

October 12, 2010

MEMORANDUM TO: Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

FROM: Susan H. Kuhbach  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Operations

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

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SUMMARY:

We have analyzed the case briefs and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on certain hot-rolled, flat-rolled carbon quality steel products (hot-rolled steel) from Brazil. As a result of our analysis, we have made changes to the margin calculation as discussed below. We recommend that you approve the Department of Commerce's (the Department's) position described in the "Discussion of Interested Party Comments" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this administrative review on which we received comments and rebuttal comments from parties:

- Comment 1: Use of Exchange Rates from *Factiva*
- Comment 2: Interest Income on Judicial Escrow Deposits
- Comment 3: U.S. Credit Expense

## BACKGROUND:

On April 14, 2010, the Department published the preliminary results of the administrative review of the antidumping duty order covering hot-rolled steel from Brazil. See [Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil: Preliminary Results of Antidumping Duty Administrative Review and Extension of Time Limit for the Final Results](#), 75 FR 19369 (April 14, 2010) (Preliminary Results). The merchandise covered by the order is hot-rolled steel from Brazil, as described in the “Scope of the Order” section of the final results Federal Register notice. The period of review (POR) is March 1, 2008, through February 28, 2009. This review covers Usinas Siderurgicas de Minas Gerais (USIMINAS) and its home market affiliate, Companhia Siderurgica Paulista (COSPIA) (collectively referred to as USIMINAS or respondent(s)).

In the Preliminary Results, we invited parties to comment. See [Preliminary Results](#), 75 FR at 19375. As noted in the preliminary results, the Department conducted cost and sales verifications of USIMINAS’ questionnaire responses and released those reports subsequent to the Preliminary Results. See Memorandum to the File, from Laurens Van Houten, Senior Accountant, titled “Verification of the Cost Response of Usinas Siderurgicas de Minas Gerais (‘USIMINAS’) and Companhia Siderurgica Paulista (‘Cosipa’) in the Antidumping Review of Hot-Rolled Steel from Brazil,” dated April 16, 2010 (USIMINAS Cost Verification Report); see also, Memorandum to the File, from Patrick Edwards and Dena Crossland, Analysts, titled “Verification of the Sales Responses of Usinas Siderurgicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA) in the Antidumping Review of Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil,” dated June 22, 2010 (USIMINAS Sales Verification Report). Per the request of the Department, USIMINAS submitted revised sales databases on July 8, 2010, reflecting needed revisions due to the minor errors and findings from USIMINAS’ sales verification.

Following the issuance of the verification reports, USIMINAS’ filing of its revised sales databases, and in response to the Department’s invitation to comment on the preliminary results of this review, USIMINAS submitted its case brief on July 1, 2010. See Letter from USIMINAS and COSIPA to the Department of Commerce, titled “Submission of Case Brief: Hot-Rolled Steel from Brazil,” dated July 1, 2010 (USIMINAS Case Brief). United States Steel Corporation (U.S. Steel), a petitioning party in this proceeding (referred to as petitioner), submitted its case brief on July 21, 2010. See Letter from United States Steel Corporation, titled “Case Brief: Certain Hot-Rolled Carbon Steel Flat Products from Brazil,” dated July 21, 2010 (U.S. Steel Case Brief). On July 28, 2010, U.S. Steel and Nucor Corporation (Nucor), a domestic interested party in this proceeding, submitted their rebuttal briefs. See Letter from United States Steel Corporation, titled “Rebuttal Brief: Certain Hot-Rolled Carbon Steel Flat Products from Brazil,” dated July 28, 2010 (U.S. Steel Rebuttal Brief); see also, Letter from Nucor Corporation, titled “Certain Hot-Rolled Carbon Steel Flat Products from Brazil: Rebuttal Brief,” dated July 28, 2010 (Nucor Rebuttal Brief). No public hearing was requested or held.

## DISCUSSION OF INTERESTED PARTY COMMENTS:

### Comment 1: Use of Exchange Rates from *Factiva*

In its case brief, USIMINAS asserts that the Department incorrectly, or rather inappropriately used the daily Brazilian exchange rate published by *Factiva*, a Dow Jones & Reuters service, when converting normal value into U.S. dollars for its margin calculation. See USIMINAS Case Brief at 5. USIMINAS asserts that these exchange rates do not reflect commercial reality and that, furthermore, the Department's preliminary calculations should utilize the exchange rates published by the Brazilian Central Bank as they are more authoritative. Id. Alternatively, USIMINAS asserts that the Department, if it will not accept the exchange rates published by the Brazilian Central Bank, ought to utilize the exchange rates actually used in USIMINAS' own books and records as these reflect the actual exchange rates used to book the value of the U.S. sale into USIMINAS' accounting records. Id. at 6.

