

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

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review of Stainless Steel Bar from Brazil for the
Period of Review February 1, 2007, through January 31, 2008

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on stainless steel bar from Brazil for the period of review February 1, 2007, through January 31, 2008. We recommend that you approve the positions described in this memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttal comments from parties:

1. Level of Trade
2. Depreciation Expenses on New Rolling Mill
3. Income Offset to General and Administrative Expense
4. Financial-Expense Ratio

Background

On March 9, 2009, the Department of Commerce (the Department) published Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 10022 (March 9, 2009) (Preliminary Results), in the Federal Register.

We invited parties to comment on the Preliminary Results. On April 20, 2009, we received a case brief from the petitioners (Carpenter Technology Corporation, Valbruna Slater, Inc., Electralloy Corporation, a Division of G.O. Carlson, Inc., and Universal Stainless). On April 27, 2009, we received a rebuttal brief from the respondent, Villares Metals S.A.

Abbreviations

Analysis Memo – 2007/2008 Administrative Review of the Antidumping Duty Order on Stainless Steel Bar from Brazil – Preliminary Analysis Memorandum for Villares Metals S.A., dated March 2, 2009
BUC – Bohler-Uddeholm Corporation
BUAG – Bohler-Uddeholm AG
CEP - Constructed export price
COM - Cost of manufacture
EP - Export price
G&A – General and administrative expenses
I&D Memo - Issues and Decision Memorandum adopted by a Federal Register notice of final determination of an investigation or final results of review
POR - period of review
Sales Verification Report – Memorandum to the File entitled Verification of the Sales Response of Villares Metals S.A. in the Antidumping Duty Review of Stainless Steel Bar from Brazil, dated January 29, 2009
The Act - The Tariff Act of 1930, as amended
The petitioners - Carpenter Technology Corporation, Valbruna Slater, Inc., Electralloy Corporation, a Division of G.O. Carlson, Inc., and Universal Stainless
Voestalpine – Voestalpine AG
VMSA - Villares Metals S.A.

Discussion of the Issues

Level of Trade

Comment 1: The petitioners argue that the record supports a finding that VMSA has a single home-market level of trade. The petitioners also argue that the alleged single home-market level of trade is the same as the U.S. level of trade and, therefore, the Department should deny VMSA's request for a level-of-trade adjustment.

The petitioners allege that VMSA did not demonstrate that there were two separate marketing stages in the home market. Citing the Sales Verification Report at page 6, the petitioners claim that VMSA relied on the transaction size of both production and sales to each customer category to define the two levels of trade in the home market. Citing, among others, Grain-Oriented Electrical Steel From Italy: Final Results of Antidumping Duty Administrative Review, 66 FR 14887 (March 14, 2001), and accompanying I&D Memo at Comment 2, the petitioners argue that the Department rejects level-of-trade definition based on differences in quantities sold, production operations, lead times for orders, and production quantities rather than differences in selling functions. The petitioners argue that, as a result, Department should find that VMSA has a single home-market level of trade.

The petitioners also argue that VMSA's alleged single home-market level of trade is at the same level as the U.S. level of trade. The petitioners claim that VMSA provides the same selling functions to the U.S. level of trade and home-market level of trade but provides more freight services to U.S. customers than to home-market customers. The petitioners argue that, as a result, the Department should find that the single U.S. level of trade is at the same if not higher

level than the alleged single home-market level of trade and deny any level-of-trade adjustment.

VMSA argues that the Department concluded properly in the Preliminary Results that the company sells at two levels of trade in the home market and a single level of trade in the United States and that the single U.S. level of trade is comparable to the direct-mill sales home-market level of trade. VMSA argues that it has demonstrated that direct-mill sales and distribution-center sales are at different marketing stages and that distribution-center sales require VMSA to conduct significantly more selling activities, the most critical of which are not performed at all for direct-mill sales (inventory services, sales forecasting, technical services) or are performed at a higher degree for distribution-center sales (freight and delivery arrangements, general promotion and marketing activities, order processing, and invoicing). VMSA asserts that the Department confirmed at verification that distribution-center sales involve substantially more selling activities. VMSA argues that the Department analyzed the evidence on the record and the documentation provided at verification, concluding that direct-mill sales are made at marketing stages which differ from distribution-center sales and that VMSA provides substantially greater selling activities on distribution-center sales.

