



A-201-843
Investigation
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April 28, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Investigation of Prestressed Concrete Steel Rail Tie Wire from Mexico

I. Summary

We analyzed the comments of the interested parties in the antidumping duty (AD) investigation of prestressed concrete steel rail tie wire (PC tie wire) from Mexico. As a result of this analysis and based on our findings at verification, we made changes to the margin calculations for the sole respondent in this case, Aceros Camesa S.A. de C.V. (Camesa). We recommend that you approve the positions detailed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation on which we received comments from parties.

1. Calculation of the Constructed Export Price (CEP) Profit Ratio
2. Calculation of the Constructed Value (CV) Selling Expense Ratio
3. Treatment of Certain Salary Expenses
4. Preliminary Determination Unreconciled Difference
5. Cost Verification Findings
6. General and Administrative (G&A) Expense Offsets
7. CV Profit

II. Background

On December 12, 2013, the Department of Commerce (the Department) published the preliminary determination in the less-than-fair-value investigation of PC tie wire from Mexico.¹ The period of investigation (POI) is April 1, 2012, through March 31, 2013.

¹ See Prestressed Concrete Steel Rail Tie Wire from Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 78 FR 75544 (December 12, 2013) (Preliminary Determination) and accompanying Preliminary Decision Memorandum.

We invited parties to comment on the preliminary determination. We received comments from the petitioners² and Camesa on February 27, 2014, and rebuttal comments from the petitioners and Camesa on March 5, and March 6, 2014, respectively. On January 13, 2014, Camesa requested that the Department conduct a hearing in this investigation, but Camesa withdrew its hearing request on February 26, 2014. Thus, no hearing was held.

Based on our analysis of the comments received and our findings at verification, we recalculated the weighted-average margin from that presented in the preliminary determination.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.³ Therefore, all deadlines in this proceeding have been extended by 16 days. If the new deadline falls on a non-business day, the deadline will become the next business day. Thus, the revised deadline for the final determination in this investigation is April 28, 2014.

III. Scope of the Investigation

The product covered by this investigation is high carbon steel wire; stress relieved or low relaxation; indented or otherwise deformed; meeting at a minimum the physical, mechanical, and chemical requirements of the American Society of Testing Materials (ASTM) A881/A881M specification; regardless of shape, size or alloy element levels; suitable for use as prestressed tendons in concrete railroad ties (PC tie wire). High carbon steel is defined as steel that contains 0.6 percent or more of carbon by weight.

PC tie wire is classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7217.10.8045, but may also be classified under subheadings 7217.10.7000, 7217.10.8025, 7217.10.8030, 7217.10.8090, 7217.10.9000, 7229.90.1000, 7229.90.5016, 7229.90.5031, 7229.90.5051, 7229.90.9000, and 7312.10.3012. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

IV. Scope Comments

In conjunction with the Preliminary Determination, the Department modified the scope of the investigation by revising the phrase “meeting at a minimum the American Society of Testing Materials (ASTM) A881/A881M specification” to “meeting at a minimum the physical, mechanical, and chemical requirements of the American Society of Testing Materials (ASTM) A881/A881M specification,” and by including two additional HTSUS numbers.⁴ No interested party commented

² The petitioners in this investigation are Davis Wire Corporation and Insteel Wire Products Company.

³ See Memorandum to the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government” (October 18, 2013).

⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Scope Modification Requests” (December 5, 2013).

on this modification of the scope. Therefore, we made no changes to the scope language as stated in the Preliminary Determination.

V. Margin Calculations

We calculated constructed export price (CEP) and normal value (NV) using the same methodology stated in the Preliminary Determination, except as follows:

- We corrected clerical errors in the CEP profit ratio calculation. See Comment 1 and Memorandum entitled, “Final Determination Margin Calculation for Aceros Camesa S.A. de C.V.” (April 28, 2014) (Final Determination Calculation Memo).
- We revised our calculation of the constructed value (CV) selling expense ratio to remove non-selling expenses from the calculation. We also based the ratio on domestic sales of wire products rather than on total sales of wire products, to correspond with the calculation of CV profit. See Comments 2 and 7, and Final Determination Calculation Memo.
- Based on verification findings, we adjusted home market and U.S. indirect selling expenses reported under DINDIRSU and INDIRSU, respectively. See Final Determination Calculation Memo.
- Because we determined that Camesa’s submitted costs include both its standard costs and all applicable variances, we reversed our decision in the Preliminary Determination to increase Camesa’s submitted costs by an unreconciled cost difference. See Comment 4.
- Based on verification findings, we adjusted Camesa’s reported costs to include duties and freight-in costs which had been excluded, and to correct an error which Camesa had made concerning the production variances attributable to two work orders. See Comment 5 and Memorandum entitled, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Aceros Camesa S.A. de C.V.” (April 28, 2014) (Cost Calculation Memo).
- Based on verification findings, we adjusted Camesa’s submitted general and administrative (G&A)-expense ratio calculation to disallow interest income attributable to value added tax (VAT) recovery. Additionally, after analyzing the parties’ comments, we further adjusted Camesa’s G&A-expense ratio calculation to disallow an offset for an item of deferred revenue. See Comments 5 and 6, and Cost Calculation Memo.
- We revised the calculation of CV profit so that the selling expense, G&A and financial expense rates used in the CV profit calculations correspond to the rates used in the final cost of production (COP) calculations. See Comment 7.

VI. Discussion of the Issues

Comment 1: Calculation of CEP Profit Ratio

In the Preliminary Determination, we calculated CEP profit based on the financial statements of Camesa and its U.S. affiliate, WireCo World Group Inc. (WireCo), because Camesa did not have a viable home or third country market.⁵ Camesa argues that the Department's preliminary calculation of the CEP profit ratio contained clerical and methodological errors that, when corrected, show that neither Camesa nor WireCo, earned a profit during the POI. Thus, Camesa contends, the CEP profit ratio should be set to zero in the final margin calculations. The clerical errors Camesa identifies consist of: (1) treating Camesa's and WireCo's "income before taxes" as positive rather than negative figures; and (2) subtracting WireCo's "Operating Income" from its "Total Expenses."

Camesa adds that, although moot because it earned no profit during the POI, the Department's methodology for calculating the CEP profit ratio yielded an illogical result. Instead of calculating and summing the separate profit rates for Camesa and WireCo, Camesa argues that the Department should have combined the revenues and costs of both companies to calculate a single weighted-average rate. Camesa argues that the Department's methodology departs from its longstanding practice, as articulated in the Department's Policy Bulletin 97.1: Calculation of Profit for Constructed Export Price Transactions (Policy Bulletin), and in the Department's standard SAS programming language.

The petitioners argue that the Department should not adopt Camesa's suggested CEP profit ratio calculations. First, the petitioners argue that data on the record show that Camesa earned a profit on its domestic sales of wire products.⁶ Second, the petitioners assert that Camesa's proposed methodology is inconsistent with the Policy Bulletin. According to the petitioners, Camesa suggests that the Department should use the loss on the total sales of all products by WireCo in calculating the profit for sales of PC tie wire, while the Policy Bulletin contemplates calculating CEP profit based on a ratio of the profit on sales of both subject merchandise and foreign like product. The petitioners claim that, absent such data, the Department will use the most similar data, which in this case is data pertaining to the sales of Camesa's wire division.⁷ Thus, the petitioners argue, Camesa's suggestion that the Department continue to use the profit on the overall operations of WireCo in its CEP profit calculation is not appropriate. Finally, the petitioners assert that, because Camesa failed to provide any profit information on WireCo's sales of PC tie wire or for U.S. sales of wire generally, the Department is prevented from calculating a CEP profit rate according to the methodology in the Policy Bulletin. The petitioners conclude that the Department should simply use the profit rate that Camesa earned on home market sales of its wire division as the basis for the CEP profit ratio in the final determination.

⁵ See Memorandum entitled, "Preliminary Determination Margin Calculation for Aceros Camesa S.A. de C.V. Camesa" (December 5, 2013) (Preliminary Determination Calculation Memo) at 2 and Attachment 3.

⁶ See Camesa's November 20, 2013, Supplemental Section D Response at 2 and Exhibit SD 3-2.

⁷ The petitioners cite to the Department's November 7, 2013, Supplemental Questionnaire at 3 (Question 2), and Memorandum to Neal M. Halper from Kristin L. Case entitled, "Constructed Value Calculation Adjustments for the Preliminary Determination – Aceros Camesa, S.A. de C.V." (December 5, 2013) at 2, with respect to calculating CV profit.

