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Investigation
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DATE: February 12, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Silicomanganese from Australia: Issues and Decision
Memorandum for the Final Determination of Sales at Less Than
Fair Value

I. SUMMARY

The Department of Commerce ("the Department") finds that silicomanganese from Australia is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The period of investigation ("POI") is January 1, 2014 through December 31, 2014.

After analyzing the comments submitted by interested parties following publication of the *Preliminary Determination*,¹ and based on our findings at verification, we made certain changes to the preliminary margin calculation for the mandatory respondent, Tasmanian Electro Metallurgical Company Pty Ltd. ("TEMCO"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments:

- Comment 1: Indirect Selling Expenses Incurred in the United States
- Comment 2: Constructed Export Price ("CEP") Offset ("CEP Offset")
- Comment 3: CEP Profit Ratio
- Comment 4: Double Counting of Packing/Loading Expenses
- Comment 5: Valuation of Ferromanganese Slag
- Comment 6: Inputs Purchased from Affiliated Parties
- Comment 7: Interest Income

¹ See *Silicomanganese From Australia: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 57787 (September 25, 2015) ("*Preliminary Determination*"), and accompanying Preliminary Decision Memorandum ("PDM").



II. BACKGROUND

The following events have taken place since the Department published the *Preliminary Determination* in this investigation on September 25, 2015. Between September 28, 2015, and November 11, 2015, the Department conducted sales and cost verifications of TEMCO and its U.S. affiliate BHP Billiton Marketing Inc. (“BMI”).² On December 16, 2015, TEMCO and Felman Production, LLC (“Petitioners”) submitted case briefs.³ On December 21, 2015, TEMCO and Petitioners submitted rebuttal case briefs.⁴ On October 26, 2015, Petitioners requested a hearing.⁵ On January 11, 2016, the Department held a hearing in this investigation.

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is silicomanganese from Australia. For a full description of the scope of the investigation, *see* Appendix I to the *Federal Register* notice for the final determination of this investigation, issued concurrently with this memorandum.

IV. DISCUSSION OF THE ISSUES

Comment 1: Indirect Selling Expenses Incurred in the United States

Petitioners' Arguments:

- The Department should reject TEMCO’s method of reporting the indirect selling expenses (“ISE”) incurred by its U.S. affiliate, BHP Billiton Marketing Inc. (“BMI”), in the United States, because during the Department’s verification of BMI, it found that

² *See* Memorandum to the File from Robert B. Greger, Senior Accountant, through Taija A. Slaughter, Lead Accountant, and Neal Halper, Office Director, regarding “Verification of Tasmanian Electro Metallurgical Company Pty Ltd. in the Antidumping Duty Investigation of Silicomanganese from Australia” (October 28, 2015) (“Cost Verification Report”); *see also* Memorandum to the File from Magd Zalok and Lilit Astvatsatrian, Enforcement & Compliance, Office IV, and David Richardson, Office of the Chief Counsel for Enforcement & Compliance, through Robert Bolling, Program Manager, Enforcement & Compliance, Office IV, regarding “Verification of the Sales Questionnaire Responses of Tasmanian Electro Metallurgical Company Pty Ltd: Antidumping Duty Investigation of Silicomanganese from Australia” (December 3, 2015) (“TEMCO’s Verification Report”); *see also* Memorandum to the File from Magd Zalok and Lilit Astvatsatrian, Enforcement & Compliance, Office IV, through Robert Bolling, Program Manager, Enforcement & Compliance, Office IV, regarding “Verification of the Sales Questionnaire Responses of BHP Billiton Marketing Inc.: Antidumping Duty Investigation of Silicomanganese from Australia,” (December 10, 2015) (“BMI Verification Report”).

³ *See* Letter from TEMCO to the Department, regarding “Silicomanganese from Australia: Case Brief,” dated December 16, 2015 (“TEMCO Case Brief”); *see also* Letter from Domestic Producers to the Department, regarding “Silicomanganese from Australia: Domestic Producers’ Case Brief,” dated December 16, 2015 (“Domestic Producers’ Case Brief”).

⁴ *See* Letter from TEMCO to the Department, regarding “Silicomanganese from Australia: Rebuttal Brief,” dated December 21, 2015 (“TEMCO Rebuttal Brief”); *see also* Letter from Domestic Producers to the Department, regarding “Silicomanganese from Australia: Domestic Producers’ Rebuttal Brief,” dated December 21, 2015 (“Domestic Producers’ Rebuttal Brief,”) dated December 21, 2015 (“Domestic Producers’ Rebuttal Brief”).

⁵ *See* Letter from Domestic Producers to the Department, regarding “Silicomanganese from Australia: Domestic Producers’ Request for Hearing,” dated October 26, 2015.

BMI submitted an incomplete headcount used in the allocation of certain ISE and failed to include other ISE in its calculation of the ISE ratio.

- While BMI officials proposed allocation methods during the Department’s verification intended to account for the excluded selling expenses, TEMCO should not be allowed to choose a favorable and unverified allocation methodology after the Department discovered that it significantly underreported its U.S. ISE.⁶
- Since TEMCO did not meet the burden of demonstrating that the information in its questionnaire response was complete and accurate,⁷ the Department should use its standard ISE methodology of dividing the total ISE by the total sales value when calculating TEMCO’s ISE ratio for the final determination.
- Citing *PET Film from China*, as a precedent, the Department rejected an ISE allocation method because the respondent was not able to completely segregate its ISE when selling the subject merchandise.⁸ Consequently, in that case, the Department employed an ISE ratio based on allocating ISE to the sales value.⁹
- While TEMCO argued that *PET Film from China* is distinguishable from this investigation because its methodology relies on amounts recorded in BMI’s books and records,¹⁰ TEMCO fails to recognize that the Department’s standard ISE practice does not, in the first instance, look to a respondent’s books and records. The Department routinely notes that the statute does not outline a particular methodology for calculating ISE.¹¹
- Accordingly, the Department is not required to follow a respondent’s ISE allocation methodology, especially, as is the case here, when a respondent’s allocation methodology fails verification or is shown to be distortive.¹²

⁶ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China*, FR 71 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum for the Less-Than-Fair-Value Investigation of Certain Lined Paper Products from the People’s Republic of China at Comment 8, where the Department did not allow submission of sales data after unreported sales were discovered at verification.

