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A-449-804  
4<sup>th</sup> Administrative Review  
POR: 9/01/04 - 8/31/05  
**Public Document**  
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MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

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

DATE: December 6, 2006

SUBJECT: Issues and Decision Memorandum for the Final Results of the  
Fourth Administrative Review of Steel Concrete Reinforcing Bars  
from Latvia

### **Summary**

We have analyzed the comments in the case and rebuttal briefs submitted by interested parties in the fourth administrative review of steel concrete reinforcing bars (rebar) from Latvia. As a result of our analysis, we have made changes to the margin calculation. We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is a complete list of the issues in this review for which we have received comments from the parties:

- Comment 1: Application of Total Adverse Facts Available
- Comment 2: Date of Sale
- Comment 3: General and Administrative Expense Ratio Calculation
- Comment 4: Clerical Error
- Comment 5: Treatment of Non-Dumped Sales
- Comment 6: Financial Statements Used for General and Administrative Expenses and Interest Expenses

### **Background**

On August 8, 2006, the Department of Commerce (the Department) published the *Preliminary Results*<sup>1</sup> of the fourth administrative review of rebar from Latvia. The period of review (POR) is September 1, 2004, through August 31, 2005. We invited parties to comment on the *Preliminary Results*. The respondent<sup>2</sup> and the petitioners<sup>3</sup> submitted case briefs on September 7, 2006. Both parties submitted rebuttal briefs on September 14, 2006.

## **Discussion of the Issues**

### **Comment 1: Application of Total Adverse Facts Available**

The petitioners argue that the Department should apply total adverse facts available (AFA) in the final results because LM failed to provide critical information throughout this administrative review. Citing section 776 of the Tariff Act of 1930, as amended (the Act), the *Statement of Administrative Action*,<sup>4</sup> and *Prestressed Concrete Steel Wire Strand from the Republic of Korea (PC Strand from Korea)*,<sup>5</sup> the petitioners contend that respondents are obligated by statute to provide the Department with information necessary for accurately calculating rates and making determinations within deadlines. Referring to *PC Strand from Korea* as an example, the petitioners contend that the burden is on respondents to place necessary information on the record and to explain why they cannot comply with specific requests from the Department.

The petitioners refer to *Stainless Steel Sheet and Strip from Taiwan (SSSS from Taiwan)*<sup>6</sup> as an example of a case in which the Department applied AFA because the respondent provided inaccurate and misleading information that was not usable for calculating an accurate dumping margin. The petitioners argue that LM also failed to provide accurate data essential for carrying out the administrative review. Therefore, the petitioners contend that the Department should apply total AFA for the final results. They also argue that the Department should apply partial

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<sup>1</sup> See *Notice of Preliminary Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia*, 71 FR 45031 (August 8, 2006) (*Preliminary Results*).

<sup>2</sup> The respondent in this segment of the proceeding is Joint Stock Company Liepajas Metalurgs (LM).

<sup>3</sup> The petitioners in this proceeding are the Rebar Trade Action Coalition (RTAC) and its individual members – Commercial Metals Company, Gerdau Ameristeel, and Nucor Corporation.

<sup>4</sup> See *Statement of Administrative Action (SAA)*, H.R. Doc. No. 316, 103d Cong. (1994), at 869-870.

<sup>5</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from the Republic of Korea*, 68 FR 68353 (December 8, 2003) (*PC Strand from Korea*).

<sup>6</sup> See *Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002) and accompanying Issues and Decision Memorandum at Comment 24 (collectively, *SSSS from Taiwan*).

AFA if it does not apply total AFA. The deficiency comments raised by the petitioners in their case brief are summarized below.

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**A. LM Failed to Provide Complete and Accurate Cost Reconciliations**

The petitioners argue that LM failed to provide complete cost reconciliations, to tie cost reconciling items to financial records, and to respond to specific requests by the Department. First, the petitioners claim that LM submitted an incomplete and inaccurate cost reconciliation in the *Sections B-D Response*<sup>7</sup> and did not correct these deficiencies in its supplemental questionnaire responses. For example, LM stated that Exhibit 11a of the *Second Supplemental QR* tied the reported cost of goods sold (COGS) totals from Exhibit 23 of the *First Supplemental QR*<sup>8</sup> to LM's general ledger (G/L) for specific months. The petitioners claim that the totals in Exhibit 23 of the *First Supplemental QR* do not tie to any figures in any part of Exhibit 11 of the *Second Supplemental QR*. Furthermore, in question 19c of the *Second Supplemental QR*, LM stated that it revised its cost reconciliation to comply with changes requested by the Department. The petitioners contend that LM neither provided a reconciliation of the cost items nor provided a revised reconciliation of the COGS. Finally, the petitioners allege that LM provided no supporting documentation for the information in Exhibit 11b of the *Second Supplemental QR*. They argue that this casts doubt on the authenticity of the information.

The petitioners contend that the Department cannot rely on LM's reported costs because LM failed to provide necessary information. They argue that LM's failure to provide accurate cost information is one of many examples that support the application of total AFA. Furthermore, the petitioners contend that the Department should still apply AFA to LM's reported costs if the Department decides not to apply total AFA. They request that the Department apply partial AFA by using the highest reported cost among all control numbers (CONNUMs) and applying this cost to all other CONNUMs.

**B. LM Ignored the Department's Requests for Documentation Supporting Its General and Administrative (G&A) Expense Offsets**

The petitioners contend that LM repeatedly refused to provide adequate support for its claimed G&A offsets. They argue that the *Second Supplemental QR* provided limited and irrelevant information on only two of the income accounts included as part of the G&A offset.<sup>9</sup> Specifically, the petitioners note the following about the accounts included in LM's G&A offset.

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<sup>7</sup> See letter from LM to the Department dated January 17, 2006, Re: Steel Concrete Reinforcing Bars from Latvia; Section A (*sic*) Response (*Sections B-D Response*).

<sup>8</sup> See letter from LM to the Department dated April 17, 2006, Re: Steel Concrete Reinforcing Bars from Latvia; Submission of Supplemental Response (*First Supplemental QR*) at Exhibit 23.

<sup>9</sup> See *Second Supplemental QR* at page 21.

- Accounts 6541 and 6542 (Income from Sale of Current Assets): The petitioners claim that the sale of current assets includes items such as accounts receivable and certain investments that may not be included in reported costs.
- Accounts 6552 and 6552.1 (Income from Sale of Capital Assets): Citing *Cut-to-Length Plate from Korea*,<sup>10</sup> the petitioners argue that gains from this sale may only be included in the G&A calculation if the capital assets were used to produce subject merchandise and were depreciable.
- Account 6553: LM failed to give any explanation of this item, according to the petitioners.
- Account 8197 (Income from Doubtful Debtor): The petitioners contend that this most likely refers to unpaid accounts receivable, not to the cost of production (COP). In addition, they argue that the income relates to products produced and sold in a prior period.
- Account 8199 (Income Due to Metallurgy Day) and 8313 (Other Kinds of Extraordinary Income): The petitioners state that LM has given no explanation of the nature of these accounts or justification for why they should offset reported G&A expenses.
- Account 8314 (Other Kinds of Extraordinary Income): This type of gain, according to the petitioners, is normally recorded in the equity section of a balance sheet and is not treated as income by the Department.

Citing *Stainless Steel Wire Rod from Italy (SSWR from Italy)*<sup>11</sup> as an example, the petitioners argue that the burden lies with respondents to place necessary information on the record. They argue that LM's failure to provide information on the offsets supports the application of total AFA. The petitioners contend that the Department, at a minimum, should deny the claimed offsets if it decides not to apply total AFA.

### **C. LM Intentionally Failed to Submit Its Electronic Databases on Time**

The petitioners contend that LM's failure to submit an electronic copy of its COP database with the *Second Supplemental QR* demonstrates its lack of cooperation. As the petitioners note, LM submitted only a paper copy of the database with its *Second Supplemental QR*.<sup>12</sup> Citing the

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<sup>10</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea*, 64 FR 73196, 73209, at Comment 14 (December 29, 1999) (collectively, *CTL Plate from Korea*).

<sup>11</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Italy*, 63 FR 40422, 40430 (July 29, 1998) (*SSWR from Italy*).

<sup>12</sup> See *Second Supplemental QR* at Exhibit 9.

*Missing Electronic Database Memorandum*,<sup>13</sup> the petitioners point out that LM also failed to submit a revised sales database and exhibits cited in the response. Referring to language in Section D of the original antidumping questionnaire,<sup>14</sup> the petitioners argue that the filing of electronic databases is a basic requirement of a questionnaire response. They state that LM's failure to submit electronic files of these data on time impeded the administrative review and demonstrates a refusal to cooperate with the Department.

**D. LM Did Not Provide Information Regarding Its Cost Allocation Methodology for Subject Merchandise Produced Using Different Technology**

The petitioners argue that the *Second Supplemental QR* failed to address the Department's question of whether LM allocated the cost of three-strand splitting technology to all products produced at the 350 mill or only to certain products that used the technology.<sup>15</sup> Claiming that LM ignored this request for crucial information, the petitioners contend that this is another deficiency supporting the application of total AFA. The petitioners request that the Department use the highest reported rolling cost for all CONNUMs if it decides not to apply total AFA.

**E. LM Failed to Justify the Capitalization of Costs Related to Its Modernization Project**

The petitioners allege that LM's statement<sup>16</sup> that it did not undertake any modernization projects during the POR contradicts its 2005 financial statement, which stated that the company was rigorously progressing with a modernization plan.<sup>17</sup> Furthermore, the petitioners contend that LM ignored the Department's request to provide full details on this project and to explain why it capitalized certain cost items as opposed to charging them to expense accounts. The petitioners request that the Department add the total amount invested in the modernization project in 2005 to LM's reported G&A expenses if it decides not to apply total AFA.