Department's Position:

Upon further consideration of the record and the comments received from interested parties, we agree with Camesa that the preliminary CEP profit calculations contained the clerical errors Camesa notes in its case brief, and we corrected them for the final determination. We also calculated the portion of the CEP profit rate related to foreign like product using the FY 2012 revenue and cost data on the record for Camesa's domestic sales of wire products.⁸

We do not agree with Camesa, however, that our methodology for calculating a single profit rate for Camesa and WireCo is either improper or illogical. Section 772(f)(1) of the Tariff Act of 1930, as amended (the Act), directs the Department to calculate CEP profit by multiplying the total actual profit of a respondent by the "applicable percentage," which is defined under section 772(f)(2)(A) of the Act as the proportion of expenses incurred by the respondent in the United States to the respondent's total expenses. This provision clearly sets forth a statutory preference for the use of actual home market and U.S. sales data by defining "total expenses" as expenses incurred in the United States and the exporting country. However, in cases where home market data are not available, section 772(f)(2)(C)(ii) permits the Department to use alternative data to calculate a profit ratio. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that the Department may obtain alternate profit data from financial reports depending on the detail in which such reports break down total expenses and profit.⁹

In this case, we used information contained in the financial statements of Camesa and WireCo to calculate a profit rate for each company, in accordance with the SAA and our past practice when there is no viable home market.¹⁰ For Camesa, we have on the record a breakdown of sales and expense data that are specific to Camesa's domestic sales of wire products. Therefore, we used these data to calculate a profit rate for the foreign like product portion of the calculation.¹¹ To calculate a profit rate for sales of subject merchandise, we used total sales and expense figures from WireCo's fiscal year (FY) 2012 financial statement, as we do not have on the record a breakdown of WireCo's sales and expenses specific to its U.S. sales of wire products. Because these data show that WireCo incurred a loss, we set WireCo's profit rate to zero in the calculation.¹²

Finally, we disagree with Camesa that it would be appropriate to derive a CEP profit percentage simply by combining the revenues and expenses of affiliated parties. Use of such a methodology would result in the double-counting of the costs of PC tie wire sold by Camesa in the denominator of the calculation, because it would include both Camesa's cost of goods sold (COGS) for the subject merchandise and WireCo's cost of sales for the same merchandise.¹³ Moreover, the statute requires

⁸ See the Final Determination Calculation Memo.

⁹ See the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 at 824-25 (1994) (SAA).

¹⁰ Id.; see also Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Administrative Review 73 FR 50933 (August 29, 2008) (Thai Shrimp).

¹¹ See November 20, 2013, Supplemental Section D Questionnaire Response at Exhibit S3D-2 and the Final Determination Calculation Memo.

¹² See July 19, 2013, Section A Questionnaire Response at Exhibit A-7.

¹³ See Thai Shrimp and accompanying Issues and Decision Memorandum at Comment 8.

that CEP profit reflect the “total profit earned by the foreign producer, exporter, and affiliated parties...”¹⁴ As Camesa and WireCo operate as distinct companies, our calculation methodology is a reasonable method to account for the total profit. Therefore, for the final determination, we calculated the CEP profit ratio by first computing a separate profit ratio for each company and adding the two ratios together as we did in the Preliminary Determination.

Comment 2: Calculation of the CV Selling Expense Ratio

In the Preliminary Determination, we calculated CV selling expenses based on Camesa’s FY 2012 financial statement.¹⁵ Camesa argues that the Department erred in using the gross unadjusted “Selling Expenses” figure to calculate the CV selling expense ratio because this figure contains packing expenses, freight of finished goods, and customs expenses, all of which are not selling expenses.

The petitioners argue that the Department should use as the CV selling expense ratio the revised ratio for indirect selling expenses incurred in Mexico that the Department identified in its verification report.¹⁶ The petitioners note that this ratio is based on Camesa’s reported indirect selling expenses (net of freight, packing and customs expenses), but includes additional customer service expenses that Camesa had excluded from its home market indirect selling expense calculation.