⁷ See *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 (December 29, 1999) at Comment 6.

⁸ See *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35245 (June 12, 2013) and accompanying “Issues and Decision Memorandum for the Final Results of the 2010 - 2011 Administrative Review” at Issue 6 (“*PET Film from China*”).

⁹ *Id.*

¹⁰ See TEMCO Response to Domestic Producers’ August 20, 2015 Pre-Preliminary Determination Comments at 3-4.

¹¹ See *Pet Film from China* at Issue 6. See also *Stainless Steel Sheet and Strip in Coils From Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 2332 (January 13, 2011) and accompanying “Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Mexico” at Comment 5 (“*Stainless Steel Sheets from Mexico*”), where the Department explained that its standard methodology is “to calculate indirect selling expenses based on expenses incurred and sales revenue recognized (or cost of goods sold) during the same period of time.”

¹² See *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32937 (June 10, 2015) and accompanying “Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Circular Welded Non Alloy Steel Pipe from the Republic of Korea: 2012-2013” at Comment 6 (“*Circular Welded Non-Alloy Steel Pipe from the PRC*”), where the Department, relying on section 773(f)(1)(A) of the Act, stated “{a}lthough HYSCO reported its costs based on its normal books and records (and consistent with Korean generally accepted accounting principles),

TEMCO's Arguments:

- The record generated during the Department's CEP verification contradicts Petitioners' claim that TEMCO's U.S. ISE were not verifiable. Accordingly, the Department should reject Petitioners' proposed method of calculating TEMCO's U.S. ISE ratio and their characterization that such expenses failed verification.
- Most of BMI's ISE are directly charged to business units that are engaged solely in the marketing and distribution of a specific group of products. BMI's ISE, related directly to the business unit for the manganese product group, which includes the merchandise under consideration, were fully verified as being accurate.
- The issues raised in the Department's CEP verification report pertain only to minor shared administrative expenses that were not allocated to the business unit for manganese products in BMI's normal course of business. If the Department requires that a portion of these shared expenses be allocated to BMI's manganese operations, the information needed to make adjustments to the reported ISE is on the record and has been verified. However, in doing so, the Department should follow the same methodology used by BMI in the normal course of business for allocating shared expenses to business units on the basis of headcount.
- Petitioners' proposed method of allocating BMI's total ISE by the total value is distortive because BMI's financial statements do not reflect the full sales value of all of the products for which BMI provides marketing support. BMI acted as a principal selling entity only for manganese and a few other products (*i.e.*, it purchases and resells these products). However, the vast majority of products (*i.e.*, petroleum products) for which BMI provides marketing support are sold by other affiliated entities within the BHP Billiton Group involved in the global petroleum operations. BMI is only compensated through service fee agreements, and books these revenues as commission income related to its petroleum operations. Therefore, the sales values for petroleum products are not reflected in BMI financial statement.¹³
- Moreover, contrary to Petitioners' claim, the Department found that TEMCO's allocation methodology could be verified. The issues raised in the verification report with respect to the headcount allocation involve only minor differences between the projected and actual headcount for individual months, in addition to a minor difference in the headcount classification of an employee.
- If the Department disagrees with TEMCO's method of calculating headcount based on projected headcount and wishes to convert headcount allocation from projected to actual, or make other adjustments to the headcount, it can use the information available on the record for such a revision. However, the Department should accept the headcount-based methodology that TEMCO used in allocating ISEs, because this method is reasonable, verified, and non-distortive.
- Although sales value allocation of ISE is a commonly-used methodology in calculating ISEs, the Department is not bound to use such a methodology and will accept an

the Department may depart from such costs if they do not reasonably reflect the costs associated with the production and sale of the merchandise.”

¹³ See TEMCO's Response to Domestic Producers' August 20, 2015 Pre-Preliminary Determination Comments, dated August 27, 2015, at 4.

allocation basis other than relative sales value, provided the methodology is reasonable.¹⁴ In this case, the use of financial statement sales values to allocate the common portion of ISE is particularly inappropriate, because only a fraction of the total sales supported by BMI is included in its audited financial statement.

- Moreover, the Department has accepted the use of headcount allocation methodologies for the common expense elements of ISE in other cases.¹⁵ Furthermore, since the headcount is a cost driver for a services company such as BMI, headcount is an appropriate method for allocating common costs.¹⁶

Department's Position:

Based on our analysis of record information, we found that in its ordinary course of business, BMI was able to separately identify certain selling expenses that are directly linked to each business unit involving a specific group of products. Thus, TEMCO was able to report a portion of BMI's ISE specific to the magnesium product group, which includes the merchandise under consideration. For the shared corporate-wide expenses not linked directly to any specific product group, BMI allocates such expenses to each product group on the basis of headcount. The headcount allocation method was based on dividing the number of employees involved in the sales and distribution of the manganese products by the total number of employees involved in the sales and distribution of all product groups, in order to arrive at a headcount ratio. BMI then used the headcount ratio to allocate corporate-wide expenses to the manganese product group.

During the Department's CEP verification, we confirmed that BMI maintains separate accounts for the portion of selling expenses that is directly linked to each product group, including the manganese product group.¹⁷ Moreover, we found no inconsistencies between BMI's records and the reported expenses linked directly to the manganese product group or the other product groups.¹⁸ In this respect, we agree with TEMCO that this portion of ISE was reported accurately. However, we agree with Petitioners that TEMCO did not meet the burden of demonstrating that the information in its questionnaire response involving the allocation of BMI's shared corporate-wide expenses to the manganese product group was complete and accurate. During the Department's CEP verification, we noted certain inconsistencies relating to BMI's calculation of the headcount ratio used to allocate the corporate-wide expenses to the

¹⁴ See *Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 20216, 20216 (May 6, 1996).

¹⁵ See, e.g., *Certain Steel Nails from the People's Republic of China*, 76 FR 16379 (March 23, 2011), Issues and Decision Memorandum ("Certain Steel Nails from China") at Comment 19; *Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005), Issues and Decision Memorandum at Comment 3.

