

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 Less Than Fair Value
Investigation of Certain Cold Rolled Carbon Steel Flat Products
from Venezuela

SUMMARY:

We have analyzed the briefs and rebuttals of interested parties in the less than fair value (“LTFV”) investigation of Certain Cold-Rolled Carbon Steel Flat Products from Venezuela. As a result of our analysis, we have made changes from the Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Certain Hot Rolled Carbon Steel Flat Products from Venezuela, 67 FR 31273 (May 9, 2002) (“Preliminary Determination”). We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this Issues and Decision Memorandum. Below is the complete list of the issues in this investigation:

Issues:

- Comment 1: Reliability of Costs
- Comment 2: Major Inputs
- Comment 3: Depreciation
- Comment 4: General and Administrative Expenses (“G&A”)
- Comment 5: Financial Expenses
- Comment 6: Sidor's Home Market Credit Expenses
- Comment 7: Constructed Export Price Offset
- Comment 8: Home Market Indirect Export Billing Adjustment
- Comment 9: U.S. Inland Trucking Freight Expense
- Comment 10: Ministerial Error
- Comment 11: Ministerial Error
- Comment 12: Computer Code Language

DISCUSSION OF THE ISSUES:

GENERAL COMMENTS

Comment 1: Reliability of Costs

The Petitioners argue that the Department should reject Siderurgica del Orinoco C.A. (“Sidor”) cost data and apply adverse facts available. First, the Petitioners argue that Sidor failed to provide the requested reconciliation of the total cost of manufacturing from its books and records to the total of the per unit manufacturing costs submitted to the Department. They note that Sidor failed to provide the requested reconciliation in its response to Section D of the questionnaire and then failed to provide a complete and adequate reconciliation in response to the supplemental questionnaire. Finally, Petitioners note that Sidor was notified two weeks before the start of the cost verification in the Department’s cost verification agenda of the need to provide adequate support for the reconciliation.

Moreover, the Petitioners argue that without this reconciliation, the Department is unable to determine whether Sidor accounted for all costs related to the merchandise under investigation. They argue that because the Department is unable to determine whether Sidor properly accounted for all costs without the requested reconciliation, the Department is left with no way of determining whether any of Sidor’s reported cost data are correct. They argue that the lack of the reconciliation alone makes all of Sidor’s submitted costs unreliable. However, the Petitioners note that during the course of other testing, the Department found that certain costs had in fact been excluded from Sidor’s reported costs.

The Petitioners argue that Sidor’s contention that it presented a reconciliation is invalid and that any reconciliation was appropriately rejected. First, as Sidor acknowledges, no such attempted reconciliation is on the record here and second, assuming that Sidor did attempt to submit such a document, the Department properly rejected it as not adhering to the Department’s explicit requirements for the reconciliation.

The Petitioners also argue that, although the Department found that the costs used in the cost buildup tie to Sidor’s cost center reports, this does not mean that the buildup of Sidor’s reported costs are complete and accurate. The Petitioners note that Sidor’s failure to provide an adequate total cost reconciliation renders the buildup of its reported costs unreliable. Without this reconciliation, the Department cannot determine whether Sidor properly accounted for and allocated all costs related to the merchandise under investigation. This is the very purpose of the reconciliation.

Furthermore, the Petitioners argue that while Sidor’s attempts to minimize the fact that it used a plug number to complete the reconciliation and seeks to highlight the areas where the Department was able to tie to its records, Sidor does not address the fact that the total reconciliation is the linchpin of the verification process. The Petitioners cite to Certain Cut-to-length Carbon Steel Plate from Mexico, where the Department employed facts available because the respondent was unable to provide such a reconciliation (“Before assessing the reasonableness of a respondent’s cost allocation method, however, the Department must ensure that the aggregate amount of the reported costs captures all costs incurred by the respondent in producing

the subject merchandise during the period under investigation. See Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Mexico, 63 FR 48181 (September 9, 1998). This is done by performing a reconciliation of the respondent's submitted cost of production and constructed value data to the company's audited financial statements..."). The Petitioners argue that although the Department found that the costs in the buildup of the specific products that it analyzed at verification agreed to cost center reports and that the production quantities for the products agreed to the production reports, that does not mean that the buildups of Sidor's reported costs are complete and accurate since the cost center reports themselves may have been missing significant production costs.

