

A-560-815
Investigation
Public Document
EG III/8: MRF/JB

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final
Determination of LTFV of the Antidumping Duty
Investigation of Carbon and Certain Alloy Steel Wire Rod
from Indonesia

Summary

We have analyzed the comments and rebuttals of interested parties in the antidumping duty investigation of Carbon and Certain Alloy Steel Wire Rod from Indonesia (A-560-815). As a result of our analysis, we have made changes to the margin calculations. We recommend that you approve the positions we have developed in the Discussion of the Issues section of the memorandum. Below is the complete list of the issues in this investigation for which we received comments and rebuttals by parties:

1. Bank Charges for U.S. Sales
2. Payment Date for Home Market Sales and Interest Revenue
3. Foreign Inland Freight for Certain U.S. Sales Sold Through IWP
4. Date of Sale
5. Exchange Losses Related to Loan to Affiliate
6. Electricity Discounts
7. Cost Allocation Associated with Special Surface Quality Product

Background

We published in the Federal Register the preliminary determination of our investigation on April 10, 2002. See Notice of Preliminary Determination of Sales at Not Less Than Fair

Value: Carbon and Certain Alloy Steel Wire Rod From Indonesia, 67 FR 17374 (April 10, 2002) “Preliminary Determination.”

The period of investigation is July 1, 2000, through June 30, 2001. We invited parties to comment on our Preliminary Determination of the investigation. We received case briefs from the respondent, P.T. Ispat Indo (“Ispat Indo” or “respondent” or “the company”) and Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively “petitioners”) on July 2, 2002. We received rebuttal briefs from Ispat Indo and petitioners on July 12, 2002. A hearing was not requested.

Changes Since the Preliminary Determination

For business proprietary details of our analysis of the below mentioned changes to our final margin calculation, see P.T. Ispat Indo Final Analysis Memorandum, August 23, 2002. In our computer programming for the Final Determination, we changed U.S. bank charges to reflect additional expenses found at verification and consequently, we did not deduct imputed credit expenses. Additionally, we revised the home market payment date to account for early payment received by the company. Finally, we removed the modifications from the Preliminary Determination to the CV data for calculating the DIFMER variables. For changes pursuant to verification, see Sales Verification Report and Verification Exhibit 1.

Discussion of the Issues

Comment 1: Bank Charges for U.S. Sales

The respondent states that if the Department deducts actual credit costs from the export price (“EP”), it should not also impute the credit expense on U.S. sales. The respondent further points out that in the Department’s sales verification report, it inaccurately calculated the credit costs or bank charges incurred by Ispat Indo and Ispat Indo’s selling agent.

For the first shipment of U.S. sales, the company made sales directly from Ispat Indo and also through the company’s affiliate, P.T. Ispat Wire Products (“IWP”). For the sales made directly from Ispat Indo, the respondent states that the Department used the incorrect tonnage in the Sales Verification Report to calculate the per metric tonnage cost of the bank charges. The respondent also points out that for the other sales in this shipment that were made through IWP, the bank charges incurred differ from the bank charges incurred for the sales made directly from Ispat Indo. The respondent states that for this shipment, allocating these bank charges on the basis of weight is not appropriate because the bank charges are incurred on the basis of value, not weight. Ispat Indo calculated two percentage factors to be multiplied by the gross unit price; one factor for the sales directly from Ispat Indo and one factor for sales through IWP.

Ispat Indo stated that the remaining three shipments to the U.S. occurred through its trading company. The respondent stated that for one set of sales reviewed during verification, the Department double counted one bank charge, as this particular charge was later reversed by

the bank and credited to the trading company. The respondent argues that there was no early payment charge at all and the Department's inclusion of this amount is incorrect. Ispat Indo explains that this factual error can be established based on the record evidence collected by the Department during the sales verification. Ispat Indo argues that if the amount the Department identified as an early withdrawal fee actually occurred, then the interest rate would be unrealistically high. Additionally, the respondent notes that the trading company actually took funding for a different amount of days than indicated in the Department's verification report. Again, Ispat Indo recommends that the Department allocate these costs on the basis of value using a factor as a percentage of gross unit price.

Petitioners argue in their rebuttal comments that Ispat Indo's arguments are based on unverified information and conjecture and, therefore, should not be considered by the Department in its final determination. For the U.S. sales sold directly from Ispat Indo, petitioners agree with the respondent that the Department used the incorrect metric tonnage in calculating a per unit value based on weight. Petitioners also noted a minor discrepancy in Ispat Indo's calculation of bank charges for this sale.

For the bank charges associated with the sales sold through IWP, petitioners state that the Department did not verify the bank documentation associated with this sale. Petitioners assert that Ispat Indo's post-verification presentation of this sale and its attempt to use this sale to change verification findings is improper and unjustified. Petitioners recommend that the Department disregard the bank charges for the IWP sale that Ispat Indo outlined in their case briefs. Petitioners state that the Department should not accept any post-verification revisions made by Ispat Indo.

