for its U.S. LOT. We found that the selling functions performed in the home market LOT were comparable to the selling functions performed in the U.S. LOT. Therefore we treated the U.S. LOT and the home market LOT as the same LOT. For a detailed description of our LOT methodology and a summary of the company-specific LOT findings for these final results, see the Memorandum from Victoria Cho, Case Analyst, to James Terpstra, Program Manager, entitled "Calculation Memorandum for Essar Steel Limited in the Preliminary Results", dated December 19, 2007 (Preliminary Calculation Memo for Essar).

Comment 20: Countervailing Duty Offset

Essar asserts that the Department had made no adjustments for the export subsidies found in the concurrent CVD review. Essar claims that for the final results, the Department should increase its EP or CEP by the amount of the export subsidy.

Petitioners asserts in making any such offset, the Department should make the offset on the basis of the duty deposit rate in effect at the time the goods were entered. Petitioners argue that, as long as the Department adjusts U.S. price upward to account for CVD duties, it can be assured that its AD margin will reflect dumping behaviors alone, as opposed to subsidization as well. In this way, the Department avoids “double-counting” subsidy rates in its respective AD and CVD assessment rates.

For the final results, petitioners urge the Department to adjust Essar’s U.S. price to account for CVD duties, using the CVD duty deposit rate in effect at the time of Essar’s entries of subject merchandise.

Department’s Position:

In the preliminary results, the Department erred in not granting Essar its export subsidy adjustment pursuant to section 772(c)(1)(C) of the Act. For the final results, we agree with Essar and the clerical error has been corrected. The Department is using the export subsidy rate which was calculated in Essar’s CVD review covering calendar year 2004. This constitutes the company’s most recently completed segment of the CVD order. See the Department’s Clerical Error of Essar’s Preliminary Results Margin Calculation Memorandum, dated February 22, 2008.

Comment 21: Treatment of U.S. Date of Sale

Petitioners claim that the Department should use Essar’s invoice date as the date of sale for Essar’s EP U.S. sales. Petitioners argue that Essar has clearly failed to demonstrate that a date other than the invoice date better reflects the date of sale.

Petitioners assert that Essar changed its EP sales date to the date that the U.S. customer issued its letters of credit midway through the review. Unlike the third administrative review of the order, petitioners argue that there is no evidence that would support a finding that a date other than the invoice date is the more appropriate date of sale. Petitioners maintain that all the evidence on the record supports a finding that the material terms of sale were established on the invoice date.

Unlike the past reviews, petitioners claim that Essar has sufficient EP sales for the Department to establish Essar’s invoice date as the U.S. date of sale. In addition, petitioners argue that Essar has previously advocated the use of invoice date, and denounced the use of the letter of credit date, as the date of sale for its EP sales.⁴⁸ Petitioners assert like in the original investigation, for

⁴⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 50406, 50408 (October 3, 2001), and the accompanying Issues and Decision Memorandum at Comment 2.

this review, the terms of sale were established on the invoice date and those sales terms were not amended after the invoice date. Petitioners assert that Essar's reliance on the Department's date-of-sale determination in Lemon Juice from Mexico,⁴⁹ is completely misplaced.

Petitioners claim that Essar's EP sales in the United States underwent changes between the letter of credit and invoice date. In addition, petitioners assert that Essar did not clearly report its date of sale for some customers, and that for some of its U.S. sales, it did not track the correct payment methods from some customers. Therefore, petitioners state that it will be difficult for the Department to properly calculate the date of sale for Essar's U.S. sales.

Essar states that initially, Essar reported the invoice date as the date of sale for both its CEP and EP sales. However, in response to questions we asked in our supplemental questionnaire, it revised the date of sale in its supplemental questionnaire response. For EP sales, it changed the date of sale from invoice date to the letter of credit date; for CEP sales, Essar changed the date of sale to the contract date. In explaining this revision, it put the sales contract, technical delivery conditions, letters of credit and commercial invoices for each sale on the record, and stated that it recognized that its original reporting of the invoice date as date of sale was inconsistent with what had been used in the previous review. Consistent with the most recently completed review, Essar reported the contract date as the date of sale for its CEP sales because the material terms of sale were fixed then.⁵⁰ However, for EP sales, in some instances, no changes were made after the contract date, and in other instances, changes were made after the contract date and are reflected in the letter of credit. Thus, Essar maintains that the Department used the correct date of sale in the preliminary results and should use the same date of sale for the final results.