The Petitioners note that section 776(b) of the Act states that in selecting adverse facts available, the Department may rely on information derived from the petition, a final determination in an investigation, any previous administrative review, or any other information placed on the record. Also the Statement of Administrative Action for the Uruguay Round Agreements Act ("SAA") expressly directs the Department to employ adverse facts available so as to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. The Petitioners argue that the unreconciled difference between the cost of manufacture from Sidor's books and records and the total cost of manufacture reported in the cost of production database, should be added to Sidor's reported cost of manufacture. The Petitioners state that this is a reasonable inference drawn from the facts on the record and also serves the underlying purpose of applying adverse facts available in that it does not reward Sidor for its failure to cooperate and it serves as an incentive for respondents to respond fully and accurately to the Department's requests for information.

Sidor asserts that the Department can rely on its reported costs. Sidor argues that at the cost verification the Department carried out extensive testing of the detailed cost of manufacturing buildups, including cost allocations. It argues further that the Department was able to tie Sidor's reported costs to its production books and records at each stage of the buildup. The respondent notes that the Verification Report documents the fundamental accuracy of Sidor's costs. In light of the amount of data that could be tied to its records, Sidor argues that it would be unfair for the Department to reject its reported costs.

Sidor argues that its failure to provide the overall reconciliation (*i.e.*, support for the difference between reported costs of cold rolled steel and Sidor's total period cost) does not warrant the rejection of its reported costs. First, Sidor argues that although it did not provide the reconciliation in the precise manner requested, it argues that it did provide a reconciliation. Sidor argues that they satisfied the Department's request by providing a reconciliation of Sidor's POI total manufacturing costs by type of cost, rather than by product. Sidor also contends that this was not reflected in the verification report exhibits.

Sidor objects to the cost verification report's portrayal of it as ill prepared for the verification. The respondent argues that the initial and supplemental questionnaires were returned in a timely fashion and, at the verification, the company books and records were at the verifiers disposal as was the cost accounting staff to answer any of the Department's questions. The respondent contends that there should be no questions of its full cooperation in the case.

Sidor argues that because of the high cost of participating in this investigation, it was not able to ask its attorneys to attend the verification. Sidor also states that it was unaware that it

could have summed the standard variable costs of non-subject merchandise and allocated variances and other fixed costs. Sidor argues that it did not understand that it could have done the exercise in this way and that it would be unreasonable to conclude that its cost data is unreliable.

Finally, Sidor disagrees with the Petitioners' suggestion that for adverse facts available the Department should increase Sidor's costs across the board by the total unreconciled difference. Sidor argues that it would have the effect of attributing to cold-rolled steel, which is only one of many steel products produced, Sidor's total cost of manufacturing for the period.

Department's Position:

We disagree with Sidor. We were unable to verify the completeness of the CONNUM-specific costs it reported. The individual verification procedures cited by Sidor that were completed are tests of individual elements of the submitted data and do not, separately or combined, indicate that Sidor correctly reported its cost data. Section 773(f)(1)(A) of the Act specifically requires that costs be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles ("GAAP") of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. In accordance with the statutory directive, the Department will accept costs of the exporter or producer if they are based on records kept in accordance with GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise i.e., the cost data can be reasonably allocated to subject merchandise). In determining if the costs were reasonably allocated to all products the Department will, consistent with section 773(f)(1)(A) of the Act, examine whether the allocation methods are used in the normal accounting records and whether they have been historically used by the company.

Before assessing the reasonableness of a respondent's cost allocation methodology, however, the Department must ensure that the aggregate amount of the reported costs captures all costs incurred by the respondent in producing the subject merchandise during the period under examination. This is done by performing a reconciliation of the respondent's submitted cost of production ("COP") and constructed value ("CV") data to the company's audited financial statements, when such statements are available. Because of the time constraints imposed on verifications, the Department generally must rely on the independent auditor's opinion concerning whether a respondent's financial statements present the actual costs incurred by the company, and whether those financial statements are in accordance with GAAP of the exporting country. In situations where the respondent's total reported costs differ from amounts reported in its financial statements, the overall cost reconciliation assists the Department in identifying and quantifying those differences in order to determine whether it was reasonable for the respondent to exclude certain costs for purposes of reporting COP and CV. Although the format of the reconciliation of submitted costs to actual financial statement costs depends greatly on the nature of the accounting records maintained by the respondent, the reconciliation represents the starting point of a cost verification, because it assures the Department that the respondent has accounted for all costs before allocating those costs to individual products.