VMSA claims that the petitioners have attempted to distort the record and mischaracterize VMSA's level-of-trade claim in order to portray it as similar to arguments in other cases where the Department has found a single level of trade. VMSA disputes the petitioners' statements that VMSA relied on transaction size of both production and sales to each customer category to define the two home-market levels of trade and that VMSA defined the home-market levels of trade based on the lead time and sales quantities of home-market sales. VMSA argues that it defined its levels of trade based on the marketing stage and degree of selling activities performed on sales through each channel of distribution (*i.e.*, direct-mill sales and distribution-center sales). VMSA claims that the fact that transaction size and lead time are factors that normally differ between direct-mill sales and distribution-center sales does not mean that VMSA based its level-of-trade definitions on lead times or quantities. VMSA agrees that the cases the petitioners cited stand for the proposition that lead times and quantities in and of themselves are not relevant to the level-of-trade analysis but argues that these cases are distinguishable from the present review because the respondents in the cited cases focused on differences in lead times and quantities without showing differences in selling functions. VMSA argues that, unlike the respondents in those cases, VMSA explained and demonstrated the differences in selling functions between direct-mill sales and distribution-center sales.

VMSA also argues that the single level of trade in the United States is comparable to the direct-mill sales home-market level of trade based on similarities in selling functions VMSA provided. Finally, VMSA argues that differences in levels of trade affect price compatibility.

Department's Position: The record shows that VMSA sells through two channels of distribution, direct mill and distribution center. VMSA used the difference in sale lead time and production and sale quantity to distinguish between the two channels of distribution but did not base its claim of two separate levels of trade in the home market on the difference in lead time and quantities. VMSA based its level-of-trade claim on differences in the selling functions it performs in each channel of distribution. Section 351.412(c)(2) of the Department's regulations provides the legal standard for determining whether sales are made at different levels of trade as follows:

The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.

We examined the differences between the selling functions VMSA performs for each channel of distribution and explained our findings in our Analysis Memo. Specifically, we looked first at how the selling activities associated with the two channels of distribution differ in the home market. For the distribution-center sales VMSA explained that it performs the following seven selling functions: Inventory maintenance; general promotion and marketing; sales forecasting; freight, handling and delivery arrangements; warranties; general selling and administration (order processing and invoices); technical services. For the direct-mill sales VMSA stated that it performs only four of the seven selling functions it performs for the distribution-center sales: general promotional marketing; freight, handling and delivery arrangements; warranties; general selling and administration (order processing and invoices). Of the four common selling functions VMSA performed for both channels of distribution, only one, warranties, is performed to the same degree. We also verified this information at verification and did not find any discrepancies. See Sales Verification Report at 6. We find the two reported channels of distribution to constitute two levels of trade; direct-mill sales constitute Level 1 and distribution-center sales constitute Level 2.

We then examined the two channels of distribution VMSA reported in the U.S. market: EP direct-mill sales and CEP sales through BUC, an affiliated trading company. For CEP sales VMSA stated that it performs two selling activities: general selling and administration (order processing and invoices) and freight, handling and delivery arrangements. The merchandise is produced to order and, therefore, the orders are made prior to production, providing usually a lead-time of three to six months, and require minimum quantities (full melt-shop heats). We compared the selling activities at the CEP level of trade with the selling activities at the home-market level of trade and found, after deducting expenses for selling functions corresponding to economic activities in the United States (*i.e.*, those performed by BUC), that the CEP level of trade was substantially similar to the direct-mill sales level of trade, *i.e.*, Level 1. We found that the home-market direct-mill sales (Level 1) and the U.S. CEP sales are produced to order prior to production, require a lead-time of at least three months, and require minimum quantities (full melt-shop heats). We also found that the selling activities VMSA performed for home-market direct-mill sales and the U.S. CEP sales are very similar and performed at similar if not identical degrees. We concluded that the home market direct-mill sales (Level 1) are at the same level of trade as the CEP sales.