Petitioners disagree with Ispat Indo's claim that the Department double-counted a particular bank charge for sales through its trading company. Petitioners point out that Ispat Indo incorrectly calculated the total bank charges that it failed to report. Secondly, petitioners point out that Ispat Indo's claim that the Department improperly included certain interest expenses is also unjustified and without merit because there is no record evidence that the amount was actually later reversed by the bank and credited to the trading company. Petitioners emphasized in their rebuttal brief that Ispat Indo failed to provide any evidence that the amount was later reversed by the bank and credited to the trading company. Petitioners assert that the Department's findings as outlined in the verification report should stand. Petitioners recalculated the per metric ton value of bank charges for this sale, which differs slightly from the Department's per metric ton bank charge calculation in the Sales Verification Report.

Petitioners argue in their rebuttal briefs that the errors found at verification were sufficient in number and magnitude as they affect all U.S. sales. Petitioners recommend that the Department apply partial adverse facts available because Ispat Indo's failure to report all of its U.S. bank charges demonstrates that it did not act to the best of its ability and as a result, impeded this proceeding. Petitioners state that the Department should apply the highest unreported per-unit bank charge to all of Ispat Indo's U.S. sales.

Since petitioners recommend that the Department deduct the highest per metric ton bank charge from all of Ispat Indo's reported U.S. sales prices, petitioners removed the line items of interest paid, bank charges, interest received and other income from Ispat Indo's trading company's indirect selling expenses to avoid double-counting of bank charges. Petitioners argue that this revised indirect selling expense ratio should be applied to the gross unit price for the calculation of indirect selling expenses.

Petitioners state that given Ispat Indo reported theoretical bank charges and neglected to report additional interest expenses incurred on U.S. sales, the Department must use partial adverse facts available in calculating an amount for unreported expenses. Petitioners infer that these unreported bank charges are not isolated and therefore recommend that the Department deduct the highest net amount of bank charges verified by the Department from all of Ispat Indo's reported U.S. sales. Petitioners state that failure to deduct the net amount of bank charges from all of Ispat Indo's U.S. sales would reward Ispat Indo for its failure to cooperate.

In Ispat Indo's rebuttal comments, the respondent recommends that the Department not use the figure recommended by petitioners and instead use the actual figures that were established by the Department at verification and outlined in Ispat Indo's case brief. The respondent states that the figure cited by petitioners is erroneous and not supported by logic, mathematics, documentation, or any other reasonable factors. Secondly, Ispat Indo states that the information collected by the Department contains the actual bank charges incurred by Ispat Indo. The respondent also argues that the bank charges in question are incurred on the basis of value as they involve an element of interest. Therefore, Ispat Indo reasons that a value-based allocation would be more reasonable and consistent with how bank charges are incurred. Ispat Indo recommends that the Department use the percentage factors calculated in the company's case briefs and rebuttal briefs in lieu of the CREDITU and BANKCHGU figures reported in the U.S. sales database.

Department's Position: We agree with petitioners that the Department should apply partial adverse facts available to all U.S. sales for Ispat Indo's failure to report actual bank charges incurred by the company and its trading company, pursuant to section 776 (b)(4) of the Act. Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to section 782(d) and (e), facts otherwise available in reaching the applicable determination.

In Ispat Indo's Sections B, C, and D response to the Department, the company stated that they incurred bank charges on U.S. sales for handling letters of credit, including discounting the letters of credit. Ispat Indo also provided a worksheet showing how they allocated these bank charges for U.S. sales. In Ispat Indo's minor corrections presented at verification, the company stated that the bank charges reported in BANKCHGU used in the Preliminary Determination were based on a standard cost. Ispat Indo elaborated that they revised these costs in their minor

corrections to reflect actual costs. Yet, at verification the Department found bank charges to significantly exceed the company's "actual costs" presented in their minor corrections. (See Sales Verification Exhibit 1 and Sales Verification Report at page 11 and 17.) At verification, we also found that Ispat Indo had the ability to report actual bank charges as the trading company's bank statement references the bill of lading number and the invoice number and for the sales not invoiced through the trading company, Ispat Indo included those documents in the sales traces reviewed at verification (see Sales Verification Report at page 17).

Taking into consideration that the Department's Antidumping Questionnaire at G-5 instructs the respondent to report expenses actually incurred in making each sale and that Ispat Indo had two opportunities (one in the responses submitted to the Department and one at the outset of verification in their minor corrections) to report actual bank charges incurred, we conclude that pursuant to section 776(a) of the Act, use of facts otherwise available is appropriate.

