



A-307-824
Investigation
Public Document
E&C/V: KJA

July 24, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Antidumping Duty Investigation of Ferrosilicon from
Venezuela

I. Summary

We analyzed the comments of the interested parties in the antidumping duty (“AD”) investigation of ferrosilicon from Venezuela. As a result of this analysis and based on our findings at verification,¹ we made certain changes to the margin calculations for the respondent in this case, FerroAtlantica de Venezuela (“FerroVen”). We recommend that you approve the positions we developed in the “Discussion of the Issues” section of this memorandum.

II. Background

On March 11, 2014, the Department published in the Federal Register the Preliminary Determination of sales at less than fair value in the AD investigation of ferrosilicon from

¹ See Memorandum to the File from Kabir Archuleta, Senior International Trade Analyst, Office V, and Irene Gorelik, Senior International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V “Verification of Home Market Sales of FerroAtlantica de Venezuela (‘FerroVen’) in the Antidumping Duty Investigation of Ferrosilicon from Venezuela” (June 4, 2014) (“FerroVen HM Verification Report”); Memorandum to the File from Kabir Archuleta, Senior International Trade Analyst, Office V, and Irene Gorelik, Senior International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V “Verification of FerroAtlantica North America in the Antidumping Duty Investigation of Ferrosilicon from Venezuela” (June 4, 2014) (“FerroVen CEP Verification Report”); Memorandum to the File from Laurens van Houten, Senior Accountant, through Michael Martin, Lead Accountant, and Neal Halper, Office Director “Verification of the Cost Response Ferro Atlantica de Venezuela in the Antidumping Duty Investigation of Ferrosilicon from Venezuela” (June 17, 2014) (“FerroVen Cost Verification Report”).



Venezuela.² The period of investigation (“POI”) is July 1, 2012, through June 30, 2013.

We invited parties to comment on the Preliminary Determination. We received case briefs and rebuttal briefs from Petitioners³ and FerroVen on June 26, 2014,⁴ and July 3, 2014,⁵ respectively.

III. Scope of the Investigation

The merchandise covered by this investigation is all forms and sizes of ferrosilicon, regardless of grade, including ferrosilicon briquettes. Ferrosilicon is a ferroalloy containing by weight four percent or more iron, more than eight percent but not more than 96 percent silicon, three percent or less phosphorus, 30 percent or less manganese, less than three percent magnesium, and 10 percent or less any other element. The merchandise covered also includes product described as slag, if the product meets these specifications.

Ferrosilicon is currently classified under U.S. Harmonized Tariff Schedule (“HTSUS”) subheadings 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

IV. Margin Calculations

We made the following changes from the Preliminary Determination to the home market (“HM”) margin program:⁶

1. For the final determination, because we determined that FerroVen and its parent company, FerroAtlantica S.A. (“FASA”), should be treated as a single entity, we are not applying the rules under sections 773(f)(2) and (3) of the Tariff Act of 1930, as amended (“the Act”) for transactions between these entities. We have, however, adjusted the cost of raw materials transferred within the “single” entity to account for all of the costs incurred related to the intercompany purchases.

² See Ferrosilicon From Venezuela: Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination, 79 FR 13619 (March 11, 2014) (“Preliminary Determination”) and accompanying Preliminary Decision Memorandum (“Preliminary Decision Memorandum”).

³ Petitioners are CC Metals and Alloys, LLC, and Globe Specialty Metals, Inc.

⁴ See Letter from Petitioners “Ferrosilicon From Venezuela; Investigation; Case Brief of CC Metals and Alloys, LLC and Globe Specialty Metals, Inc.” (June 26, 2014) (“Petitioners Case Brief”); Letter from FerroVen “Ferrosilicon from Venezuela, Case No. A-307-824: Case Brief” (June 26, 2014) (“FerroVen Case Brief”).

⁵ See Letter from Petitioners “Ferrosilicon From Venezuela; Investigation; Rebuttal Brief of CC Metals and Alloys, LLC and Globe Specialty Metals, Inc.” (June 26, 2014) (“Petitioners Rebuttal Brief”); Letter from FerroVen “Ferrosilicon from Venezuela, Case No. A-307-824: Rebuttal Brief” (June 26, 2014) (“FerroVen Rebuttal Brief”).