Sidor, however, was unable to perform such a reconciliation. We agree with the Petitioners that the verification was not the time or place for Sidor to explain that it could not

complete the requested reconciliation. Moreover, the “reconciliation” Sidor presented at verification failed to complete the purpose of the requested reconciliation, that is, that all costs were appropriately included or excluded. Sidor’s alternative worksheets simply tied costs to production records proving only that the costs that were included were appropriately included, but did not establish whether there were other costs that should have also been included. Additionally, the Department found that Sidor failed to include certain costs (i.e., depreciation and general and administrative). These unreported costs were substantial and raise further our concerns about whether there are additional cost center costs related to the cold-rolled production process which were not reported by Sidor and not discovered by the Department at verification due to Sidor’s inability to complete the overall cost reconciliation. See Verification Report on the Cost of Production and Constructed Value Data Submitted by Siderurgica del Orinoco, C.A. dated August 2, 2002 (“Cost Verification Report”).

We disagree with Sidor that we should factor into our decision Sidor’s decision not to have its counsel present at verification. Moreover, we note that we made every attempt at verification to assist Sidor officials in completing the requested reconciliations, including suggesting to them various ways to complete the task and by identifying the typical reconciling items they would have to quantify. See Cost Verification Report at 12. However, it is not the Department verifiers’ responsibility to prepare the cost reconciliations for the respondent.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information by the deadlines for such information or in the form and manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides information which cannot be verified the Department shall use, subject to sections 782(d), and (e) facts otherwise available in reaching the applicable determination. In this investigation, Sidor failed to provide the necessary information (i.e., a proper reconciliation that could be supported by records, rather than the “plugged” reconciliation it provided, that is, a conclusory reconciliation that does not identify the relevant cost elements) and in some instances was found to have excluded costs. In addition, by providing an incorrect reconciliation it impeded the verification process to the point where the test could not be performed. Finally, since Sidor’s inability to reconcile its costs renders its reported per-unit costs unreliable and not verifiable we are unable to calculate a margin for Sidor. Therefore, we conclude that, pursuant to section 776(a) of the Act, use of facts otherwise available is appropriate.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and, to the extent practicable, shall provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department, subject to section 782(e), may disregard all or part of the original and subsequent responses, as appropriate. In this case, as the Petitioners noted above, the Department requested a proper reconciliation on several occasions, including our intention of testing the reconciling items at verification. We were unable to inform Sidor of its deficiency (in plugging the reconciliation), or to address its problems in doing such a reconciliation, until verification when the deficiency was discovered. Prior to verification we

appropriately relied upon Sidor's claim that it had performed the requested reconciliation in a legitimate manner that would satisfy the intended purpose of the exercise.

Section 782(e) of the Act provides that the administering authority shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements, if – 1) the information is submitted by the deadline established; 2) the information can be verified; 3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; 4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements; and 5) the information can be used without undue difficulties. In this case a proper reconciliation was never provided, which renders the reported costs unverifiable. Additionally, since we could not verify that all costs were properly included, Sidor's reported per-unit costs can not serve as a reliable basis for reaching the final determination. Thus, in this case section 782(e) of the Act does not compel us to use Sidor's reported per-unit data.

Therefore, the Department has determined that, since Sidor's cost data could not be verified, section 776(a) of the Act requires the Department to use the facts available with respect to this data. However, the Department must also determine whether (1) the use of facts available for Sidor's cost data renders the rest of Sidor's submitted information (*i.e.*, the sales data) not usable, and (2) whether the use of adverse information as facts available is warranted.

First, we have determined that the unreliability of Sidor's cost data renders its sales data unusable without undue difficulty. This is due to the fact that Sidor's inability to reconcile its cost data has rendered its per-unit cost data incomplete because home market sales cannot be tested to determine whether they were made at prices at or above production cost. Since the Department can only make price-to-price comparisons (normal value ("NV") to export price ("EP")) using those home market sales that did not fail the cost test, the systematically flawed nature of the cost data makes these comparisons impossible. In the absence of home market sales data (*i.e.*, when the home market is viable but there are insufficient sales above COP to compare with U.S. sales), the Department would normally resort to the use of CV as NV. However, the CV information reported by Sidor suffers from the same problem as the unverifiable COP cost data. Therefore, the necessity for use of facts available for COP data precludes the use of the submitted CV information.

