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September 11, 2006

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results and Final Partial Rescission of Oil Country Tubular Goods from Mexico

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Summary

We have analyzed the comments and rebuttals thereof from interested parties in the administrative review of the antidumping duty order on oil country tubular goods ("OCTG") from Mexico. See Antidumping Duty Order: Oil Country Tubular Goods From Mexico, 60 FR 41056 (August 11, 1995). We recommend that you approve the positions developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments from interested parties:

Comment 1: Offsetting for Export Sales that Exceed Normal Value
Comment 2: Limited-Service and Regular-Grade OCTG
Comment 3: Brokerage and Handling
Comment 4: Warranty Expenses
Comment 5: Steel Scrap Purchases
Comment 6: Investment Income
Comment 7: Inventory Carrying Cost

Background

On May 12, 2006, we published the preliminary results of this antidumping duty administrative review. See Certain Oil Country Tubular Goods from Mexico: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission, 71 FR 27676 (May 12, 2006) ("Preliminary Results").

We invited parties to comment on our Preliminary Results. We received case briefs from respondent Hylsa, S.A. de C.V. ("Hylsa") and petitioner United States Steel Corporation ("petitioner") on June 12, 2006. We received rebuttal briefs from Hylsa and petitioner on June 19, 2006.

Discussion of the Issues

Comment 1 – Offsetting for Export Sales that Exceed Normal Value

Hylsa argues that the Department failed to take into account "negative margins" (i.e., export transactions that exceed normal value, ("NV")) calculated in the Preliminary Results and instead set "negative margins" to zero (i.e., a practice referred to as "zeroing"). Hylsa maintains that had the Department not zeroed "negative margins," the preliminary results would have yielded an overall negative dumping margin for Hylsa. See Hylsa's June 12, 2006, Case Brief ("Hylsa's Case Brief") at 3-4.

Hylsa argues that treating "negative margins" as zero margins, while consistent with the Department's normal practice, is inconsistent with U.S. WTO obligations under the Antidumping Agreement ("ADA"), citing United States – Laws, Regulations, and Methodology for Calculating Dumping Margins "Zeroing" ("AB Zeroing Decision"), WT/DS294/AB/R (April 18, 2006), United States - Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/AB/R, (August 11, 2004), United States – Sunset Review of Anti-Dumping Duties on Corrosion – Resistant Carbon Steel Flat Products from Japan, WT/DS244/AB/R, (December 15, 2003), and European Communities – Antidumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R, (March 1, 2001). Hylsa also maintains that the WTO Appellate Body has specifically held that the U.S. practice of "zeroing" in administrative reviews is not consistent with the ADA's provisions concerning duty assessment. See AB Zeroing Decision. Respondent maintains that the Department's zeroing methodology will ultimately be overturned. Therefore, Hylsa contends that in order to avoid unnecessary burdens, the Department should change its practice of zeroing "negative margins" for the final results and consider both positive and "negative margins" in its dumping calculations. See Hylsa's Case Brief at 4.

Hylsa further argues that if the Department continues its zeroing practice for the final results, respondent, along with the U.S. and Mexican governments, will be forced to go through unnecessary and time-consuming legal proceedings.

In its June 19, 2006, rebuttal submission, petitioner argues that the Department should continue to use its zeroing methodology. See petitioner's July 19, 2006, Rebuttal Brief ("Petitioner's Rebuttal Brief"). Petitioner contends that Hylsa's arguments must be rejected because the U.S. antidumping statute requires the Department to use zeroing in its dumping analysis. See Comments of Skadden, Arps, Slate Meagher & Flom LLP on behalf of United States Steel Corporation ("U.S. Steel") (April 5, 2006), available at http://ia.ita.doc/gov/download/zeroing/cmts/ussc-zeroing-cmt.pdf; Comments of the

Committee to Support U.S. Trade Laws (April 5, 2006) at 4-9, available at http://ia.ita.doc.gov/download/zeroing/cmts/csustl-zeroing-cmt.pdf cited in Petitioner's Rebuttal Brief at 2, footnote 4. Furthermore, petitioner contends, even if the Department's use of zeroing is not required by statute, it certainly is a reasonable and permissible interpretation of the law. See Corus Staal BV v Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), cert. denied, __U.S.__, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (2006) ("Corus I"); Timken Co. v. United States, 354 F.3d 1334, 1342-45 (Fed. Cir. 2004), cert. denied, 543 U.S. 976, 125 S. Ct. 412, 160 L. Ed. 352 (2004) ("Timken"); Corus Staal BV v. United States, 387 F. Supp. 2d 1291, 1298-1300 (CIT 2005). See Petitioner's Rebuttal Brief at 3, footnote 6.