Moreover, section 776(b) of the Act, provides that an adverse inference may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. As previously discussed, Ispat Indo and its trading company had two opportunities to report actual bank charges. Instead, the Department discovered these expenses in their examination of U.S. sales documents. Since Ispat Indo included the relevant bank documents in selected sales reviewed at verification, we conclude that the company had the necessary information readily available for reporting those costs to the Department prior to verification. (See Sales Verification Exhibits 5 and 19.) Yet Ispat Indo omitted these expenses from its sales database and minor corrections presented at the outset of verification. As noted in the Sales Verification Report, Ispat Indo's trading company also had the ability to collect all of the incurred bank charges by looking at the bank statement, which references the bill of lading number and the invoice number (see Sales Verification Report at page 17). While Ispat Indo incurs multiple types of bank charges for one shipment, it only had four shipments of subject merchandise to the United States, therefore minimizing the company's burden for collecting necessary sales costs. Given these circumstances, we find that Ispat Indo did not act to the best of its ability to gather actual bank charges incurred on U.S. sales.

As partial adverse facts available, we will apply the highest bank charge factor calculated from the sale reviewed at verification (taking into account the revised bank charge factor for the sale through Ispat Indo's trading company, as described below) and apply that factor to all U.S. sales. Using a value-based allocation in lieu of a weight-based allocation is compatible with the manner in which Ispat Indo incurs these bank charges (see next paragraph). We are applying partial adverse facts available to all U.S. sales because all observations in Ispat Indo's database submitted to the Department contained "theoretical" bank charges and all sales reviewed at verification contained bank charges exceeding the initially reported amount.

We agree with the respondent that the bank charges incurred on U.S. sales should be applied using a value-based allocation. We observe that bank documents collected at verification

only reference the value of the sale, not the weight of the goods sold (see Exhibit 1 and 3 of Ispat Indo's case brief). Additionally, in Ispat Indo's Section C response and in its minor corrections presented at verification, the company calculated its bank charges on a value-based allocation. In applying partial adverse facts available, we note that the adverse facts selected must be rationally related to sales, indicative of the company's customary selling practices, and not unduly harsh or punitive. See Krupp Thyssen v. U.S., Slip. Op. 01-84, at 10 (Court of International Trade, 2001). Additionally, Chapter 7 of the Antidumping Manual states that "whenever possible, we calculate these charges {costs, charges, expenses, or duties that are typically deducted from both EP and CEP} on the basis of the actual costs incurred for each sale." Given that Ispat Indo's bank references the total value of the merchandise when assessing bank charges and that throughout the investigation Ispat Indo has calculated bank charges based upon value, we will apply a value-based factor to the gross unit price to derive the bank charges.

With respect to the tonnage amount used by the Department in its Sales Verification Report for sales made directly from Ispat Indo to the U.S. customer, we agree with both petitioners and respondents. Both parties noted the correct tonnage in their case briefs. However, the issue is moot since we are using a value-based allocation in lieu of a weight-based allocation to calculate bank charges.

We agree with petitioners that there is no evidence on the record to demonstrate Ispat Indo's claim that one of the bank charges incurred by its trading company was later reversed. Therefore, the total value of the bank charges incurred by Ispat Indo's trading company calculated in the Sales Verification Report remains unchanged. The total value of the bank charges (See Sales Verification Report at page 17) for the sale through the respondent's trading company consists of multiple components. The Department verified all of these components as actual expenses in bank documents located at Ispat Indo's trading company, including the bank charge in question. Ispat Indo does not dispute the fact that its trading company incurred this particular charge. The interest rate and number of discounting days associated with these bank charges is supplementary information that is not necessary to sum various bank charges that appear in the trading company's bank statements and its general ledger. While Ispat Indo claims in its case briefs and rebuttal briefs that this particular bank charge was later reversed and credited to the trading company, there is no evidence in the sales verification exhibits nor the Sales Verification Report that the trading company was credited. Ispat Indo never offered any such explanation or documentation supporting this particular reversed bank charge during verification. In those instances when Ispat Indo noted a reversed bank charge, the Department was able to verify the reversed bank charge and noted this finding in our report. (See Sales Verification Report at 11.)

Moreover, the information on the record indicates that there could be bank charges in addition to the ones enumerated in the Sales Verification Report. As indicated in the Sales Verification Report, we randomly selected two bank charges from the trading company's general ledger and found that one of those bank charges related to one of the sales, but was not included in the sales trace package (see Sales Verification Report at page 17). When we asked the trading

company how the Department could verify that every bank charge has been accounted for in the sales trace packages, the company official stated that we could look at the trading company's bank statements, which reference the bill of lading number and the invoice number (see Sales Verification Report at page 17). Therefore, we conclude that Ispat Indo could have derived the actual bank charges for the Department from the trading company's bank statement but instead reported bank charges that differed significantly from the actual expenses incurred.