¹⁶ See *Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 77 FR 40857 (July 11, 2012), Issues and Decision Memorandum at Comment 15. In that case, the Department states "{a}t the cost verification, we noted that Hyosung used the information recorded in its normal accounting system to identify individual accounts within SG&A expense that contain both G&A and selling expenses (*i.e.*, common expenses). We also noted that the "cost driver" for the common expenses (*i.e.*, number of employees) appeared reasonable given that the expenses in question arise directly from its employees. As such, we determined that head count was an appropriate base to allocate common expenses to G&A and selling functions."

¹⁷ See BMI Verification Report at 3-4 and 18-20.

¹⁸ *Id.*

manganese product group, as well as the amounts of corporate-wide expenses allocable to the manganese product group. First, we found that the headcount used in the denominator was not consistently supported by payroll records, in that the headcount in the denominator for purposes of allocating ISE was generally higher than the headcount in BMI's payroll records, thereby understating the headcount ratio and the amount of corporate-wide ISE allocable to the manganese product group. Second, BMI incorrectly accounted for the number of employees not working directly for any of the product group business units, resulting in an overstatement of the number of employees working directly in the product group business units. Third, the headcount ratio used in BMI's normal course of business for allocating the corporate-wide ISE to the manganese product group was inaccurate in that the headcount ratio was generally lower than it should be, even when using BMI's own headcount calculation. For further details, see BMI Verification Report and related Verification Exhibit 9-A, as well as, the Analysis Memorandum for the Final Determination. Fourth, BMI did not consistently use its own headcount methodology in allocating certain corporate-wide ISE, in that it underreported expenses related to managing BMI employees' stock option and did not include in its ISE ratio other corporate-wide administrative expenses, as well as expenses related to depreciation.¹⁹ For the reasons noted above, which are based on record evidence, we determined that TEMCO failed to cooperate by not acting to the best of its ability to comply with the Department's request for information and not providing accurate information to calculate the portion of the shared corporate-wide expenses. Therefore, we determined that TEMCO's failure to provide verifiable information necessary to properly allocate BMI's corporate-wide selling expenses warrants facts available.

Section 776(a) of the Act provides that the Department will apply "facts otherwise available" if, inter alia, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified. Because certain TEMCO information necessary to properly allocate BMI's corporate-wide selling expenses failed verification, we have determined to partially apply facts otherwise available in accordance with section 776(a)(2)(D) of the Act.

Additionally, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.²⁰ Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference."²¹ For the final determination, we have partially applied adverse facts available ("AFA") as described below. We have determined that, pursuant to section 776(b) of the Act, the application of adverse inferences is warranted as partial AFA

¹⁹ *Id.* at pages 18-20.

²⁰ See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

²¹ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) ("*Nippon*").

because TEMCO failed to act to the best of its ability by failing to support certain submitted information at verification as described above.²²

As partial AFA, we recalculated BMI's headcount ratio by using the highest headcount for the manganese product group reported for any individual month during the POI in the numerator and using the lowest headcount found in BMI's monthly payroll records for all product groups in the denominator.²³ We then applied the revised headcount ratio to all of BMI's shared corporate-wide expenses, including the underreported and unreported expenses, to arrive at the portion of such expenses for the manganese product group. For further details regarding the recalculation of TEMCO's U.S. ISE, see the Analysis Memorandum for the Final Determination, issued concurrently with this memorandum.

We disagree with Petitioners' proposed methodology of allocating BMI's total selling expenses by the total sales revenue, and that the facts in *PET Film from China* are fully analogous to the facts present in this instant investigation. In *PET Film from China*, the Department noted that:

“... the DuPont Group was able to identify certain indirect selling expenses arising from either subject merchandise or non-subject merchandise, in order to exclude expenses incurred for non-subject merchandise. However, the DuPont Group cannot point to any factual information on the record to indicate whether the remaining pool of indirect selling expenses might apply to only subject merchandise, to only non-subject merchandise, or to both subject and non-subject merchandise proportionately.”²⁴

Accordingly, because the DuPont Group was not able to completely segregate its indirect selling expenses incurred for selling the subject merchandise, from expenses incurred selling non-subject merchandise, the Department found that the DuPont Group's allocation was potentially distortive and, therefore, allocated the total ISE by the total sales value for the final results.²⁵

In this investigation, BMI was able, in its normal course of business, to separately identify the portion of selling expenses that is directly linked to each product group business unit, including the business unit for manganese products. As we noted above, we confirmed during the Department CEP verification that BMI maintains separate accounting records for the expenses linked directly to each product group business unit.²⁶ We have also confirmed the accuracy of this reported portion of ISE.²⁷ For the remaining corporate-wide expenses, the pool of such shared expenses is on the record of this investigation, thereby allowing the Department to allocate such expenses to the subject merchandise on the basis of headcount. Moreover, while the Department found inconsistencies with respect to the manner in which the headcount ratio was calculated and applied, as noted above, we find the headcount allocation methodology to be

²² See, e.g., *Chlorinated Isocyanurates from Spain: Notice of Final Determination of Sales at Less than Fair Value*, 70 FR 24506 (May 10, 2005), and the accompanying Issues and Decision Memorandum (*Chlorinated Isocyanurates from Spain*).

²³ See BMI Verification Report at Verification Exhibits 9-A and 9-B.

²⁴ See *PET Film from China* and accompanying I&D Memorandum at Issue 6.

²⁵ *Id.*

²⁶ See BMI Verification Report at 18-20.

²⁷ *Id.*

the most reasonable allocation methodology to calculate BMI's shared corporate-wide expenses. Specifically, in contrast to the scenario present in *PET Film from China*, allocating BMI's total selling expenses by its total revenue here would be highly distortive, because BMI's total sales revenue does not reflect the sales value of the petroleum products for which BMI receives only a commission. Accordingly, BMI's total revenue, to which selling expenses would be allocated under the Petitioners' suggested methodology, is not representative of the actual sales value of all of BMI product sales. Therefore, for the final determination, while the Department applied partial AFA with respect to BMI's headcount ratio calculation, the Department has not changed TEMCO's allocation methodology on the basis of headcount.²⁸ As explained above, the Department selected as partial adverse facts available the figures on the record for the headcount allocation methodology that result in the highest headcount ratio.