Department's Position:

The Department agrees with Essar that the date of the letter of credit should be used as the date of sale for EP sales. The Department's regulations at 19 CFR 351.401(i) state, "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."

The Department disagrees with petitioners' claim that the Department should use Essar's invoice date as the date of sale because record evidence shows that this is the point when the material terms of its EP sales are set. On the contrary, for Essar's EP sales, the material terms of sale are set at the time of the sales contract, but are occasionally changed when the letter of credit is issued. Because the letter of credit is issued after the sales contract, any changes to the letter of credit would also signal a departure from the sales contract.⁵¹ Petitioners point to instances where material terms changed after the letter of credit was issued. In these instances, the original

⁴⁹ See Notice of Preliminary Determinations of Sales at Less Than Fair Value and of Critical Circumstances in Part: Lemon Juice from Mexico, 72 FR 20830 (April 26, 2007).

⁵⁰ See Essar's Supplemental Response at 32.

⁵¹ See id.

letter of credit was amended and we used the amended letter of credit. Thus, for the instant review, the letter of credit is a better test than the sales contract for when the terms of sale are set. Moreover, in all circumstances, the invoice is issued after the letter of credit, or in some instances the amended letter of credit, when the merchandise is shipped and the essential terms are never changed between the letter of credit, or the amended letter of credit, and the invoice.

In contrast to EP sales, CEP sales do not involve letters of credit where the terms of sales contract are subject to change. Rather, the material terms are set at the contract date and do not change when the invoice is issued. Essar properly reported its CEP sales consistent with the third administrative review of this order.

Comment 22: Treatment of U.S. Credit Expense

U.S. Steel asserts that Essar calculated its U.S. credit expense based on the credit period starting from the shipment through the payment date. U.S. Steel argues that for the final results, the Department should calculate Essar's credit period starting from Essar's date of sale. Petitioners explain that for continuity, Essar's EP and CEP sales should be based on a credit period starting with the invoice date through the payment date.

Essar did not comment on this issue.

Department's Position:

The Department disagrees with U.S. Steel. It is the Department's practice to calculate the credit period for a company starting from the date of shipment through the payment date.⁵² The Department's normal practice is based on the fact that producers are not entitled to payment for finished goods until they ship the merchandise and issue the commercial invoice. Thus the imputed credit expense, *i.e.*, the opportunity cost of forgone payment, starts at shipment. This is true generally whether contract date or invoice date is used as date of sale. In many cases, the commercial invoice is issued upon shipment and is used as the date of sale. However, as is the case in this proceeding, using contract date or letter of credit date as date of sale does not change the underlying practice. Therefore, for the purposes of calculating Essar's U.S. credit expense, we will use Essar's date of shipment through its payment date. See Essar's May 30, 2008, Final Results Calculation Memorandum (Final Results Calculation Memo).

Comment 23: Treatment of Sales Tax

U.S. Steel explains that the Department should include the amount of the sales tax collected by Essar, but not remitted to the Indian Authorities in the calculation of NV and Cost of Production (COP). U.S. Steel claims that the Department should increase the price of Essar's home market sales by the amount of the sales tax collected by Essar, but not remitted to the GOI. U.S. Steel maintains that Essar charged its home market customers an amount for taxes on sales of the

⁵² See Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review, 72 FR 71357 (December 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

foreign like product, but was never required to remit the amount collected to the Indian authorities.

U.S. Steel asserts that the taxes collected by Essar and not remitted to the GOI represent additional charges to Essar's customers for its sales of the foreign like product. Accordingly, the amount of such taxes should be considered part of the price at which the foreign like product is first sold for consumption in the exporting country, and should be included in the Department's calculation of Essar's NV.

U.S. Steel maintains that Essar was and is under no obligation to pay the taxes collected by Essar from its home market customers to the GOI. Accordingly, such collected amount never was a tax charged and paid on Essar's home market sales, and the requirements of section 773(a)(6)(B)(iii) of the Act simply do not apply. For the final results, U.S. Steel asserts that the Department should thus increase Essar's home market prices by the amount of tax which Essar did not remit to the government.