Lastly, petitioner asserts that the WTO's recent decision has no binding effect under U.S. law, nullifying respondent's reliance on the AB Zeroing Decision, in which the Appellate Body found that the practice of "zeroing" was contrary to the AD Agreement. Petitioner argues that there is no due deference owed to WTO decisions, unless the United States has implemented the relevant decisions, as stated in Corus I, 395 F.3d at 1348-49 and Corus Staal BV v. United States, 2006 U.S. App. LEXIS 15022 (Fed. Cir. 2006) (per curiam). Thus, petitioner argues, the Department should be guided by U.S. case law, not decisions made by the WTO. Therefore, petitioner advocates that the Department adhere to its current methodology in calculating Hylsa's dumping margin.

Department's Position: We disagree with Hylsa 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 investigation. The Court in Corus I held that the Department's interpretation of section 771(35) of the Tariff Act of 1930, as amended ("the Act"), to permit this methodology was permissible whether it is in the context of an administrative review or investigation. See Corus I, 395 F.3d at 1347-49.

With regard to Hylsa's argument concerning the WTO Appellate Body report in Softwood Lumber, 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. 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) ("Softwood Lumber"). 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 has no bearing on this or any other antidumping duty proceeding. See Corus Staal v. United States, 387 F. Supp. 2d 1291, 1299-1300 (CIT 2005). Accordingly, the Department will continue in this case to deny offsets to dumping based on export transactions that exceed NV.

With respect to United States – Laws, Regulations, and Methodology for Calculating Dumping Margins "Zeroing", WT/DS294/R (October 31, 2005), we recognize that the Department has initiated a process under section 123 of the URAA to address the potential implementation of the WTO panel's recommendation regarding the calculation of the weighted-average dumping margin in antidumping investigations. See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation, 71 FR 11189 (March 6, 2006). To date, however, that implementation process has not run its course. See 19 U.S.C. § 3533(g). As such, it is premature to determine precisely how the United States will implement the panel recommendation. With respect to the recent Appellate Body Report in the same dispute, the United States has not yet gone through the statutorily mandated process of determining whether to implement the report. See 19 U.S.C. §§ 3533 and 3538.

Comment 2 – Limited-Service and Regular-Grade OCTG

Hylsa argues that the Department should recognize the sale of both regular-grade OCTG and limited-service OCTG in the home market in its dumping margin calculation by applying average U.S. prices to NVs.

Hylsa argues that in the process of manufacturing OCTG, it produces both regular-grade OCTG and limited-service OCTG. Hylsa contends that the production of limited-service OCTG was an unavoidable consequence of Hylsa's effort to produce regular-grade OCTG. Hylsa maintains that while regular-grade OCTG meets API 5CT product requirements, limited-service OCTG fails to meet API 5CT standards because it fails certain non-destructive tests or has superficial defects causing it to be reclassified and sold as limited-service OCTG. Hylsa notes, however, that because the limited-service OCTG it produces can be used for some of the applications in oil drilling installations, it does not meet Hylsa's normal definition of a "second."[1] Therefore, Hylsa contends that limited-service OCTG is sold at a lower price.[2]

[1] Hylsa notes on page 5 of its June 12, 2006, Case Brief that it classifies pipe products as "seconds" only if the defects in the products prevent them from being used in any specific applications.
[2] Hylsa maintains that it does not assign different costs to regular-grade and limited-service OCTG in the course of its production because it does not intend to produce different products when it manufactures the OCTG.

Hylsa argues that because it had no comparison market sales and the Department had to use constructed value ("CV"), the price differences between regular-grade and limited-service OCTG are not accounted for in the Department's margin calculations. Therefore, Hylsa contends that the Department should compare average U.S. prices to CV to eliminate the price differences between the regular-grade and limited-service OCTG sold in the United States.

Hylsa maintains that while it assigns different product codes to regular-grade and limited-service OCTG, both regular-grade and limited-service OCTG share the same normal production routing and product codes, which are assigned identical costs. Therefore, Hylsa contends that there is no difference in costs between calculated costs for regular-grade OCTG and downgraded products that share the same production path. See Hylsa's Case Brief at 6.

Hylsa maintains that in a normal review situation with home market sales to use as NV, the Department would match regular-grade OCTG home market sales to regular-grade U.S. sales, using the same analysis for limited-service OCTG. However, because the Department must use CV for matching purposes, regular-grade and limited-service OCTG will not be matched to its identical product. Hylsa argues that the Department should take into account that limited-service OCTG is not produced intentionally and should average U.S. prices for both regular-grade and limited-service OCTG to apply to CV.