Comment 2: CEP Offset

TEMCO's Arguments:

- In the Preliminary Determination, the Department did not grant TEMCO a CEP offset, on the grounds that TEMCO engaged in minimal activities in support of its home market sales. However, the record in this proceeding establishes that during the POI, TEMCO engaged in material support for home market sales.
- Because the Department is deducting the costs associated with activities supporting U.S. sales from the U.S. price, parallel costs in the home market should be deducted through the application of the CEP offset.
- In its Section A response, TEMCO reported a number of activities involving home market sales, including contract negotiations, order input processing, packing, inventory maintenance (both at the plant and on the Australian mainland), and after sales services.
- During its home market sales verification, the Department confirmed that TEMCO representatives working at the plant engaged in substantial communications with home market customers regarding order/input processing, contract negotiations, packing, ocean freight services, inland freight services, and warehousing.
- Moreover, the Department, in reviewing TEMCO's reported indirect selling expenses, verified that costs related to these services are borne by TEMCO. Thus, the record establishes that the costs of comparable selling activities deducted from the U.S. CEP price, remain in the unadjusted home market price.
- In order to neutralize this demonstrated difference in selling functions between CEP sales and home market sales, the Department should grant TEMCO a CEP offset in its final determination.

Petitioners' Arguments:

- TEMCO should not be allowed a CEP offset, because its minimal home market selling activity is not more advanced than its U.S. CEP selling activity. Accordingly, consistent

²⁸ For further details regarding the Department's recalculation of TEMCO's U.S. ISE, see Memorandum to the File: Final Determination Analysis for Tasmanian Electro Metallurgical Company Pty Ltd." ("Analysis Memorandum for the Final Determination,") dated concurrently with this memorandum.

with the Department's *Preliminary Determination*,²⁹ the Department should continue to deny TEMCO a CEP offset in the final determination.

- At verification, the Department confirmed its preliminary finding and TEMCO did not identify errors in the Department's analysis or verification finding. Moreover, the Department's verification report for TEMCO's home market indicates that TEMCO performed additional selling activities involving U.S. sales that were not originally listed in TEMCO's selling activities chart.
- In particular, the Department found that, while the selling activities chart indicated that TEMCO did not provide any ocean freight services with respect to its silicomanganese U.S. sales, the verifiers discovered that TEMCO either prepared certain shipping documentation, such as packing lists and export declaration forms, or coordinated shipping relating to U.S. sales by transmitting the necessary information to the shipping agent and broker.³⁰
- TEMCO indicated that it performed activities, such as order/input processing, contract negotiation, packing, ocean freight services, inland freight services, and warehousing. However, TEMCO did not provide more factual analysis or a meaningful comparison of activities in the U.S. and home markets; and, therefore, failed to demonstrate a meaningful difference in levels of trade.
- The level of trade and CEP offset analyses require a comparative assessment of relative levels of selling activity; not simply asking "whether or not" any home market selling activity took place. TEMCO simply has not presented a factual basis for reversing the preliminary decision on this issue. TEMCO has the burden of proof, and it has not met that burden.³¹ Accordingly, in the final determination the Department should not alter its preliminary finding that TEMCO is not eligible for a Level of Trade/CEP offset.

Department's Position:

We evaluated all the information on the record, and we continue to find the CEP level of trade to be similar to the home-market level of trade. Accordingly, we have not made a CEP-offset adjustment. In the *Preliminary Determination*, the Department did not grant TEMCO a CEP offset in accordance with 19 CFR 351.412(f), because the normal value was not determined to be at a more advanced level of trade than the level of trade of the CEP sales.³² Specifically, we found no substantial differences in the selling activities between the normal value level of trade and the level of trade for CEP.³³ We noted that, while TEMCO performed limited selling activities with respect to the CEP sales, its selling activities in the home market are not significant in terms of the number of selling functions and the level of intensity of such selling functions, such that they do not constitute a marketing stage which differs from (and is more advanced than) the marketing stage involving CEP sales.³⁴ During verification, we discussed with TEMCO officials the selling functions performed and the services offered with respect to

²⁹ See *Preliminary Determination Analysis for Tasmanian Electro Metallurgical Company Pty Ltd. ("TEMCO")*, dated September 17, 2015 ("Preliminary Analysis Memorandum") at 11.

³⁰ See TEMCO's Home Market Sales Verification Report at 7.

³¹ See 19 CFR 351.401(b)(1).

³² See PDM at 11.

³³ *Id.*

³⁴ *Id.*

the home market and CEP sales. We found no evidence to suggest that the selling functions performed by TEMCO at the CEP level of trade and the home market level of trade are significantly different to warrant a finding that the home market level of trade is at a more advanced stage of distribution than the CEP level of trade. In fact, upon reviewing TEMCO's records, we confirmed that TEMCO and other affiliated entities within the BHP Billiton Group in Asia and Europe performed additional functions involving the sales, shipment, or exportation relating to CEP sales.³⁵ Accordingly, and consistent with the Department's *Preliminary Determination*, we have not granted TEMCO a CEP-offset adjustment in the final determination.

Comment 3: CEP Profit Ratio

TEMCO's Argument:

- The Department should correct a programming error related to the calculation of the CEP profit ratio used in the preliminary margin calculation.

No other party commented on this issue.

Department's Position:

We agree with TEMCO. In the *Preliminary Determination*, we incorrectly calculated the CEP profit ratio. Accordingly, we corrected this error in the SAS programs for purposes of the final determination.³⁶ Specifically, in the Preliminary Determination, we inadvertently used the standard SAS macro when calculating the overall CEP profit ratio, which converted the U.S. revenues and costs to the domestic currency. However, TEMCO reported its home market sales and cost in U.S. dollars. Accordingly, no conversion to the domestic currency was necessary. In order to eliminate this error, we revised the code in the CEP profit macro that converts U.S. revenues and costs to the domestic currency.³⁷

Comment 4: Double Counting of Packing Expenses

TEMCO's Argument:

- TEMCO inadvertently double-counted the same charges for dock-side packing and loading. Therefore, for the final determination, the Department should exclude the adjustment for either packing charges reported under the fields PACK2H and PACKU, or loading charges reported under the fields LOADH and LOADU.