Department’s Position:

We agree with Camesa that freight, customs and packing expenses should be deducted from Camesa’s FY 2012 total selling expense figure before calculating the CV selling expense ratio, and we revised the ratio accordingly for the final determination. We did not use the revised indirect selling expense ratio noted in the verification report, as the petitioner suggested, because that ratio was calculated using expenses and revenues for home market sales of all products, while the CV selling expense ratio is based on the expenses and revenues associated with sales of wire products to Mexico.¹⁷ Accordingly, in addition to the revisions noted above, we also included in the numerator of the CV selling expense ratio some additional customer service expenses associated with sales of wire products incurred by a Camesa affiliate.¹⁸

Comment 3: Treatment of Certain Salary Expenses

The petitioners argue that Camesa improperly classified as home market indirect selling expenses certain expenses incurred by an affiliated company for salaries. The petitioners contend that the expenses should instead be included in G&A. The petitioners claim that there is no basis for Camesa to claim that the administrative expenses recorded in its accounting records should be reclassified as

¹⁴ See Section 772(f)(2)(D) of the Act.

¹⁵ See Preliminary Determination Calculation Memo at 2 and Attachment 4.

¹⁶ See Memorandum to the File entitled, “Verification of the Sales Response of WireCo World Group Inc. (WireCo) in the Antidumping Duty Investigation of Prestressed Concrete Steel Rail Tie Wire from Mexico” (February 14, 2014) (WireCo Sales Verification Report) at 12.

¹⁷ See Final Determination Calculation Memo.

¹⁸ Id.

selling expenses, as Camesa's audited income statement separately reports selling and administrative expenses, and includes an auditor's opinion certifying that the financial statements are in accordance with Mexican reporting standards. The petitioners contend that the expense amount, as noted in the cost verification report, constitutes a significant adjustment to the total G&A expenses reported in Camesa's audited income statement; therefore, the Department should revise Camesa's net administrative expenses shown at cost verification Exhibit CVE-16 to include these salary expenses. Camesa notes that the expenses at issue are selling expenses and, as such, were properly reported as indirect selling expenses rather than as administrative expenses, in accordance with Department policy. Camesa adds that selling expenses are not G&A expenses, and that the Department has always required that they be reported in the sales file rather than the cost file, regardless of how such expenses are classified in a company's records. Camesa concludes that the Department should continue to exclude selling expenses from the G&A calculation.

Department's Position:

We agree with Camesa. Camesa reported in its questionnaire response that, while it does not directly employ sales personnel, "administrative services, including indirect selling services, are provided...by an affiliated company..." and that the selling services provided "consist primarily of preparing sales related documents, such as invoices."¹⁹ Camesa deducted these expenses from the reported G&A expense amount and added them to its indirect selling expense figure. We agree that Camesa was correct to do so, as the expenses at issue are related to the salaries of sales representatives and sales support staff. This treatment of "administrative" expenses as indirect selling expenses is consistent with the Department's practice in other cases in which we included the administrative expenses of the U.S. reseller in the calculation of indirect selling expenses because the expenses supported the selling functions of the reseller.²⁰ For these reasons, we continued to treat the salary expenses at issue as indirect selling expenses, rather than as G&A expenses, in the final margin calculation.

Comment 4: Preliminary Determination Unreconciled Difference

In the Preliminary Determination, we made an adjustment to account for an unreconciled difference between Camesa's reported costs and the costs recorded in its financial accounting system.²¹ Camesa argues that the Department's preliminary decision to adjust its reported cost of manufacturing (COM) by an unreconciled cost difference was in error. Camesa explains that the amount in question is not an unreconciled cost difference, but instead relates to the periodic valuation adjustments made to its finished goods inventory. Camesa argues that the Department verified that Camesa's reported costs include both standard costs and all associated variances. Accordingly, Camesa concludes that the

¹⁹ See Camesa's September 25, 2013, Supplemental Section C Questionnaire Response at 7; see also WireCo Sales Verification Report at 3 ("Corcam S.A. de C.V (Corcam) employs the Mexican sales and administrative staff") and 7 ("Camesa added to its indirect selling expense total an amount for expenses incurred by Corcam for sales department salaries.")

²⁰ See Citric Acid and Certain Citrate Salts from Canada: Preliminary Results of Antidumping Duty Administrative Review, 78 FR 34338 (June 7, 2013) and accompanying Decision Memorandum at 6, unchanged in Citric Acid and Certain Citrate Salts From Canada: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 64914 (October 30, 2013); see also Certain Frozen Warmwater Shrimp from Ecuador: Final Results of Antidumping Duty Administrative Review, 72 FR 52070 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 8.

