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A-549-817
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MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty Administrative Review of Certain Hot-
Rolled Carbon Steel Flat Products from Thailand

Summary

We have analyzed the comments and rebuttals of interested parties in the antidumping duty administrative review of certain hot-rolled carbon steel flat products from Thailand (A-549-817). As a result of our analysis of the comments received, we have not made any changes to the margin calculation. We recommend that you approve the positions we have developed in the Discussion of the Issues section of the memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttals by parties:

1. Date of Sale
2. Home Market Duty Drawback
3. Margin Adjustment for Export Subsidy
4. Slab Costs
5. Income Offsets to the General and Administrative Expenses
6. Financial Expense Offset

Background

We published in the Federal Register the preliminary results of the administrative review on December 8, 2003. See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Preliminary

Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 68336 (December 8, 2003) “Preliminary Results.”

The period of review is May 3, 2001, through October 31, 2002. We invited parties to comment on our Preliminary Results of the administrative review. We received case briefs from the respondent, Sahaviriya Steel Industries (“SSI” or “respondent” or “the company”) and Nucor Corporation (“the petitioner”) on January 7, 2004. We received rebuttal briefs from SSI and the petitioner on January 12, 2004. A hearing was not requested.

Changes Since the Preliminary Results

We have modified the test for sales below the cost of production so that, for each CONNUM, separate tests are done for prime and non-prime merchandise. See Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review 68 FR 2566 (January 16, 2004).

Discussion of the Issues

Comment 1: Date of Sale

The petitioner asserts that the Department should use the commercial invoice date as the date of sale for both the U.S. market and home market for this administrative review. The petitioner believes that there are significant changes in the terms of sale among various documents SSI generates in its U.S. sales process. The petitioner concludes that since SSI has the same sales practices in both markets, the Department should use commercial invoice for both markets.

The petitioner states that the record shows that SSI allows changes in its U.S. sales contracts. The petitioner asserts that for SSI’s U.S. sales, the sales contract does not identify that a particular contract to a U.S. sale is the final contract prior to the issuance of the commercial invoice. The petitioner surmises that even if the customer did not ask for changes after the final revision, a change would be allowed up to the commercial invoice. The petitioner illustrates this point by referencing the U.S. sales trace contained in Sales Verification Exhibit 11 where the volume of merchandise sold changes among the sales contracts, and between the pre-shipment invoice and the commercial invoice.

The petitioner also points to SSI’s accounting practices where the creation of the commercial invoice triggers the recognition of the sale in SSI’s accounting system as evidence that the appropriate date of sale is the commercial invoice date. The petitioner asserts that there is no finality at the “pre-shipment” invoice. The petitioner argues that in SSI’s accounting records, the sale takes place on the date of the commercial invoice.

The petitioner states that while in the original investigation the Department used the final contract date as the date of sale, the facts are different for this review and the petitioner urges the Department to use the invoice date as the date of sale. To support this assertion, the petitioner cites to SSI's statement in its Section A response stating that "due to a clerical error, SSI's Export Department was not printing the final commercial invoice the actual date it was issued, but was instead simply recording the date of the pre-shipment invoice as the commercial invoice date. Since then, SSI has instructed the Export Department to use the B/L date as the commercial invoice date." The petitioner states that this statement provides a good reason for the Department to change its approach from the original investigation.

The petitioner states that for SSI's home market sales that the Department verified, there were no significant changes in the sale terms between the sales contract and the commercial invoice. The petitioner cites to the sales traces collected by the Department at verification.

The petitioner states that the Department's past practice regarding date of sale, especially in steel cases, has been mixed, and varies by the particular facts, but it tends towards using the commercial invoice date. The petitioner cites Circular Welded Non-Alloy Steel Pipe from the Republic of Korea (see Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 63 FR 32833 (June 16, 1998)) where the Department used different dates of sale for the home market and U.S. market because in the home market, pipe was sold out of inventory with the purchase order/contract, invoice, and shipment dates all occurring within a relatively short period of time and in the U.S. market, the respondent produced to order. The petitioner argues that the Department cannot use different dates of sale on the grounds (*i.e.*, producing to order versus selling from inventory) it used in Circular Welded Non-Alloy Steel Pipe from Republic of Korea and the Department must therefore use invoice date in both markets or contract date in both markets as the date of sale. Additionally, the petitioner states another important reason to adopt invoice date for both the home and U.S. markets (rather than order contract date for both markets) is that SSI's affiliated resellers provided their invoice dates and these sales are used in the calculation of normal value. The petitioner states that the Department must be consistent and use either the date of commercial invoice in both markets, or the order date in both markets. The petitioner urges the Department to use the commercial invoice date in both markets.