In addition, U.S. Steel claims that Essar reported that it paid taxes – *i.e.*, excise duties, sales taxes, and/or VAT – on purchases of inputs used to manufacture hot-rolled steel products sold to Indian customers.⁵³ However, Essar failed to include such taxes in the calculation of its COP. U.S. Steel states that the net prices inclusive of taxes should be compared with COPs inclusive of taxes. U.S. Steel argues that during the investigation, the Department found that “the excise duty or modvat recovered through sales exceed that paid on inputs {and t}hus, excise duty on inputs does not constitute a cost to either company.”⁵⁴ U.S. Steel points to the investigation in which the Department treated taxes paid on input purchases may be offset with refunded sales taxes in determining the amount of taxes that should be included in the calculation of COP. U.S. Steel argues that, during the investigation, the Department calculated NV and COPs without including any taxes incurred by the respondents.⁵⁵

U.S. Steel asserts that in the instant review, Essar paid taxes on purchases of inputs used to manufacture hot-rolled steel products sold to Indian customers.⁵⁶ However, U.S. Steel states that Essar did not pay any taxes to the GOI on its sales of the foreign like product in the home market.⁵⁷ Since Essar did not pay any sales taxes, by extension, it was not refunded any taxes by the GOI related to such home market sales. Given this backdrop, there are no refunded taxes to offset the taxes Essar paid on its inputs.

U.S. Steel argues that taxes collected from home market customers should be properly included in the gross unit price. In order to achieve tax neutrality, given that taxes collected would be included in the gross unit price, the taxes paid on inputs should be included in the calculation of COP. For the final results, U.S. Steel asserts that the Department should include the full amount of taxes Essar incurred on inputs in the calculation of COP.

⁵³ See Essar's Supplemental Response at 9-10, Exhibit 7A (Public Version).

⁵⁴ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 50406 (October 3, 2001), and the accompanying Issues and Memorandum at Comment 3.

⁵⁵ See *id.*

⁵⁶ See Essar's Supplemental Response at 9-10 (Public Version).

⁵⁷ See *id.* at 9

Essar maintains that the Department should not add taxes to NV, as done in the preliminary results. Essar states that the state of Gujarat offered a specific reduced sales tax plan from 1993 to 2007, on which Essar paid a reduced sales tax on its inputs and did not charge sales tax on sales. Essar explains that with the implementation of the VAT tax, Essar was required to pay the VAT tax on purchases and charge sales tax on sales. Essar states that the amount collected and charged was used to offset the remaining incentive amount. This transition scheme ended in October 2006. Essar claims that the amount that U.S. Steel is claiming was not remitted to the GOI was an offset to the tax incentive program, and that the Department has recognized that taxes can be used to offset other taxes and do not necessarily have to be remitted.

Essar further argues that U.S. Steel is attempting to double count taxes by adding the same tax to both sales price and to cost. Essar maintains that sales tax paid has already been included in the COP. Essar states that all of the VAT taxes collected have been offset by the VAT paid and should not be included as part of revenues or costs.⁵⁸

Essar argues that if the Department does increase the gross prices to account for taxes collected, the Department should not use petitioners' tax allocation proposal. Essar argues that the proposal is flawed in three ways; (A) it assumes that Essar only made home market sales of the foreign like product, (B) it ignores the fact that the Department allowed Essar not to report its consignment sales and retail outlet sales of foreign like product, and (C) it allocates taxes not only to Essar's home market sales of foreign like product, but also to CFS' home market sales of foreign like product. Thus, Essar states that the correct allocation methodology is to allocate the taxes over Essar's total home market sales of subject and non-subject merchandise and should not be extended to CFS' downstream sales. Essar urges the Department to use Essar's home market sales value and monthly tax collections for April to November, 2008, to calculate the tax allocation during the POR.