²¹ See Preliminary Decision Memorandum at 8-9.

Department should reverse its decision in the Preliminary Determination to adjust Camesa's submitted COM for this item.

The petitioners argue that the Department should continue to adjust Camesa's reported COM to ensure that Camesa's actual POI costs are fully captured. The petitioners argue that, for the purposes of the Preliminary Determination, the Department correctly noted that the finished goods inventory balance in Camesa's audited financial statements equaled the sum of two separate accounts but that Camesa's cost reconciliation worksheet only referenced the POI change in the balance of one account. The petitioners also state that during the cost verification the Department determined that one account reflected the standard cost of finished goods inventory and the second account was used to record the variances. Accordingly, the petitioners argue that the adjustment made at the Preliminary Determination is proper because it ensures that Camesa's full costs are captured.

The petitioners continue that, if the Department determines that it is not necessary to adjust Camesa's reported costs to include the inventory adjustment, it should ensure that the inventory adjustment is excluded from the COGS denominator used in the CV profit calculation.

Department's Position:

We agree with Camesa that, because its submitted cost reconciliation did, in fact, include both the standard costs and the applicable variances associated with changes in the finished goods inventory, there is no unreconciled cost difference. As such, it is no longer necessary to adjust Camesa's costs to account for any unreconciled cost difference, as was done for the Preliminary Determination. As explained in the cost verification report, the Department confirmed that Camesa's submitted cost reconciliation and product-specific costs included both standard material and processing costs, as well as the applicable purchase price variance, production variances, and net manufacturing variance.²² Additionally, the Department tied both the beginning and ending subject merchandise inventory balances to inventory records.²³ In doing so, the Department confirmed that the portion of the variances attributable to subject merchandise (which were a part of the periodic inventory valuation adjustments) had been included in Camesa's submitted costs.²⁴

We disagree with the petitioner that, in the event we decline to adjust Camesa's reported costs to reflect the inventory adjustment, we need to adjust the COGS denominator of the CV profit calculation. As explained above, there is no inventory adjustment that needs to be made. Camesa's reported costs include product-specific standard costs and all applicable variances. Likewise, the COGS denominator used in the CV profit calculation also includes product-specific standard costs and all applicable variances. As such, there is no reason to make any adjustment to the denominator of the CV profit calculation.

²² See Memorandum to File entitled, "Verification of the Cost Response of Aceros Camesa S.A. de C.V. in the Less-Than-Fair-Value Investigation of Prestressed Concrete Steel Rail Tie Wire from Mexico," (February 18, 2014) (Cost Verification Report) at 10.

²³ Id. at 9.

²⁴ For a detailed explanation of Camesa's cost accounting practices as they relate to finished goods, see Cost Verification Report at 5-6.

Comment 5: Cost Verification Findings

The petitioners argue that the Department should adjust Camesa's reported costs to reflect each of its three findings from the cost verification. The petitioners request that the Department adjust Camesa's reported raw material costs for customs duties and applicable inland freight charges that were excluded. The petitioners also request that the Department correct Camesa's understated processing costs attributable to two work orders. Finally, the petitioners argue that the Department should revise Camesa's reported G&A expenses to exclude the interest income from VAT recovery because interest income, when short-term in nature, is treated as an offset to financial expenses rather than an offset to G&A expenses.

Camesa did not comment on the above issues.

Department's Position:

We agree with the petitioners that it is appropriate to adjust Camesa's submitted COM to reflect unreported freight charges, duty costs, and understated processing costs. Section 773(b)(3)(A) of the Act mandates that the Department include the cost of materials and of fabrication in the calculation of COP. Moreover, section D of the Department's standard antidumping questionnaire instructs respondents to include the cost of "transportation charges, import duties and other expenses normally associated with obtaining the materials that become an integral part of the finished product" in its direct materials cost calculation.²⁵ Additionally, it is the Department's standard practice to adjust a respondent's reported costs to account for such omissions.²⁶ Accordingly, we increased Camesa's reported COM to reflect these costs.²⁷

We also agree with the petitioners that it is appropriate to disallow Camesa's offset to its G&A expenses with interest income attributable to VAT recovery. It is the Department's longstanding practice to calculate G&A-expense factors at the company-level and to calculate financial-expense factors at the highest level of consolidation.²⁸ Moreover, the Department permits respondents to offset their financial expenses, not their G&A expenses, with short-term interest income generated from working capital.²⁹ Accordingly, because the income in question is interest income, it is not appropriate to include it as an offset to G&A expenses.