The respondent argues that the record evidence cited by the petitioner does not support a change in the date of sale for U.S. sales and the few sales cited by the petitioner actually supports the continued use of final contract date as the date of sale. The respondent argues that the issue of U.S. date of sale was examined closely in the less than fair value ("LTFV") investigation and the Department verified that the U.S. sales process is identical to that examined by the Department in the original investigation.

SSI clarifies that it allows revisions to its contracts but always issues a final contract that reflects the final material terms of sale, which precedes the commercial invoice and shipment date. The

respondent believes that petitioner's argument that the final contract must contain the words "this is the final contract" is irrelevant to the Department's standard. The respondent argues that if any change is made to the terms of sale, SSI issues an addendum to the contract prior to the invoice date and shipment, thus conveying the material terms of sale prior to invoicing and shipment.

The respondent argues that the petitioner's lengthy explanation of a single sale to support its assertion that invoice date is the date of sale, only demonstrates that final contract date is appropriate. The respondent argues that petitioner's mention of a 0.4% change in quantity between the final contract date and the commercial invoice date is within the allowable tolerance typical in the sale of steel. The respondent argues that the petitioner misleads the Department in citing a change in quantity between the final contract, pre-shipment invoice, and a return of quantity to its original amount at the issuance of the commercial invoice. SSI cites to the sales verification report where company officials state that the pre-shipment invoice is prepared to satisfy Thai Customs formalities in advance of actual shipment in order to avoid shipping delays. The respondent concludes that the petitioner has only highlighted the consistency in the material terms of sale from the final contract to the commercial invoice date.

The respondent states that since it establishes the material terms of sale in the final contract, SSI's accounting date is insufficient to support its use as date of sale. SSI argues that the Department's standard regarding material terms of sale would be unnecessary if date of sale was based on accounting date alone. The respondent urges the Department to dismiss the petitioner's statement that SSI does "not know how many coils it would actually ship until that date {shipment date}." Additionally, SSI discredits the petitioner's argument that invoice date was inappropriate in the LTFV investigation as the invoice date was not recorded properly in SSI's system. The respondent argues that this issue was irrelevant to the Department's reasoning in the LTFV date of sale decision. Instead, SSI states that the Department determined to use the final contract date as the date of sale because this was the last date before shipment on which the material terms of sale were fixed.

SSI urges the Department to dismiss petitioner's attempt to demonstrate that SSI's selling process is the same for the U.S. and home markets. The respondent argues that petitioner's citation to three home market sales where the sale terms did not change between contract and invoice is an unsupported attempt to equate a home market order confirmation with an export contract. SSI states that there is insufficient record evidence in this review to reverse the Department determination in the LTFV investigation. SSI states that the Department verified the home market sales process and found no changes since the original investigation. SSI also suggests that the Department dismiss petitioner's reasoning to accept invoice date as the date of sale because SSI's affiliated home market resellers do not record order dates.

SSI argues that the Department should maintain its use of final contract date as the date of sale for U.S. sales. The respondent states that any change in the U.S. date of sale will create inconsistency between periods of review and the pool of sales examined in each segment of the proceeding, thus creating the possibility that certain U.S. sales may be reviewed twice.

Department's Position: We agree with SSI that it properly reported the date of sale for both home market and U.S. market sales. Section 351.401(i) of the Department's regulations states that the Department will use the invoice date as the date of sale unless a different date better reflects the date on which the exporter establishes the material terms of sale. In some instances, it may not be appropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that the material terms of sale were established on some date other than the invoice date. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27348-9 (1997) ("Preamble"). Thus, despite the general presumption that the invoice date constitutes the date of sale, the Department may determine that this is not an appropriate date of sale where the evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

We agree with SSI that its U.S. sales process has not changed between the LTFV investigation and this administrative review. SSI stated in its Section A response that it has not changed its sales process and the Department has verified the sales process of SSI for this POR and found no changes to its U.S. sales process. For example during the investigation period and this review period, SSI manufactures to order, sells to unaffiliated trading companies rather than directly to end-users, negotiates the terms of sale with multiple sales contracts prior to issuing the commercial invoice, and prepares the pre-invoice in preparation for customs and export documentation (see Issues and Decision Memorandum for the Antidumping Investigation of Certain Hot-Rolled Carbon Steel Flat Products from Thailand; Notice of Final Determination of Sales at Less Than Fair Value 66 FR 49622, (September 28, 2001) ("Final Determination") at Comment 9).