With regard to the use of the exchange rates published by the Central Bank of Brazil, USIMINAS argues that these rates are not only the logical alternative due to their presumed authority over the *Factiva* rates, but are, furthermore, publicly available, citing to the Central Bank of Brazil's website at [www.bacen.gov.br](http://www.bacen.gov.br). See USIMINAS Case Brief at 5. USIMINAS submits that these rates should be the prevailing rates used in USIMINAS' final margin calculation as they are published by an official government source and, therefore, their origin and provenance are more substantial than those of *Factiva*. Id. at 6.

If the Department chooses not to utilize the exchange rates of the Central Bank of Brazil, USIMINAS argues that the next most rational alternative rate should be that which USIMINAS used in its own books and records to record the value of the U.S. sale. See USIMINAS Case Brief at 6. First, USIMINAS argues that this rate, while not specifically submitted on the record of this administrative review, is provided in Exhibit 14 of the Department's sales verification report (*i.e.*, the U.S. dollar value of the U.S. sale divided by the value of that sale recorded into USIMINAS' books in records in Brazilian real (R\$)). Id. Second, USIMINAS avers that this exchange rate (approximately R\$2.164 per U.S. dollar) is not artificial or contractual, but rather reflects the actual amount that USIMINAS received in Brazilian reais on its U.S. dollar sale. Id. at 7. As such, USIMINAS asserts that this exchange rate is more appropriate than the *Factiva* rates used by the Department at the Preliminary Results, as this rate reflects the exchange rate used by the specific company at issue, and the *Factiva* rates have no documented bearing on, or relation to, the business practices of USIMINAS. Id.

In its rebuttal brief, U.S. Steel asserts that the Department should reject USIMINAS' claim and suggested alternatives arguing USIMINAS' claim has no merit and, ultimately, is in stark contrast to the Department's preference, practice and precedent. U.S. Steel argues that the Department's well established practice is to convert a normal value denominated in a foreign currency to U.S. dollars using an "official rate," and typically resorts to the daily exchange rates published by the Federal Reserve. See U.S. Steel Rebuttal Brief at 1. Where a foreign currency is not published or readily available from the Federal Reserve, "the Department will use 'another reliable source,' ... "in particular {the Department} will use daily exchange rate data published by *Factiva*..." Id. Petitioner asserts that the Department has used the *Factiva* data in numerous

antidumping cases, to include those antidumping cases which involved merchandise produced and/or exported from Brazil. *Id.* at 2. U.S. Steel further argues that the use of the *Factiva* (or the Federal Reserve data) vis-à-vis the Department's currency conversion policy requires that the exchange rates used ignore fluctuations in daily exchange rates, which petitioner asserts the *Factiva* rates accomplish, but the Central Brazilian Bank rates do not. *Id.* at 2.

Moreover, petitioner indicates that the Department has made both the SAS computer program used to calculate the official daily exchange rates and the resulting file of official daily exchange rates available on its website, thus contradicting USIMINAS' claim that the *Factiva* rates are baseless and lack information as to their origin and calculation. *See* U.S. Steel Rebuttal Brief at 4. Notwithstanding public availability of the Federal Reserve and *Factiva* daily exchange rates, petitioner continues by arguing that accepting either of USIMINAS' two suggested alternative methodologies would be contrary to the Department's practice as well as "the statutory mandate that the Department ignore fluctuations in daily exchange rates." *Id.* at 3. Petitioner further avers that using USIMINAS' suggested alternatives reflect the significant fluctuations that occurred in the daily exchange rate. *Id.*

Finally, Nucor states that the Department's regulations only require the Department "to convert currencies according to a 'reliable' rate in effect on the date of sale." *See* Nucor Rebuttal Brief at 3. Nucor argues there is no reliable indication as to the source of the rate used to calculate the real-denominated sales value in USIMINAS' books, nor when the actual conversion occurred. *Id.* Furthermore, Nucor argues that there is no indication that an exchange rate calculated from USIMINAS' books and records would satisfy the "dictates of the agency's regulations and policies." Finally, Nucor asserts that the Central Bank of Brazil exchanges rates are not on the record of this review, nor did USIMINAS take any action to place such information and data on the record while it remained open. *Id.*