Hylsa maintains that sales of limited-service OCTG are analogous to "end-of-day" distress sales of perishable products, such as flowers. Hylsa argues that the Department recognizes that distress sales of perishable products are a necessary consequence of making non-distress sales earlier in the day. See Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Ecuador, 64 FR 18878, 18882 (April 16, 1999) and Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers From Colombia, 62 FR 53287, 53298 (October 14, 1997) (collectively "Flowers determinations"). Hylsa contends that the Department has recognized that the dumping analysis for non-distressed sales of perishable products must be based on a comprehensive approach that looks at the overall return on both distress and non-distress sales. Hylsa maintains that because sales of limited-service OCTG are a necessary consequence of producing and selling regular-grade OCTG, a comprehensive approach that looks at the overall return on both limited-service and regular-grade OCTG should be applied. Hylsa argues that OCTG is not a perishable product, and that aesthetic differences between flowers and OCTG are irrelevant. See Hylsa's Case Brief at 7-8. Hylsa maintains that the economic realities of the differences between regular-grade and limited-service OCTG are the same principles that led the Department to look at U.S. sales of perishable agricultural products in a comprehensive manner and require a similar approach in the present case. Hylsa contends that the Department should apply the same logic, namely that because sales of limited-service OCTG are a necessary consequence of producing and selling regular-grade OCTG, a comprehensive approach that looks at the overall return on both limited-service and regular-grade OCTG should be applied. See Hylsa's Case Brief at 6-9.

In the alternative, if the Department does not choose to apply an average U.S. price for both regular-grade and limited-service OCTG, Hylsa contends that the Department should recalculate the CV for regular-grade and limited-service OCTG by allocating the total profit between the different qualities based on the relative value of the products or allocate the cost of manufacture between regular-grade and limited-service OCTG based on relative value.

In its rebuttal submission, petitioner argues that there is no basis for the Department to modify its dumping margin calculation to account for sales of limited-service OCTG. Petitioner contends that both the Department and the courts have rejected Hylsa's arguments regarding limited-service OCTG previously. See Petitioner's Rebuttal Brief at 5 and 7.

Petitioner states that Hylsa acknowledges that regular-grade and limited-service OCTG share the same production path and costs by expending the same materials, capital, labor, and overhead on both products. Petitioner further contends that the sole difference between the two products is that limited-service OCTG cannot be used in all applications, and is generally sold at a lower price. Petitioner asserts that since the production path and costs borne by production are the same, the U.S. price must be compared to the CV of the product since Hylsa reported no sales of OCTG in the home market or to a third-country. Petitioner maintains that the Department should similarly reject Hylsa's argument as it did in the previous review in which the facts were identical. See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods from Mexico, 70 FR 60492 (October 18, 2005) ("Mexico OCTG"), and accompanying Issues and Decision Memorandum at Comment 3. Petitioner maintains that the Department should do nothing different in the current review.

Furthermore, petitioner contends that the Department has been upheld where it rejected a similar claim from the respondent based on identical circumstances. See IPSCO, Inc. v. United States, 965 F.2d 1056, 1061 (Fed. Cir. 1992) ("IPSCO"). Petitioner notes that in IPSCO, the costs for producing limited-service and regular-grade OCTG were the same, and, therefore, the CV of the two grades was the same. In rejecting respondent's argument, petitioner contends that the Federal Circuit determined that 19 U.S.C. § 1677(e) does not allow adjustment of production costs to account for products of a lower grade or lesser value.[3] Petitioner notes that the Federal Circuit, therefore, upheld the Department's calculation methodology of comparing individual U.S. prices to CV. Petitioner maintains that the Department should reach the same result in this review and cites two other cases that relied on the decision in IPSCO. See Certain Cold –Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty

[3] Petitioner notes that Hylsa has acknowledged that regular-grade and limited-service OCTG share the same costs, with the only difference being that limited-service OCTG cannot be used in all OCTG applications and is generally sold at a lower price. See Hylsa's Case Brief at 5.

Administrative Review, 62 FR 18476, 18482 (April 15, 1997) and Certain Cold-Rolled Carbon Quality Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review, 61 FR 48465, 48466-67 (September 13, 1996).

Petitioner argues that Hylsa's proposed remedy for price differences between limited-service and regular-grade OCTG in the U.S. market, averaging U.S. prices, has only been employed by the Department in the case of perishable products such as flowers. In all other cases in which averaging U.S. prices has been suggested, the petitioner notes that the Department has rejected this argument. Additionally, petitioner argues that the Federal Circuit also rejected this argument in Koyo Seiko Co., Ltd. v. United States, 20 F.3d 1156, 1159 (Fed. Cir. 1994) ("Koyo"). In Koyo, the Court ruled that because tapered roller bearings are not perishable and subject to distress sales, the Department properly followed its long-established practice of not averaging the U.S. price. See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India, 63 FR 72246, 72250-51 (December 31, 1998). Petitioner contends that Hylsa's assertion that sales of limited-service pipe are analogous to end of day distress sales of perishable products, such as flowers, is not applicable in the present case. Petitioner contends that distress sales of perishable products are made under conditions where the product is about to spoil or die and, therefore, need to be sold at lower prices. Petitioner maintains that Hylsa has made no showing that this logic is true of OCTG and the Department should come to the same conclusion in this review as it did in the previous administrative review. See Mexico OCTG and accompanying Issues and Decision Memorandum at Comment 3.