The Department disagrees with petitioner's assertion that because there is no written indication that a sales contract is the final contract and that SSI's accounting practices establish the date of sale as invoice date, the Department should use invoice date as the date of sale for SSI's U.S. sales. Instead, the Department relies upon actual changes in the quantity, value, or specification of products between the sales contracts and the sales invoice to establish the date of sale, see Final Determination at Comment 9. Thus, the Department agrees with SSI that a final contract stating that a sales contract is the final contract is irrelevant to the Department's standard for determining date of sale. The Department disagrees with the petitioner's statement that SSI's sales practice differed between this review and the LTFV investigation. The Department finds that SSI's correction of a clerical error in its Export Department does not change the fact that the material terms of sale do not change between the last contract and the commercial invoice and therefore, should not be considered a change in SSI's sales process that warrants a change in SSI's date of sale.

The Department agrees with SSI that the material terms of sale did not change between SSI's final contract and the commercial invoice for its U.S. sales. At verification the Department examined several of SSI's U.S. sales and included a sample as part of the verification exhibits. As correctly noted by SSI, the change in the quantity between the final sales contract and the commercial invoice was 0.4 percent for the sale referenced in the verification report. We agree with SSI that this small quantity change is within the allowable tolerance typical of steel sales. As the Department previously

noted in the Final Determination at Comment 9, “any differences between the quantity ordered and the quantity shipped which fall within the tolerance specified by the entire contract do not constitute changes in the material terms of sale.” Since the Department has verified that the pre-shipment invoice is for Thai customs purposes only, the Department does not find a Customs related document evidence that the material terms of sale changed between the final contract and the commercial invoice.

The Department disagrees with petitioner’s assertion that contract date is the appropriate date of sale for SSI’s home market sales. The Department verified SSI’s sales process for this POR and found no changes in SSI’s home market selling process as compared to the LTFV investigation. Additionally, during verification the company stated that its home market sales process has not changed since the investigation. See Memorandum to The File: Verification of Questionnaire Responses of Sahaviriya Steel Industries in the Antidumping Duty Administrative Review of Certain Hot-Rolled Carbon Steel Flat Products From Thailand, December 1, 2003 (“Sales Verification Report”) at page 8. Given that the Department has not found any changes in SSI’s home market sales process between the investigation and this POR, petitioner’s illustration of three home market sales examined at verification by the Department where the material terms of sale remain the same does not suggest that SSI’s home market sales process has changed and therefore, contract date is the appropriate date of sale for SSI’s home market sales.

Although the petitioner notes that the Department prefers a uniform date of sale for both the home market and the U.S. market, “Congress expressed its intent, that for antidumping purposes, the date of sale be flexible so as to accurately reflect the true date on which the material elements of sale were established” Allied Tube and Conduit Corp., v. United States 127 F. Supp. 2d 207, 218 (CIT 2000). Since SSI’s selling practice (*i.e.*, selling from inventory versus producing to order) is similar in both markets, the Department does not find the petitioner’s argument in reference to Circular Welded Non-Alloy Steel Pipe from the Republic of Korea relevant to this review and there have been no changes in SSI’s home market or U.S. market sales practices since the original investigation. Determining SSI’s date of sale for each market on whether it sells from inventory or produces to order ignores the fact that SSI does not allow changes between the final contract and the invoice date for its U.S. sales. Therefore, the Department finds that final contract date is the appropriate date of sale for SSI’s U.S. sales and invoice date is the appropriate date of sale for SSI’s home market sales, consistent with the original investigation.