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<sup>13</sup> See Memorandum from Shane Subler, International Trade Compliance Analyst, to the File, Re: Fourth Administrative Review of Steel Concrete Reinforcing Bars from Latvia: Missing Cost of Production / Constructed Value and U.S. Sales Databases, dated July 10, 2006 (*Missing Electronic Database Memorandum*).

<sup>14</sup> See *Sections B-D Response* at page D-38.

<sup>15</sup> See *Second Supplemental QR* at pages 8-9.

<sup>16</sup> See *First Supplemental QR* at Exhibit D-4 (translated version of "Protocol," page 2).

<sup>17</sup> See *id.* at Exhibit 17.

#### **F. LM Ignored the Department's Request for Information on Its Cost Offsets**

The petitioners argue that in the *First Supplemental QR*<sup>18</sup> and *Second Supplemental QR*,<sup>19</sup> LM inadequately responded to the Department's requests that it provide detailed information on its reported COP offsets. Furthermore, the petitioners allege that LM misled the Department by stating that calculations in Exhibit 21 of the *First Supplemental QR* were based only on actual numbers, not estimates.<sup>20</sup> The petitioners state that a cursory review of Exhibit 21 clearly demonstrates that LM's calculated offsets for scrap, slag, and outgoing heat are based on estimates. They argue that this further supports the application of total AFA, but also argue that the Department should deny the reported offset field if it does not apply total AFA.

#### **G. LM Failed to Explain How It Calculated Its Production Quantities**

The petitioners contend that in the *Second Supplemental QR*, LM failed to answer the Department's question on whether its per-unit rolling costs are inclusive of byproducts.<sup>21</sup> They argue that Exhibit 12 submitted in response to this question indicates that LM may have understated its per-unit costs by overstating its production quantity during the POR. The petitioners state that the Department, at a minimum, should increase LM's reported total cost of manufacturing (TOTCOM) by the percentage difference between the quantity reported in the cost database and the quantity reported in Exhibit 12.

#### **H. LM Submitted False Financial Statements in the *First Supplemental QR* and Attempted to Mislead the Department in the *Second Supplemental QR***

The petitioners question the authenticity and credibility of LM's submitted financial statements. In the *Second Supplemental QR*, according to the petitioners, LM failed to answer the Department's question on why the 2004 financial statements presented contradictory information on LM's sale of fixed assets.<sup>22</sup> The petitioners point out that LM submitted blank schedules in the *First Supplemental QR*.<sup>23</sup> This, the petitioners allege, demonstrates that LM submitted false financial statements in the *First Supplemental QR* and withheld critical information from the review. They argue that this supports the application of total AFA to prevent LM from such conduct in future segments of the proceeding.

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<sup>18</sup> See *First Supplemental QR* at page 13.

<sup>19</sup> See *Second Supplemental QR* at page 10.

<sup>20</sup> See *id.*

<sup>21</sup> See *id.* at page 19 and Exhibit 12.

<sup>22</sup> See *id.* at page 7.

<sup>23</sup> See *First Supplemental QR* at Exhibit 17.

## **I. LM Ignored the Department's Specific Instructions Regarding Bracketing**

The petitioners point out that in the *Second Supplemental QR*, LM failed to explain why it bracketed publicly available information in its financial statements.<sup>24</sup> The petitioners also claim that LM refused to comply with the Department's request to revise this bracketing. This, according to the petitioners, is another example of LM's deliberate non-compliance.

### **LM's Rebuttal to the Application of Total AFA**

In its rebuttal brief, LM rejects the petitioners' claims and contends that it submitted voluminous responses to the Department's questionnaires. In response to statements by the petitioners,<sup>25</sup> LM contends that its responses were timely in accordance with extensions granted by the Department under 19 C.F.R. 351.302(c). The company argues that the petitioners' claim that LM impeded the review is belied by the fact that the Department issued the *Preliminary Results* before the latest possible deadline under 19 C.F.R. 351.213(h)(2). Finally, LM posits that its responses must satisfy the Department's requests, not the petitioners' requests that are not incorporated into the Department's questionnaires.

Regarding the petitioners' comment that LM failed to reconcile its reported costs with its financial statements, LM contends that documentation submitted in the *First Supplemental QR*<sup>26</sup> reconciled the TOTCOM reported in LM's financial statements to the TOTCOM in the database within .0005 percent. LM notes that the Department issued a clarification question addressing three issues from the first cost reconciliation – the write-off in the production balance, reconciliations to trial balances for individual months, and additional documentation for reconciling items. LM asserts that it answered these questions fully in question 19 and Exhibits 11a and 11b of the *Second Supplemental QR*.<sup>27</sup>

With regard to the petitioners' comment on G&A offsets, LM argues that it provided explanations of accounts 8190 and 8313 in both the *First Supplemental QR*<sup>28</sup> and the *Second Supplemental QR*.<sup>29</sup> Furthermore, LM notes that it provided G/L pages for these accounts in the *Second Supplemental QR* in response to the Department's request for supporting documentation. Noting that the Department did in fact deny the G&A offset in the *Preliminary Results*, LM argues that the Department should only deny the offset and not apply total AFA if it continues to find that LM did not provide sufficient supporting documentation.

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<sup>24</sup> See *id.* at page 5.

<sup>25</sup> See the petitioners' case brief at page 10, footnotes 10 and 12.

<sup>26</sup> See *First Supplemental QR* at page 13 and Exhibit 23.

<sup>27</sup> See *Second Supplemental QR* at page 19 and Exhibits 11a and 11b.

<sup>28</sup> See *First Supplemental QR* at page 16.

<sup>29</sup> See *Second Supplemental QR* at page 21.

Responding to the petitioners' comment on production technology used at the two rolling mills (explained above in Comment 1(d)), LM argues that it fully responded to the Department's requests for an explanation of the technology, an identification of how the differences are reported in production costs, and a revised flowchart.<sup>30</sup> Rejecting the petitioners' claim that LM failed to explain how it allocated costs to specific merchandise, LM counters that the Department never used the term "allocation" in any of its questions. LM contends, therefore, that there is no basis for the petitioners' claim that it did not respond to the Department's requests.

LM also rejects the petitioners' allegations concerning its modernization costs, its by-product offsets, and the submission of its financial statements. First, LM contends that it fully responded to questions on its modernization projects by explaining that it did not carry out all of the previously projected modernization plans during the POR,<sup>31</sup> by reporting investment and budget totals for the single ongoing project, and by explaining that all related costs were capitalized.<sup>32</sup> Regarding the petitioners' comment on by-product offsets, LM argues that it provided a detailed worksheet in the *First Supplemental QR*<sup>33</sup> and provided additional requested information on its slag offset in the *Second Supplemental QR*.<sup>34</sup> Finally, referring to the financial statements submitted with the *First Supplemental QR*,<sup>35</sup> LM argues that the administrative record belies the petitioners' allegation that the financial statements are false. LM concludes that it has fully cooperated with the Department in this review and in all previous reviews, and that there is no basis for the application of total AFA.

### **Department's Position:**

We agree with LM that the application of total AFA is not warranted. Section 776(a)(2) of the Act states that the Department shall use facts otherwise available if an interested party withholds requested information, fails to provide requested information by applicable deadlines or in the form and manner requested, significantly impedes a proceeding, or provides information that cannot be verified. Section 776(b) of the Act provides that the Department may use adverse inferences if an interested party fails to cooperate to the best of its ability. Consistent with other antidumping proceedings administered by the Department, we issued supplemental

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<sup>30</sup> See *First Supplemental QR* at page 10; see also *Second Supplemental QR* at pages 8-9 and Exhibit 6. We note that LM's case brief refers to the relevant question in the *First Supplemental QR* as question 12; however, this is a question on packing costs. Questions 22 and 23 on pages 10 and 11 of the *First Supplemental QR* ask LM to explain the technological differences and to provide a revised production flowchart.

<sup>31</sup> See *First Supplemental QR* at page 11.

<sup>32</sup> See *Second Supplemental QR* at page 9.

<sup>33</sup> See *id.* at page 11 and Exhibit 21.

<sup>34</sup> See *Second Supplemental QR* at page 10.

<sup>35</sup> See *First Supplemental QR* at Exhibit 17.

questionnaires to LM to address certain deficiencies in its responses. LM answered these questions and did not withhold information, fail to provide requested information, significantly impede the proceeding, or provide information that cannot be verified. In short, LM's cooperation in this segment of the proceeding and the thoroughness of its responses do not warrant the application of total AFA. Our positions with respect to each of the points raised by the petitioners are discussed below.

### **A. Cost Reconciliations**

We find that LM provided a cost reconciliation and provided supporting documentation for this reconciliation upon request. We do not find that this issue supports the application of partial or total AFA. In Exhibit D8 of the *Sections B-D Response*, LM responded to section III.B.1 of Section D of the *Antidumping Questionnaire*<sup>36</sup> by reconciling the fiscal year (FY) COGS on its 2004 financial statement to its financial accounting system. At Exhibit D9 of the *Sections B-D Response*, LM responded to section III.B.2 of the questionnaire by reconciling the COGS from its financial accounting system to its cost accounting system. In response to section III.B.3 of the questionnaire, LM referred to its reconciliations of the COP for two specific control numbers (CONNUMs), but did not explain clearly how the fiscal year TOTCOM from the cost accounting system reconciled to the total of the per-unit manufacturing costs submitted to the Department. Therefore, in question 31 of the *First Supplemental Questionnaire*,<sup>37</sup> we requested that LM demonstrate how the fiscal year TOTCOM from the cost accounting system reconciled to the TOTCOM reported in the submitted database. In Exhibit 23 of the *First Supplemental QR*, LM provided documentation to show how it reconciled the cost accounting system to the database. On the third page of this exhibit, LM began with the FY 2004 TOTCOM from the cost accounting system and excluded certain items (*i.e.*, squares, rounds, wire rod, and packing)<sup>38</sup> to reconcile the cost accounting system to the database. The TOTCOM from the cost accounting system reconciles to within .0005% of the TOTCOM from the database.