Furthermore, petitioner contends, the Department has uniformly and consistently rejected the averaging of U.S. price in cases outside of that context. In particular, petitioner refers to cases involving steel products and ball bearings that don't fit into the context of perishable products.

Lastly, petitioner disputes Hylsa's assertion that the production of limited-service OCTG was an unavoidable consequence of producing regular-grade OCTG. Hylsa cites the Department's finding in the last review that Hylsa did not satisfy the accounting standards necessary to constitute an unavoidable consequence. See Mexico OCTG and accompanying Issues and Decision Memorandum at Comment 3.

Department's Position: We disagree with Hylsa and have not adjusted the margin program to account for supposed pricing differences between limited-service and regular-grade OCTG.

The Department does not consider OCTG to be a perishable product and the Federal Circuit has declined to consider steel a perishable product in previous decisions. See IPSCO, 956 F.2d at 1061, and Koyo, 20 F.3d at 1159. Hylsa admits that pipe is not a perishable product, and instead argues that sales of limited-service OCTG are a necessary consequence of attempting to produce regular-grade OCTG, and therefore analogous to end-of-day distress sales of perishable products. See Hylsa's Case Brief at 8. The Department rejects Hylsa's argument.

The premise of "end-of-day" distress sales is that the product in question loses value between the beginning and the end of the day. All flowers grown are presumably in pristine condition when cut or harvested, and all flowers will eventually wilt, which the producers are aware of prior to growing the flowers. Wilting and subsequent loss in sales value are an unavoidable consequence of growing and cutting a perishable product, which the Department recognized in the Flowers determinations. Conversely, OCTG, unlike flowers, will not become less valuable by the end of the day.[4] Hylsa is not in the business of producing limited-service OCTG, whereas flower producers' products will lose their value if not sold at the beginning of the day. Because limited-service OCTG and regular-grade OCTG do not have a same-day (or some comparable time frame) loss of value, the Department cannot draw an analogy between these two products.

We disagree with Hylsa that the production of limited-service OCTG is an "unavoidable consequence" of producing regular-grade OCTG. The term "unavoidable consequence" is used in accounting to describe the production of two or more joint products at the same time from a common production process. See Cost Accounting, A Managerial Emphasis, Charles T. Horngren, 7th ed., 1990, chapter 16, page 537. That is, the production of one of the joint products unavoidably results in the simultaneous production of the others (e.g., the curds and whey from processing milk). In the case of limited-service OCTG, errors are made as individual pipes are formed on a production line. However, because producing OCTG pipes does not result in the production of other ancillary product(s), all costs associated with producing OCTG pipe can be directly tied to the individual pipe. Thus, the activities and associated costs for each run can be directly identified with that product and its cost is known.

While limited-service products may or may not be produced intentionally, we note that the resulting product is still a viable OCTG pipe that can be used in OCTG applications. Furthermore, the accounting treatment in Hylsa's books and records does not support the notion that limited-service pipe and regular-grade OCTG product are some type of joint products that warrant special treatment. Hylsa admits that in its normal accounting system, limited-service OCTG and regular-grade OCTG products are assigned the same accounting costs if they pass through the same production cost centers. See Hylsa's Case Brief at 6. For these reasons, we disagree with Hylsa's proposal that the limited-service OCTG and regular-grade OCTG should be combined as if one aggregate sale had taken place.

For the foregoing reasons we will not average U.S. sales prices, but will continue to use individual U.S. sales in our dumping margin calculation.

Comment 3 – Brokerage and Handling

Hylsa argues that the Department erroneously concluded that services provided by Galvak, S.A. de C.V. ("Galvak"), a brokerage and handling company, were not at arm's

[4] As Hylsa points out, it is interested in any techniques which may help it produce regular-grade OCTG on a consistent basis. See Hylsa's Case Brief at 9.

length. Hylsa argues that it transported OCTG to the U.S.-Mexican border by rail or by truck. Hylsa contends that both affiliated and unaffiliated brokers provided Mexican brokerage and handling services and that fees charged by the unaffiliated brokers varied. In addition, Hylsa states, fees varied according to how the merchandise was shipped (i.e., by truck or rail).

Hylsa contends that services provided by Galvak are different from those provided by unaffiliated brokers because Galvak combined a large number of shipments into a single export pedimento (i.e., export permit). Hylsa maintains that a proper comparison would find that the fees paid to Galvak were at arm's length. Hylsa argues that the Department, in its final determination, should revise its calculations using the reported charges for the brokerage and handling services, which reflect the actual arm's length amounts incurred by Hylsa on its sales. See Hylsa's Case Brief at 10-11.