No other party commented on this issue.

Department's Position:

We agree with TEMCO that packing and loading charges are for the same pool of expenses reflected in TEMCO's records. As noted in TEMCO's Verification Report, TEMCO double-

³⁵ See TEMCO's Verification Report at 7 and 20-21.

³⁶ See TEMCO's Analysis Memorandum for the Final Determination.

³⁷ *Id.*

counted the expenses reported under the fields PACK2H and PACKU, in that it reported the same expenses under the fields LOADH and LOADU, using a different allocation methodology.³⁸ Accordingly, such packing expenses should be reported only once under either the fields PACK2H and PACKU or the fields LOADH and DLOADU. As we noted in TEMCO's Verification Report, TEMCO's allocation methodology for PACK2H and PACKU is specific to the finished goods, in that it is based on allocating the port loading cost for only finished goods over the total quantity of finished goods across the wharf.³⁹ TEMCO reported the loading charges under the fields LOADH and LOADU by allocating the total loading charges for incoming raw materials and outgoing finished goods across the wharf over the total quantity of both incoming raw materials and outgoing finished goods across the wharf.⁴⁰ Accordingly, since the charges reported under PACK2H and PACKU are more specific to finished goods, such as silicomanganese, in the final determination, we only used the charges reported under the fields PACK2H and PACKU in our margin calculation program. However, we note that during the Department's home market verification, we found errors in the amounts reported under PACK2H and PACKU. Accordingly, for the final determination, we used the revised amounts for these charges. For further details regarding the Department's recalculation of PACK2H and PACKU based on verification findings, see Analysis Memorandum for the Final Determination.

Comment 5: Valuation of Ferromanganese Slag

Petitioners' Arguments:

- The valuation of ferromanganese slag consumed in the production of the merchandise under consideration must be corrected to reflect the fact that it is not a by-product material.
- TEMCO uses a conventional sales revenue based approach to allocate costs to ferromanganese slag that does not involve the use of by-product offsets.
- Under section 773(f)(1)(A) of the Act, the Department is authorized to disregard distortive cost allocations even if they are used in the normal course of business. The Court of Appeals has repeatedly acknowledged this authority.⁴¹
- Accordingly, the Department has wide discretion to select a more accurate methodology for the valuation of ferromanganese slag.
- No record evidence supports the treatment of ferromanganese slag as a low value by-product material as it was treated at the Preliminary Determination.
- The valuation used in the Preliminary Determination distorts the cost of production by understating the cost of ferromanganese slag.
- Ferromanganese slag is an important output of ferromanganese production that contains a large portion of the total manganese recovered in the ferromanganese operation. That portion is much too large to warrant treating ferromanganese as a by-product.
- The Department could value ferromanganese slag using the average price paid for the new manganese content in purchased ores. When quality is sufficiently comparable, this is a commonly used method for valuing recycled materials.⁴²

³⁸ See TEMCO's Verification Report at 19-20.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See, e.g., *PSC-VSMPO-AVISMA Corp. v. United States*, 688 F. 3d 751,763 (Fed. Cir. 2012).

- It would also be appropriate to treat ferromanganese slag as a joint product and develop a valuation using standard joint product valuation methodologies.
- Co-product/by-product analysis should not be required because TEMCO does not treat ferromanganese slag as a by-product. Nonetheless, the Department's five part co-product/by-product analysis clearly shows that ferromanganese slag is not a by-product.
- According to longstanding agency practice and well-respected accounting texts, by-products must be of minor value relative to other products and no costs are allocated to them.⁴³
- It is clear that TEMCO does not treat the estimated sales value of ferromanganese slag as an offset to its ferromanganese cost of production and it also does not assign it a zero cost, which are the hallmarks of by-product accounting.⁴⁴
- TEMCO is not using a by-product cost methodology and there is no basis for the Department's valuation at the Preliminary Determination. However, if the Department continues to use its faulty methodology, the by-product credit value must be adjusted upward to reflect transportation costs because properly stated acquisition costs reflect inbound freight. The appropriate value must reflect delivery to TEMCO's furnaces were it required to obtain the slag from unaffiliated suppliers.

TEMCO'S Arguments:

- The Department should not adjust TEMCO's reported cost for ferromanganese slag in its final determination. TEMCO's valuation of ferromanganese slag is based on a longstanding methodology prepared by personnel with substantial experience and it is consistent with applicable international accounting standards.
- The Department should treat ferromanganese slag as a by-product of the joint production process. A proper application of the Department's five factor test supports this treatment.
- The Department's practice has been to focus on how the company records and allocates costs in the ordinary course of business rather than a single rigid accounting principle. In the ordinary course of business, TEMCO records and values ferromanganese slag as a by-product.
- TEMCO does not allocate full costs to the ferromanganese slag as it does to the main product, *i.e.*, ferromanganese alloy, and it applies a much simpler treatment. This indicates that the slag is treated as a by-product.⁴⁵

⁴² See, e.g., *Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Results of Antidumping Duty Administrative Review: 2011-2012*, 77 FR 14493 (April 28, 2014) and accompanying Issues and Decision Memorandum at Comment 2 and *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010) and accompanying Issues and Decision Memorandum at Comment 4.

⁴³ See, e.g., Charles T. Horngren, George Foster & Srikant M. Datar, *Cost Accounting: A Managerial Emphasis*, 10th Ed. 2000 at pg. 537.

⁴⁴ See, e.g., *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (August 11, 2008) and accompanying Issues and Decision Memorandum at Comment 8 and *Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review: 2012-2013*, 79 FR 43391 (July 25, 2014).

⁴⁵ See *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006) and accompanying Issues and Decision Memorandum at Comment 7 ("*Orange Juice from Brazil*").