In question 19 of the *Second Supplemental Questionnaire*,<sup>39</sup> we asked LM for additional support for three items from its reconciliation in the *First Supplemental QR*. LM answered the first part

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<sup>36</sup> See letter from the Department to LM dated November 22, 2005 (*Antidumping Questionnaire*), at pages D-12 through D-13.

<sup>37</sup> See letter from the Department to LM dated March 27, 2006, Re: Steel Concrete Reinforcing Bars from Latvia (*First Supplemental Questionnaire*).

<sup>38</sup> LM withdrew its request for business proprietary treatment of the words "rounds" and "squares" in this exhibit. See letter from LM to the Department dated October 11, 2006, Re: Steel Concrete Reinforcing Bars from Latvia; Withdrawal of Specific Requests for Business Proprietary Treatment (*Withdrawal of BPI Request Letter*); see also Memorandum to the File from Shane Subler, International Trade Compliance Analyst, dated October 12, 2006, Re: Fourth Administrative Review of Steel Concrete Reinforcing Bars from Latvia: Bracketing of Submissions.

<sup>39</sup> See letter from the Department to LM dated June 16, 2006, Re: Fourth Antidumping Review of Steel Concrete Reinforcing Bars from Latvia (*Second Supplemental Questionnaire*) at page 7.

of this question, which did not request supporting documentation.<sup>40</sup> The second part of the question requested that LM tie specific monthly COGS totals from the supporting documentation in Exhibit 23 of the *First Supplemental QR* to monthly profit and loss statements or trial balances. In response, LM provided G/L pages for the COGS of all products, including non-subject merchandise. The numbers did not exactly match the numbers in the *First Supplemental QR* because they included all products, not just subject merchandise. The ratio of the monthly COGS totals for subject and non-subject merchandise, however, was very close to the ratio for the entire POR, as detailed in the *First Supplemental QR*. Therefore, based on an analysis of LM's POR-wide reconciliation in the *First Supplemental QR*, we concluded that the monthly reconciliation in the *Second Supplemental QR* was reasonable.

Finally, for the third part of question 19, we requested documentation to support the three individual items (*i.e.*, cost of production under tolling arrangements (rounds, squares), wire rod, and packing) used to reconcile the TOTCOM from the cost accounting system to the TOTCOM in the database. LM presented supporting documentation from the cost accounting system for wire rod and packing that reconciled to the totals in the *First Supplemental QR*.<sup>41</sup> For rounds and squares, LM revised its overall TOTCOM calculation in accordance with our instructions by eliminating the inventory effect coefficient.<sup>42</sup> As a result, the allocation of costs between non-subject rounds and squares and subject merchandise changed. In its answer to question 19 of the *Second Supplemental QR*, LM noted that it revised its COGS reconciliation due to this change in the cost calculation methodology. Although the petitioners allege that LM did not submit a revised reconciliation, the only change to the reconciliation that occurs as a result of the change in methodology is that the amount of the overall TOTCOM allocated to each CONNUM and to non-subject rounds and squares is different. LM accounted for this change in Exhibit 11b of the *Second Supplemental QR*.<sup>43</sup>

Therefore, we find that LM provided a cost reconciliation and provided supporting documentation for this reconciliation upon request. Section 773(f)(1)(A) of the Act states,

Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate)

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<sup>40</sup> See *Second Supplemental QR* at page 19.

<sup>41</sup> See *First Supplemental QR* at Exhibit 23; see also *Second Supplemental QR* at Exhibit 11b.

<sup>42</sup> See *Second Supplemental QR* at page 11.

<sup>43</sup> See the fifth page of Exhibit 23 of the *First Supplemental QR*; see also the first page of Exhibit 11b of the *Second Supplemental QR*. Line 1 ("rebars") in both exhibits is the TOTCOM reported in the database. Line 2 is the TOTCOM for non-subject rounds; line 3 is the TOTCOM for non-subject squares. In accordance with our instructions, LM modified its cost allocation methodology in the *Second Supplemental QR*. This changed the allocation of costs from the cost accounting system to each CONNUM in the database and to rounds and squares. In both exhibits, however, the sum of the TOTCOM for rebars, squares, and rounds is the same. Therefore, the total amount allocated from the cost accounting system is the same.

and reasonably reflect the costs associated with the production and sale of the merchandise.

LM demonstrated that its reported costs are based on its records and supported this with documentation. We find that LM cooperated with our requests for information and that its reported costs are reconciled at the level appropriate for a questionnaire response. We do not find that this issue supports the application of partial or total AFA.

### **B. G&A Expenses**

We agree with the petitioners that LM did not respond fully to our questions on its G&A offsets; however, we denied LM's entire claimed G&A offset in the *Preliminary Results*.<sup>44</sup> Therefore, no revision of the G&A calculation methodology is necessary. For discussion on this issue, see Comment 3. We do not find, however, that LM's failure to provide complete information on this issue alone warrants the application of total AFA.

### **C. Submission of Electronic Databases**

We disagree with the petitioners' contention that LM intentionally delayed its submission of revised cost data in the *Second Supplemental QR*. On Friday, July 7, 2006, LM provided a printout of the actual cost data at Exhibit 9 of the *Second Supplemental QR*. On Monday, July 10, we requested that LM provide an electronic copy to the Department and petitioners.<sup>45</sup> LM provided electronic copies on July 11, which was three weeks prior to the deadline for the *Preliminary Results*. The data submitted electronically on July 11 matched the data on the hard copy submitted on July 7. We do not find that this impeded the administrative review or compromised our ability to issue the *Preliminary Results* by the August 1 deadline. We also do not find that it supports the application of total AFA.

### **D. Subject Merchandise Produced Using Different Technology**

We disagree with the petitioners that LM ignored our requests for information. After asking questions on LM's rolling process in the *First Supplemental Questionnaire*,<sup>46</sup> we requested additional detail in the *Second Supplemental Questionnaire*.<sup>47</sup> Taking into consideration the

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<sup>44</sup> See *Preliminary Results*, 71 FR 45032; see also Memorandum to the File from Shane Subler, International Trade Compliance Analyst, Subject: Analysis Memorandum for Joint Stock Company Liepajas Metalurgs, dated August 1, 2006 (*Preliminary Results Analysis Memorandum*), at page 6.

<sup>45</sup> See Memorandum to the File from Shane Subler, International Trade Compliance Analyst, Re: Fourth Administrative Review of Steel Concrete Reinforcing Bars from Latvia: Missing Cost of Production / Constructed Value and U.S. Sales Databases, dated July 10, 2006.

<sup>46</sup> See *First Supplemental Questionnaire* at page 6.

<sup>47</sup> See *Second Supplemental Questionnaire* at page 5.

petitioners' comments on the issue,<sup>48</sup> we asked LM to identify how the two rolling mills differed in terms of technology and construction, to identify how these differences were reflected in the reported COP, to provide a detailed explanation of the equipment used for three-strand splitting, and to provide a revised production flowchart. LM answered each part of this question. We did not ask LM to explain how it allocated the cost of the three-strand splitting technology within the 350 mill, the mill that uses the technology. In their comments, the petitioners did not raise this issue. The petitioners' comment, which we incorporated into our question, was that products going through the rolling mill that did not have the three-strand splitting technology should not have costs associated with the process. The petitioners requested that LM explain how technological differences between the two mills are reflected in the reported costs. In our question, we requested that LM identify how differences in the production technology of the two mills are reflected in the COP.<sup>49</sup> By stating, "COP is calculated by LM for each mill separately, and then for the same sized rebar (LM) calculates average COP from two mills,"<sup>50</sup> LM answered our request. Because the COP for each mill is calculated separately, only products produced at the mill that used the technology have costs associated with the process. Therefore, we find that LM responded to our request, and we do not find that this issue supports the application of total AFA.

### **E. Modernization Project**

We disagree with the petitioners' argument that LM's responses on its modernization project warrant the application of partial or total AFA. For the *First Supplemental QR*, we requested that LM provide details on its open hearth furnace modernization project, which was mentioned in the "Protocol" in Exhibit D4 of the *Sections B-D Response*. LM responded that no modernization of its open hearth furnace occurred during the POR, but identified the modernization of another piece of equipment.<sup>51</sup> For the *Second Supplemental QR*, we asked LM to provide the total budgeted cost of the project, the amount invested to date, and a list of capitalized costs vs. expensed items related to the modernization.<sup>52</sup> LM provided answers to each of these questions. It did not, however, respond explicitly to the last part of our question that stated, "Explain why LM capitalized certain cost items as opposed to expensing them." Because LM provided auditor's reports on its financial statements, however, it is clear that the capitalization of items related to the modernization is in accordance with generally accepted accounting principles (GAAP) in Latvia. Capitalized assets are recorded under section II of LM's balance sheet as part of its audited financial statements.<sup>53</sup> As stated previously, section

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<sup>48</sup> See letter from the petitioners to the Department, Re: Certain Steel Concrete Reinforcing Bars from Latvia: Petitioner's Comments on Joint Stock Company Liepajas Metalurgs's ("LM") April 17, 2006 Sections A, B, C, and D Supplemental Questionnaire Responses, dated May 19, 2006 at pages 15-16.

<sup>49</sup> See *Second Supplemental Questionnaire* at page 5.

<sup>50</sup> See *id.*

<sup>51</sup> See *First Supplemental QR* at pages 11-12.

<sup>52</sup> See *Second Supplemental QR* at page 9.

<sup>53</sup> See *id.* at Exhibit 5.

773(f)(1)(A) of the Act states that the Department will normally calculate costs based on the records of the exporter or producer of the merchandise. Because LM reported that all items related to the equipment modernization are capitalized and reported its costs in accordance with its audited financial statements, we do not find that LM misrepresented the costs in its normal books and records. Therefore, we did not request additional information from LM on this issue. Even though LM did not provide an explicit answer to the final part of this question in the *Second Supplemental QR*, we do not find that this warrants the application of total or partial AFA.