Comment 2: Home Market Duty Drawback

SSI states that the Department does not have the authority to adjust normal value for drawback received on unspecified sales to one home market customer and should therefore reverse this decision. SSI explains that it reported a per-unit amount for slab import duty drawback the company received during the POR from one home market customer. SSI states that this drawback was potentially generated when SSI sold hot-rolled steel to this customer, which then cold rolled the

steel before exporting the non-subject merchandise. SSI argues that it has no way of knowing at the time of sale whether the hot-rolled steel will actually be used for the production of exported downstream products and potentially eligible for drawback. SSI states that it cannot tie the duty drawback amount to specific sales of hot-rolled steel from SSI to this customer.

SSI argues that the Department may only change prices for the dumping calculation by means of adjustments authorized by law. The respondent cites Ad Hoc Committee v. U.S. in which the CAFC states that “where Congress has included specific language in one section of a statute but has omitted it from another, related section of the same Act, it is generally presumed that Congress intended the omission.” See Ad Hoc Committee v. U.S., 13 F.3d 398, 403 (Fed. Cir. 1994) (“Ad Hoc Committee”). The respondent further argues that in that decision, the CAFC reasoned that where the statute expressly included a certain price adjustment for U.S. sales and made no mention of the adjustment in the statutory language for normal value, “the antidumping statute is not silent on the question... {and}, therefore, the reasonableness or fairness of Commerce’s interpretation of the Antidumping Act is irrelevant” (see Ad Hoc Committee at 403).

SSI states that the Department has no authority to make an adjustment to home market prices for drawback in situations involving indirect export sales as section 773(a)(6) of the Act specifies that normal value shall be adjusted for differences in packing, movement expenses, or differences in taxes, price differences attributable to quantity difference, or differences in merchandise. Additionally, section 773(a)(7) of the Act specifies that normal value shall be adjusted for differences in level of trade and for constructed export price offset. The respondent argues that while this might be viewed as an imbalance under the statute, the Department does not have the authority to adjust home market prices for duty drawback. The respondent notes that the Department made similar home market duty drawback adjustments in Stainless Steel Wire Rod from Korea and Polyethylene Terephthalate Film, Sheet, and Strip from Korea without providing any basis of the adjustment under the statute or regulations and therefore, the Department cannot rely upon these cases for these final results. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea, 63 FR 40404 (July 29, 1998) (“Wire Rod from Korea”) and Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part, 61 FR 35177 (July 5, 1996) (“PET Film from Korea”). The respondent concludes that there is no precedent establishing a legal basis for the Department to make a duty drawback adjustment to normal value.

The respondent argues that a circumstance of sale adjustment under section 773(a)(6)(C)(iii) of the Act cannot be made because drawback on indirect export sales is not a direct selling expense. SSI reasons that if drawback were a direct selling expense for which a circumstance of sale adjustment could be made, there would appear to be no reason for section 772(c)(1)(B) of the Act to adjust U.S. prices for drawback. The company stated that it has demonstrated and the Department has verified that there is no direct relationship between the drawback received and SSI’s sales of hot-rolled to this customer so as to satisfy a circumstance of sale adjustment. SSI reiterated that its customers do not

provide SSI with a list of coil identification numbers purchased from SSI that were consumed in the production of exported merchandise, and it is not necessary for SSI to have that sales-specific information to claim duty drawback for these sales. SSI claims that since this drawback could not be associated with SSI's sales of specific hot-rolled coils, all indirect export drawback credits received from this particular customer were allocated over total SSI sales to this customer during the POR. SSI states that this customer-specific allocation methodology is not sufficient for making a circumstances of sale adjustment since SSI cannot know which sales or even how much material is destined for export at the time of the sale from SSI to its customer.

The petitioner equates the adjustment of normal value for duty drawback in this administrative review to the CEP offset where there was no provision in the statute for an ESP offset (the predecessor to the current CEP offset) and the Department began its practice of applying the offset in order to ensure a fair comparison. The petitioner notes that the Court upheld the Department's regulation. The Petitioner cites Smith-Corona Group v. United States ("Smith-Corona") where the Federal Circuit stated that "one of the goals of the statute is to guarantee that the administering authority makes the fair value comparison on a fair basis—comparing apples with apples." See 713 F2d 1568 (Fed. Cir. 1983).