For EP sales, VMSA performs three selling activities: general selling and administration (order processing and invoices); freight, handling and delivery arrangements; general promotion and marketing. The merchandise is produced to order and, therefore, the orders are made prior to production, providing usually a lead-time of three to six months, and require minimum quantities (full melt-shop heats). We compared the selling activities at the EP level of trade with the selling activities at the home-market level of trade and found that the EP level of trade was substantially similar to the direct-mill sales level of trade, *i.e.*, Level 1. We found that the home-

market direct-mill sales (Level 1) and the U.S. EP sales are produced to order prior to production, require a lead-time of at least three months, and require minimum quantities (full melt-shop heats). We also found that the selling activities VMSA performed for home-market direct-mill sales and the U.S. EP sales are very similar and performed at similar if not identical degrees. We concluded that the home-market direct-mill sales (Level 1) are at the same level of trade as the EP sales.

For both channels of distribution in the U.S. market, VMSA performed the same two selling functions. For EP sales VMSA performed one additional function it did not perform for CEP sales (general promotion and marketing) but at a moderate degree. Therefore we consider the two reported U.S. channels of distribution to constitute one level of trade. We also confirmed this information at verification and did not find any discrepancies.

Because we determined that there are two distinct levels of trade in the home market and that the single level of trade in the U.S. market matches Level 1 in the home market, we examined whether a level-of-trade adjustment is warranted for those U.S. sales for which there might not be a match in the home market at Level 1. In accordance with section 773(a)(7)(A)(ii) of the Act, such an adjustment is warranted when the difference in level of trade is demonstrated to affect price comparability based on a pattern of consistent price differences between sales at different levels of trade in the home market (the basis for normal value). Our comparison of the prices at the two levels of trade in the home market (the basis for normal value) shows that there is a pattern of price differences and a level-of-trade adjustment is warranted where there are no matches for U.S. sales at the same level of trade in the home market. Therefore, we made a level-of-trade adjustment in instances when U.S. sales are matched with home-market sales at Level 2. With respect to CEP sales, because we were able to make comparisons at the same level of trade or make a level-of-trade adjustment when comparing to the other level of trade, no CEP offset was warranted.

As described in the level-of-trade analysis section in the Analysis Memo (see pages 3 through 5), we examined and compared the selling functions VMSA performed for each channel of distribution for both the home market and the U.S. market. Our conclusion that VMSA makes sales at two distinct levels of trade in the home market and at one level of trade in the U.S. market which is identical to one of the home-market levels was based on the selling functions involved and not on the production and sale quantity and lead time. See section 351.412(c)(2) of the Department's regulations. In their argument, the petitioners ignore our extensive examination of the selling functions VMSA performed and claim that we based our level-of-trade analysis on quantity and lead time. By ignoring our extensive analysis and comparisons of selling functions, the petitioners draw inaccurate parallels between this case and other cases in which the Department found that the respondents' attempt to present two distinct levels of trade based on quantity and lead time do not justify a finding of distinct levels of trade. VMSA's claim for two distinct levels of trade can be distinguished from the cases the petitioners cite because, as we explained in our Analysis Memo, VMSA based its claim on differences in selling functions performed.

Therefore, we maintain our preliminary decision and find for the final results that VMSA makes sales at two distinct levels of trade in the home market and at one level of trade in the U.S. market which is identical to one of the home-market levels of trade. When U.S. sales are matched with home-market sales at the non-identical level of trade, we have made a level-of-trade adjustment.

Depreciation Expense on New Rolling Mill

During the POR, VMSA placed into service a new rolling mill at its Sumare facility in March 2007. VMSA received a final certificate of acceptance of the new rolling mill on October 4, 2007. VMSA depreciated part of the rolling mill in November 2007 and the entire rolling mill in December 2007. VMSA began producing on the new rolling mill in March 2007. The old rolling mill was removed from service in May 2007.

Comment 2: The petitioners argue that the Department should increase VMSA's COM for depreciation expenses on the new rolling mill for the period May 2007 through November 2007 (*i.e.*, beginning in the month in which the old mill stopped production and the new mill was fully utilized). The petitioners contend that VMSA did not depreciate its new rolling mill prior to November 2007 despite the fact that VMSA was only producing rolled products at its new rolling mill starting in May 2007. The petitioners argue that the Department should increase VMSA's COM to reflect the depreciation expenses for the new rolling mill for the period when the old mill was retired and only the new mill was producing the rolled products. The petitioners also believe that depreciation for May 2007 should be included as well because the new mill became fully operational in May 2007.