#### **F. By-Product Cost Offsets**

We disagree with the petitioners' argument that LM ignored our requests for information on its by-product offsets. In response to question 15 of the *Second Supplemental Questionnaire*, LM stated that its by-product offset calculations are based on actual values, not estimates.<sup>54</sup> Exhibits 20 and 21 of the *First Supplemental QR* demonstrate that LM bases its by-product offset calculations on standards that it uses in its books and records, not on random estimates. The response demonstrates that LM bases the calculation of the quantity and value of these offsets on the actual amount of rebar produced, not on the quantity and value of a further processed product that incurs additional costs before LM sells it.

LM's submitted documentation shows that the company based its offset calculations on its records and tied the offsets to the cost of production. First, in the *First Supplemental QR*, LM explained that it calculates the quantity of slag produced as a ratio of the actual production of finished rebar during the POR and values the slag based on an internal price list.<sup>55</sup> LM also stated that it must further process the slag before selling it as a finished product. Because LM must further process the slag before selling it, the selling price of the further processed product is not reflective of the value of the slag that is an offset to the production of finished rebar. Therefore, although LM answered our question in the *First Supplemental QR* to provide the actual quantity and value of slag sold during the POR, we did not use these figures in our analysis. We used the value of the slag in LM's records at the stage directly after the production of rebar, which is at the stage prior to further processing.

In Exhibit 21 of the *Second Supplemental QR*, LM explained that the open-hearth furnace shop delivers outgoing heat to the system of the steam power shop. The steam power shop transfers this heat from the open hearth furnace to its steam system, uses the heat to produce steam, and delivers this steam to customers. The quantity and value of the steam delivered to customers does not reflect the quantity and value of waste heat that is transferred to the steam power shop from the open hearth furnace. This is why LM uses a formula in its books and records to place a value on the amount of heat that is transferred from the open hearth furnace to the steam power shop. The value of this heat is what LM transfers internally from the account of the steam power shop to the account of the open hearth furnace in its normal books and records. As LM states,

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<sup>54</sup> See *id.* at page 10.

<sup>55</sup> See *First Supplemental QR* at pages 11-12.

“Open-hearth shop was paid (amount) LVL (Latvian lats) for delivered quantity of outgoing heat through general steam line (quantity) Gcal in August 2005.”<sup>56</sup> Therefore, LM appropriately based the value of the reported offset on the value of the heat transferred to the steam power system, not on the value of steam transferred to the consumer.

LM’s response demonstrates that the offsets are appropriately based on the actual production of finished rebar, not on the production or sale of further processed products. The response also demonstrates that LM based these calculations on records kept in the normal course of business. Therefore, we find that LM’s by-product offset calculations are in accordance with section 773(f)(1)(A) of the Act because they are based on the company’s records kept in the normal course of business and because they tie to the cost of producing the subject merchandise. We also find that the information in the records is reasonable. Therefore, we do not find that LM misled the Department or that this issue supports the application of total or partial AFA.

### **G. Production Quantities**

We disagree with the petitioners that LM failed to explain how it reported its per-unit rolling costs or misreported its production quantity. In response to our question on whether LM’s per-unit rolling costs are inclusive of by-products, LM responded, “Due to the fact that losses (*sic*) are determined during production process of the rolled products, they are accounted into the costs of per unit rolled product.”<sup>57</sup> Furthermore, as shown by LM’s reconciliation of the TOTCOM at Exhibit 11b of the *Second Supplemental QR*, non-subject rounds and squares account for the difference between the production quantity in Exhibit 12 of the *Second Supplemental QR* and the database. The quantity of rounds and squares shown in the TOTCOM reconciliation in Exhibit 11b exactly matches the difference between the database and Exhibit 12. Therefore, LM answered question 20 of the *Second Supplemental QR* and did not understate its production quantity. We do not find that this issue supports the application of partial AFA or total AFA.

### **H. Financial Statements**

We disagree with the petitioners’ allegation that LM submitted false financial statements. First, the 2004 and 2005 financial statements that LM submitted in the *First Supplemental QR*<sup>58</sup> and *Second Supplemental QR*<sup>59</sup> are identical to the 2004 and 2005 financial statements on the Riga Stock Exchange website to which LM referred in the *Second Supplemental QR*.<sup>60</sup> LM

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<sup>56</sup> See *id.* at Exhibit 21. The amount and quantity to which this sentence refers may not be disclosed in this memorandum because the information is business proprietary. See Memorandum to the File from Shane Subler, International Trade Compliance Analyst, dated October 20, 2006, Re: Fourth Administrative Review of Steel Concrete Reinforcing Bars from Latvia: Bracketing of April 17, 2006, Supplemental Questionnaire Response.

<sup>57</sup> See *Second Supplemental QR* at page 20, question 20.

<sup>58</sup> See *First Supplemental QR* at Exhibit 17.

<sup>59</sup> See *Second Supplemental QR* at Exhibit 5.

<sup>60</sup> See *id.* at page 6.

corroborated the accuracy of its financial statements submitted on the record, so we have no basis to conclude that LM submitted false financial statements.

Furthermore, in the *Section A Response*,<sup>61</sup> LM submitted its 2003 and 2004 profit and loss statements and balance sheets, the basic set of financial statements for a company. LM submitted the *Section A Response* on December 13, 2005, so it had not prepared its 2005 financial statements by the date of the response. In the *First Supplemental Questionnaire*, dated March 27, 2006, we requested that LM provide complete, fully translated copies of its 2004 and 2005 consolidated and unconsolidated audited financial statements. LM responded that it had not yet prepared its 2005 consolidated financial statements and annual report, but provided a comprehensive set of unconsolidated and consolidated 2004 statements and 2005 unconsolidated statements.<sup>62</sup> This included auditor's reports, profit and loss statements, balance sheets, statements of owners' equity, cash flow statements, annual reports, summary cost reports, and appendices.

Upon analyzing the *First Supplemental QR* and considering the petitioners' comments on the response, we found that the annual reports submitted with the financial statements appeared to be out of sequence and incomplete. Certain appendices included in Exhibit 17 of the *First Supplemental QR* were blank. In addition, LM was unable to submit the FY 2005 consolidated annual report and financial statements prior to the date of the *First Supplemental QR* because the company had not yet prepared them. In order to ensure that the record was complete, we released additional supplemental questions to LM.<sup>63</sup> In response, LM submitted complete, fully translated copies of its 2004 and 2005 financial statements and consolidated and unconsolidated annual reports.<sup>64</sup>

Therefore, we disagree with the petitioners' allegation that LM's submission of its financial statements warrants the application of AFA. Section A of the antidumping questionnaire requires a respondent to provide "audited, consolidated and unconsolidated financial statements (including any footnotes and auditor's opinion)," and "internal financial statements or profit and loss reports of any kind that are prepared and maintained in the normal course of business for the merchandise under review."<sup>65</sup> LM provided this information in Exhibits 7 and 8 of the *Section A Response* and in a follow-up submission dated December 27, 2005.<sup>66</sup> LM provided additional

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<sup>61</sup> See letter from LM to the Department, dated December 13, 2005, *Re: Section A Response (Section A Response)* at Exhibit 8.

<sup>62</sup> See *First Supplemental QR* at Exhibit 17.

<sup>63</sup> See *Second Supplemental Questionnaire* at page 10.

<sup>64</sup> See *Second Supplemental QR* at page 6, question 10f.

<sup>65</sup> See *Section A Response* at page A-22.

<sup>66</sup> See letter from LM to the Department dated December 27, 2005, *Re: Steel Concrete Reinforcing Bars from Latvia; Supplemental Data for Section A Response*.

financial statements and information from its annual reports upon request. Therefore, LM did not ignore our requests at any point during the review.

The petitioners also commented that LM failed to answer question 10h of the *Second Supplemental Questionnaire*. This question requested that LM explain the discrepancy between the 2004 cash flow statement, which showed a value for the sale of fixed assets, and schedules included in Exhibit 17 of the *First Supplemental QR*, which were blank. LM responded that the sale of fixed assets on the cash flow statement will not tie to other line items on the cash flow statement. The objective of the question, however, was for LM to explain why the schedules related to the cash flow statement were blank. In Exhibit 5 of the *Second Supplemental QR*, LM submitted the actual schedules with no blank spaces. These schedules included values for the sale of equipment.<sup>67</sup> By providing completed schedules in the *Second Supplemental QR*, LM satisfied our request. Therefore, we do not find that LM's response to question 10h in the *Second Supplemental QR* supports the application of total AFA.

### **I. Bracketing**

We agree with the petitioners that LM should not have bracketed certain information in its financial statements. In the *Second Supplemental Questionnaire*, we asked LM to explain why it bracketed information in the annual reports and financial statements given that it is a publicly-traded company.<sup>68</sup> We did not, however, specifically request that LM revise its bracketing. In the *Second Supplemental QR*, LM stated that its annual reports and financial statements are publicly available on the Riga Stock Exchange website.<sup>69</sup> On October 10, 2006, we requested that LM withdraw its request for proprietary treatment of the information in its financial statements and annual reports.<sup>70</sup> LM withdrew its request on October 11, 2006.<sup>71</sup> Although we agree with the petitioners that LM should not have bracketed the information in its financial statements, we do not find that this warrants the application of total AFA. The petitioners did not argue that the bracketing impeded their ability to review and comment on the information, and we do not find that it impeded our ability to analyze LM's responses.

Finally, we note that LM provided extensive support to its questionnaire responses throughout this review in order to satisfy our requests for information. For example, in question 2 of the *First Supplemental QR*, LM provided a separate volume of documentation to comply with our request that it provide all product standards for subject merchandise sold in the U.S. and home

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<sup>67</sup> See *Second Supplemental QR* at Exhibit 5.