Department's Position:

The Department disagrees with U.S. Steel. In accordance with section 773(a)(6)(B)(iii) of the Act, the Department does not include excise taxes in NV. See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 26589 (May 10, 2001), and the accompanying Issues and Decision Memorandum at Comment 2. Similarly, consistent with section 773(b)(3)(A) of the Act, we have included in NV any taxes paid on material inputs used in production, as long as such taxes were not remitted or refunded upon export. See Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review, 64 FR 6305 (February 9, 1999), and accompanying Issues and Decision Memorandum at Comment 1.

Essar and U.S. Steel argue about different ways in which payments covered by the relevant tax programs should be treated. In applying our standard practice, we are concerned with whether respondent was able to recover such taxes paid. Since record evidence shows that the taxes at issue were recovered, we agree with Essar that the net amount of taxes paid on materials was

⁵⁸ See Elkem Metals Company v. United States and Rima Industrial, 468 F. 3d 795 (Fed. Cir. 2006).

accurately accounted for. See Essar's August 15, 2007, supplemental response at 5-9. Thus, we find that no further adjustment is warranted.

Comment 24: U.S. Indirect Selling Expenses

Petitioners assert that during the POR, Essar made shipments to the United States, pursuant to one CEP sale through its affiliated entity, Essar USA.⁵⁹ Petitioners argue that Essar failed to report Essar USA's indirect selling expenses with respect to its CEP sale.⁶⁰ In addition, Petitioners argue that the record evidence demonstrates that Essar USA was clearly involved in the U.S. selling process and incurred indirect selling expenses related thereto. Petitioners state that the evidence on the record overwhelmingly demonstrates that Essar USA incurred indirect selling expenses with respect to Essar's CEP sale during the POR and that such expenses should be included in the calculation of CEP.

For the final results, petitioners claim that the Department should recalculate the indirect selling expense ratio for Essar USA's indirect selling expenses for Essar's CEP sale during the POR or the Department should apply AFA to Essar's U.S. indirect selling expenses.

Essar states that, "Essar USA consist of one individual in New York who primary activity was to seek out investment opportunities for Essar." Essar maintains that record evidence shows that Essar USA was not involved in the U.S. selling process. Essar asserts that the Department should continue to not include an amount of U.S. indirect selling expenses in the calculation of the constructed export price.

Department's Position:

The Department agrees with petitioners that U.S. indirect selling expenses should be deducted from CEP and we agree with petitioners that Essar failed to report a value for Essar USA's indirect selling expense field, INDIRSU, for its U.S. database. However, the Department in our July 20, 2007, supplemental questionnaire at 6-7, asked Essar to report Essar USA's indirect selling expenses. Essar reported these expenses in accordance with the requirements of the questionnaire.⁶¹ We disagree with Essar that Essar USA is not involved in the sales of subject merchandise. Essar's questionnaire response shows different ways in which Essar USA is involved in the sales process. For the final results, the Department has used Essar USA's reported indirect selling expenses for Essar's CEP sales. See Essar's Final Calculation Memo at 2-3.

Comment 25: DINDIRSU for CEP Sales

U.S. Steel asserts that Essar USA prepared the final invoice to the customer. However, Essar handled all the other aspects of sales via Essar USA. Therefore, petitioners argue that Essar's selling activities performed in India were therefore related to economic activities in the United

⁵⁹ See Essar's April 13, 2007, Section A Response at A-16 (Section A Response) (Public Version).

⁶⁰ See Essar's Section C Response at 33-34 (Public Version).

⁶¹ See Essar's Section A Response at 5, 15-17 and Exhibits 6A-6C, Essar's Section B Response at 41-42, and Essar's August 15, 2007, supplemental response at Exhibit 20B.

States and should be deducted from the calculation of CEP.

In accordance to section 772(d)(1) of the Act, U.S. Steel asserts that it is the Department's standard practice to deduct indirect selling expenses incurred in the country of manufacture in calculating CEP where the expenses are attributable to "commercial activities in the United States that relate to the sale to an unaffiliated purchaser."⁶² Therefore, it is Essar's burden to show that such expenses related solely to sales to its U.S. affiliate, Essar USA.⁶³ Petitioners argue that Essar has failed to satisfy this burden. Petitioners allege that the evidence on the record irrefutably demonstrates that Essar performed selling activities related to its sales to unaffiliated U.S. customers during the POR and incurred expenses related thereto.