VMSA did not comment on this issue.

Department's Position: In May 2007, the new mill was fully operational and VMSA stopped production at its old rolling mill. Therefore, we find that the COM of rolled products should include the additional depreciation expenses for the new rolling mill from May 2007 through November 2007.

Pursuant to section 773(f)(1)(A) of the Act, the Department relies on a respondent's normal books and records where those records are prepared in accordance with home-country GAAP and reasonably reflect the costs of producing the merchandise. In those instances, however, where the Department determines that a company's normal accounting practices do not reasonably capture the full cost of production, the Department will adjust the respondent's costs. See, *e.g.*, Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181 (March 11, 2005), and the accompanying I&D Memo at Comment 26, where we state:

{I}n those instances where it is determined that a company's normal accounting practices result in a misallocation of production costs, the Department will adjust the respondent's costs or use alternative calculation methodologies that more accurately capture the actual costs incurred to produce the merchandise.

See also Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review, 70 FR 46482 (August 10, 2005), and the accompanying I&D Memo at Comment 1.

VMSA started operating its new rolling mill at its Sumare facility in March 2007 and used both its new and old rolling mills until May 2007. In May 2007, VMSA was able to switch entirely to the new rolling mill. While VMSA did not receive a final certificate of acceptance of the new rolling mill until October 4, 2007, and did not start depreciating the rolling mill until November 2007, the new mill was producing at the production levels of the old mill by May

2007. In order to match costs associated with the new rolling mill to periods benefiting from its use properly, we consider it appropriate to include in COM the depreciation on the new rolling mill from May 2007 onward.

Because VMSA's new rolling mill was producing at the production levels of the old mill by May 2007, it is unreasonable to exclude depreciation expense associated with the new rolling mill. This is consistent with Stainless Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 74 FR 6365 (February 9, 2009), and the accompanying I&D Memo at Comment 6 (SSSS Mexico), where we said:

{W}e find that Mexinox's failure to recognize an allocated portion of the capitalized expenses during the POR is contrary to the requirements of section 773(f)(1)(A) of the Act, because Mexinox's reported costs do not 'reasonably reflect the costs associated with the production the merchandise.' In order to capture the fully absorbed costs for all of Mexinox's reported production for the POR, the products produced on the new line must bear a portion of the depreciation expense associated with the new line.

Therefore, consistent with the Act and our decision in SSSS Mexico, for the final results, we have recalculated VMSA's COM of the rolled products to include the additional depreciation expense on the new rolling mill for May through October 2007.

Income Offset to General and Administrative Expense

Comment 3: The petitioners argue that the Department should not allow any of VMSA's claimed income which it used to offset its G&A. The petitioners contend that VMSA offset its G&A with the revenue from the "reversal of a contingency" which was the reversal of a 2004 provision for the loss expected on the sale of equipment. Citing Certain Steel Concrete Reinforcing Bars From Turkey: Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part, 69 FR 64731 (November 8, 2004), and the accompanying I&D Memo at Comment 13, the petitioners assert that it is the Department's practice to consider only the income related to the current period as an offset to G&A. Because this adjustment was related to a prior period, the petitioners argue, the income should not be used to offset current G&A.

The petitioners also argue that the income from the recovery of other expenses, other revenues, subsidy, and other revenue (inventory) should not be used as offsets to G&A because VMSA has not demonstrated that these items are related to the general operations of the company. The petitioners contend that, because the two largest income offsets (the reversal of contingencies discussed above and the dividends received) were not related to the general operations of the company, the Department should also conclude that none of the other income offsets is related to the general operations of the company.

VMSA did not comment on this issue.

Department's Position: Sections 773(b)(3)(B) and 773(e)(2)(A) of the Act define the cost of production and constructed value to include an amount for selling, general, and administrative

expenses based on actual data pertaining to production and sales of the foreign like product. In calculating G&A, the Department's practice is to include expenses and revenues that relate to the general operations of the company as a whole. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From Taiwan, 64 FR 56308, 56323 (October 19, 1999), at Comment 18.