²⁵ See June 19, 2013, Section D Questionnaire at D-16 (Section D Questionnaire).

²⁶ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico, 77 FR 17422 (March 26, 2012) and accompanying Issues and Decision Memorandum at Comment 33 (adjusting respondent's reported costs to reflect understated inland freight charges).

²⁷ See Cost Calculation Memo.

²⁸ See, e.g., Stainless Steel Sheet and Strip in Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review, 68 FR 6716 (February 10, 2003) and accompanying Issues and Decision Memorandum at Comment 5; and Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Final Results of Antidumping Duty Administrative Review, 76 FR 76939 (December 9, 2011) and accompanying Issues and Decision Memorandum at Comment 9.

²⁹ See, e.g., Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 40848 (July 11, 2012) and accompanying Issues and Decision Memorandum at Comment 6.

Comment 6: G&A Offsets

The petitioners argue that the Department should not permit Camesa to offset its G&A expenses with income categorized as “Deferred Revenue from Cayman.” The petitioners argue that this income item, which is classified by Camesa as an “other income” item, was attributable to specific non-subject merchandise.³⁰ The petitioners argue that excluding this revenue item from Camesa’s G&A-expense factor calculation is consistent with Camesa’s treatment of certain selling expenses related to non-subject merchandise such as commissions, which Camesa removed from its indirect selling expense calculation.

Camesa asserts that the petitioners’ argument is based on the mistaken belief that the Department’s practice is to calculate G&A expenses on a product-specific basis. Camesa argues that the Department should follow its longstanding practice and use the FY company-wide G&A rate. Camesa also asserts that the petitioner mistakenly equated the calculation of G&A expense factors with the calculation of indirect selling expense rates, even though G&A expenses are calculated on a company-wide basis and indirect selling expense rates are calculated on a market or product-group basis. Finally, Camesa claims that it deducted the commissions from its indirect selling expense calculation because commissions are not indirect selling expenses and not because the commissions were related to sales of non-subject merchandise.

Department’s Position:

We agree with the petitioners and disallowed the offset in question. Section 773(f)(1)(A) of the Act states that the COP “shall normally be based upon 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 . . . and reasonably reflect the costs associated with the production and sale of merchandise.” Because there is no definition in the Act of what a G&A expense is or how the G&A expense ratio should be calculated, the Department has, over time, developed a consistent and predictable practice for calculating and allocating G&A expenses, as described in the Department’s standard section D questionnaire.³¹ This reasonable, consistent, and predictable method is to calculate the rate based on the company-wide G&A costs incurred by the producing company allocated over the producing company’s company-wide COGS, and not on a consolidated, divisional, or product-specific basis.³² The rationale for this approach is that, by definition, G&A expenses relate to the general operations of the company as a whole and not to specific products and processes. Accordingly, the Department’s well-established practice is to include in the G&A expense ratio calculation certain expenses and revenues that relate to the general operations of the company as a whole.

In determining whether it is appropriate to include particular items in the G&A expense ratio calculation, the Department reviews the nature of the item relative to the general operations of the

³⁰ Due to the business proprietary nature of this information, we cannot fully address it in this public document. For a more detailed discussion of this issue, see Cost Calculation Memorandum.

³¹ See Section D Questionnaire at D-14.

³² See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers From the Republic of Korea, 77 FR 75988 (December 26, 2012) and accompanying Issues and Decision Memorandum at Comment 7.

company. The income item in question is generated by sales of non-subject merchandise only.³³ Accordingly, because this income item is generated exclusively from and directly by non-subject merchandise sales, it is not, by definition, related to the general operations of the company as a whole. Accordingly, it is not appropriate to include this revenue as an offset to G&A.

Comment 7: CV Profit

Camesa argues that the Department should use its revised CV profit rate calculation that it submitted on November 26, 2013.