<sup>68</sup> See *Second Supplemental Questionnaire* at page 3.

<sup>69</sup> See *Second Supplemental QR* at page 6.

<sup>70</sup> See Memorandum to the File from Shane Subler, International Trade Compliance Analyst, Re: Fourth Administrative Review of Steel Concrete Reinforcing Bars from Latvia: Bracketing of Submissions, dated October 10, 2006.

<sup>71</sup> See *Withdrawal of BPI Request Letter*.

markets.<sup>72</sup> In response to question 16 of the *Second Supplemental QR*, LM complied with our request to revise the cost reporting methodology and provided revised cost reconciliations of the highest volume CONNUMs sold in the home market and U.S. market during the POR.<sup>73</sup>

LM's responsiveness contrasts sharply with the respondents in *PC Strand from Korea* and *SSSS from Taiwan*, two total AFA cases cited by the petitioners. In *PC Strand from Korea*, the respondents in the case did not respond to any part of the Department's antidumping questionnaire, did not explain why they did not respond, and did not propose alternatives for the information requested.<sup>74</sup> In *SSSS from Taiwan*, the the respondent repeatedly denied having a principal/agent relationship with an affiliate despite clear record evidence of the existence of the relationship.<sup>75</sup> We find that LM, by contrast, responded to the best of its ability to both the original antidumping questionnaire and the supplemental questionnaires. No evidence on the record indicates that LM submitted false information or withheld essential information that we requested. Therefore, we do not find that LM has been uncooperative or that its conduct in this segment of the proceeding warrants the application of total AFA.

## **Comment 2: Date of Sale**

LM contests the Department's decision in the *Preliminary Results* to use the date of contract addendum (*i.e.*, the purchase contract for each individual sale) or the date of the last amendment to the addendum as the U.S. market date of sale. Referring to the *Section A Response*,<sup>76</sup> LM argues that it reported the commercial invoice date as the date of sale because this is when the material terms of price, quantity, and product mix are determined and not subject to further change. Citing 19 CFR 351.401(i), LM argues that the Department normally considers the date of invoice as the date of sale.

Citing *Antifriction Bearings from Germany (AFBs from Germany)*,<sup>77</sup> LM maintains that the quantities set forth in the contract addenda are only estimates and that the quantity on each invoice during the POR differed from the quantity on the corresponding addendum. Therefore, LM argues that the final product quantity is determined by the commercial invoice. Second, LM argues that the Department did not acknowledge that the product mix for U.S. sales may change at any time between the date of the addendum and the date of the commercial invoice. Finally, LM notes that it does not know the actual weight or actual price of the rebar until it issues the

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<sup>72</sup> See *First Supplemental QR* at page 1 and Volume 2.

<sup>73</sup> See *Second Supplemental QR* at page 10.

<sup>74</sup> See *PC Strand from Korea*, 68 FR 68353.

<sup>75</sup> See *SSSS from Taiwan* Issues and Decision Memorandum at Comment 24.

<sup>76</sup> See *Section A Response* at pages A22-A23.

<sup>77</sup> See *Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*, 54 FR 18992 (May 3, 1989) (*AFBs from Germany*), at Part Two, Section 9, Comment 2.

commercial invoice because its U.S. sales are on a theoretical basis. Therefore, LM argues that the Department must use the commercial invoice date to allow home market sales on an actual weight basis to be compared to U.S. sales on an actual weight basis.

Furthermore, LM argues that it developed an antidumping compliance program in accordance with the Department's date of sale methodology used in the investigation and the first and second administrative reviews. LM explains that it sells merchandise in the home market that is identical to merchandise sold to the United States in the same month in order to eliminate antidumping liability. This program, LM contends, has helped lower its antidumping margin from 17.21 percent in the investigation to .87 percent in the first review and 3.01 percent in the second review. LM argues that changing the date of sale raised the margin to 5.24 percent in the last review and 6.03 percent in the *Preliminary Results*. It contends that shifting the date of sale from a date immediately after the production of the subject merchandise to a date two to three months prior to the production of subject merchandise eviscerates the company's antidumping compliance program. This, LM argues, will result in fewer comparisons of identical merchandise and more constructed value comparisons, which is contrary to the statutory scheme under section 773(a) of the Act.

Citing 19 CFR 351.401(i), *Pineapple from Thailand*,<sup>78</sup> and the *Final Rule*,<sup>79</sup> the petitioners counter that the Department has discretion to use a sale date other than invoice date if the other date better reflects the date on which the material terms of sale are established. Referring to *Sulfanilic Acid from Portugal*<sup>80</sup> as an example, the petitioners contend that the date of sale reflects the date on which the material terms of price and quantity are definite and firm. Responding to LM's arguments that the product mix and quantity may change up to the invoice date, the petitioners counter that all quantity changes during the POR were within specified tolerances and no changes to the product mix occurred after the final amendment. In response to LM's argument on quantity, the petitioners cite *Pipe and Tube from Thailand*<sup>81</sup> and *Hot-Rolled Steel from Kazakhstan*<sup>82</sup> as cases in which the Department addressed post-

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<sup>78</sup> See *Notice of Final Results of Antidumping Duty Administrative Review and Recission (sic) of Administrative Review in Part: Canned Pineapple Fruit From Thailand*, 66 FR 52744 (October 17, 2001) and accompanying Issues and Decision Memorandum at Comment 12 (collectively, *Pineapple from Thailand*).

<sup>79</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27349 (May 19, 1997) (*Final Rule*).

<sup>80</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Portugal*, 67 FR 60219 (September 25, 2002) and accompanying Issues and Decision Memorandum at Comment 1 (collectively, *Sulfanilic Acid from Portugal*).

<sup>81</sup> See *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18901, 18902 (April 12, 2001); unchanged in *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 66 FR 53388 (October 22, 2001) (collectively, *Pipe and Tube from Thailand*).

<sup>82</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Kazakhstan*, 66 FR 22168, 22171 (May 3, 2001); unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Kazakhstan*, 66 FR 50397 (October 3, 2001) (collectively, *Hot-Rolled Steel from Kazakhstan*).

contract changes to quantity. In both of these cases, the petitioners note, the Department found that post-contract quantity changes were within specified tolerance levels and used the contract date as the date of sale. Citing the *Third Review Final Results*,<sup>83</sup> the petitioners point out that the Department found that the quantity remained within the tolerances on the contract or amendment for all sales in the previous review. They argue that the facts of this review are identical to the third review. Furthermore, responding to LM's contention that prices are not final until the commercial invoice, the petitioners argue that the per-unit price was clearly fixed by the contract for all sales during the POR.

In response to LM's argument on product mix, the petitioners respond that the Department, consistent with the *Third Review Final Results*, reviewed information on LM's sales and found that the contract amendments establish the product mix. The petitioners also argue that the record contains no evidence to support LM's contention that the product mix for any sale changed, or was subject to change, between the final amendment and the invoice. They note that the Department analyzed the product mix in detail in the *Preliminary Results Analysis Memorandum*.<sup>84</sup>

Regarding LM's argument on its antidumping compliance program, the petitioners respond that the Department used the same date of sale determination in the previous review. They note that the Department announced this determination in the *Third Review Preliminary Results*,<sup>85</sup> thereby giving LM time to modify its compliance program. Citing *Rebar from Turkey*,<sup>86</sup> the petitioners argue that the Department considers each segment of a proceeding separately and is not precluded from making changes because of the facts of a previous segment.

Although the petitioners acknowledge that the Court of International Trade (CIT) concluded in *Shikoku*<sup>87</sup> that the Department is bound by its prior actions so that respondents may purge themselves of antidumping duties, the petitioners contend that the CIT has made numerous exceptions. For example, citing *Sinopec*,<sup>88</sup> the petitioners note that the CIT upheld a change in the cost methodology used by the Department because the respondent failed to demonstrate reliance on the original methodology and because the change was reasonable and based on record

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<sup>83</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia*, 71 FR 7016 (February 10, 2006) and accompanying Issues and Decision Memorandum at Comment 2 (collectively, *Third Review Final Results*).

<sup>84</sup> See *Preliminary Results Analysis Memorandum* at page 4.

<sup>85</sup> See *Notice of Preliminary Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia*, 70 FR 58687 (October 7, 2005) (*Third Review Preliminary Results*).

<sup>86</sup> See *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 68 FR 53127 (September 9, 2003) and accompanying Issues and Decision Memorandum at Comment 6 (collectively, *Rebar from Turkey*).

<sup>87</sup> See *Shikoku Chemicals Corporation v. United States*, 795 F. Supp. 417, 421 (CIT 1992) (*Shikoku*).

<sup>88</sup> See *Sinopec Sichuan Valyon Works v. United States*, 366 F. Supp. 2d 1339, 1348 (CIT 2005) (*Sinopec*).

evidence. The petitioners claim that the facts of *Sinopec* apply to the current review. They argue that LM failed to provide any evidence of a compliance program other than its statement that it lowered its dumping margin since the investigation.

Finally, in response to LM's assertion that it can no longer eliminate dumping on U.S. sales, the petitioners argue that there is no reason why LM cannot revise the compliance program it described. The petitioners note that the per-unit price and product mix for LM's U.S. sales are established by the date of the contract amendment. This, the petitioners contend, allows LM to match home market sales to U.S. sales of the same products in order to eliminate dumping.

### **Department's Position:**

We have continued to use the date of the final contract amendment as the date of sale for LM's U.S. sales. The Department's regulations at 351.401(i) state that the Department may select a date of sale other than the invoice date if the other date better reflects the point at which the exporter or producer establishes the material terms of sale. The Department has interpreted "material terms of sale" to include price and quantity.<sup>89</sup> It has also indicated that the terms to examine in selecting the date of sale are those which directly affect the calculation of the dumping margin.<sup>90</sup> In the third administrative review, we determined that the product mix based on the Department's product matching criteria constituted a third term of sale, in addition to the price and quantity.<sup>91</sup> As in the third administrative review, the record for the current review demonstrates, as a factual matter, that the date of the final sales contract amendment best reflects the date on which the material terms of price, quantity, and product mix are established.