Second, the Department's practice has been to reject a respondent's submitted information in total when flawed and unreliable cost data renders any price-to-price comparison impossible. See Notice of Final Determination of Sales at Less than Fair Value: Grain-Oriented Electrical Steel From Italy, 59 FR 33952 (July 1, 1994) ("Electrical Steel From Italy") See, also Certain Cut-to-Length Carbon Steel Plate from Mexico: Notice of Preliminary Results of Antidumping Duty Administrative Review, 63 FR 48181, 48138 (September 9, 1998) and Certain Cut-to-Length Carbon Steel Plate from Mexico: Notice of Final Results of Antidumping Duty Administrative Review 64 FR 76, 77-78 (January 4, 1999). If the Department were to accept verified sales information when a respondent's cost information does not verify, respondents would be in a position to manipulate margin calculations by permitting the Department to verify only that information which the respondent wishes the Department to use in its margin calculation. Sidor has provided home market and U.S. sales information in proper form which

could be verified, but has not provided cost data which could be verified. See Cost Verification Report at 2, 12, and 13. Accordingly, we find that there is no reasonable basis for determining NV for Sidor in this investigation. As a result, we could not use Sidor's home market sales data in determining a dumping margin. The Department, therefore, had no choice but to resort to total facts available.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also SAA at 870. Specifically, section 776(b) of the Act provides that, where the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority" the Department "may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." As discussed above, Sidor failed to reconcile the reported costs to its normal cost accounting system. Moreover, Sidor made no effort to provide the Department with notice of this defect. We have thus determined that Sidor has not acted to the best of its ability to comply with our requests for information. Accordingly, consistent with section 776(b) of the Act, we have applied total adverse facts available. As discussed below, as adverse facts available we have used the rate calculated for the preliminary determination, adjusted for a ministerial error.

In this case, we have two margin rates on the record (the estimated petition rate and the preliminary rate). It would be inappropriate to assign Sidor the lower rate from the petition because the Department applies adverse facts available "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870. Moreover, while we recognize that Sidor has placed additional information on the record since the preliminary determination and both Sidor and the Petitioners have provided comments on our preliminary margin calculation, we do not find it appropriate to consider this data and these comments to adjust the preliminary margin calculation. Because of Sidor's failure to reconcile its reported cost data to its books and records, the reported cost database is incomplete. We do not know what net effect a properly reconciled cost database would have on the margin. The preliminary rate represents a calculated rate based on the information available to the Department at the time of its determination. Accordingly, we have not adjusted the preliminary rate other than to correct for the ministerial error and minor corrections presented at verification which the Department stated it would address in the final determination (see Ministerial Error Memo).

Given that there are only two rates on the record, the corrected preliminary rate and petition rate, and given our obligation to prevent a more favorable result being generated by a failure to cooperate, we must apply the corrected preliminary rate. For calculation correction of the prelim rate, see Analysis for the Final Determination of Cold-Rolled Carbon Steel Flat Products from Venezuela: Siderurgica del Orinoco C.A.'s ("Sidor"), dated September 23, 2002. No corroboration of the corrected prelim rate is necessary because we are relying on information obtained in the course of the investigation, rather than secondary information.

As facts otherwise available, we are making an adverse inference and assigning to Sidor the weighted-average margin of 58.95 percent calculated for the Preliminary Determination based on Sidor's submitted information (taking into account a ministerial error). See Analysis of Allegation of Ministerial Error Memorandum: Antidumping Duty Investigation of Certain Cold-

Rolled Carbon Steel Flat Products from Venezuela, dated May 17, 2002. This rate is the higher of the petition margin recalculated for the Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 54198 (October 26, 2001) (“Notice of Initiation”), or the highest margin calculated in this proceeding. See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova, 67 FR 55790 (August 30, 2002) and Notice of Final Determination of Sales at Less Than Fair Value: Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom, 61 FR 51411, 51412 (October 2, 1996). Thus, we are assigning the higher calculated rate from the Preliminary Determination to Sidor, rather than the lower petition rate.