U.S. Steel claims that Essar has clearly failed to satisfy its burden to demonstrate that the selling functions captured in DINDIRSU relate solely to affiliated party sales or that DINDIRSU should not be deducted from U.S. price on its CEP sales. U.S. Steel states that Essar's own statements demonstrate precisely to the contrary. For the final results, petitioners argue that the Department should therefore deduct the full DINDIRSU amount from the net price calculation of CEP in the final results.

Essar did not comment on this issue.

Department's Position:

We disagree with petitioners that the Department's findings in OCTG require us to conclude that the indirect selling expenses incurred in India are related to sales to unaffiliated customers in the United States. The Department's findings in OCTG are based on the factual information on the record in that case. The relevant factual information on the record of this proceeding is contained in Essar's questionnaire response,⁶⁴ and includes a detailed description of the activities incurred in India and the United States, a comparative chart of selling functions, accounting records, and copies of communication between Essar and its U.S. subsidiary. All of this information shows that none of the selling activities in India was related to sales to unaffiliated parties in the United States. Therefore, the Department will not deduct DINDIRSU directly from U.S. price on its CEP sales.

Comment 26: CEP Offset

Petitioners argue that in deciding whether to apply a DINDIRSU deduction to the calculation of CEP, if the Department determines that the selling activities performed by Essar related solely to

⁶² See 19 CFR 351.402(b) (2007) ("{T}he Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid"); see Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review, 65 FR 30068 (May 10, 2000), and accompanying Issues and Decision Memorandum at Comment 3 (citing 19 CFR 351.402(b) in support of deducting indirect selling expenses incurred in Mexico that were associated with sales to U.S. unaffiliated customers).

⁶³ See Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of New Shipper Review and Antidumping Duty Administrative Review, 68 FR 2313 (January 16, 2003) (OCTG), and accompanying Issues and Decision Memorandum at Comment 2.

⁶⁴ See Exhibit C-15 of Essar's Section C Response.

its sales to Essar USA, rather than its sales to unaffiliated U.S. customers, then the Department should also deny Essar a CEP offset for the final results.

Petitioners assert that to determine the LOTs of a respondent's home market and CEP sales, the Department must examine the level of selling functions and selling expenses provided by the respondent on such sales. Petitioners argue that if the Department determines the selling activities performed by Essar were for its sales to Essar USA, then the number of selling activities performed by Essar for its home market and U.S. sales would not be "substantially different" and Essar would not be eligible for a CEP offset. Petitioners also assert that Essar's selling chart is confusing and contradictory in nature because the selling functions do not clarify if the sales were for Essar's CEP and EP sales. Petitioners as well contend that the chart does not clearly list Essar USA's selling functions.

Essar maintains that the Department conducted the appropriate analysis and granted Essar a CEP offset in the preliminary results.⁶⁵ Essar argues that U.S. Steel incorrectly has considered the sale to the unaffiliated company in making the CEP analysis. Thus, Essar maintains that the Department should continue to grant a CEP offset.

Department's Position:

In the preliminary results, the Department granted Essar a CEP offset because we determined that Essar's home market sales are made at a different and more advanced stage of marketing than the LOT of CEP sales. Contrary to petitioners' assertion, the Department correctly granted Essar's CEP offset in the preliminary results. We disagree with petitioners that Essar's selling chart for Essar's CEP and EP sales is confusing and contradictory. Essar's selling activities for the home market, and for sales to the United States are clearly identified in the selling function chart, and other parts of the questionnaire response.⁶⁶ This information clearly shows that after the CEP deductions are made and accounted for, Essar engages in significant additional selling activities in the home market and that its home market sales are at a more advanced stage. Therefore, we have continued to grant Essar a CEP offset pursuant to section 773(a)(7)(B) of the Act. For a detailed description of our LOT methodology and a summary of the company-specific CEP offset findings for these final results, see Preliminary Calculation Memo for Essar.

Comment 27: The Treatment of Rebates

Petitioners claim that the Department should deny Essar's reported rebate program in the home market and the rebated amounts that were reported in REBATE1H. Petitioners argue that the burden is squarely on Essar to demonstrate that the post-sale rebates reported in REBATE1H should be deducted from NV.⁶⁷ To do so, petitioners state that Essar must demonstrate that, prior to the time of sale, customers were aware of the rebates and the approximate amount of such rebates.⁶⁸ Petitioners contend that Essar has clearly failed to meet this burden.