⁶ See also Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V “Calculations Performed for FerroAtlantica de Venezuela for the Final Determination in the Antidumping Duty Investigation of Ferrosilicon from Venezuela” (“Final Analysis Memo”) dated concurrently with this memorandum; see also Memorandum to Neal M. Halper, Director, Office of Accounting, from Laurens van Houten, Senior Accountant, through Michael Martin, Lead Accountant “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – FerroAtlantica de Venezuela” (“Final Cost Calc Memo”) dated concurrently with this memorandum.

2. We recalculated certain taxes reported by FerroVen as direct selling expenses based on observations at verification.
3. We adjusted FASA's reported G&A expense ratio to include the impairment losses on the disposal of fixed assets of and for the tax on lease backs.
4. We excluded Government VAT credits and interest on the government payments in calculating FerroVen's G&A expense ratio. We continued to include the adjustment for depreciation expense that was made at the preliminary determination.
5. We revised FASA's financial expense ratio by removing interest income earned from long-term sources and corrected the denominator of the financial expense ratio to exclude packing costs.

We made the following changes from the Preliminary Determination to the U.S. sales margin program:⁷

1. We added freight expenses for certain sales based on observations at verification.
2. We adjusted warehousing expenses for certain U.S. sales observations based on findings at verification.
3. We revised the U.S. packing expense reported by FerroVen based on observations at verification.
4. We added U.S. duty expenses that were not reimbursed for certain U.S. sales observations.

V. Discussion of the Issues

Comment 1: Whether FerroVen and FASA Should be Treated as a Single Entity

FerroVen's Comments:

- The Department should collapse FerroVen with its parent company, FASA, and should not apply the transactions disregarded rule to the purchases of raw materials from FASA.
- FASA is responsible for all aspects of FerroVen's export sales, while FerroVen's role in export sales is limited to producing the merchandise in Venezuela.
- FerroVen is FASA's production facility in Venezuela and operates essentially as a toll processor, taking the raw materials supplied in part by FASA and producing the merchandise, while FASA handles the export sales and retains the revenues on export sales.
- The Department has a clear policy of treating producers and their affiliated exporters, or resellers, as single entities in these circumstances.

⁷ Id.

- When the Department treats producers and exporters as a single entity, the cost of production is based on the actual cost of production of the producing entity without the application of the “transactions disregarded” rule.
- While the Department’s collapsing regulation addresses only affiliated producers, the Department applies that regulation to treat a producer and its affiliated exporter as a single entity if the criteria are met.
- The U.S. Court of International Trade (“CIT”) has found that collapsing exporters of subject merchandise with producers of subject merchandise under the regulation is consistent with a “reasonable interpretation of the statute.”
- While the Department will not collapse producers located in different countries, even if the affiliation, common management, and intertwined operations tests are otherwise met, in this case both the production and the relevant sales activities take place in Venezuela, so the fact that FASA is incorporated in Spain has no legal relevance for the Department’s collapsing analysis as all relevant activities take place in Venezuela with respect to merchandise under consideration.
- FASA and FerroVen share a high level of common ownership, common managerial directors and board members, and the operations of FerroVen and FASA are significantly intertwined.
- The facts in this case are similar to the arrangement which led the Department to collapse two entities in Stainless Butt-Weld Pipe Fittings from Italy.⁸
- FASA is responsible for purchasing the majority of the raw materials for FerroVen’s production of ferrosilicon. FASA then invoices FerroVen, generally at the same price as it paid to the unaffiliated party.
- FerroVen is merely the producer of the ferrosilicon while all of the decisions regarding when and how to sell that ferrosilicon are made by FASA.
- Once two parties are found to constitute a single entity, they should be treated as such and the transactions disregarded rule no longer applies.
- The Department’s practice is not to apply the “transactions disregarded” or the “major input” rules in accordance with section 773(f)(2) and (3) of the Act, to transfers when affiliates are treated as a single entity.
- FASA is not acting as an affiliated supplier of raw materials to FerroVen but, rather, the two companies are acting as a single entity that carry out production and sale of ferrosilicon from Venezuela.