In addition, we disagree with Ispat Indo's reasoning that these bank charges are overstated because the total value of the bank charges calculated by the Department in the Sales Verification Report exceeds the sum of the "bank charges" and "interest expenses" line items in the trading company's indirect selling expenses worksheet. The Department verified the actual bank charges at Ispat Indo's trading company. Verified bank charges are more reliable in comparison to the bank charges in the indirect selling expenses worksheet.

Finally, while the bank charges outlined in the Sales Verification Exhibit may not encompass all of the charges, including the reversal of charges (*i.e.*, credits to Ispat Indo), it is the most complete information on the record of this proceeding for the bank charges incurred by Ispat Indo. Ispat Indo had two opportunities to provide actual bank charges incurred on U.S. sales and failed on both occasions to provide the information to the Department. In order to most accurately account for all of the expenses Ispat Indo incurred in delivering the merchandise to the U.S., the Department will use the total value of the bank charges outlined in the Sales Verification Report (see page 17) as the basis for calculating the value-based percentage factor to be applied to all U.S. sales.

We agree with Ispat Indo that since the Department collected at verification actual credit expenses for certain U.S. sales, it will not impute credit expenses. Imputed credit expenses "represent the amount that the Department attributes to theoretical interest expenses incurred between shipment date and payment date" (see Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta From Italy, 65 FR 7349 (February 14, 2000)). Since the Department found actual credit expenses Ispat Indo incurred and is applying those actual expenses as partial adverse facts available, there is no need to impute credit expenses.

Comment 2: Payment Date for Home Market Sales and Interest Revenue

Petitioners state in their case briefs that Ispat Indo failed to report correct home market payment dates despite several opportunities to do so. Petitioners argue that the credit expense errors in the home market sales examined at verification are significant. They also allege that Ispat Indo failed to act to the best of its ability because the respondent did not disclose its home market imputed credit revenue prior to, or during verification – despite repeated requests by the Department. Petitioners assert that Ispat Indo could have easily reported the correct information since payment dates are recorded in the company's general ledger. Petitioners recommend that the Department conclude that Ispat Indo failed to cooperate by not acting to the best of its ability

to provide the necessary home market interest revenue information as requested, and rely on partial adverse facts available. As partial facts available, petitioners suggest that the Department should reassign the payment date for all home market sales as the shipment date minus the highest number of days that payment precedes shipment date.

In Ispat Indo's rebuttal briefs, Ispat Indo reasons that because there were almost 10,000 observations in the home market and because of the difficulty in collecting payment dates for each of those sales, Ispat Indo based its imputed credit calculations on the average accounts receivable period of the company. Ispat Indo points out that this was consistent with the instructions in the Department's questionnaire. The respondent argues that any prepayment for a home market sale would be accounted for in the accounts receivable figures.

Ispat Indo points out that when the Department requested actual home market payment dates, it complied to the best of its ability by submitting the payment date information recorded in its accounts. Ispat Indo states that its system only allows it to record and report the date of full payment for the sale. The company further clarified that none of the sales involving prepayment was paid in full before the date of the invoice. Ispat Indo explained that there were some installment payments, some pre-paid deposits, and in some cases, payment after the invoice. Additionally, the respondent states that payments were also in varying amounts and in some cases difficult to trace to particular home market sales. Ispat Indo concludes that for the above reasons, it had initially reported home market credit expenses based on the average accounts receivable. Ispat Indo concludes that should the Department see the need to account for all payment information, the average accounts receivable reported in the December 26, 2001, response should be used, not the artificial figure suggested by petitioners.

Department's Position: We agree with petitioners that Ispat Indo failed to act to the best of its ability in providing individual home market payment dates and, therefore, should be subject to partial adverse facts available. Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to section 782(d) and (e), facts otherwise available in reaching the applicable determination. In response to the Department's request on January 10, 2002, to report the payment date for each home market observation, Ispat Indo stated in its January 31, 2002, supplemental response, that it reported the "actual date of payment as recorded in Ispat Indo's accounting system." Yet at verification, the Department found that the company's recorded payment date in its accounting system preceded the payment date information reported to the Department for all of the selected sales where the payment terms were cash, rather than letter of credit. See Sales Verification Report at 17 and Sales Verification Exhibits 5, 10, 12, 13, and 14. Since Ispat Indo withheld actual payment dates requested by the Department prior to verification, we conclude that pursuant to section 776(a) of the Act, use of facts otherwise available is appropriate.