Comment 2: Major Inputs (Electricity and Iron Ore costs)

The respondent argues that Sidor should not be penalized because it did not provide the financial statements of its electricity and iron ore suppliers. The respondent contends, under Venezuelan law, financial and accounting information is confidential, and it is practically impossible to obtain such information from companies other than one’s own. The respondent notes that Sidor provided substantial information on the prices that its electricity supplier charged other customers. On this basis, the Department suggests increasing the cost of electricity of Sidor because it noted that three other entities paid more than Sidor per kilowatt hour. However, the record contains no information suggesting that the other customers are comparable to Sidor. In these circumstances, the respondent argues that they should not be punished for failing to provide information which it did not have and should not draw adverse inferences from information that is incomplete.

The Petitioners note that Sidor had not shown that it made any attempt to obtain financial statements of the affiliates and can not claim that the financial statements are impossible to obtain with out having made such an effort. The lack of any showing of Sidor’s attempt to procure its affiliates’ cost of production for electricity and iron ore and the market price information for iron ore shows that Sidor failed to cooperate by acting to the best of its ability. Also, the failure to provide necessary information to make application of the major input rule impossible. Therefore the Petitioners contend, that the lack of this information on the record renders Sidor’s costs unreliable.

The Petitioners also state that Sidor failed to provide necessary information to enable the Department to apply the major input rule to properly value inputs obtained by Sidor from its affiliates, specifically electricity and iron ore. Sidor failed to provide the affiliate’s cost of production and market prices for the iron ore. Therefore, it cannot be determined whether the transfer price of electricity or iron ore used by Sidor in its reported costs is lower, higher, or comparable to the cost of production.

Department’s Position:

Because we have applied total adverse facts available (“AFA”), as explained in Comment 1, we need not discuss this argument. See SAA at 892.

Comment 3: Depreciation

The Petitioners argue that Sidor did not calculate product-specific depreciation expense. Sidor has two distinct production lines, one for flat products from slabs and one for bars and wire rod from billets. The Petitioners state that Sidor should have at least calculated separate depreciation rates for the two production lines but failed to do so which is further evidence of the unreliability of Sidor's reported costs.

The respondent contends that such disagreement on methodological issues should not be considered a basis for questioning the overall reliability of Sidor's reported costs. Sidor argues that it calculates these ratios in accordance with the methods used in its ordinary course of business. Sidor notes that it does not normally attribute to production costs depreciation that is not related to productive assets.

Department's Position:

Because we have applied total AFA, as explained in Comment 1, we need not discuss this argument. See SAA at 892.

Comment 4: General and Administrative Expenses (G&A)

The respondent notes that the Department is considering adjusting Sidor's reported G&A ratio because it disagrees with the precise methodology followed by Sidor. The respondent contends that such disagreement on methodological issues should not be considered a basis for questioning the overall reliability of Sidor's reported costs. Sidor calculated these ratios in accordance with the methods used in its ordinary course of business. For G&A expense, Sidor included in its calculation the accounts that it considers in the normal course for these purposes.

The Petitioners argue that Sidor misreported its G&A expense.

Department's Position:

Because we have applied total AFA, as explained in Comment 1, we need not discuss this argument. See SAA at 892.

Comment 5: Financial Expense

Although the Department was able to arrive at possible corrections to this ratio using data available to it at verification, the Department found significant errors in Sidor's calculation. The Petitioners contend that the nature and the magnitude of these errors, especially when considered in conjunction with the failure to provide an adequate reconciliation, justify finding Sidor's costs to be unreliable in their entirety and justify the application of adverse facts available.

The respondent contends that such disagreement on methodological issues should not be considered a basis for questioning the overall reliability of Sidor's reported costs. Sidor calculates these ratios in accordance with the methods used in its ordinary course of business. The respondent contends to the extent that the Department continues to disagree with Sidor's calculation of these items, the Department should make the necessary adjustment to the Sidor's cost in the final determination.

Department's Position:

Because we have applied total AFA, as explained in Comment 1, we need not discuss this argument. See SAA at 892.