The petitioner notes that here, the statute calls for an increase in the export price by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." See section 772 (c)(1)(B) of the Act. The petitioner states that the purpose of this adjustment is to allow a fair comparison between the merchandise sold in the United States, which may have benefitted from duty drawback, and merchandise sold in the home market, which normally would not have benefitted from duty drawback. The petitioner argues that the U.S. merchandise could, to the extent that it benefits from duty drawback that was not available to home market sales, legitimately be sold for a lower price than home market sales without being dumped. The petitioner argues that the extent to which home market sales also benefit from duty drawback, however, lessens the amount by which U.S. sales benefit from duty drawback. The petitioner urges the Department to increase the amount of duty drawback advantage to account for the extent to which home market sales also benefit from duty drawback. The petitioner states that making an adjustment to those home market sales, rather than an adjustment to the amount of the duty drawback adjustment on the U.S. sale side, is the most accurate way to accomplish this goal.

The petitioner states that the Ad Hoc Committee mentions, but does not attempt to reconcile the opposite conclusion reached in Smith-Corona. The petitioner states that the Department should continue to apply its consistent agency practice. The petitioner states that the Department's ESP offset (the predecessor to the current CEP offset) practice at issue in Smith-Corona has been a longstanding

one, while the treatment of home market moving expenses at issue in the Ad Hoc Committee was a new approach. The petitioner states that the Department has always made an adjustment for home market duty drawback whenever the issue has arisen. The petitioner urges the Department to do so again.

The petitioner claims that SSI did know which sales would be eligible for duty drawback. The petitioner states even if the Department concludes that SSI did not exactly know which sales received drawback, drawback is “direct” rather than “indirect.” The petitioner states that the amount of duty drawback received by SSI varies with the quantity of merchandise sold rather than received regardless of whether a sale is made. Therefore, the petitioner concludes that the duty drawback received by SSI is “direct” rather than “indirect.” The petitioner concludes that drawback is therefore a circumstance of sale, even though it is an income item rather than an expense. The petitioner states that the Department should continue to add drawback to normal value.

Department’s Position: We agree with petitioner that the Department should continue to add duty drawback to normal value, as a circumstance of sale adjustment, for SSI’s sales of hot-rolled steel to the customer that cold-rolled the steel before exporting the non-subject merchandise.

In this case we adjusted export price for duty drawback. SSI also received duty drawback on certain home market sales. The Department considers that it is proper to ensure that the home market duty drawback here does not distort the proper comparison of normal value and export price on an equivalent duty-paid basis. Therefore, the Department considers it appropriate under the statute to increase normal value by the amount of duty drawback advantage to account for the extent to which home market sales also benefit from duty drawback. Making an adjustment (addition) to those home market sales, rather than an adjustment to (reduction of) the amount of the duty drawback adjustment on the U.S. sale side is the most accurate way to accomplish this goal.

Because these drawback amounts are directly related to domestic sales transactions, the Department equates SSI’s duty drawback for these sales as a circumstance of sale adjustment to normal value (as described in Section 773(a)(6)(C)(iii) of the Act) in order to account for differences in the circumstance of sale between the home market and U.S. market. The statute in Section 773(a)(6)(C) indicates that it is designed to address “any difference” that is not otherwise addressed under subsection (C) concerning adjustments and which is wholly or partly due to differences in quantities, physical characteristics, or “other differences in the circumstances of sale.” See Senate Report 103-412 (November 22, 1994) at 70.

For these reasons, the Department disagrees with respondent’s assertion that the Department has no authority to adjust for home market duty drawback. Moreover, the Department disagrees with SSI that these duty drawbacks are indirect income and finds the home market duty drawback as direct income. The duty drawbacks are direct, and thus circumstance of sale adjustments are warranted because, they are variable and are traceable in the company’s financial records to sales of the

merchandise under review. See Antidumping Questionnaire to Sahaviriya Steel Industries, dated January 6, 2003, at Appendix I-3. As noted in the Preliminary Results, “SSI’s accounting records demonstrate that the company records in its accounting system these duty drawbacks in a similar manner as its U.S. market duty drawbacks” see Preliminary Results at 68338. For all duty drawbacks received by SSI, the Department found at verification that SSI only received duty drawback when SSI merchandise was exported (either directly or by its customer). See Preliminary Results. The Department disagrees with SSI’s argument that this customer-specific allocation methodology is not sufficient for making a circumstances of sale adjustment for home market duty drawbacks, because the Department found that the duty drawbacks vary based on the amount of material exported and they are traceable to SSI’s accounting records. At verification, the Department found that when this further processor plans to export, this further processor notifies the Board of Investment of the Thai government that it intends to export (see Sales Verification Report at page 30). Additionally, at verification the Department reviewed a duty drawback spreadsheet maintained in the company’s normal course of business that contained “all slab imports and all export credits for all products and all markets” (see Sales Verification Report at page 30). Thus, the adjustment here is directly related to sales under consideration.