- The very fact that ferromanganese slag is used as an offset to ferromanganese alloy costs shows that there is only one main product.
- The significance of a joint product is measured by its value in relation to other joint products generated by the same process.⁴⁶ Ferromanganese slag is not a significant output of the ferromanganese operation.
- Ferromanganese slag is an unavoidable consequence of producing ferromanganese alloy even though the type and quantity produced can vary with certain operational variables. The ability to vary the manganese content does not equate to the ability to cease production.
- TEMCO management does not intentionally control ferromanganese slag production. After the initial choice of a singular or duplex operation, there is very little that can be controlled. Further, even this choice is constrained by the types of ores that a smelter has access to.
- TEMCO's ferromanganese slag processing is minimal and does not favor treating the slag as anything other than a by-product.
- The lack of significant further processing of ferromanganese slag is of limited relevance in determining whether it is appropriate to treat ferromanganese slag as a by-product.
- If the Department does adjust the cost of ferromanganese slag, it should account for the decline in manganese values. The sales price being used to restate TEMCO's POI ferromanganese consumption should be adjusted to reflect the change in the monthly values of manganese ore prices.
- If the Department continues to adjust the cost of ferromanganese slag, then, based on the same rationale, it should also adjust the value of silicomanganese fines. Specifically, the Department should increase the by-product offset in the silicomanganese cost calculations to reflect the actual sales value of silicomanganese fines.
- Petitioners' assertion that the Department could value ferromanganese slag using the average price paid for the new manganese content in purchased ores is overly simplistic and based on flawed assumptions. Inputs containing manganese have different values depending on the level of undesirable elements contained therein and the cost of separating and disposing of them.
- Petitioners' suggestion that the ferromanganese slag by-product credit value must be adjusted upward to reflect transportation costs is inappropriate. TEMCO does not incur freight costs as its production process renders transportation unnecessary. In accordance with *Magnesium from Russia*,⁴⁷ if the Department does adjust the cost of ferromanganese slag, it should attempt to estimate TEMCO's cost of ferromanganese slag based on an FOB price (*i.e.*, net of distribution costs).

Department's Position:

During the production of ferromanganese, TEMCO generates ferromanganese slag, which it subsequently uses as an input into the production of silicomanganese. In its accounting records, TEMCO calculates an estimated value for this slag using a complex formula derived from various estimates. This estimated value is used to offset ferromanganese production costs, and,

⁴⁶ See *Orange Juice from Brazil* at Comment 7.

⁴⁷ See *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 75 FR 59689 (September 17, 2010) and accompanying Issues and Decision Memorandum at Comment 4 ("*Magnesium from Russia*").

subsequently, to value the input consumed in the production of silicomanganese. At the Preliminary Determination, we revalued the ferromanganese slag consumed in silicomanganese production to reflect the average sales price charged to outside parties.⁴⁸

We disagree with Petitioners that ferromanganese slag is not a by-product of ferromanganese production. As noted by both TEMCO and Petitioners, the Department generally looks at several factors in order to determine whether joint products are to be considered co-products or by-products.⁴⁹ Among these factors are the following: 1) how the company records and allocates costs in the ordinary course of business, in accordance with its home country GAAP; 2) the significance of each product relative to the other joint products; 3) whether the product is an unavoidable consequence of producing another product; 4) whether management intentionally controls production of the product; and, 5) whether the product requires significant further processing after the split-off point. We emphasize that no single factor is dispositive in our determination. Rather, we consider each factor in light of all of the facts and circumstances surrounding each case.

In this case, we find that TEMCO properly classified ferromanganese slag as a by-product of ferromanganese production based on our analysis of the factors outlined above. The first factor is how the company records and allocates costs in the ordinary course of business to joint products. Contrary to Petitioners' assertion, rather than allocate costs to ferromanganese slag, TEMCO calculates an estimated per-unit value and then uses this value to offset the total costs incurred at the ferromanganese furnaces.⁵⁰ The total value of the inputs consumed at each furnace is charged directly to the main input produced at that furnace (*i.e.*, ferromanganese) and not to slag. Accordingly, we consider TEMCO's treatment as an indication of the relative insignificance that is attributed to ferromanganese slag as compared to ferromanganese alloy. Thus, this treatment supports the conclusion that in its normal course of business TEMCO treats ferromanganese slag as a by-product of the ferromanganese production process.

The second factor in our analysis is the significance of each product relative to the other joint products. In assessing the significance of each product generated from a joint production process, we look at the relative value of each of the products generated at the split-off point.⁵¹ In this case, the ferromanganese alloy and the ferromanganese slag are generated from the joint production process. Based on our analysis of the relative product values of each, we note that the value of the ferromanganese slag is not significant relative to the value of ferromanganese

⁴⁸ See Memorandum to Neal M. Halper from Robert B. Greger entitled Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Tasmanian Electro Metallurgical Company Pty Ltd., dated September 17, 2015 (“Preliminary Cost Calculation Memo”).

⁴⁹ See *Elemental Sulphur from Canada: Final Results of Antidumping Finding Administrative Review*, 61 FR 8239, 8241-8242 (March 4, 1996) (“Elemental Sulphur from Canada”); *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 43949 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 3 (“Pure Magnesium from Israel”); and *Orange Juice from Brazil* at Comment 7.

⁵⁰ See Memorandum to the File from Robert B. Greger entitled Verification of Tasmanian Electro Metallurgical Company Pty Ltd. in the Antidumping Duty Investigation of Silicomanganese from Australia, dated October 28, 2015 at 9 and 18 (“Cost Verification Report”).

⁵¹ See, *e.g.*, *Elemental Sulphur from Canada*; see also *Orange Juice from Brazil* at Comment 7, and *Pure Magnesium from Israel* at Comment 3.

alloy.⁵² Therefore, under this factor, ferromanganese slag is not a co-product, but, rather, should be considered a by-product of ferromanganese production.

The third factor in determining whether joint products should be considered co-products or by-products is whether the product is an unavoidable consequence of producing another product. Both parties to this proceeding have submitted evidence that a ferromanganese producer can choose between two basic production processes, and that the quantity and quality (in terms of manganese content) of slag output varies between these two processes.⁵³ However, there is no record evidence that shows that the production of slag can be avoided under either production process. Rather, regardless of the process chosen, it is undisputed that the production of ferromanganese necessarily results in ferromanganese slag. In any event, in this case we do not believe that determining whether or not a product is an unavoidable consequence of the production process supports either a by-product or co-product treatment.