#### Department's Position:

For purposes of these final results, we have continued to use the exchange rates sourced from *Factiva*. The Department has a long-standing practice of utilizing the *Factiva* exchange rates when certain exchange rates are not readily available from its preferred source, the Federal Reserve. *See, e.g., Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010); *see also, Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part*, 74 FR 32107 (July 7, 2009). In the instant review, as the Federal Reserve does not publish a daily exchange rate for the Brazilian real, the Department used the exchange rates published by *Factiva*, as these rates are considered reliable and publicly-available. Moreover, the *Factiva* rates have been used in other antidumping proceedings involving Brazil.<sup>1</sup> In light of this consistent use and precedence, USIMINAS has failed to

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<sup>1</sup> *See, e.g., Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil; Final Results of Antidumping Duty Administrative Review*, 72 FR 60001 (October 23, 2007); *see also, Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review*, 69 FR 13813 (March 24, 2004).

demonstrate how the *Factiva* rates are unreliable to the extent that it would preclude the Department from using them in its analysis in this proceeding.

With regard to USIMINAS' argument that the source or calculation methodology of the *Factiva* exchange rates is not explicitly defined, we find this to be misguided. Pursuant to section 773(A) of the Tariff Act of 1930, as amended (the Act), the Department publishes and maintains daily exchange rates on a country-specific basis, whether published by the Federal Reserve or *Factiva*, on the Import Administration website.<sup>2</sup> These exchange rates are published quarterly to ensure contemporaneity to a given proceeding, and as of these final results, were most recently updated on July 28, 2010. *Id.* Not only does the Department's website provide the *Factiva* and Federal Reserve exchange rates for review and download, but the Department also provides the SAS program it uses to calculate the daily exchange rates, thus maintaining a clear and transparent facility for not just respondents, but all interested parties, to ascertain the calculation methodology for the specific exchange rates used in the Department's antidumping margin calculations. *Id.* The Department does so in order to, "...ensure that all exporters, when they set their U.S. prices and whether under order or not, can know with certainty the daily exchange rate the Department will use in a dumping analysis, and to capture the model in simple computer code to reduce the administrative burdens on Import Administration and other parties that wish to monitor exchange rates." See Change in Policy Regarding Currency Conversions, 61 FR 9436 (March 8, 1996) (Currency Policy). Moreover, the Department disclosed the source of the exchange rates used for currency conversion purposes in its Preliminary Results, as it does with all preliminary findings in all antidumping proceedings. See Preliminary Results, 75 FR at 19375; see also, Light-Walled Rectangular Pipe and Tube from Turkey; Notice of Final Results of Antidumping Duty Administrative Review, 73 FR 19814 (April 11, 2008).

Similarly, we disagree with USIMINAS' assertion that the *Factiva* rates are not "grounded on substantial evidence on the record of this review." Although USIMINAS argues that the Department should use alternate exchange rates (*i.e.*, rates published by the Central Bank of Brazil and a derived exchange rate from its own books and records), it has placed neither of these suggested alternatives on the record of this review. The Department published its currency conversion policy in the Federal Register in 1996, thereby outlining the intent and need, as interpreted by and resulting from the Uruguay Round Agreements Act, to use the daily exchange rate in effect on the U.S. date of sale and, furthermore, to guarantee that those rates are not reflective of severe fluctuations or distortions in the currency of a given country. See Currency Policy. Not only are USIMINAS' proposed alternative sources for exchange rates not on the record of this review, but USIMINAS has placed no information on the record demonstrating that either the Central Bank of Brazil exchange rates or the proposed, derived rate from its accounting records are free from distortions caused by exchange rate fluctuations.

Nevertheless, were there no administrative regulation for the Department to adjust its exchange rates for currency fluctuations for use in its antidumping proceedings, USIMINAS' proposed alternate sources fall short for several reasons: 1) neither proposed alternative gives any indication as to their validity or relevance to this proceeding, 2) neither are currently on the record of this review, 3) USIMINAS has not substantiated the use of either of these sources with any past case precedent, 4) USIMINAS has not provided a substantive analysis as to why a

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<sup>2</sup> See <http://ia.ita.doc.gov/exchange/index.html>.

foreign bank's exchange rates are superior to U.S. *Factiva* rates, and 5) USIMINAS has not demonstrated that using a rate derived from its books and records is either free of distortions due to currency fluctuations or somehow superior to the *Factiva* rates as well.