Accordingly, consistent with treatment of home market duty drawback in other cases, Wire Rod from Korea (see 63 FR 40419) and PET Film from Korea (see 61 FR 35186), the Department finds it appropriate to place SSI’s domestic drawback sales on the same basis as all other sales used for comparison.

Comment 3: Margin Adjustment for Export Subsidy

SSI reminds the Department that it is obligated to reduce SSI’s margin by the amount determined to constitute an export subsidy, as it did in the final determination of the LTFV investigation. SSI states that although its zero margin in the preliminary results of this review obviated the need for such an adjustment, this type of adjustment is required and should be made in the final results, especially if any changes are made that result in a positive margin. SSI states that the Department should subtract 0.58 percent from SSI’s calculated margin since this was the portion of the rate determined to be attributable to export subsidies and was used as an offset to the margin in the original investigation, the most recently completed segment of this proceeding.

The petitioner clarifies that concurrent export subsidies offset cash deposit rates, but do not impact the calculated dumping margin. The petitioner states that the Department should not subtract 0.58 percent from SSI’s calculated margin.

Department’s Position: Since the margin for this antidumping duty administrative review remains zero for these final results, it is not necessary for the Department to revise its calculations to account for countervailing duties imposed to offset export subsidies.

Comment 4: Slab Costs

The petitioner contends that if the Department allows SSI to assign a slab-specific cost to each hot-rolled coil, then SSI could artificially lower its dumping margin by choosing to use its lowest cost slabs to produce home market hot-rolled coils that will be compared to the U.S. market sales. The petitioner maintains that during the POR, slab costs varied more based on the purchase date than the product characteristics and that the risk of margin manipulation based on the date a particular slab was purchased outweighs any benefit from matching individual slabs to individual coils. The petitioner argues that the Department should use the direct material costs reported in the DIRMAT2 field of SSI's reported section D cost of production database. According to the petitioner, the amounts in the DIRMAT2 field represent the average cost of different slabs by their characteristics during the POR, and thus are a more accurate way to assign cost to types of coils.

SSI argues that the Department examined and dismissed an alternative slab cost methodology in the preliminary results. SSI maintains that it is irrational to determine that the slab costing methodology used in its normal course of business could artificially lower its dumping margin. According to SSI, information in the Verification Report on the Cost of Production and Constructed Value Data Submitted by Sahaviriya Steel Industries, Ltd., at 4-5, 15-16 (Oct. 7, 2003) ("Cost Verification Report") confirmed that SSI does not specifically choose low-cost slab to produce hot-rolled coils sold in the home market or any market.

SSI contends that the methodology used for the DIRMAT2 field is based on the mistaken fundamental premise that a slab's characteristics dictate the physical characteristics of the finished hot-rolled coil. SSI argues that both the slab characteristics and the hot-rolling production process affect the resulting hot-rolled coil characteristics. As a result, the end-product characteristics cannot be used to group material costs.¹ Moreover, SSI argues that the thickness and width of the slab, characteristics not included in the DIRMAT2 field, are important parameters for slab selection. Although slab dimension is an important criterion for slab cost and selection, hot-rolled coil dimension cannot be used to measure slab cost because hot-rolled coil of a given dimension may incorporate slab of different dimensions. Finally, SSI contends that this alternative slab costing methodology represents a sharp departure from SSI's normal books and records. SSI argues that the normal books and records are the Department's preference and that the petitioner has not overcome this preference. Therefore, SSI argues that the Department should continue to use its normal slab costs.

¹ SSI cites their April 22, 2003 supplemental section D response, at 7-15, for a more detailed argument on this topic.