In the alternative, Hylsa maintains that if the Department continues to find that Galvak's brokerage and handling fees were not at arm's length, the Department should use the lowest fee for each type of shipment charged by an unaffiliated broker because those amounts represent the best arm's length alternative available to Hylsa for the sales on which Galvak provided the brokerage and handling services.

In its June 19, 2006, rebuttal submission, petitioner argues that the Department's determination that brokerage and handling services provided by Hylsa's affiliate were not made at arm's length was correct, and should be retained in the final results. See Petitioner's Rebuttal Brief at 13. In doing so, petitioner contends, the Department is acting consistent with its normal practice, and Hylsa's arguments to the contrary are devoid of merit.

Petitioner maintains that the Department's normal practice is to disregard transactions between affiliates if the transfer price does not fairly reflect the value of the product or service in the market under consideration. See Notice of Final Determination of Sales at Less Than Fair Value: Bottle Grade Polyethylene Terephthalate (PET) Resin from Indonesia, 70 FR 13456 (March 21, 2005) ("PET Resin from Indonesia") and accompanying Issues and Decision Memorandum at Comment 12 (PET Resin Decision Memo); see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France, 64 FR 73143, 73146-47 (December 29, 1999) ("CTL Steel from France").

Petitioner further asserts that the Department's normal practice is to compare the transfer price charged by the affiliate to the market price charged by unaffiliated brokers for the same product during the period reviewed. Petitioner maintains that the Department then averages the transfer prices and prices to unaffiliated brokers using the higher of the two to value purchases from the affiliate. See PET Resin Decision Memo at Comment 12. In the Preliminary Results, the Department found that prices for services provided by its affiliate Galvak were significantly lower than those provided by unaffiliated brokers. See Preliminary Results, 71 FR at 27678. Petitioner contends that in the Preliminary Results, the Department followed its practice by conducting a comparative analysis of brokerage and handling expenses from affiliated and unaffiliated brokers. See Petitioner's Rebuttal Brief at 13.

Petitioner argues that Hylsa's case brief is deficient in explaining why services provided by Galvak were in fact made at arm's length. Petitioner argues that the sole basis of Hylsa's argument was that Galvak's services were different from the services provided by other brokers because Galvak combined a large number of shipments into a single export pedimento. Petitioner maintains that this fact fails to show how this undermines the Department's analysis of whether the services provided by Galvak were made at arm's length. Petitioner further reiterates that the Department acted in accordance with normal practice, and states that the charges for Galvak's services were not made at arm's length.

Lastly, Petitioner disagrees with Hylsa's assertion that the Department, if continuing to find that services provided by Galvak were not made at arm's length, should use the lowest fee for each type of shipment charged by an unaffiliated broker. Petitioner maintains that the Department should adhere to its standard practice, as stated above, and use the average price charged by unaffiliated suppliers (if that price is higher) to value purchases from the affiliate. Petitioner asserts that the Department has done this in the preliminary results, and should not change its methodology for the final results.

Department's Position: We disagree with Hylsa and will continue to use brokerage and handling expenses Hylsa incurred from its unaffiliated brokerage and handling providers to calculate an average brokerage and handling expense to apply to all U.S. sales for which Galvak provided these services.

The Department's normal practice to date is to value expenses based on transactions made at arm's length. See PET Resin from Indonesia, accompanying Issues and Decision Memorandum at Comment 12, and CTL Steel from France, 64 FR at 73145-73147. The Department asked Hylsa to provide an explanation as to why brokerage and handling expenses provided to Hylsa by affiliate Galvak did not appear to be arm's length in nature. See the Department's March 31, 2006, Fourth Section C Supplemental C Questionnaire to Hylsa. Hylsa responded to this supplemental on April 4, 2006, in which it explained, as it did in its June 12, 2006, Case Brief, that the reason Galvak charges are lower than those charged by unaffiliated brokers is because Galvak combined a large number of shipments into a single export pedimento. The Department does not find Hylsa's explanation useful for our analysis. Hylsa fails to explain why amalgamating all brokerage and handling invoices into a single invoice results in the charges from Galvak being lower than those charges incurred by Hylsa from unaffiliated companies. More importantly, Hylsa provides no explanation as to why this methodology would provide for a more accurate dumping analysis then the methodology employed by the Department in the Preliminary Results.

Additionally, the Department disagrees with Hylsa's argument that in the alternative, instead of using an average of brokerage and handling expenses, the Department should use the lowest brokerage and handling charges from unaffiliated brokers to apply to

Galvak transactions. Again, Hylsa provides no explanation as to why this methodology should be used or how it would provide for a more accurate dumping analysis than the methodology employed by the Department in the Preliminary Results.

Accordingly, consistent with our practice in similar cases and with the Preliminary Results, as noted above, we will continue to use the brokerage and handling expenses Hylsa incurred from its unaffiliated brokerage and handling providers to calculate an average brokerage and handling expense to apply to all U.S. sales for which Galvak provided these services.