As we stated in the *Preliminary Results Analysis Memorandum*,<sup>92</sup> the per-unit price for all of LM's U.S. sales during the POR was established by the purchase contract (or "addendum" for sales to a certain customer).<sup>93</sup> No changes to the per-unit price occurred between the issuance of the purchase contracts and the final invoices. On page 6 of its case brief, LM states that the contract addendum date sets the pricing terms for the transaction. On page 8 of the brief, however, LM claims that the use of invoice date is necessary because the actual weight of the sale is not known until shipment. Therefore, LM argues that it also does not know the actual per-unit price until shipment. The adjustment to which LM refers, however, converts U.S. prices on a

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<sup>89</sup> See, e.g., *Sulfanilic Acid from Portugal* Issues and Decision Memorandum at Comment 1.

<sup>90</sup> See *Pineapple from Thailand* Issues and Decision Memorandum at Comment 12 (noting that the central purpose of establishing a date of sale is to select the point in time "when the terms which directly affect our dumping calculation were actually set.").

<sup>91</sup> See *Third Review Final Results* Issues and Decision Memorandum at Comment 2.

<sup>92</sup> See *Preliminary Results Analysis Memorandum* at page 4.

<sup>93</sup> As we noted in footnote 3 of the *Preliminary Results*, the terminology used for LM's sales documentation varies by customer. See *Preliminary Results*, 71 FR 45032. As shown in Exhibit 11 of LM's April 17, 2006, supplemental response, a purchase contract is equivalent to a contract addendum, and an appendix is equivalent to an amendment to the addendum.

theoretical basis to an actual basis, thereby allowing for proper comparison to home market prices on an actual weight basis. This adjustment is necessary so that LM can comply with the Department's requirements for reporting information in the databases. It is not a change to the material terms to which LM and the customer agreed. Therefore, we find that the per-unit price for all sales orders during the POR was fixed by the purchase contract.

We also stated in the *Preliminary Results Analysis Memorandum* that the total quantity on the final invoice for each sale was within the tolerance level listed on the final purchase contract amendment.<sup>94</sup> LM argues in its case brief that the precise quantity changes between the date of the amendment and the invoice date. Our analysis, however, focused on whether the total quantity on the final invoice was within the tolerance level for the quantity listed on the final amendment. Information on the record indicates that LM fulfills the terms of the purchase contract by shipping a total quantity that is within a narrowly defined tolerance to which the parties have agreed.

Rebar is sold by weight, not by the quantity of individual units. LM explains that it does not know the exact actual weight of the rebar until the it is loaded for shipment.<sup>95</sup> The difference between the weight on the final amendment and the weight on the invoice, however, is not the result of a change in the agreed-upon material terms of sale between the buyer and seller. Under LM's argument, an extremely small deviation between the two weights (*e.g.*, 1,000 metric tons (MT) on the amendment vs. 1,000.01 MT on the invoice) would constitute a change in the terms of sale between the buyer and seller. In order for the buyer to guarantee that LM fulfills the terms of each sales contract, the buyer agrees to a narrowly defined quantity tolerance. Thus, in our date of sale analysis, we looked for the date that best reflects the establishment of the agreement between LM and the buyer over the quantity of the sale.

We find that the date of the final amendment best reflects the date of this agreement. Consistent with the *Preliminary Results Analysis Memorandum*,<sup>96</sup> the *Third Review Final Results*,<sup>97</sup> *Pipe and*

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<sup>94</sup> As we noted in footnote 4 of the *Preliminary Results Analysis Memorandum*, one purchase contract was not amended by changes to the material terms of sale. See *Preliminary Results Analysis Memorandum* at page 4. The price, quantity within the specified tolerance, and product mix were established by the purchase contract for this sale. Therefore, we used the contract date as the date of sale for this sale.

<sup>95</sup> See LM's case brief at page 8.

<sup>96</sup> See *Preliminary Results Analysis Memorandum* at page 4 ("Also for all U.S. sales orders, the total sales quantity on the final invoice was within the tolerance level listed on the last amendment that modified the terms of sale.").

<sup>97</sup> See *Third Review Final Results Issues and Decision Memorandum* at Comment 2, page 11 ("We also stated that the quantity for each sale remained within the specified tolerance between the contract addendum / amendment and the final invoice.").

*Tube from Thailand*,<sup>98</sup> and *Hot-Rolled Steel from Kazakhstan*,<sup>99</sup> our analysis focused on whether the final invoice quantities fell within the tolerance limits of the amendments. In its case brief, LM acknowledges, “{T}he Department is correct that the total quantity within a tolerance of +/- 5 percent will not change after the last addendum or amendment.”<sup>100</sup> Because the record indicates that the quantities listed on the final invoices were within the tolerance levels, we find that the date of the final contract amendment best reflects the establishment of the quantity term of sale.

With respect to the product mix, LM states,

The Department’s analysis memorandum completely ignores the fact that an additional material term of the contract – the product mix subject to the order, which dictates the actual products that are purchased by the U.S. customer – may change between the date of addendum and the date of the commercial invoice.<sup>101</sup>

In the *Preliminary Results Analysis Memorandum*, however, we addressed in detail how the product mix may change after the issuance of the contract.<sup>102</sup> We provided examples of how the amendments modified the product mix listed in the contract.<sup>103</sup> Our conclusion was consistent with LM’s statement in the *First Supplemental QR* that the final product mix for each sales specification was established by the amendment or appendix.<sup>104</sup> Therefore, contrary to LM’s claim in its case brief, the *Preliminary Results Analysis Memorandum* addressed the issue of product mix in detail.

In its case brief, LM states, “{M}oreover, at any time before issuance of the commercial invoice date the purchaser is permitted to change the product mix, as long as the total weight remains within the tolerance limits of the addendum.”<sup>105</sup> This statement, however, is not consistent with LM’s submitted U.S. sales documentation. The sales contracts for all of LM’s U.S. sales list a

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<sup>98</sup> See *Pipe and Tube from Thailand*, 66 FR 18901, 18902 (“Specifically, changes in quantity were within the specified contract tolerances and as such were not material.”).

<sup>99</sup> See *Hot-Rolled Steel from Kazakhstan*, 66 FR 22168, 22171 (“There appear to be no changes in price or in quantity, outside of the contractually agreed upon tolerances, after the addendum is finalized.”).

<sup>100</sup> See LM’s case brief at page 7.

<sup>101</sup> See *id.* at page 7.

<sup>102</sup> See *Preliminary Results Analysis Memorandum* at pages 4-5.

<sup>103</sup> See *id.*

<sup>104</sup> See *First Supplemental QR* at page 7. LM withdrew its request for business proprietary treatment of the phrases “amendment to the addendum” and “appendix to the contract” in the *Withdrawal of BPI Request Letter*. See page 2 of the *Withdrawal of BPI Request Letter*.

<sup>105</sup> See LM’s case brief at page 7.

“load ready” or “loadreadiness” date that is between one month and one week before the date of the invoice for that sale.<sup>106</sup> LM must produce all of the specific products covered by the final amendment and have them ready for loading by this date. In addition, for all sales during the POR, the date of the final amendment that establishes the product mix is at least nine days before the “loadreadiness” date.<sup>107</sup> Therefore, the documentation shows that LM must have significant lead time to produce all of the products listed on the amendments. Although LM stated that the product mix may change up until shipment, the sales documentation on the record shows that this did not occur and could not have occurred under the framework of the sales contracts.

Additional record information on LM’s sales supports the conclusion that the product mix cannot change up to the date of shipment. First, LM stated that it does not maintain a warehouse,<sup>108</sup> and all of its U.S. sales contracts require that the rebar be “newly produced” or “from new rollings.”<sup>109</sup> Thus, LM cannot pull products from inventory to accommodate late substitutions of one product for another. Furthermore, late additions to the product mix would be very difficult to accommodate because LM produces on confirmed schedules according to agreements with customers.<sup>110</sup> As the contracts in Exhibit 11 and product standards in Volume 2 of the *First Supplemental QR* show, different grades of rebar produced for specific markets have different chemical and physical properties and are not easily substitutable.<sup>111</sup> Accommodating an addition of products shortly before shipment would require LM to reschedule production from assigning raw materials to the end-rolling stage. This would be extremely difficult, if not impossible, for LM to accommodate. Furthermore, each contract specifies that only a certain amount of rebar will be loaded into the hull of the ship destined for the United States per day,<sup>112</sup> meaning that products loaded onto the ship cannot easily be removed and replaced with others to accommodate changes. Finally, documentation on the record shows that LM required

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<sup>106</sup> See the first pages of the individual purchase contracts and addenda in Exhibit 11 of the *First Supplemental QR*.

<sup>107</sup> See *id.*

<sup>108</sup> See *Sections B-D Response* at pages B-15 and C-16.

<sup>109</sup> See *First Supplemental QR* at Exhibit 11 (e.g., “Page 3 of 5 of Contract 4085,” which is the first contract in Exhibit 11, and page 1 of “Addendum No. 35 DD.14.06.2005.”)

<sup>110</sup> See *Section A Response* at A-6 (description of Production Department: “Ensuring continuous work of production plants and their control in conformity with the concluded agreements, the assortment of products and the supplies of materials, according to confirmed schedules.”).

<sup>111</sup> See, e.g., Addendum 37 in Exhibit 11 of the *First Supplemental QR* (“Thermex or Tempcore treatment is not allowed in the production of the given Specification.” “The Certificate (for the merchandise) states that the material conforms to Quality ASTM A-615-04a Grade 60 / Grade 40 and chemical analysis and mechanical properties conform to Quality ASTM A-615/04a Grade 60 / Grade 40.”). See also Volume 2 of the *First Supplemental QR*, which lists separate product standards for Thermex grades, Grade 40, Grade 60, and other grades of rebar produced by LM.