Department's Position: We agree with SSI that the Department should continue to rely on the methodology used in SSI's normal books and records to value slab costs. It is the Department's practice to rely on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles ("GAAP") of the exporting country and reasonably reflect the costs associated with the production of the merchandise. See section 773(f)(1)(A) of the Act. SSI's normal books and records are based on actual coil-specific slab costs for each coil provided and SSI's audited financial statements are prepared in accordance with Thai GAAP. In this instance, the Department believes that the slab costs reported by SSI reasonably reflect the costs associated with the production of hot-rolled coils. The Department reviewed and tested SSI's slab selection process and costing methodology during verification and found no evidence that SSI manipulated the slab selection process in the production of hot-rolled coils. Specifically, the company practice is for production employees to retrieve the appropriate slab quality required to satisfy the order specifications from the most accessible slab box. We note that the production employees do not have access to cost information and we did not note any discrepancies in SSI's slab selection practice. See Cost Verification Report, at pages 4-5 and 15-16. Therefore, we found no evidence on the record that supports deviating from SSI's normal books and records for the calculation of slab costs.

Finally, in regards to the DIRMAT2 field representing a more accurate way to assign costs to different types of coils, we agree with SSI. The methodology used to calculate the costs reported in that field does not accurately reflect the costs associated with the production of the merchandise. The DIRMAT2 field represents the weighted-average cost of dissimilar dimensions of slabs that produced finished coils having identical quality, carbon content, and yield strength product characteristics. The DIRMAT2 field, however, does not take into account the fact that slabs of different dimensions were used to make coils of differing dimensions. As a result, the DIRMAT2 field for certain CONNUMs includes the cost of slabs which could not have been used to produce that CONNUM. Thus, for the final results, we have continued to rely on slab costs calculated in SSI's normal books and records.

Comment 5: Income Offsets to the General and Administrative Expenses

The petitioner contends that other revenue items used as an offset to the general and administrative ("G&A") expenses should be removed from the calculation of the G&A expense ratio. See Cost Verification Exhibit 16 for a list of business proprietary items included as other revenue for G&A expenses. The petitioner argues that these items are not related to the production of subject merchandise.

SSI argues that the petitioner gives no explanation or cites any record evidence supporting its claim that the other revenue items are not related to the production of subject merchandise. SSI cites Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled

Carbon-Quality Steel Products from Taiwan, 65 FR 34658 (May 31, 2000), Decision Memorandum comment 11, in contending that the Department may only exclude items from G&A when there is sufficient evidence that those items are not related to the general operations of the company. SSI argues that the Cost Verification Report reflects that these items meet the Department's standard. Moreover, SSI argues that the revenue earned from these items relate to the general operations of the company as the costs associated with these items are embedded in the cost of goods sold and other G&A expense categories that are included in the reported costs.

Department's Position: We agree with SSI that the Department should continue to include the other revenue items as an offset to G&A expenses in the G&A expense ratio calculation. In calculating the G&A expense ratio, it is the Department's practice to include revenues and expenses that relate to the general operations of the company. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Taiwan, 65 FR 34658 (May 31, 2000), Decision Memorandum comment 11 and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan, 64 FR 17336 (April 9, 1999), comment 2. The Department reviewed at verification the largest items reported as other revenue in SSI's financial statements and used as an offset to G&A expenses in the G&A expense ratio calculation.² Based on that review, we determined that the other revenue items were related to the general operations of the company. Therefore, for the final results, we have continued to offset the G&A expenses with the other revenue items in SSI's G&A expense ratio calculation.

Comment 6: Financial Expense Offset

The petitioner contends that SSI's financial expenses should not be offset by gains from investments. The petitioner argues that the offset has no bearing on the production of the subject merchandise.

SSI cites the Department's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results Memorandum (December 1, 2003), stating that the Department has already adjusted the financial expenses for the offset that the petitioner is briefing and they do not rebut the argument.

Department's Position: We agree with SSI that the Department already adjusted the financial expenses in the preliminary results for the gains from investments in affiliated parties. See the Department's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results (December 1, 2003). As the Department normally does not include gains or losses from investments in affiliated companies, for the final results we have continued to exclude gains from

² See section V.D. of the Cost Verification Report and Cost Verification Exhibit 16.

investments in affiliated parties from the financial expense ratio calculation.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the positions set forth above and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final results in the Federal Register.

AGREE_____ DISAGREE_____

James J. Jochum
Assistant Secretary
for Import Administration

Date