Comment 4 – Warranty Expenses

Hylsa argues that the Department incorrectly deducted U.S. warranty expenses from U.S. price and that warranty expenses should be added to NV. Hylsa contends that pursuant to 19 C.F.R. 351.410(c), it is the Department's normal practice in an export price situation, regardless of whether or not NV is based on domestic sales or CV, to add direct selling expenses (e.g., warranty expenses) to NV.

Petitioner states in its rebuttal submission that it agrees with Hylsa on this point, and the error should be corrected in the final results.

Department's Position: We agree with Hylsa and petitioners that, pursuant to 19 C.F.R. 351.410(c), it is the Department's normal practice in an export price situation to add direct selling expenses to NV. See Notice of Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Ecuador, 69 FR at 76913 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 10. We will make the appropriate change for the final results.

Comment 5 – Steel Scrap Purchases

Hylsa argues in its June 19, 2006, Rebuttal Brief that steel scrap purchased from Ferropak Comercial, S.A. de C.V. ("Ferropak") and Transamerica E. and I. Trading Corporation ("Transei") were made at arm's length. See Hylsa's June 19, 2006, Rebuttal Brief ("Hylsa's Rebuttal Brief") at 3-4. Hylsa argues that Ferropak and Transei did not produce the steel scrap, but rather purchased it from unaffiliated suppliers. Hylsa maintains that the prices it paid to Ferropak and Transei were above the acquisition costs plus the selling, general and administrative, and interest expenses incurred by Ferropak and Transei in purchasing the steel scrap.

Hylsa argues that its purchases of steel scrap from unaffiliated suppliers are not comparable transactions to Hylsa's purchases of steel scrap from Ferropak and Transei. Hylsa contends that, had the petitioner raised the issue in a timely manner, the Department could have requested more information. Hylsa maintains that without further information on the record, the Department must follow the information already on the record, which confirms that the prices Hylsa paid for steel scrap from both Ferropak and

Transei were higher than the arm's length prices Hylsa's affiliates paid their unaffiliated suppliers for the same merchandise.

In the alternative, should the Department make an adjustment to Hylsa's final cost of manufacture, Hylsa argues that the computation of the CV profit rate should be modified to reflect these changes.

Petitioner maintains that the Department should disregard the prices Hylsa paid for steel scrap from certain affiliated steel scrap providers.

Petitioner argues that pursuant to 19 U.S.C. § 1677b(f)(2), the Department may disregard transactions between affiliates if the transfer price does not fairly reflect the value of the items sold in the market under consideration (i.e., transactions disregarded rule).[1] Petitioner maintains that, in such cases, it has been the Department's practice to conduct an analysis to compare the affiliate's input transfer price to an unaffiliated companies market price for the same inputs. See PET Resin from Indonesia, and accompanying Issues and Decision Memorandum at Comment 12; and Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France, 70 FR 54359 (September 14, 2005) and accompanying Issues and Decision Memorandum at Comment 3. Petitioner contends that the Department then uses the higher of the two prices to value the purchases of the inputs.[2] Petitioner argues that the Department should apply this same methodology in the present case. See petitioner's June 12, 2006, Case Brief ("Petitioner's Case Brief") at 2.

Petitioner maintains that steel scrap was purchased by Hylsa from two affiliated scrap dealers, Ferropak and Transei, at less than market prices. Petitioner contends that the data submitted by Hylsa in Appendix D-4-B of its original November 28, 2005, Section D Questionnaire Response indicate that the transfer price of scrap from affiliated suppliers was lower than the price paid to unaffiliated suppliers.

Based on Hylsa's purchases of steel scrap from Ferropak and Transei, which were made at prices below the market prices charged by unaffiliated suppliers to Hylsa, petitioner

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[1] Petitioner cites Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Indonesia, 70 FR 13456 (March 21, 2005) ("PET Resin from Indonesia") and accompanying Issues and Decision Memorandum at Comment 12; Certain Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part, 70 FR 67665 (November 8, 2005) and accompanying Issues and Decision Memorandum at Comment 11; and Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, 70 FR 12648 (March 15, 2005) ("Wire Rod from Trinidad and Tobago") and accompanying Issues and Decision Memorandum at Comment 7 as examples where the Department may disregard transactions between affiliates if the transfer price does not reflect market value.

[2] PET Resin from Indonesia, and accompanying Issues and Decision Memorandum at Comment 12; and Wire Rod from Trinidad and Tobago, and accompanying Issues and Decision Memorandum at Comment 7, where the Department's preference is to use the higher of the transfer price charged by affiliates or the market price.

maintains that the Department should value Hylsa's affiliated steel scrap purchases at the market price of steel scrap (i.e., prices charged by unaffiliated suppliers). See Petitioner's Case Brief at 3.