Comment 6: Sidor's Home Market Credit Expenses

Petitioners state that with respect to Sidor's home market sales involving multiple payments, the Department instructed the company to report the date and amount of each of the payments it received or, if this was not possible, to report the first date of payment for such sales. Petitioners argue that Sidor reported the last date of payment for such sales. Petitioners assert that Sidor did not attempt to show or even claim that it was unable to determine the dates of individual payments for sales involving multiple payments and stated only that this process would be "time consuming" and require "manipulation" of its accounting system.

Petitioners contend that at verification Sidor did not provide any information to show that it was unable to report the dates of the individual payments for its home market sales involving multiple payments. Petitioners state that Sidor claimed for the first time that it had reported the first date of payment for the home market sales in question. Petitioners assert that Sidor had previously and consistently stated that it was reporting the last date of payment, not the first, for such sales. Thus, Petitioners argue that any correction to these assertions was required to have been made in the minor corrections submitted at the outset of verification.

Petitioners argue that Sidor's current home market sales database does not reflect the methodology reported to the Department at verification. Additionally Petitioners assert that the Department should disregard Sidor's contention that it reported the first date of payment for these sales as unsupported on the record and inconsistent with its prior statements on this issue.

Further, Petitioners argue that Sidor's use of the last payment date for the home market sales involving multiple payments has the effect of overstating its credit expenses and artificially decreasing the dumping margin. Furthermore, Petitioners state that based on Sidor's failure to act to the best of its ability to report the home market payment dates requested by the Department, the Department should apply partial adverse facts available for the company's home market credit expenses because Sidor has not identified or provided any basis to identify the specific home market sales involving multiple payments. Finally, Petitioners state as partial adverse facts available the Department should apply the lowest reported non-zero home market credit expense to all of Sidor's home market sales for which it has reported non-zero credit expenses.

Sidor argues that the Department verified payment dates on home market sales at verification and noted no discrepancies. Sidor asserts that only 1.5% of home market sales has multiple payment dates. Sidor notes that for the sales involving partial payment, Sidor reported the last payment date. Sidor contends that the reference in the home market verification report to the first payment date is a misstatement. Sidor states that it was not possible to extract from the accounting system within a reasonable amount of time the partial payment dates for the 1.5% of the sales that had multiple payment dates. Sidor argues that it has cooperated to the best of its ability and the Department should accept Sidor's verified payment dates.

Department's Position:

Because we have applied total AFA, as explained in Comment 1, we need not discuss this argument. See SAA at 892.

Comment 7: CEP Offset

Petitioners argue that Sidor has failed to meet its burden to establish its entitlement to a constructed export price ("CEP") offset and the Department should deny Sidor's claim for such

an adjustment in the final determination. Petitioners assert that a decision of whether to grant a CEP offset is made by comparing the actual selling functions and activities performed for the respondent's home market and CEP sales as well as the degree to which those selling functions and activities are performed for the respective sets of sales.

Petitioners state that it is the burden of the respondent to demonstrate that its categorizations of the levels of trade for its sales are correct. Petitioners argue that Sidor has failed to satisfy its burden to demonstrate that its home market sales were made at a more advanced level of trade than its CEP sales in the United States and that Sidor is entitled to a CEP offset. Petitioners contend that Sidor failed to provide documentary evidence either in its questionnaire responses or at verification that would substantiate its description of the selling functions performed for its home market and U.S. sales. Petitioners argue that Sidor's showing of its selling functions consisted of nothing more than the oral accounts of its representatives.

Additionally, Petitioners assert that the selling functions performed in the home market were not substantially different from and more advanced than those in the United States. Petitioners argue that the difference between Sidor's selling functions for its home market and CEP sales can hardly be considered "substantial." Finally, Petitioners assert that Sidor's claim for a CEP offset is without merit and should be denied.

Sidor argues that the Department discussed level of trade with company officials at verification and noted no discrepancies. Sidor asserts that there is no reference in the verification report that any request for documentation went unsatisfied. Sidor contends that the Department should find that Sidor correctly reported level of trade. Additionally, Sidor argues asserts that the Department has already examined this issue in the preliminary determination where the Department determined that both home market level of trades were at a more advanced stage of distribution when compared to respondent's CEP sales. Finally, Sidor argues that the Department should continue to grant a CEP offset.

Department's Position:

Because we have applied total AFA, as explained in Comment 1, we need not discuss this argument. See SAA at 892.