⁶⁵ See Preliminary Calculation Memo for Essar at 2.

⁶⁶ See Essar's Section A Response at Exhibit 19-20 and Exhibit A-5.

⁶⁷ See 19 CFR 351.401(b)(1) (2007); and also see Timken v. United States, 209 F. Supp. 2d at 1381-83.

⁶⁸ See Canned Pineapple Fruit from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 70948 (December 7, 2006), and the accompanying Issues and Decision

Petitioners claim that Essar has clearly failed to satisfy its burden to demonstrate that the amounts reported in REBATE1H should be deducted from the calculation of NV. For the final results, petitioners assert that the Department should disallow any deduction of the REBATE1H amount from the calculation of NV in the final results.

Essar asserts that the record in the instant case demonstrates that customers did know in advance what the requirements were for receiving rebates from Essar. Essar maintains that it provided the Department with sample documentation for the certain discounts in Essar's Section B Response at Exhibit B-7. Thus, Essar maintains that the Department correctly deducted REBATE1H for the preliminary results, and should continue to do so for the final results.

Department's Position:

We agree with Essar. It is the Department's practice to deduct rebates in the Department's calculation of NV.⁶⁹ Essar provided sufficient evidence on the record of its rebate program, Essar's customers had prior knowledge of Essar's rebate program,⁷⁰ and the program was in existence before the sales were made.⁷¹ Due to the business proprietary nature of this discussion, see Essar's Final Calculation Memo for a further discussion. Therefore, we have continued to allow the adjustment for the final results.⁷²

Comment 28: Home Market Indirect Selling Expenses

U.S. Steel argues that the Department should exclude billing discounting charges from the calculation of Essar's home market indirect selling expenses. According to Essar's indirect selling expense calculation worksheet, petitioners claim that Essar included certain line items in the calculation of its indirect selling expenses for the POR that are not indirect selling expenses.⁷³ For the final results, petitioners state that the Department should exclude billing discounts charges from Essar's home market indirect selling expenses.

In addition, petitioners claim that the Department should exclude stockyard expenses from the calculation of Essar's home market indirect selling expenses.⁷⁴ Essar reported the expenses associated with its stockyards as part of its indirect selling expenses.

Essar asserts that petitioners misinterpret the word "discount" and equate them to sales discounts. Essar argues that they are not sales discounts or cash discounts, and treated as a reduction to price, or direct selling expenses. Instead, Essar claims that they are indirect sales expenses related to domestic and export sales captured in the net finance costs in Essar's financial

Memorandum at Comment 1.

⁶⁹ See 19 CFR. 351.401(c); see also the Department's questionnaire general filing instructions at G. II.

⁷⁰ See Essar's April 20, 2007, Section B Response (Section B Response) at 23.

⁷¹ See Essar's Section B Response at Exhibit B-7.

⁷² See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review, 73 FR 14220 (March 17, 2008), and accompanying Issues and Decision Memorandum at Comment 4.

⁷³ See Essar's Section B Response at Exhibit 9-A, page 8.

⁷⁴ See Essar's Section B Response at 27-28.

statements.⁷⁵ Essar contends that the bill discounting charges have been correctly reported in indirect selling expenses, and should not be double counted by deducting them from net price.

Essar states that the stockyards in question are located not at the production facility, but elsewhere in India. Thus, Essar argues that those stockyard expenses should not be treated as part of the cost of manufacturing. Essar agrees with petitioners that the stockyard expenses should be reported as movement expenses.⁷⁶ However, Essar maintains that its accounting system does not separately track the expenses related to the stockyards, and that Essar could not disaggregate the stockyard expenses from other expenses.

Department's Position:

It is the Department's standard practice to treat stockyard expenses – *i.e.*, warehousing expenses – as movement expenses or as part of the cost of manufacturing if the stockyard is located at the production facility, rather than indirect selling expenses.⁷⁷ Moreover, the Department normally deducts movement expenses directly from the invoice price. However, Essar's accounting system does not separately track the expenses related to stockyards because Essar uses the warehouses as a general part of its distribution system for sales. In addition, Essar's stockyards are not located in Hazira where the production facility is located; thus, Essar's stockyard expenses will not be treated as a part of cost of manufacturing. Therefore, for these final results, the Department has continued to include Essar's stockyard expenses in the calculation of Essar's indirect selling expense ratio as a reasonable method we have for accounting for these expenses.