<sup>112</sup> See Exhibit 11 of the *First Supplemental QR* (e.g., “Page 3 of 5 of Contract 4085”).

prepayments for all of its U.S. sales.<sup>113</sup> These prepayments, due within a few days of the original purchase contract, cover up to 95 percent of the total value of the transaction. As a result, customers are not free to make last-minute changes to the product mix by cancelling orders for certain products.

Taken as a whole, this evidence indicates that it is not commercially viable for LM to change the product mix of its U.S. sales up to the date of shipment. LM has pointed to no evidence on the record that the product mix is subject to change up to the day of shipment. The documentation on the record shows that no changes to the product mix (or other terms of sale) occurred close to the date of shipment and indicates that these changes could not occur under the framework of LM's sales contracts. Although the documentation indicates no set deadline for proposals to change the product mix, LM would not agree to any change that would prevent it from fulfilling the terms of the contract. LM could not meet the terms of the contract if changes up to the date of shipment were permissible. As a result, the material terms are fixed at some unspecified point between the contract date and the date of shipment. We find that the date of the final purchase contract amendment best reflects the date on which the parties finally agree to the material terms.

LM also argues that the Department's date of sale determination is not consistent with the date of sale determination from the investigation and first two administrative reviews. It claims that the change to the date of sale eviscerated its antidumping compliance program. Our date of sale determination, however, is consistent with the determination from the third administrative review. Furthermore, even though the date of sale selected in this review and the previous review differs from the one used in the investigation and first two administrative reviews, the Department's practice is to consider each segment of a proceeding separately.<sup>114</sup> The Department's determination of the appropriate date of sale is factual in nature and therefore is based upon the evidence on the record of the particular segment of the proceeding. In any case, the Department may change a policy provided the Department explains the basis for the change and such change is reasonable.<sup>115</sup>

### **Comment 3: G&A Expenses**

Citing the *Investigation Final Results*,<sup>116</sup> LM asserts that the Department properly excluded accounts not related to production from LM's G&A expense ratio in the original investigation. LM claims that in this review, however, the Department incorrectly instructed it to include

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<sup>113</sup> See *id.* (e.g., "Page 4 of 5 of Contract 4085").

<sup>114</sup> See, e.g., *Rebar from Turkey* Issues and Decision Memorandum at Comment 6.

<sup>115</sup> In *Sinopec*, the CIT upheld the Department's decision to change its cost allocation methodology from one segment of a proceeding to another because the respondent did not demonstrate that it relied on any implicit or explicit instructions from the Department to adopt the methodology and because the change was reasonable and supported by substantial evidence on the record. 366 F. Supp. 2d at 1348.

<sup>116</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Latvia*, 66 FR 33530 (June 22, 2001), and accompanying Issues and Decision Memorandum at Comment 4 (collectively, *Investigation Final Results*).

certain accounts not related to production in the G&A expense calculation submitted with the *Second Supplemental QR*.<sup>117</sup> LM argues that the Department correctly excluded expenses for the medical center (account 7126) from the G&A expense ratio because the medical center is not related to production and is open to the public. It claims that the Department did not follow this methodology, however, by directing LM to include expenses from non-production related accounts for the sponsorship of the football club (account 8413.1), Bernati Recreation Center (account 8413.2), and sponsorship or grant-in-aid to other organizations (part of account 8413.5). Citing 19 C.F.R. 351.301(c)(2)(i), which permits the Department to request information from a party at any time in a proceeding, LM contends that the Department should issue an additional supplemental questionnaire if it finds that LM has not sufficiently described the accounts.

Furthermore, LM contests the Department's decision to exclude certain income offsets from the G&A expense calculation. Disputing the Department's conclusion that the record did not include sufficient information about these accounts,<sup>118</sup> LM argues that it explained that accounts 8190 and 8313 are income accounts that do not contain any expenses.<sup>119</sup> LM contends that it responded fully to the Department's questions by describing the costs associated with these accounts in the *First Supplemental QR* and by providing a more detailed explanation of the accounts, along with corresponding G/L pages, in the *Second Supplemental QR*. LM argues, therefore, that income recorded in these accounts should offset reported G&A expenses because the income relates to production and because LM fully responded to the Department's requests.

The petitioners respond that the Department should continue to include the specified accounts in G&A expenses and should deny all of the claimed G&A offsets if it decides not to apply total AFA. Referring to LM's explanation of sports and recreation expenses in Section D of the *Sections B-D Response*,<sup>120</sup> the petitioners note LM originally claimed that these expenses only relate to the general operations of the mill. They argue that LM's subsequent claim that these expenses should be excluded from G&A expenses does not comport with *SSSS from France*,<sup>121</sup> in which the Department included football and donation expenses in the G&A expense calculation because they were administrative expenses attributable to all production. The petitioners state that the Department's practice is to include indirect marketing or advertising expenses in G&A expenses.

With regard to G&A expense offsets, the petitioners contend that LM's description of accounts 8190 and 8313 is insufficient because it does not state whether the costs corresponding to the

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<sup>117</sup> See *Second Supplemental QR* at page 20 and Exhibit 15 (Exhibit 15 resubmitted as Attachment 3 to the letter to the Department from LM, Re: Steel Concrete Reinforcing Bars from Latvia: Submission of Corrected Exhibits to the 7/7/2006 Supplemental Response, dated July 18, 2006).

<sup>118</sup> See *Preliminary Results* at 45032.

<sup>119</sup> See *Second Supplemental QR* at page 21.

<sup>120</sup> See *Sections B-D response* at D-37.

<sup>121</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France*, 64 FR 30820, 30837 (June 8, 1999) (*SSSS from France*), at Comment 22.

offsets are included in LM's reported costs. The petitioners also argue that LM's descriptions give no indication of whether these two accounts relate to production. Furthermore, countering LM's claim that it submitted supporting documentation for these accounts, the petitioners state that LM submitted only G/L pages that do not explain the nature of the accounts themselves. Finally, referring back to their case brief, the petitioners argue that the Department should deny the other G&A expense offsets because there is not enough information on the record to understand the nature of the offsets.

### **Department's Position:**

We agree with the petitioners in part. First, we disagree with the petitioners' argument that expenses that may be characterized as indirect marketing or advertising expenses should be included in G&A expenses. We find that these expenses should be included in indirect selling expenses. In the previous administrative review, we included expenses from account 8413.1 in indirect selling expenses because company officials stated at verification that LM derives an advertising benefit from sponsoring the sports clubs.<sup>122</sup> This is consistent with other cases in which the Department has found that general advertising expenses not directly aimed at the customer's customer should be considered indirect selling expenses.<sup>123</sup> Second, also at verification during the third administrative review, company officials stated that the Bernati Recreation Center (account 8413.2) is a recreation center used by company employees.<sup>124</sup> We agree with the petitioners that these expenses should be included in G&A expenses because the center provides benefits to company employees. Finally, as LM stated in its case brief, the portion of account 8413.5 that LM sought to exclude from reported G&A expenses related to "sponsorship, grant-in-aid to other organizations."<sup>125</sup> We agree with the petitioners that expenses for grants to organizations should be included in G&A expenses because they relate to the general operations of the company. Therefore, for the final results, we have left the totals for accounts 8413.2 and 8413.5 in G&A expenses, and we have moved the total for account 8413.1 from G&A expenses to indirect selling expenses.<sup>126</sup>

With respect to LM's claimed G&A offsets, we also agree with the petitioners that our decision to exclude the offsets was appropriate. In the *Sections B-D Response* at Exhibit D6, LM included

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<sup>122</sup> See Memorandum from Shane Subler, International Trade Compliance Analyst, to the File, Re: Verification Report and Preliminary Results Calculation Memorandum from the Third Administrative Review, dated October 23, 2006 (*Third Review Verification Report and Analysis Memorandum*), at page 34 of the verification report.

<sup>123</sup> See, e.g., *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 25.

<sup>124</sup> See *Third Review Verification Report and Analysis Memorandum* at page 34 of the verification report.

<sup>125</sup> See LM's case brief at page 13.

<sup>126</sup> See Memorandum from Shane Subler, International Trade Compliance Analyst, to the file, Subject: Final Results Analysis Memorandum, dated December 6, 2006 (*Final Results Analysis Memorandum*).

18 different accounts as part of the “Other incomes from economic activity” category applied as an offset to G&A expenses. In question 35 of the *First Supplemental Questionnaire*, we asked LM to explain its G&A expense exhibit.<sup>127</sup> For the first half of question 36 of the *First Supplemental Questionnaire*, we asked LM to explain what is included in each income account listed as an offset and to identify where the corresponding costs for these accounts are located in LM’s accounting records and in the submitted cost database. For the second half of question 36, we requested that LM provide the specific items included in two of these accounts: 8190 and 8313.

In response to question 35, LM explained that accounts 8150 and 8170, which were both included in “Other incomes from economic activity,” represented exchange rate differences that were included in the interest expense calculation.<sup>128</sup> Therefore, question 36 required LM to provide an overall description of the remaining 16 accounts in the “Other incomes from economic activity” category and to provide additional detail on two of these accounts: 8190 and 8313. In response, LM only provided a limited description of accounts 8190 and 8313. It provided no description of the other 14 accounts in question, no identification of the corresponding costs for these accounts in its accounting system or the databases, and no identification of the specific items in accounts 8190 and 8313.

In the *Second Supplemental Questionnaire*, we notified LM that it did not answer either the first or second half of question 36 in the *First Supplemental QR*.<sup>129</sup> We requested a complete answer to both parts of this question. In its response, LM did not mention any of the remaining 14 accounts in question. It provided a general description of accounts 8190 and 8313 and an explanation of accounts 8150 and 8170, although the question did not require this.<sup>130</sup>

Despite our direct instructions, LM did not provide details on the accounts that compose the “Other incomes from economic activity” category. Therefore, for the *Preliminary Results*, we denied the entire amount of LM’s claimed offset.<sup>131</sup> In its case brief, LM continued to address only accounts 8190 and 8313, but did not mention the remaining accounts in question. We continue to find that LM’s failure to respond to our direct request for information on these accounts warrants denying these claimed offsets. Thus, we have made no changes to the G&A expense calculation methodology used in the *Preliminary Results*.