Section 776(b) of the Act provides that an adverse inference may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. Ispat Indo's withholding of actual payment date information as noted above coupled with verification procedures followed at the sales verification indicate that the company did not act to the best of its ability to comply with the Department's request for actual payment dates for home market sales. Ispat Indo argues in its case briefs that none of the sales involving prepayment were paid in full before the date of the invoice thus creating difficulties in reporting actual home market payment dates. While Ispat Indo receives down payments from customers prior to production, Ispat Indo provided sales vouchers and general ledger pages at verification clearly showing a sale, paid in full prior to the invoice date. (See Sales Verification Exhibit 5). Moreover, the Department's verifiers were able to trace with ease the total invoiced value of the merchandise to the sales voucher and to a single entry in the company's general ledger. Additionally, we believe that the company's use of an Oracle based accounting system in its normal course of business potentially mitigates the burden for reporting actual payment dates for home market sales (see Sales Verification Report at 5).

The Department believes that Ispat Indo had the opportunity and the ability to provide accurate home market payment information but chose to report payment dates that did not reflect the actual sales transactions nor the company's accounting records used in its normal course of business. Given that Ispat Indo did not act to the best of its ability, pursuant to section 776 (b)(4) of the Act, the Department is applying partial adverse facts available for all home market sales where the customer did not pay by letter of credit. For these sales, the Department reassigned the payment date as the shipment date minus the highest number of days that payment preceded shipment. The Department derived the highest number of days from the home market sales examined at verification.

Comment 3: Foreign Inland Freight for Certain U.S. Sales Sold Through IWP

Petitioners state that Ispat Indo failed to report foreign inland freight costs for certain U.S. sales sold through IWP. Petitioners refer to their March 12, 2002, letter to the Department where petitioners asked the Department to apply facts available to these sales in the Preliminary Determination. Petitioners state that the Department should now apply partial adverse facts available to these sales since, according to petitioners, Ispat Indo knowingly failed to report foreign inland freight costs. Petitioners recommend that the Department assign the highest foreign inland freight rate for these U.S. sales or compute an average foreign inland freight from those sales where freight was reported.

Ispat Indo states that it properly reported home market inland freight costs for the sales made through IWP. The respondent clarified that the steel wire rod was shipped directly from Ispat Indo to the Surabaya seaport for shipment to the United States. The company reiterated that the inland freight costs associated with moving the steel wire rod from Ispat Indo's facility to the Surabaya seaport were already reported in the DBROKU field. Ispat Indo referenced its response

in the January 22, 2002, supplemental response. The company also stated that the Department verified these expenses at verification. Ispat Indo concludes that the Department should reject petitioners' suggestion for the use of facts available and petitioners' allegation.

Department's Position: We agree with the respondent that Ispat Indo properly reported home market inland freight costs for the sales made through IWP. In Ispat Indo's January 31, 2002, supplemental B and C questionnaire response, the company states that the foreign inland freight costs were included in the domestic brokerage and handling costs or the DBROKU field of the U.S. sales database. We confirmed this statement prior to the Preliminary Determination by noting that the sum of the foreign inland freight field and the domestic brokerage and handling field for all other sales approximately equals the value of the domestic brokerage and handling field for these sales sold through IWP. Additionally, at verification we verified these commingled foreign inland freight and domestic brokerage and handling costs. (See Verification Exhibit 19).

Comment 4: Date of Sale

Petitioners state that Ispat Indo's choice of invoice date as date of sale for both the home market and the U.S. market is not supported by the findings at verification or by Ispat Indo's description of the sales process. Petitioners argue that it seems incongruous that Ispat Indo selected invoice date as the date of sale given that Ispat Indo confirms the sale with a sales contract and then begins production of the ordered merchandise. Petitioners question Ispat Indo's assertion that the sale terms such as price, quantity, and product type are subject to change until the date of invoicing because, petitioners argue, Ispat Indo does not indicate how often changes in the sale terms occur. Additionally, petitioners assert that verification did not reveal frequent changes between contract and invoice date. Petitioners conclude that Ispat Indo's assertion is not proper justification for selecting invoice date as date of sale.

Petitioners state that the sales contract date is the proper basis for the date of sale because the sales contract is a written document maintained by Ispat Indo in its normal course of business, unless Ispat Indo can demonstrate that there are frequent and significant changes in material terms of sale after the sales contract.

Petitioners believe it is appropriate to use an adverse inference in selecting the facts otherwise available. They recommend that the Department determine the average number of days between the contract date and the invoice date by examining the sales documentation collected at verification. Petitioners suggest using the calculated average number of days to exclude those sales observations invoiced during the beginning of the POI. Petitioners recommend using the quantity of sales excluded from the beginning of the POI as a guide for approximating the quantity of sales made at the end of the POI that were under contract, but not yet invoiced. As facts available, petitioners urge the Department to assign the highest calculated margin in the dataset to this unreported quantity of U.S. sales.