Comment 8: Home Market Indirect Export Billing Adjustment

Petitioners argue the Department should deny the downward billing adjustments reported in the billing adjustment for the indirect export sales ("BILADJIN") field for home market sales to all customers. Petitioners contend that Sidor misreported the indirect export billing adjustments for the only customer for which it provided an agreement. Petitioners assert that the adjustment was made to all sales and should only have been made to sales prior to the agreement date, as sales after the agreement date should have already taken into account the discount. Petitioners contend that this shows that Sidor has likely misreported the billing adjustments in the BILADJIN field for other home market customers.

Sidor argues that Petitioners have misunderstood how the indirect export adjustment operated and that the Department should disregard Petitioners argument. Additionally, Sidor argues that Petitioners have erroneously interpreted the agreement that Sidor provided on the record as a sample for this billing adjustment. Sidor contends that the Department fully verified this adjustment and noted no discrepancies. Sidor explains that one customer can have some

transactions covered by an indirect export agreement and some transactions are not. Sidor states that it is reasonable that some transactions for one customer may show a zero in the billing adjustment field while others transactions for the same customer do reflect amounts other than zero in the billing adjustment field.

Department's Position:

Because we have applied total AFA, as explained in Comment 1, we need not discuss this argument. See SAA at 892.

Comment 9: U.S. Inland Trucking Freight Expense

Petitioners argue that in Sidor's U.S. sales database, Sidor reported incurring trucking freight expenses for some, but not all, CEP sales shipped to certain destinations and to certain customers. Petitioners argue that the reporting of the trucking expense is inconsistent. Petitioners assert that because Sidor did not explained the missing freight charges for shipments to a certain destination, the Department should apply partial adverse facts available for the missing expenses. Petitioners argue that the Department should apply the highest value reported in the trucking expense field, INLFPW1U, for any U.S. sale shipped to the destinations for which Sidor has failed to report trucking freight. However, Petitioners state that if the Department does not apply the highest reported value as facts available, at a minimum, for the sales shipped to the destinations with the missing values, the Department should employ as facts available the average per-ton trucking freight reported for other sales to those respective cities for the trucking expense.

Sidor argues that the Department verified that in some cases Siderca Corporation never incurred the trucking expense and was never invoiced for the service even though the merchandise was shipped by truck. Sidor asserts that it correctly reported the movement expenses for the trucking field, INLFPW1U .

Department's Position:

Because we have applied total AFA, as explained in Comment 1, we need not discuss this argument. See SAA at 892.

Comment 10: Ministerial Error Alleged During the Briefing Period

Petitioners argue that the Department's preliminary determination contains a ministerial error that should be corrected for the final determination. Specifically, in the Model Match Program, the Department inadvertently did not properly account for interest revenue. Petitioners argue that the Department should subtract rather than add INTREVVH when calculating DIRSELH2, SELLCOP, and DSELCOP.

Department's Position:

Because we have applied total AFA, as explained in Comment 1, we need not discuss this argument. See SAA at 892.

Comment 11: Ministerial Error Alleged After the Preliminary Determination

Respondents argue that the Department should correct the ministerial error addressed in the May 17, 2002 Memorandum by replacing line 15373 of the Model Match Program with $NETPRIH_B = MOVEH_B + DIRSELH_B$.

Department’s Position:

We agree. The Department will correct this ministerial error for the final determination as discussed in the See Analysis of Allegation of Ministerial Error Memorandum: Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Venezuela, dated May 17, 2002. See also, Analysis for the Final Determination of Cold-Rolled Carbon Steel Flat Products from Venezuela : Siderurgica del Orinoco C.A.’s (“Sidor”) dated September 23, 2002.

Comment 12: Computer Code Language

Sidor asserts that the Department should use the computer programming language provided in its brief to address the product coding change accepted at verification. Sidor argues that the programming code will allow all of the CONNUMs in the sales database to have corresponding CONNUMs in the cost database, which will allow the margin calculation program to operate properly. Petitioners did not provide comments on this issue.

Department’s Position:

We have made this change based on minor corrections presented at verification, as explained in Comment 1.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of the investigation and the final weighted-average dumping margins in the Federal Register.

AGREE_____

DISAGREE_____

Faryar Shirzad
Assistant Secretary
for Import Administration

Date