The fourth factor in determining whether joint products should be considered co-products or by-products is whether management intentionally controls their production. As noted above, a ferromanganese producer can choose between two basic production methods. A choice between production methods, however, does not equate to being able to control the output quantities of a joint product once a specific method is chosen. Thus, while a ferromanganese producer may choose one method over another, once a method is chosen, there is no record evidence that it has the ability to intentionally control the amount of slag that is produced.⁵⁴ As such, this factor alone cannot confirm a finding as to whether ferromanganese slag is a by-product or a co-product.

With respect to the fifth factor, whether a product requires significant further processing after the split-off point, we consider this factor to have conflicting implications. For financial reporting purposes, this factor is relevant in that if there is significant further processing required, presumably the end product's value will increase to the point where its value may be significant in relation to the other end products produced. On the other hand, the fact that a product requires significant further processing after the split-off point may indicate that the value of the output product is minimal, with the bulk of its value being added by the further processing. In such a case, it would appear unreasonable to allocate joint costs to the output product which is basically worthless at the split-off point, but somewhat valuable after significant further processing. Regardless, we found that both the ferromanganese alloy and the ferromanganese slag resulting from the joint production process required minimal additional processing after the split-off point.

Consequently, based on our analysis of the factors listed above, we consider ferromanganese slag to be a by-product of the ferromanganese production process. However, although we agree with TEMCO that ferromanganese slag is a by-product and that it follows a by-product valuation

⁵² See Memorandum to Neal M. Halper from Robert B. Greger entitled Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Tasmanian Electro Metallurgical Company Pty Ltd., dated February 8, 2016 (“Final Cost Calculation Memo”).

⁵³ See Cost Verification Report at 10; *see, also*, Domestic Producers Comments on TEMCO Section D Questionnaire Response dated June 22, 2015 at 2.

⁵⁴ We note also that while the two methods result in different manganese content in the slag produced, once a method is chosen there is no record evidence that the producer can control the ultimate manganese content.

methodology for ferromanganese slag in its normal books and records, we continue to disagree with the particular value applied in TEMCO's normal books and records, as we did at the Preliminary Determination.⁵⁵ Specifically, we continue to find that the average net sales price charged to outside parties in the most recent year in which ferromanganese slag was sold more reasonably reflects the actual value of the slag than the estimated value applied by TEMCO. We disagree with Petitioners' argument, however, that this value should be adjusted upward to reflect transportation costs. In this situation, TEMCO is the seller of the slag, and the net value received by the company is equivalent to the price paid by the customer, less the distribution costs paid by TEMCO.⁵⁶

Regarding TEMCO's argument that the Department should adjust the sales values of ferromanganese slag to account for a decline in manganese values, we disagree. We note that TEMCO bases this argument on the change in the monthly values of manganese ore between 2012 (the year in which TEMCO's slag sales were made) and the POI as shown in the data provided at the cost verification.⁵⁷ While these specific manganese ore values did in fact fluctuate during that time period, our analysis based on the record evidence clearly demonstrates that the changes in the sales price of the slag and the changes in the manganese ore values were vastly different in both size and direction.⁵⁸ Simply put, the movements in the slag values and the manganese ore values do not appear to be related. Accordingly, no adjustment to the slag sales value used by the Department at the Preliminary Determination is warranted.

Lastly, we agree with TEMCO that if we continue to adjust the value of ferromanganese slag, we should make a similar adjustment to the value of silicomanganese fines. TEMCO values both ferromanganese slag and silicomanganese fines that are sold to outside parties as by-products in its normal books and records.⁵⁹ Similar to ferromanganese slag, the record evidence demonstrates that the by-product value used in TEMCO's normal books and records does not reasonably reflect the actual value of the fines.⁶⁰

Accordingly, for the final determination we have adjusted both the value of TEMCO's ferromanganese slag and the value of silicomanganese fines generated and sold during the POI to reflect the prices charged to outside parties.⁶¹

Comment 6: Inputs Purchased from Affiliated Parties

TEMCO's Arguments:

- The Department should not apply the major input rule to manganese ore transfers from Groote Elandt Mining Company Pty Ltd. ("GEMCO") to TEMCO. The major input rule is

⁵⁵ See Preliminary Cost Calculation Memo.

⁵⁶ A majority of the slag sales made by TEMCO are under CIF terms, whereby TEMCO pays the costs and freight necessary to transport the slag to the purchaser's port of destination.

⁵⁷ See Cost Verification Report at 19.

⁵⁸ See Final Cost Calculation Memo.

⁵⁹ See Cost Verification Report at 9.

⁶⁰ See Final Cost Calculation Memo.

⁶¹ See *id.*

premised on the assumption that there are two stand-alone corporate entities, each of which can be evaluated as an independent commercial actor. The Department does not apply this rule to transfers of inputs between the divisions of a legal corporate entity.⁶² In such situations, the Department values the major inputs at cost.

- While GEMCO and TEMCO are technically separate legal entities, in practice they are operated as a single Australian economic entity. This is reflected in the fact that under Australian corporation law, TEMCO does not prepare its own financial statements. Further, GEMCO and TEMCO are treated as a single taxable enterprise.

Petitioners' Arguments:

- Either the major input rule is applicable to TEMCO, or GEMCO is the real respondent, and its margin should be based on total adverse facts available because it has failed to report necessary information.
- If TEMCO's assertion that the real respondent in this investigation should be a collapsed GEMCO/TEMCO is true, it is a startling admission as TEMCO has not submitted full cost responses for the combined entity. Thus, because TEMCO has withheld information that has been requested, the Department would have to resort to total facts available under sections 776(a) and (b) of the Act.