In Ispat Indo's rebuttal comments, the company argues that its use of invoice date as the date of sale is entirely consistent with the Department's practice and questionnaire request, as it has not been demonstrated that another date should be used as the date of sale. The respondent cites the Department's Antidumping Questionnaire at Glossary, I-5, which states that the Department will normally use the respondent's invoice date as the date of sale unless the material terms of sale are set at a different stage in the sales process. Ispat Indo states that petitioners fail to support their statements with actual documentation collected by the Department during the course of the investigation.

Ispat Indo first reiterated from its supplemental responses that for both home market and U.S. market sales, there are material changes in the terms of sale – price, quantity, and product mix. Ispat Indo argues that petitioners citations to the Sales Verification Report refer to general descriptions of Ispat Indo's sales process, and not the material changes between contract and invoice.

Ispat Indo states that for the four shipments to the United States contained in the U.S. sales database, the changes were frequent and significant. For the first shipment, Ispat Indo points out that the price and the quantity of merchandise of the order is quite different from the price and quantity of merchandise which were actually invoiced and sold to the U.S. customer. The company further explains that Ispat Indo shipped Grade 75 instead of Grade 145 at a different price. For the second shipment, Ispat Indo notes that the contract was amended two weeks before the invoice date. Ispat Indo asserts that the price and quantity of the merchandise changed from the time of the contract to the time of the invoice. The company noted that for this shipment, the prices for all merchandise were revised upward and Ispat Indo shipped Grade 155, 8.0 mm instead of Grade 115, 7.00 mm. For the fourth shipment, Ispat Indo notes that Grade 85 was not included in the original contract, yet was produced, shipped and invoiced to the U.S. customer. Ispat Indo concludes that there were frequent and significant changes in the product specifications, product mix, quantity and price for the U.S. sales. The respondent reasons that it properly applied the date of invoice – which confirmed the material terms of sale – as the date of sale for U.S. sales.

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

To determine whether Ispat Indo properly reported invoice date as the date of sale for both home market and U.S. market sales, on December 28, 2001, we requested Ispat Indo to summarize the changes in the terms of sales subsequent to the contract date. In its January 18, 2002, supplemental response, the respondent stated that there were numerous instances where the price, quantity, and product specifications changed subsequent to the sales contract. For purposes of our Preliminary Determination, we accepted the invoice date as the date of sale for both the home market and the U.S. market sales.

Based on sales documents reviewed at verification, we find that the magnitude and frequency of changes between sales contract and sales invoice to be significant for U.S. sales. For example, in the second shipment (as described above) we noted at verification that the contract was amended two weeks before the invoice date and that changes in grade, diameter, and price were significant. The Department also verified the fourth shipment (as described above) and noted that Grade 85 was not included in the original contract, yet was produced and sold to the U.S. customer. Finally, for one U.S. observation (with a specified grade in the contract and the invoice) reviewed at verification, we noted a significant difference in the quantity between the sales contract and the sales invoice to the U.S. customer.

An examination of Ispat Indo's home market sales process and the home market sales contracts and corresponding sales invoices gathered at verification similarly shows significant changes in the sale terms between the contract date and the invoice date. Ispat Indo stated in its Section A response submitted to the Department on December 11, 2001, that changes could be made to the home market terms of sales before shipment due to the customers' request or Ispat Indo's production capacity situation. At verification we found that a number of the home market sales were subject to changes in price between the contract date and the invoice date. Additionally, we found that a significant amount of the sales examined at verification, there were significant changes between the contract quantity and the invoiced quantity. Given Ispat Indo's home market sales process and the changes we found at verification, we conclude that invoice date is the appropriate date of sale for home market sales.

We find that petitioners' use of partial adverse facts available for the U.S. date of sale is incongruous with the facts on the record of this proceeding. At verification the Department found that Ispat Indo did not receive any orders from U.S. customers at the end of the POI that were subsequently invoiced and shipped after the POI. (See Sales Verification Report at 16). Therefore, we find that Ispat Indo has accounted for all U.S. sales by properly reporting invoice date as the date of sale.

Moreover, the Preamble to section 351.401 of the Department's regulations states that the Department prefers a uniform date of sale rather than a different date of sale for each sale in order to simplify reporting and verification of information. In Allied Tube and Conduit Corp., v. United States 127 F. Supp. 2d 207, 218 (CIT 2000), the Court of International Trade recognized the necessity for consistency in the Department's procedural applications when determining the appropriate date of sale. Therefore, we conclude that invoice date is when the material terms of

sale are set because Ispat Indo demonstrated that the invoice date is the appropriate date of sale for both markets, the Department's finding at verification that there are changes to the sale terms up until invoice date, and changing the date of sale for only one market is not a consistent application of the Department's regulations.