The petitioners disagree, claiming that because Camesa's request is limited to a single sentence in Camesa's case brief, Camesa did not satisfy its obligation to include the relevant law or facts in its case brief as required by 19 CFR 351.309(c)(2). The petitioners also argue that, because 28 U.S.C. 2637(d) requires that Camesa exhaust its administrative remedies and the U.S. Court of International Trade has recognized that the purpose of the exhaustion requirement is to allow the Department to "apply its expertise, rectify administrative mistakes and compile a record adequate for judicial review,"³⁴ Camesa's failure to articulate its position with clarity or detail prevents the Department from applying its expertise because the Department does not have any specific arguments from Camesa to which it may respond.

The petitioners explain that, for the purposes of the preliminary determination, the Department relied on information Camesa submitted pertaining to its domestic sales and the associated cost of sales of the wire rod division. The petitioners argue that the calculation contained in Camesa's November 26, 2013, submission includes an improper adjustment for costs that were incurred by Camesa's parent and allocated to Camesa. The petitioners note that Camesa had stated previously that its parent company had not provided any administrative services on its behalf.

Department's Position:

Although the petitioners are correct that Camesa's case brief contains only a single sentence requesting that the Department use its November 26, 2013, CV profit calculation, the Department had informed Camesa that, due to time constraints, information submitted after November 21, 2013, may not be considered for the preliminary determination.³⁵ We note that Camesa explained in its November 26, 2013, submission that its revised CV profit calculation included management fees incurred by its parent company and billed to Camesa.³⁶ Camesa further explained that the management fees were included in the "Other Income and Expense" line of Camesa's audited financial statements.³⁷ Therefore, the record contains sufficient verified information for the Department to consider and analyze Camesa's request that the Department use its revised CV profit calculation.

³³ See Cost Verification Report at 23.

³⁴ See *Carpenter Tech. Corp. v. United States*, 452 F. Supp. 2d 1344, 1346 (CIT 2006).

³⁵ See, e.g., Letter to Camesa, dated November 21, 2013.

³⁶ See Camesa's November 26, 2013, Submission at 2.

³⁷ See *id.*

As explained in the Preliminary Determination, the Department cannot determine profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in the ordinary course of trade in the comparison market, because Camesa does not have a viable comparison market.³⁸ Therefore, we relied on section 773(e)(2)(B) of the Act to determine Camesa's profit.

In situations where profit cannot be calculated under the preferred method, section 773(e)(2)(B) of the Act sets forth three alternatives. The statute does not establish a hierarchy for selecting among these three alternatives.³⁹ Nonetheless, for purposes of the Preliminary Determination, we examined each alternative in searching for an appropriate method.⁴⁰ Alternative (i) of section 773(e)(2)(B) of the Act specifies that profit may be calculated based on "actual amounts incurred by the specific exporter or producer . . . on merchandise in the same general category" as subject merchandise. In the Preliminary Determination, we explained that, because Camesa provided sales and cost information specific to its sales in Mexico of products generally classified as wire, we relied on alternative (i) to calculate Camesa's profit.⁴¹

For the final determination, we continued to rely on the information submitted by Camesa concerning its sales in Mexico of products generally classified as wire for the purposes of calculating CV profit pursuant to section 773(e)(2)(B)(i) of the Act. However, the profit rate used in the Preliminary Determination contained a clerical error. Specifically, Camesa's submitted CV profit calculation relied on selling expense and G&A-expense calculations and allocations that were different from those used by the Department in its COP calculations.⁴² Therefore, for the final determination, the Department continued to use the information submitted by Camesa pertaining to its sales revenue and cost of sales for the wire products sold in Mexico. However, for the selling expense, G&A expense and financial expense ratios, the Department used the same rates as those used for the final COP calculations.⁴³ As the G&A expense ratio calculation already includes the management fees which Camesa claims should be included in its CV profit calculation, no further adjustment is necessary.⁴⁴

³⁸ See Preliminary Decision Memorandum at 9.

³⁹ See SAA at 840.

⁴⁰ See Preliminary Decision Memorandum at 9.

⁴¹ Id.

⁴² The calculation contained in Camesa's November 26, 2013, submission also relied on Camesa's own profit calculation.

⁴³ See Cost Calculation Memorandum at Attachment 3.

⁴⁴ See Cost Verification Report at 22 and Camesa's November 26, 2013, submission at 2.

Recommendation:

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

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

28 APRIL 2014
(Date)