Petitioners’ Comments:

- The Department should not treat FerroVen and FASA as a single entity and the Department should continue to apply the transactions disregarded rule, in accordance with section 773(f)(2) of the Act, to value the materials purchased from FASA.

⁸ Citing to Stainless Steel Butt-Weld Pipe Fittings From Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination, 76 FR 79651 (December 22, 2011), unchanged in Stainless Steel Butt-Weld Pipe Fittings From Italy: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 24459 (April 24, 2012).

- By adding FASA’s selling, general and administrative (“SG&A”) and financial expenses to the acquisition costs of the inputs FASA resold to FerroVen, the Department applied the transactions disregarded rule consistent with its established practice.
- The Department’s regulation under 19 CFR 351.401(f) address only the collapsing of producers.
- In some cases, the Department has collapsed a home market producer with (1) a reseller located in another country or the United States where the reseller had no production operations, or (2) with a reseller/processor in the same country.
- FASA is not merely a reseller or exporter located in a third country, but has extensive ferrosilicon production operations elsewhere, in addition to Venezuela.
- These facts are fundamentally different from the facts in the cases where the Department has treated a reseller/exporter and a subject-country producer as a single entity.
- FerroVen wants the Department to collapse FerroVen and FASA based on FASA’s role as a reseller/exporter of FerroVen’s ferrosilicon for the purpose of reducing the valuation of the inputs that FASA obtained for FerroVen.
- FerroVen is attempting to achieve “collapsing” of FerroVen and FASA only with respect to a single aspect of FASA’s production-related operations without asking for a true collapsing of FerroVen’s and FASA’s ferrosilicon production operations.
- Even if the Department were to treat FerroVen and FASA as a single entity, it could not value the inputs that FASA purchased for FerroVen in the manner requested by FerroVen.
- The Department has made clear that the purpose of treating companies as a single entity is “to determine a single weighted-average margin for that entity, in order to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.”
- The full cost of FASA procuring and providing inputs to FerroVen is more than the price that FASA paid to the unaffiliated suppliers and includes the costs incurred by FASA in connection with identifying the suppliers, ensuring the quality of the inputs being purchased, negotiating sales terms and prices with the suppliers, arranging for and providing payments for the inputs, related tax payments by FASA, arranging for shipment of the inputs to FerroVen, and any other expenses incurred by FASA related to obtaining the inputs and providing them to FerroVen.
- It is these types of expenses that the Department captured in the preliminary determination when it added FASA’s SG&A and financial expenses to the acquisition costs of the inputs FASA resold to FerroVen.
- The Department should continue to not treat FerroVen and FASA as a single entity and continue to apply the transaction disregarded rule to value the inputs purchased by FerroVen from FASA.

Department’s Position: The Department agrees with FerroVen that it should be treated as a single entity with its parent company, FASA. Section 351.401(f) of the Department’s regulations outlines the criteria for determining the appropriate treatment of affiliated producers for purposes of antidumping proceedings –

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production

facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.

(2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:

- (i) The level of common ownership;
- (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.⁹

The CIT has upheld the Department's practice of determining whether to treat two or more companies as a single entity for antidumping purposes based on a consideration of whether there exists a significant potential for manipulation of prices and/or export decisions.¹⁰

The Department notes that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive. In the Preamble to the Department's regulations, the Department explained that this list is "non-exhaustive," and that not all of the factors identified in paragraph (f) need be present in order to collapse affiliated producers.¹¹ Additionally, the court has recognized that when determining whether there is a significant potential for manipulation, 19 CFR 351.401(f)(2)(i), (ii), and (iii) are considered by the Department in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse the producers.¹²

Further, the Department looks for "relatively unusual situations, where the type and degree of relationship is so significant that {it} finds that there is a strong possibility of price manipulation."¹³ Although the Department's regulations do not address the treatment of non-producing entities (e.g., exporters), where non-producing entities are affiliated, and there exists a significant potential for manipulation of prices and/or export decisions, the Department has considered such entities, as well as other affiliated entities (where appropriate), as a single entity.¹⁴ Moreover, in examining these factors as they pertain to a significant potential for

⁹ See 19 CFR 351.401(f).

¹⁰ See Hontex Enterprises v. United States, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004).