Comment 5: Exchange Losses Related to Loan to Affiliate

The petitioners contend that the portion of exchange losses identified by the Department during verification as associated with money loaned to an affiliate rather than other accounts receivables should be included in Ispat Indo's interest expense calculation. The petitioners argue that the foreign exchange losses were not properly classified by the respondent as other accounts receivables because the losses were not associated with sales but to Ispat Indo's financing activities. Because these exchange losses relate to financing activities and the Department's established practice is to include exchange gains and losses from financing operations in the calculation of the financial expense ratio, the Department in its final determination should include these exchange losses in Ispat Indo's financial expense ratio calculation. The petitioners cite Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Duty Administrative Review ("Orange Juice from Brazil"), 65 FR 60406 (October 11, 2000) noting the Department stated that foreign exchange losses related to the financing activities of a company should be included in the calculation of the financial expense ratio. The petitioners also cite Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil ("Cold-Rolled from Brazil"), 65 FR 5554 (February 4, 2000) where the Department recognized the fungible nature of a company's invested capital¹ (both debt and equity) and stated that foreign exchange losses incurred on funds received from accounts receivables are related to the companies' debt; therefore, the losses should be included in the calculation of the respondent's financial expense ratio. Further, the petitioners argue that the foreign exchange losses incurred represent actual financial costs incurred and the respondent's financial expenses, in accordance with 19 U.S.C. § 1677b(b)(3)(B) and 19 U.S.C. § 1677b(e)(2)(A), must be based on the actual experience of the company.² In addition, the foreign exchange losses were incurred in Ispat Indo's normal course of business (*i.e.*, in accordance with Indonesian GAAP) and the Department's long-standing practice is to use data from the respondent's books and records as long as they are in accordance with GAAP of the country and reasonably reflect the costs of producing the merchandise.³ Furthermore, the petitioners argue

¹ The petitioners cite Camargo Correa Metais, S.A. v. United States ("Camargo"), 17 C.I.T. 902 (1993); Floral Trade Council v. United States, 41 F.Supp. 2d 319, 337 (Ct. Int'l Trade 1999).

² The petitioners also cite Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30326 (Jun. 14, 1996).

³ The petitioners cite Camargo, at 897, 898.

that the fact that the loan in question was made by Ispat Indo rather than to Ispat Indo is irrelevant to the issue of determining whether Ispat Indo recognized the foreign exchange losses in its normal books and records.⁴

The respondent argues that the Department's cost verification report erroneously suggests that the foreign exchange losses associated with a loan by Ispat Indo (as opposed to a loan to Ispat Indo) should be included in the calculation of financial expenses. Because the loan made by Ispat Indo represents a transfer of funds and the transfer is not related to the production process or to obtaining funds for the operation of the company, the respondent contends that it is inappropriate for the Department to include the related foreign exchange losses in Ispat Indo's financial expense ratio calculation. Further, the respondent cites Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from the Republic of Korea ("Emulsion Rubber"), 64 FR 14865 (March 29, 1999) where the Department stated that it typically only includes foreign exchange gains and losses in a respondent's financial expenses if such gains and losses are related to the cost of acquiring debt.⁵ The respondent distinguishes the instant case from Emulsion Rubber by stating that in this case the loan from Ispat Indo was a "sale" of money whereas in the case of debt (i.e., a loan to Ispat Indo), loans are generally taken out to finance the purchase of materials and other inputs for producing the subject merchandise. The respondent refutes the petitioners citations of Orange Juice from Brazil and Cold-Rolled from Brazil stating that both of these cases deal with situations where the foreign exchange losses included by the Department were associated with loans made to the respondent, not by the respondent. The respondent contends that if the Department determines that the foreign exchange loss should be included in Ispat Indo's financial expenses, the Department should also include an imputed amount for the interest income that would have been associated with the loan by Ispat Indo. The respondent cites Notice of Final Determination of Sales at Less Than Fair Value : Extruded Rubber Thread from Indonesia, 64 FR 14690, (March 26, 1999) where the Department imputed interest expense for interest free loans made to a company by affiliated companies. Conversely, argues the respondent, the interest income associated with an interest free loan by affiliated companies to a respondent should be imputed.

Department's Position: In this case, we agree with the respondent that the exchange losses related to its loans to a related party should not be included in the finance expense calculation. The loans in question were classified in the financial statements as being long-term. In terms of foreign exchange losses on a company's debt, the Department's practice is to include only the portion of exchange gains or losses associated with current debt. Therefore, it is consistent with our practice to exclude foreign exchange gains or losses incurred on the long-term portion of loans to outside parties.

We disagree with respondent that we should impute an amount for interest income

⁴ The Petitioners cite Orange Juice from Brazil.