In addition, the Department agrees with Essar that we should not deduct discounts on receivables from the calculation of Essar's home market indirect selling expenses. The Department believes that petitioners misinterpreted the word "discount" in this instance. These charges are neither cash discounts nor sales discounts incurred by Essar as a direct selling expense. Rather, these expenses are not directly attributable to specific transactions and are appropriately treated as indirect selling expenses. For these final results, we will continue to keep Essar's discounts on receivables in the calculation of Essar's indirect selling expense ratio.

Comment 29: Treatment of Commission

U.S. Steel argues that Essar's affiliate, CFS, "acted as a sales agent for {it} primarily handling sales of non-prime merchandise or overrun material" in the home market.⁷⁸ Moreover, Essar has stated that it "{sold} steel through CFS in the Indian market"⁷⁹ and reported its "sales via CFS."⁸⁰ With respect to its U.S. sales, however, Essar stated that it "did not employ the services of a selling agent"⁸¹ Petitioners argue despite the fact that a sales agent was only used in the

⁷⁵ See Essar's rebuttal at page 8-9.

⁷⁶ See Essar's case brief at page 10.

⁷⁷ See Notice of Preliminary Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Canada, 72 FR 62816, 62817 (November 7, 2007) ("Movement expenses included inland freight, warehousing expenses, and brokerage fees"), unchanged in final Carbon and Certain Alloy Steel Wire Rod from Canada: Final Results of Antidumping Duty Administrative Review, 73 FR 26958 (May 12, 2008).

⁷⁸ See Essar's Section A Response at A-28 (Public Version).

⁷⁹ See *id.* at A-15

⁸⁰ See *id.* at A-18.

⁸¹ See Essar's Section C Response at C-35 (Public Version).

home market; no commission offset was applied in the calculation of the NV.

U.S. Steel asserts that in cases where the respondent incurred commissions in the home market, but not in the U.S. market, a commission offset equal to the lesser of the commission amount and the indirect selling expenses incurred in the United States is applied to NV. U.S. Steel claims in prior cases, the Department has treated the selling expenses incurred by an affiliated sales agent as commissions, rather than indirect selling expenses.⁸² Thus, petitioners claim that the Department should do the same here. Accordingly, for the final results, petitioners claim that the Department should calculate a commission offset amount that is equal to the lesser of the amounts reported fields in the Home Market Indirect Selling Expense (INDIRS2H) and U.S. Indirect Selling Expense (INDIRSU), and add such offset amount to the calculation of NV.

Essar states that it reported downstream sales made by its affiliate CFS, and not Essar's sales to CFS. Essar maintains that any selling expenses incurred by CFS have been properly reported, and are not commissions. Further, Essar asserts that U.S. sales are made at a different LOT than those made by CFS, and the Department should not match the CFS sales to the U.S. sales.

Department's Position:

The Department agrees with Essar that the sales between Essar and CFS were downstream sales between affiliated parties; Essar correctly reported the downstream sales made by its affiliate, CFS. The Department does not consider downstream sales between affiliated parties as commission sales. There is no payment from Essar to CFS associated with these sales; thus, there are no commissions or direct selling expenses. Therefore, we disagree with U.S. Steel that there are any commissions or that any commission offset is warranted. In addition, we agree with Essar that any selling expenses incurred by CFS should be treated as indirect selling expenses. In fact, these expenses are included in Essar's total indirect selling expenses recorded in its accounting records. For the final results, no commission offset will be applied.

⁸² See e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France, 71 FR 6269 (February 7, 2006), and accompanying Issues and Decision Memorandum at Comment 1; Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod From Spain (October 13, 2000); Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 65 FR 49219 (August 11, 2000), and the accompanying Issues and Decision Memorandum Comment 3C.

V. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results and the final weighted-average dumping margins in the Federal Register.

Agree _____

Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

(date)