Department's Position: We agree with Hylsa. We compared Hylsa's scrap purchases from two affiliates, Transei and Ferropak, to the market price, pursuant to section 773(f)(2) of the Act. See also Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Bar from Germany, 67 FR 3159 (January 23, 2002), and accompanying Issues and Decision Memorandum at Comment 35 ("The Department's practice in conducting this analysis has been to compare the transfer prices for the inputs charged by affiliated suppliers to the market price for the same input"). In this case we defined the market price as the affiliated resellers' acquisition cost from an unaffiliated party, plus selling, general, and administrative costs, and financial costs. We determined the transfer price from Transei and Ferropak to Hylsa reflects market price. See Memorandum from Christopher J. Zimpo, Accountant, through Peter S. Scholl, Lead Accountant, to Neal M. Halper, Director, Office of Accounting, regarding Constructed Value Calculation Adjustments for the Final Results – Hylsa, S.A. de C.V., dated September 11, 2006. The determinations cited by the petitioner, see note 1 supra, which support disregarding transactions between affiliates if the price is not reflective of market value, are inapposite here because the scrap transfer price between Hylsa and its affiliates does reflect market value.

Comment 6 – Investment Income

Hylsa argues that its interest earned on short-term investments, described in its normal books and records as "interest on temporary investments" (an interest income on a short-term investment of working capital), is properly included in the interest expense calculation. Hylsa maintains that the Department excludes certain types of income relating to investments from the interest expense calculation (e.g., interest income on long-term investments, dividend income, gains or losses on sales of marketable securities) because these income amounts relate to the company's investment activities, and not to the production of subject merchandise. See Hylsa's Rebuttal Brief at 4-6.

Hylsa maintains, however, that interest income arising from temporary investments of a company's working capital is related to production because the working capital is needed to allow the company to fund its production operations. Hylsa cites Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea, 71 FR 29310 (May 22, 2006) and accompanying Issues and Decision Memorandum, at Comment 38, in support of its position that interest income earned on a company's working capital accounts is more appropriately treated as part of the financial expense rate computation. Therefore, Hylsa contends that interest income from short-term investments should be included in the interest expense calculation.

Moreover, Hylsa contends that petitioner had the opportunity prior to the submission of case briefs to argue its contention that interest income on short-term investments should be excluded from the interest expense calculation. Hylsa maintains that had petitioner brought this issue to the attention of the Department, Hylsa could have provided additional information on the precise nature of the temporary investments on which the short-term interest income was generated.

In the alternative, should the Department make an adjustment to Hylsa's interest expense calculation, Hylsa argues that the computation of the CV profit rate should be modified to reflect these changes.

Petitioner argues that the Department should not include Hylsa's investment income in the calculation of interest expense. Petitioner maintains that for the preliminary results, the Department included Hylsa's reported "interest on temporary investments" ("ITI") as an offset to interest expenses in the calculation of Hylsa's financial expense ratio. Petitioner argues that this "interest on temporary investments" should be excluded from Hylsa's short-term interest income and from the calculation of Hylsa's net interest expense. Petitioner contends that the Department's practice is to exclude income or expenses related to investments from the interest expense calculation, determining that a company cannot offset its financial expenses with income earned from investment activities because such activities are not related to the current operations of the company.[3] See Petitioner's Case Brief at 3-4.

Department's Position: We disagree with petitioner. The ITI account in question is included in an account category titled "Total Interest Income" as classified in the normal books and records of Alfa S.A. de C.V.[4] As such we consider it appropriate to treat the income as interest income and include it as an offset to interest expense. See Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada, 70 FR 12181 (March 11, 2005) and accompanying Issues and Decision Memorandum, at Comment 34, where we determined that the reported amount of interest income earned on cash deposits was appropriately classified as short-term interest income. The determinations cited by petitioner, see note 3 supra, in which the Department excluded investment income, are inapposite because the ITI account is properly classified as interest income, not investment income. As a result, we are not adjusting Hylsa's financial expense ratio for the ITI account.

[3] Petitioner cites the following cases, among others: Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 73437 (December 12, 2005) and accompanying Issues and Decision Memorandum at Comment 21 Stainless Steel Wire Rod from Taiwan: Final Results of Antidumping Duty Administrative Review, 66 FR 52587 (October 16, 2001) and accompanying Issues and Decision Memorandum at Comment 2; and Sulfanilic Acid from Portugal, 67 FR 60219 (September 25, 2002) and accompanying Issue and Decision Memorandum at Comment 3, where the Department determined that income earned from investment activities are not related to production operations and there not used to offset financial expenses.

[4] Section D Questionnaire Response dated November 28, 2005 at Appendix D-14.