⁵ The respondent also cites Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 63 FR 35190 (Jun. 29, 1998).

associated with this loan and use the figure to offset interest expense. Given the apparent long-term nature of the loan, we would not allow any interest from the loan as an offset to financial expense. It is the longstanding practice of the Department to allow only interest income from short term sources (e.g., working capital) as an offset to interest expense. Therefore we have not made either adjustment for the final determination.

Comment 6: Electricity Discounts

The petitioners assert that the discounts granted to Ispat Indo by the power company, PLN, should be rejected by the Department. The petitioners argue that, as indicated by the cost verification report,⁶ these discounts were not granted until after the respondent filed its supplemental section D response and that there is no record evidence that the discounts received are normal business practice. Instead, the petitioners claim that the timing of such discounts suggest that PLN, a government-operated power company, may have collaborated with the respondent in efforts to lower the respondent's cost of manufacture for the purposes of this investigation. Petitioners cite Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Antidumping Duty Investigation of Color Negative Photographic Paper and Chemical Components Thereof from Japan (Color Paper from Japan), 59 FR 16177 (April 6, 1994) and Certain Circular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Determination of Sales at Less Than Fair Value (Steel Pipes from Korea), 49 FR 9926 (March 16, 1984) and the Department's Antidumping Manual⁷ as evidence of the Department's longstanding practice to reject rebate/discount programs that were instituted retroactively after the filing of a petition.

The respondent argues that its electricity costs are normally accrued until such time that the actual invoices from the electric company are received, usually in the month after the costs are incurred. Ispat Indo's originally reported costs included these accrued amounts. At the beginning of verification, the respondent contends that it submitted COP/CV data at the earliest opportunity in the pre-verification corrections based on the actual costs incurred and that the verified actual costs should be used by the Department in this final determination. Further, the respondent explained at verification that it contests its electricity invoices on a regular basis. The respondent refutes the petitioners citation of Color Paper from Japan and Steel Pipes from Korea stating that these cases involved rebates on home market sales (i.e., direct adjustment to home market prices), not discounts on purchases that affect the respondent's calculation of costs. Finally, the respondent states that the petitioners' allegations of collaboration between the respondent and PLN is irrelevant in that the respondent is not affiliated with the Indonesian government in any way.

⁶ See, Memorandum from James Balog to Neal Halper, Verification Report on the Cost of Production and Constructed Value, RE: Antidumping Duty Investigation of Steel Wire Rod from Indonesia (June 18, 2002).

⁷ See Chapter 8 at 11.

Department's Position: We verified that electricity costs resulted from payments of actual electricity invoices and agree with the respondent that electricity costs are correct as reported. Disallowed rebates cited by petitioners in Color Paper from Japan and Steel Pipes from Korea relate to rebates of sales to customers rather than costs of obtaining services from suppliers. The petitioner's citation from the Department's Antidumping Manual also addresses sales and not cost rebates. The Department does not allow sales rebates which are instituted retroactively after the filing of the petition because such rebates could be designed to reduce the exporting country's market price which could reduce or eliminate margins. The Department has no reason to believe that the respondent conspired with the power company (PLN), an unaffiliated party, to reduce costs for the purpose of this investigation.

Comment 7: Cost Allocation Associated with Special Surface Quality Product

The petitioners allege that the Department's cost verification report refutes Ispat Indo's claim that special surface quality high carbon wire rod requires additional processing time and reduces productivity, therefore requiring an additional allocation of costs. The Department's report, according to the petitioners, specifically states that the respondent's cost accounting system does not track labor or machine hours. In addition, the cost verification report does not support Ispat Indo's claim that additional costs are incurred for special quality products. Instead, by assigning more costs to these specialty products, which are sold exclusively in the home market, Ispat Indo has shifted costs away from the products used for comparison to the products sold in the United States.⁸ The Department, assert the petitioners, should therefore reject Ispat Indo's cost allocation to these special surface quality high carbon products and assign an average material cost to both high carbon and special surface high carbon products in the final determination.

The respondent states that it presented to the Department, at verification, explanations and information regarding the methodology it used for developing the costs submitted in its responses in accordance with the Department's reporting requirements. The respondent contends that the Department's cost verification report does not note any discrepancies with its methodology.

Department's Position: It is reasonable that it would take more costs to produce special surface quality high carbon wire rod than regular surface high carbon wire rod. The respondent accounted for the higher costs by adding costs to the already computed regular surface high carbon wire rod and not by shifting costs from regular surface wire rod to special surface wire rod.⁸ Therefore, because the per-unit cost for regular surface high carbon wire rod would not have been higher had the new category of special surface high carbon rod not been created for

⁸ The petitioners cite SAA at 835.

⁸ See supplemental D response at question 16.

reporting purposes, we disagree with petitioners that the per-unit cost for regular surface high carbon wire rod should be increased.

Recommendation

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

AGREE_____ DISAGREE_____

Faryar Shirzad
Assistant Secretary
for Import Administration

Date