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<sup>127</sup> See *First Supplemental Questionnaire* at page 8.

<sup>128</sup> See *First Supplemental QR* at page 16.

<sup>129</sup> See *Second Supplemental Questionnaire* at page 8.

<sup>130</sup> See *Second Supplemental QR* at page 21.

<sup>131</sup> See *Preliminary Results*, 71 FR at 45032. We note that the amount of the offset denied in the *Preliminary Results* was net of accounts 8150 and 8170 because LM explained in the *First Supplemental QR* that these accounts are incorporated into the interest expense calculation. See page 16 of the *First Supplemental QR*. We recognized this in question 24 of the *Second Supplemental Questionnaire* by stating, “Provide details on all accounts that are included in the ‘Other incomes from economic activity’ total of (business proprietary number) LVL, which is the total net of accounts 8150 and 8170.” See page 7 of the *Second Supplemental Questionnaire*.

#### **Comment 4: Clerical Error**

LM notes that the SAS programming language used for the *Preliminary Results* contains an error with respect to the calculation of the variable cost of manufacturing (VCOM). LM points out that the Department's calculation of the VCOM incorrectly adds fixed rolling costs to the TOTCOM instead of subtracting them. The correct equation, according to LM, should subtract fixed rolling costs from the TOTCOM to calculate the VCOM.

The petitioners did not comment on this issue.

#### **Department's Position:**

We agree with LM. For the correct calculation of the VCOM, fixed melting and fixed rolling costs are subtracted from the TOTCOM. We have incorporated the change into the SAS programming language for the final results. See the *Final Results Analysis Memorandum* at Comment 3.

#### **Comment 5: Offset for Non-Dumped Sales**

LM disputes the Department's standard methodology used in the *Preliminary Results* of assigning a margin of zero to U.S. sales made at or above the prices charged for home market sales. It argues that the WTO's Appellate Body in *Softwood Lumber from Canada*<sup>132</sup> affirmed the finding of a WTO Dispute Settlement Panel that this practice violates Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. Citing *Corus 2003*<sup>133</sup> and *Mushrooms from India*,<sup>134</sup> LM acknowledges that the CIT upheld the Department's practice with respect to the *Bed Linens*<sup>135</sup> decision because *Bed Linens* was not binding on the United States. It argues that *Softwood Lumber from Canada*, by contrast, binds the United States to change its practice. LM urges the Department to offset positive dumping margins with margins based on home market prices that are below U.S. sales prices.

The petitioners counter that the CIT and the Court of Appeals for the Federal Circuit (CAFC) have both upheld the practice of not offsetting for non-dumped sales in both investigations<sup>136</sup> and

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<sup>132</sup> See Appellate Body Report, *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R (August 11, 2004) (*Softwood Lumber from Canada*).

<sup>133</sup> See *Corus Staal BV v. United States*, 27, CIT \_\_\_, 259 F. Supp. 2d 1253, 1273 (2003) (*Corus 2003*).

<sup>134</sup> See *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 66 FR 42507 (August 13, 2001) (*Mushrooms from India*).

<sup>135</sup> See *European Communities – Antidumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141/R (October 30, 2000) and the subsequent report by the WTO Appellate Body, WT/DS141/AB/R (March 1, 2001) (collectively, *Bed Linens*).

<sup>136</sup> See *Corus 2003*, 259 F. Supp. 2d at 1257.

reviews.<sup>137</sup> They acknowledge that the Department recently announced its intention to abandon the practice, but also point out that the Department is still considering comments on the issue and stated explicitly that it will use zeroing in pending investigations.<sup>138</sup> Furthermore, citing the Department's decision memorandum in *Ball Bearings*, the petitioners argue that the WTO's ruling in *Softwood Lumber from Canada* was irrelevant with respect to the consistency of the practice with U.S. law.<sup>139</sup> Referring to section 123(g)(1) of the Uruguay Round Agreements Act,<sup>140</sup> the petitioners argue that a regulation or practice may not be amended, rescinded, or modified as the result of a WTO Appellate Body or dispute panel decision until certain steps are completed by the U.S. Government. Therefore, the petitioners contend that there is no statutory basis for changing the Department's methodology in this administrative review.

### **Department's Position:**

We agree with the petitioners and have not changed our calculation of the weighted-average dumping margin for the final results. As we have discussed in prior cases, our methodology is consistent with our statutory obligations under the Act. *See, e.g., Notice of Final Results of Antidumping Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 69 FR 75921 (December 20, 2004), and accompanying Issues and Decision Memorandum at Comment 4; *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Administrative Antidumping Review*, 69 FR 61649 (October 20, 2004), and accompanying Issues and Decision Memorandum at Comment 7; and *Notice of Final Results of Antidumping Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 69 FR 68309 (November 24, 2004), and accompanying Issues and Decision Memorandum at Comment 8.

The Federal Circuit has affirmed the Department's methodology as a reasonable interpretation of the statute. *See Timken*, 354 F.3d at 1342-43 (covering an antidumping administrative review of tapered roller bearings from Japan). More recently, the Federal Circuit again affirmed the Department's methodology as consistent with the statute with respect to an antidumping

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<sup>137</sup> *See, e.g., Timken Co. v. United States*, 354 F.3d 1334, 1341-42 (CAFC), cert. denied, 125 S. Ct. 412 (2004) (*Timken*); *see also Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 71 FR 40064 (July 14, 2006) and accompanying Issues and Decision Memorandum at Comment 1 (citing *Paul Muller Industrie GmbH v. United States*, 435 F. Supp. 2d 1141, 1245 (CIT 2006) (“unless the Supreme Court or the Federal Circuit expressly overrule *Timken 2004* or *Corus Staal*, this court does not have the power to re-examine the issue of zeroing in administrative reviews.”)) (collectively, *Ball Bearings*).

<sup>138</sup> *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation*, 71 FR 11189 (March 6, 2006); *see also Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation; Extension of Rebuttal Comment Period*, 71 FR 23898 (April 25, 2006).

<sup>139</sup> *See Ball Bearings* at Comment 1.

<sup>140</sup> *See* 19 USC § 3538.

investigation. The Federal Circuit in *Corus I*<sup>141</sup> held that the Department's interpretation of section 771(35) of the Act permits this methodology whether it is in the context of an administrative review or investigation.

With regard to LM's argument concerning the WTO Appellate Body report in *Softwood Lumber from Canada*, at the instruction of United States Trade Representative, the Department implemented the WTO report on May 2, 2005, pursuant to section 129 of the URAA.<sup>142</sup> Under section 129, the implementation of the WTO report affects only the specific administrative determination that was the subject of the dispute before the WTO: the antidumping duty investigation of softwood lumber from Canada. *See* 19 U.S.C. § 3538. The implementation of *Softwood Lumber from Canada* has no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law. *See Corus Staal*, 395 F.3d at 1347-49; *Timken*, 354 F.3d at 1342. Accordingly, the Department will continue in this case to deny offsets to dumping based on export transactions that exceed normal value.

#### **Comment 6 (Pre-Preliminary): Financial Statements Used for General and Administrative Expenses and Interest Expenses**

In their *Pre-Preliminary Results Comments*, the petitioners requested that the Department instruct LM to recalculate its G&A and interest expense ratios based on the company's 2005 audited financial statements.<sup>143</sup> Citing page 37 of the *Sections B-D Response*, the petitioners note that Section D of the questionnaire instructs respondents to calculate G&A expense ratios based on the audited financial statements that most closely correspond to the POR. The petitioners contend that the 2005 financial statements cover the majority of the POR and, therefore, should be used for the G&A and interest expense calculations.

The Department did not have these calculations on the record as of August 1, 2006, the date of issuance of the *Preliminary Results*. On August 8, 2006, the Department issued LM a supplemental questionnaire requesting that it provide calculations for G&A expenses and interest expenses based on the 2005 financial statements.<sup>144</sup> LM provided a timely response on August 16, 2006.<sup>145</sup>

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<sup>141</sup> *See Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347 (2005) (*Corus I*).

<sup>142</sup> *See Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products From Canada*, 70 FR 22636 (May 2, 2005).

<sup>143</sup> *See* letter from the petitioners to the Department dated July 17, 2006, Re: Certain Steel Concrete Reinforcing Bars from Latvia: Petitioner's Comments on Joint Stock Company Liepajas Metalurgs's ("LM") July 7, 2006 Sections A, B, C, and D Supplemental Questionnaire Responses (*Pre-Preliminary Results Comments*) at page 20.

<sup>144</sup> *See* letter from the Department to LM dated June 16, 2006, Re: Fourth Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bars from Latvia.

<sup>145</sup> *See* Letter from LM to the Department dated August 16, 2006, Re: Steel Concrete Reinforcing Bars from Latvia; Submission of LM's 3<sup>rd</sup> Section D Supplemental Response.

Neither party raised this issue in its case brief or rebuttal brief.

**Department's Position:**

We agree with the petitioners that G&A and interest expenses should be based on the financial statements that most closely correspond to the POR. Therefore, for the final results, we used LM's 2005 financial statements to calculate G&A and interest expenses. We have adjusted the calculations in LM's August 16 submission by removing the G&A income offset and by moving football and hockey club expenses from G&A expenses to indirect selling expenses (*see* Comment 3 above; *see also* the *Final Results Analysis Memorandum* at page 2).

**Recommendation**

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish in the *Federal Register* the final results of the antidumping review and the final weighted-average dumping margin.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

\_\_\_\_\_  
David M. Spooner  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date