Therefore, we continue to find that the Brazilian real exchange rates published by *Factiva* are appropriate for use in USIMINAS' antidumping margin calculation for these final results as these rates remain publicly available, are from a reliable source, are based on numerous case precedents and satisfy the Act and the Department's regulations for currency conversion. See section 773(A) of the Act and 19 CFR 351.415(a) and (c).

#### Comment 2: Interest Income on Judicial Escrow Deposits

USIMINAS argues in its case brief that the Department should offset its interest expense with the interest income earned on judicial deposits (*i.e.*, escrow deposits) in the calculation of its financial expense ratio. See USIMINAS Case Brief at 7. USIMINAS argues that because the deposits are for an indeterminate time period, the income generated from the deposits should not be considered long-term interest income, and should be allowed to offset USIMINAS' interest expense. Id.

USIMINAS believes that the Department concluded that the interest income on the judicial escrow deposits was long-term solely because the assets that generated the interest income were shown as long-term assets on USIMINAS' consolidated financial statements. See USIMINAS Case Brief at 7. USIMINAS states that the judicial escrow deposits are required by Brazilian law to be placed with the courts in the event of tax or labor disputes. Id. According to USIMINAS, these deposits generate interest income quarterly. USIMINAS argues that the life of the escrow deposits is not long-term, but rather indeterminate. Id. at 8. USIMINAS claims that while some disputes can exceed one year, most are settled within a year or even within weeks. According to USIMINAS, it cannot predict the duration of each dispute, nor does it track the length of time an escrow has been in effect, and therefore it claims that it classified the escrow deposits as long-term assets as a matter of convenience. Id.

USIMINAS argues that escrow deposits are very different from long-term loans and other long-term financial assets where the time period is known and is usually stated on the face of the underlying document. USIMINAS claims that judicial deposits remain in effect until the judicial dispute is either settled or adjudicated, and therefore, there is no way of knowing how long the deposits are required nor whether the interest income generated on those deposits was long-term or not. Id. at 8. Therefore, USIMINAS argues that the Department should offset its interest expense with the interest income on the judicial deposits for the final results.

U.S. Steel argues that the Department should continue to disallow USIMINAS' claimed offset to its interest expense with the interest income generated from its escrow deposits. See U.S. Steel Rebuttal Brief at 5. According to the petitioner, it is the Department's long-standing practice to "only offset financial expenses with short-term interest income generated from a company's working capital accounts or other current interest-bearing assets." See Certain Tissue Paper Products From the People's Republic of China: Final Results and Partial Rescission of the 2007-2008 Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 74

FR 52176 (October 9, 2009) and the accompanying Issues and Decision Memorandum at Comment 6.

According to Nucor, section 773(f)(1)(A) of the Act provides that “costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or producing country, where appropriate) and reasonably reflect the cost associated with the production and sale of the merchandise.” See Nucor Rebuttal Brief at 6. Nucor argues that the interest income earned on the judicial escrow deposits is long-term interest and the underlying assets were recorded as long-term deposits on USIMINAS’ 2008 consolidated financial statements. Nucor notes that the auditor’s opinion that accompanies USIMINAS’ consolidated financial statement states that it represents a fair indication of USIMINAS’ financial position in accordance with Brazilian accounting standards. *Id.* at 6. Nucor claims that USIMINAS has not provided any evidence that the interest income was in fact short-term interest income other than its assertion that the life of the judicial deposits is indeterminate.

Nucor notes that record evidence indicates that the judicial deposits are required by Brazilian law and that they are of indefinite duration, citing to Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 58581 (October 4, 2006) (PSF from Korea) and the accompanying Issues and Decision Memorandum at Comment 4, where the Department disallowed the interest income from a “deposit for retirement insurance” because the deposits were long-term assets. See Nucor Rebuttal Brief at 7. According to Nucor, in that case the Department reasoned that the respondent was “not able to freely divert the ‘deposit for retirement insurance’ funds” and, as a result, “these funds were not a working capital reserve that the respondent could use to meet its daily cash requirements (e.g., payroll, supplies, etc.).” Nucor argues that as with “deposit for retirement insurance funds,” judicial deposits do not provide a working capital reserve that can be used to meet USIMINAS’ daily cash requirements. Petitioner and Nucor therefore argue that the Department should continue to disallow the interest income on judicial deposits as an offset to interest expense for the final results.