Comment 7 – Inventory Carrying Cost

Hylsa argues that the imputed costs of financing inventory are treated by the Department as part of the adjustment for indirect selling expenses and should not, therefore, be included again in the interest expense included in CV. Hylsa contends that the Department's normal practice is to treat both imputed interest expense for financing accounts receivable and imputed interest expense for financing inventory as selling expenses which are used as adjustments in the comparison of U.S. price to NV. Therefore, Hylsa maintains that imputed interest expense is reflected in the calculation for credit expense and imputed interest expense for financing inventory is reflected in the calculation of inventory carrying cost. Accordingly, Hylsa argues that these imputed expenses are not included in the build-up of CV, which reflects only the actual expenses of the company. See Hylsa's Rebuttal Brief at 6-8.

Hylsa maintains that it does not normally separately identify the actual interest expenses attributable to financing accounts receivable and inventory. Thus, Hylsa contends that a portion of its interest expense is attributable to financing accounts receivable and inventory, which the Department includes in its selling expense adjustment for financing accounts receivable (credit). Therefore, Hylsa argues that the Department would be double counting if it were to make a selling expense adjustment for credit and also include interest expenses attributable to financing accounts receivable and inventory in its build up of CV.

Hylsa further contends that petitioner fails to cite a case on point, merely citing cases that reiterate that CV does not include imputed credit and inventory carrying costs. Hylsa cites to Amended Final Results of Antidumping Administrative Reviews Pursuant to Final Court Decision: Antifriction Bearings from Germany, 66 FR 57034 (November 14, 2001) to argue that the Department should make an adjustment to the cost-of-production interest expense to avoid double counting the imputed interest attributable to financing accounts receivable and inventory. Thus, Hylsa argues that the Department should use the net interest expense reported by Hylsa in its submissions.

Petitioner argues that Hylsa erroneously reduced its interest expense for "expense relating to inventory carrying" from interest expense. Petitioner contends that pursuant to 19 U.S.C. § 1677b(e)(2)(A), the Department is required to calculate CV based on actual costs, and not include imputed expenses such as inventory carrying costs in its build-up of CV. See Notice of Final Determination of Sales at Less Than Fair Value: Honey from Argentina, 66 FR 50611 (October 4, 2001) and accompanying Issues and Decision Memorandum at Comment 10.[5] Petitioner argues that in the present case, because NV is

[5] Petitioner also cites Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411 (June 9, 1998) and accompanying Issues and Decision Memorandum at Comment 26; and Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (April 2, 2002) and accompanying Issue and Decision Memorandum at Comment 35.

based on CV, Hylsa should not have deducted "expense relating to inventory carrying" from interest expense in its interest expense ratio. See Petitioner's Case Brief at 5-6.

Department's Position: We disagree with Hylsa. CV interest expense and imputed selling expense adjustments are two separate calculations, each with a distinct purpose. Interest expense is based on actual costs and is used to construct a gross comparison market price, while imputed selling expenses are a theoretical calculation used to adjust sales prices for differences in selling practices between the U.S. and the comparison market.

CV is in effect an unadjusted price in the comparison market. It is calculated based on the actual cost of producing the merchandise (i.e., cost of production ("COP")) plus profit. For both COP and CV, section 773(e)(2)(A) of the Act provides that general expenses, including interest expense, are to be based on actual amounts incurred by the exporter for production and sale of the foreign like product[5]. See Notice of Final Results of Antidumping Administrative Reviews: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom, 62 FR 2081 (January 15, 1997) ("Antifriction Bearings from France, Germany, Italy, Japan, Singapore, and the United Kingdom") and accompanying Issues and Decision Memorandum at Comment 6-G-7. In calculating CV, the Department uses the actual financing expense as recorded in a company's audited financial statements, plus an amount for profit which is determined using the same actual interest expense as used for CV (i.e., no offset for imputed costs). Calculating CV profit using actual interest expenses and applying it to COP, in which actual interest expenses are reduced for imputed costs, would result in a diluted CV.

Consistent with section 773(a)(8) of the Act, adjustments to NV are appropriate when CV is the basis for NV, including, as appropriate, adjustments for imputed costs (i.e., credit and inventory carrying costs). The Department uses imputed expenses, as appropriate, as a circumstance of sale adjustment to account for differences in selling practices in price to price comparisons, or in this case, U.S. price to CV. See Antifriction Bearings from France, Germany, Italy, Japan, Singapore, and the United Kingdom, 62 FR at 2119-2120 and accompanying Issues and Decision Memorandum at Comment 6-G-7. Imputed circumstance of sale adjustments take into account the selling practices on both sides of the price comparison. The imputed expenses are applied as adjustments to sales prices, not as an additional cost in CV. As such, there is no double counting of the imputed costs in CV, and no offset is warranted in the CV interest expense computation.

[5] See also sections 773(b) and (e) of the Tariff Act.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation accordingly. If these recommendations are accepted, we will publish the final results of this administrative review and the final dumping margins in the Federal Register.

AGREE _______ DISAGREE _______

David M. Spooner
Assistant Secretary
for Import Administration

Date