We find that VMSA's reversal of the fixed-asset disposal provision should not be allowed as an offset to G&A. Typically we do not allow a company to reduce current-period costs for a reversal of a provision set several years prior to the period under examination. The fact that, several years ago, VMSA over-estimated its costs associated with the planned sale of equipment does not mean it is appropriate to reduce the current year's costs by the over-estimation. This is consistent with our decision in Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Italy, 60 FR 31981 (June 19, 1995), at Comment 17, where we stated:

{W}e do not consider it appropriate to reduce current year production costs by the reversal of prior year operating expense accruals and write-downs of equipment and inventory. The subsequent year's reversal of these estimated costs does not represent revenue or reduced operating costs in the year of reversal. See Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From France, 58 FR 37079 (July 9, 1993). Rather, they represent a correction of an estimate which was made in a prior year. If the Department is able to verify that an operating expense accrual or an equipment or inventory write-down recorded during the {period of investigation} is subsequently adjusted because the company overestimated the cost, we will use the corrected figure, but only for the same period in which the accrual or write-down occurred.

Because VMSA's reversal of the prior-period provision does not relate to costs incurred in the current period, we have excluded it from the G&A calculation.

With respect to other income VMSA claimed as an adjustment to its G&A, subsidies and grants received are typically treated as allowable offsets to G&A. See Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181 (March 11, 2005), and accompanying I&D Memo at Comment 2 where we stated:

{T}he Department normally includes the grants received from the government in the reported costs. See Notice of Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from South Africa, 60 FR 22550, 22556 (May 8, 1995) (Furfuryl Alcohol Final Determination) and Notice of Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy, 61 FR 30326, 30355 (July 14, 1996) (Pasta Final Determination). In Furfuryl Alcohol Final Determination, the Department included in

the G&A rate calculation, [sic] the government grant received by the respondent which was recorded as grant revenue in the respondent's financial statements. Also, in Pasta Final Determination, the Department included the government grant received during the {period of investigation} as an offset to the respondent's G&A expenses.

In addition, we consider it appropriate to include an amount for the other revenue on inventory in the calculation of VMSA's G&A as this minor amount is related to the company's general operations and the losses on inventory were also included as part of the G&A. Finally, we have included the other minor-revenue items in the G&A computation because they appear to be related to the company's general operations as a whole and there is no record evidence to indicate otherwise.

Financial-Expense Ratio

Until July 1, 2007, VMSA's consolidated parent, BUAG, owned 99.9 percent of VMSA and consolidated VMSA's results with its own financial results. From July 1, 2007, onward, Voestalpine acquired a majority interest in BUAG which was then consolidated with Voestalpine. VMSA reported its financial-expense ratio based on the financial expenses of BUAG and also submitted a financial-expense ratio based on the financial expenses of Voestalpine.

Comment 4: According to the petitioners, the Department's standard cost questionnaire directs respondents to calculate the financial-expense ratio based on the highest level of consolidation. The petitioners argue that, because VMSA's financial results were consolidated for the first five months of the POR with BUAG and consolidated for the remaining seven months of the POR with Voestalpine, the Department should calculate a weighted-average interest-expense ratio that addresses the periods of consolidation of VMSA with both BUAG and Voestalpine.

VMSA did not comment on this issue.

Department's Position: It is the Department's normal practice to calculate the financial-expense ratio based on the highest level of consolidated financial statements for the fiscal year that corresponds most closely with the POR. See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Administrative Review, 74 FR 17951 (April 20, 2009), and the accompanying I&D Memo at Comment 5; see also Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico, 67 FR 55800 (August 30, 2002), and accompanying I&D Memo at Comment 8. This practice recognizes the fungible nature of invested capital resources within a consolidated group of companies and that the controlling entity within a consolidated group has the ultimate power to determine the capital structure and financial costs of each member within the group.

Consistent with our practice, we have based the financial-expense ratio on the consolidated financial statement of Voestalpine for the year ended March 31, 2008, which reflects the highest level of consolidated financial statements for the majority of the POR. Those financial statements reflect the financial results of VMSA for nine months, including the last

seven months of the POR.

Recommendation

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

Agree _____

Disagree _____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date