#### Department’s Position:

We have continued to not offset USIMINAS’ interest expense by the interest income earned on judicial escrow deposits in the calculation of USIMINAS’ financial expense ratio. Section 773(f)(1)(A) of the Act provides that “costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or producing country, where appropriate) and reasonably reflect the cost associated with the production and sale of the merchandise.” The record evidence shows that the interest income at issue was earned on judicial escrow deposits and that the deposits were recorded by USIMINAS as long-term deposits on its 2008 consolidated financial statements. In the event of tax or labor disputes, Brazilian companies are required by law to create a judicial escrow account with the courts.

We understand that the duration of a given court proceeding is indeterminate, but while the escrow account is required, the funds deposited in the escrow account no longer represent

working capital which could be used to meet the daily cash requirements of the company. See PSF from Korea, 71 FR at 58581 and the accompanying Issues and Decision Memorandum at Comment 4. USIMINAS acknowledges on page 8 of its case brief that at the time a deposit is made the company does not know how long the dispute will take to resolve, “nor does it track the length of time the escrow has been in effect in order to determine its appropriate classification.” There is no record evidence that any interest income on the judicial escrow deposits was short-term in nature. Therefore, for the final results, we have continued to rely on USIMINAS’ normal books and records which record the escrow deposits as long-term deposits and have continued to disallow the long-term interest income on the judicial escrow deposits as an offset to USIMINAS’ interest income in the calculation of its financial expense ratio.

### Comment 3: U.S. Credit Expenses

In its case brief, U.S. Steel argues that the Department should use the Federal Reserve’s weighted-average commercial lending rate rather than the Federal Funds rate as reported by USIMINAS. See U.S. Steel Case Brief at 1; see also, USIMINAS’ Supplemental Response, dated September 22, 2009, at 37. Petitioner asserts that the Federal Funds rate is an interbank interest rate and is “not available to other borrowers.” See U.S. Steel Case Brief at 1. Moreover, citing to Ball Bearings, petitioner avers that the Department has rejected the use of this rate in calculating a respondent’s U.S. credit expenses in past cases.<sup>3</sup>

As such, U.S. Steel argues that for the final results, the Department should reject USIMINAS’ reported short-term interest rate and instead utilize the Federal Reserve’s weighted-average commercial lending rate per its normal practice. USIMINAS did not rebut this argument.

### Department’s Position:

In cases where a respondent company does not have short-term borrowings in the currency of the transaction, it is the Department’s policy to use publicly available information to establish a short-term interest rate to determine the amount of any imputed credit expenses. See Import Administration Policy Bulletin 98.2, “Imputed Credit Expenses and Interest Rates,” dated February 23, 1998. For dollar transactions, the Department generally will use the weighted-average data for commercial and industrial loans as published quarterly by the Federal Reserve. Id.

As USIMINAS incurred no short-term borrowings in the United States for its U.S. sales, it reported a short-term interest rate based on the Federal Funds Rate published by the Federal Reserve. However, although published by the Federal Reserve, we find that the Federal Funds Rate is an interest rate applicable to transactions or loans between banks.<sup>4</sup> Therefore, in calculating USIMINAS’ U.S. imputed credit expenses for these final results, and consistent with

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<sup>3</sup> See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom, 74 FR 44819 (August 31, 2009) (Ball Bearings), and the accompanying Issues and Decision Memorandum at Comment 6.

<sup>4</sup> See Website of the Federal Reserve (<http://www.federalreserve.gov/monetarypolicy/openmarket.htm>) stating, “The federal funds rate is the interest rate at which depository institutions lend balances at the Federal Reserve to other depository institutions overnight.”

Department practice, we find it more appropriate to use the Federal Reserve's U.S.-dollar denominated, weighted-average commercial lending rate (based on loans with maturity between 31 and 365 days) in our margin calculations. We have therefore revised our programming language to reflect the use of this rate. See Memorandum to the File from Patrick Edwards, Case Analyst, titled "Final Results of Antidumping Duty Administrative Review of Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil: Analysis of the Sales Responses Submitted by Usinas Siderurgicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA)," dated October 12, 2010, at 4.