Department's Position:

We disagree with TEMCO that the Department should not apply the major input rule to its POI purchases of manganese ore from GEMCO. While TEMCO attempts to portray TEMCO and GEMCO as divisions of the same company and asserts that the Department should revalue the transactions between them at cost, the fact remains, as supported by the record evidence, that TEMCO and GEMCO operated as separate legal entities throughout the POI.⁶³ Under the Department's established practice, transactions between separate legal entities would be valued at the affiliate's cost of production only if the entities were treated as a single collapsed entity.⁶⁴

The Department's regulations at 19 CFR 351.401(f) state that the Department will treat two or more affiliated producers as a single entity "where those producers have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities and the Secretary concludes that there is significant potential for the manipulation of price or production." In this case, TEMCO and GEMCO do not have production facilities for similar or identical products. TEMCO produces silicomanganese (*i.e.*, the subject merchandise) and purchases manganese ore from its affiliate GEMCO. GEMCO

⁶² See, e.g., *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 72 FR 64194 (November 15, 2007), and accompanying Issues and Decision Memorandum at Comment 3 ("*Chlor-Isos from Spain*").

⁶³ See, e.g., exhibit A-3 of the May 4, 2015 section A response. See, also the May 4, 2015 section A response at page 2 where TEMCO states for the record that GEMCO is "TEMCO's parent company and affiliated principal manganese ore supplier" and at pg. 7 where TEMCO states that TEMCO is legally a separate subsidiary from GEMCO.

⁶⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Citric Acid and Certain Citrate Salts from Canada*, 74 FR 16843 (April 13, 2009) and accompanying Issues and Decision Memorandum at Comment 5 ("*Citric Acid from Canada*") and "*Chlor-Isos from Spain*" at Comment 3.

produces manganese ore but does not own equipment that would enable it to produce silicomanganese or a similar product without substantial retooling. Nor was GEMCO involved in the export or sale of the subject merchandise during the POI and there is no basis to conclude that a significant potential for the manipulation of price or production exists. Thus, we find that the regulatory criteria for treating affiliated companies as a single entity are not met and we have not collapsed TEMCO with GEMCO in accordance with 19 CFR 351.401(f).

Accordingly, because the record evidence establishes that TEMCO and its parent GEMCO are separate legal entities and the Department's criteria for collapsing have not been met, under our established practice we have continued to analyze TEMCO's purchases of manganese ore in accordance with the major input rule as set forth in section 773(f)(3) of the Act.⁶⁵ Based on this analysis, we have continued to adjust the value of TEMCO's manganese ore purchases to reflect arm's length prices.⁶⁶

Comment 7: Interest Income

TEMCO's Arguments:

- If the Department excludes TEMCO's interest income from the financial expense ratio calculation, it should exclude only the portion related to non-current interest generating assets.
- While it is correct that TEMCO lost access to its parent company's detailed interest income records as stated in the Cost Verification Report,⁶⁷ the 2014 annual report contains information that most of the interest income was generated by current assets.
- In past cases, the Department has considered the nature of interest generating assets in the company's balance sheet for the purpose of determining the nature of the interest income offset,⁶⁸ and it should follow the same logic here.

Petitioners' Arguments:

- At the final determination the total interest income should be excluded from the financial expense ratio calculation without any adjustment for so-called current assets. The cost verifiers correctly observed that the interest income relates to financial assets carried at amortized cost and that it is not short-term.
- TEMCO is disputing a verification finding that was triggered by its own failure to provide necessary documentation. TEMCO had the opportunity to support its claim both prior to and during verification.

⁶⁵ See, e.g., *Citric Acid from Canada* at Comment 5, *Chlor-Isos from Spain* at Comment 3 and *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 13.

⁶⁶ See Final Cost Calculation Memo.

⁶⁷ See Cost Verification Report at 24.

⁶⁸ See, e.g., *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) and accompanying Issues and Decision Memorandum at Comment 14 ("Nails from the UAE").

- Under 19 CFR 351.401(b)(1) TEMCO has the burden of proof concerning its long-term or short-term interest income claims, and it failed to meet that burden.

Department's Position:

In calculating a respondent's cost of production and constructed value, it is the Department's well-established practice to allow a respondent to offset financial expenses with short-term interest income generated from the company's current assets and working-capital accounts.⁶⁹ However, when the record evidence does not demonstrate that the financial income received is related to a company's current assets and working capital, the Department routinely excludes the income item as an offset to financial expenses.⁷⁰

The Department has in certain past cases considered the nature of the underlying interest bearing assets in deciding whether to include or exclude interest income.⁷¹ However, we note that in the instant case, TEMCO was afforded every opportunity to support its claimed interest income offset and the nature of the underlying assets throughout this proceeding, but it failed to do so. No record evidence regarding the nature of the interest-bearing assets was submitted prior to verification, and, when specifically asked by the Department's verifiers to support the offset at verification, company officials stated for the record that they were unable to provide any documentation.⁷² Moreover, contrary to TEMCO's assertion, BHP Billiton's 2014 audited financial statements (on which the financial expense ratio calculation is based) appears to indicate that all of the group's interest bearing assets and resulting interest income is in fact long-term in nature.⁷³ In light of the lack of any record evidence to support TEMCO's claim that its interest income was generated from the company's current assets and working-capital accounts, we find no reason to allow the interest income as an offset to the reported financial expenses. Accordingly, consistent with our established practice,⁷⁴ we find that TEMCO's reported interest income is not related to working capital and we therefore have excluded the total interest income offset from the financial expense ratio calculation in this final determination.⁷⁵

⁶⁹ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009) ("*Thailand Shrimp*"), and accompanying Issues and Decision Memorandum at Comment 7. See also *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 73 FR 7710 (February 11, 2008) and accompanying Issues and Decision Memorandum at Comment 11; *Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review*, 74 FR 65751 (December 11, 2009) and accompanying Issues and Decision Memorandum at Comment 5 ("*PRCBs from Thailand*").

⁷⁰ See, e.g., *PRCBs from Thailand* at Comment 5.

⁷¹ *Id.*; see also *Nails from the UAE* at Comment 14.

⁷² See Cost Verification Report at 24.

⁷³ BHP Billiton's annual report at page 238 notes that all interest income relates to "financial assets carried at amortized cost." See exhibit 5 of the May 14, 2015 section A response.

⁷⁴ See, e.g., *Nails from the UAE* at Comment 14.

⁷⁵ See Final Cost Calculation Memorandum.

RECOMMENDATION

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



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

12 FEBRUARY 2016

Date