¹¹ See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27295, 27346 (May 19, 1997) ("Preamble")

¹² See Koyo Seiko Co., Ltd. v. United States, 516 F. Supp. 2d 1323, 1346 (CIT 2007) ("Koyo Seiko"), citing Light Walled Rectangular Pipe and Tube from Turkey; Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53675 (September 2, 2004) and accompanying Issues and Decision Memorandum, at Comment 10.

¹³ See Koyo Seiko, citing Nihon Cement Co. v. United States, 17 C.I.T. 400, 426 (CIT 1993) (quoting Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19089 (May 3, 1989)).

¹⁴ See, e.g., Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil; Notice of Final Determination at Sales at Less Than Fair Value, 65 FR 5554 (February 4, 2000); Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 63 FR 55578 (October 16, 1998) and accompanying Issues and Decision Memorandum at Comment 2; Automotive Replacement Glass

manipulation, the Department considers both actual manipulation in the past and the possibility of future manipulation.¹⁵ The Preamble underscores the importance of considering the possibility of future manipulation: “a standard based on the potential for manipulation focuses on what may transpire in the future.”¹⁶ We have, therefore, examined all three factors with respect to the potential for future manipulation.

The Department finds, pursuant to 19 CFR 351.401(f), that FerroVen and FASA should be treated as a single entity. In the Preliminary Determination, we found FerroVen and FASA affiliated pursuant to sections 771(33)(E) and (G) of the Act, based on ownership and common control, and stated that we would consider arguments by interested parties on the matter of treatment as a single entity for the final determination.¹⁷ No interested party commented on the Department’s finding of affiliation. Accordingly, for the final determination, the Department continues to find FerroVen and FASA to be affiliated on the aforementioned bases. In addition, for the reasons detailed below, pursuant to 19 CFR 351.401(f)(2), for the final determination we find that there is a significant potential for manipulation of the price or production between FerroVen and FASA.

In determining whether to treat FerroVen and FASA as a single entity, the record indicates that FerroVen is a subsidiary of FASA and both companies are members of Grupo FerroAtlantica.¹⁸ Therefore, in considering the level of common ownership pursuant to 19 CFR 351.401(f)(2)(i), and as detailed in the Preliminary Affiliation Memo, we find that there is common ownership between FerroVen and FASA.¹⁹

In regards to 19 CFR 351.401(f)(2)(ii), the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, the record of this proceeding shows that there are common managerial directors and board members between the two companies.²⁰

With respect to the third factor under 19 CFR 351.401 (f)(2)(iii), the presence of intertwined operations, the record of this proceeding demonstrates that the operation of these entities are

Windshields from the People’s Republic of China; Preliminary Results of Antidumping Duty Administrative Review, 69 FR 25545 (May 7, 2004); Automotive Replacement Glass Windshields from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review, 69 FR 61790 (October 21, 2004); Certain Preserved Mushrooms from the People’s Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004) and accompanying Issues and Decision Memorandum, at Comment 1. See also Hontex Enterprises, Inc. v. United States, 248 F. Supp. 2d 1323, 1343 (CIT 2003).

¹⁵ See Preamble, 62 FR at 27346.

¹⁶ Id.

¹⁷ See Memorandum to the File from Kabir Archuleta, Senior International Trade Analyst, Office V “Antidumping Investigation of Ferrosilicon from Venezuela: Preliminary Affiliation and Collapsing Memorandum” (March 4, 2014) (“Preliminary Affiliation Memo”).

¹⁸ See, e.g., Letter from FerroVen “Response to Section A of Initial Questionnaire” (November 1, 2014) (“FerroVen SAQR”), at 5-7 and Exhibit A-3.

¹⁹ Portions of this analysis rely upon the proprietary information of FerroVen and FASA. For proprietary details, see Final Analysis Memo, at 2-4.

²⁰ See, e.g., FerroVen SAQR, at Exhibit A-2, and Letter from FerroVen “Supplemental Section A Questionnaire Response” (December 9, 2013), at Exhibit A-18. See also Final Analysis Memo, at 2-4.

intertwined. As explained in the Preliminary Affiliation Memo, overall management of FerroVen's operations is provided by FASA.²¹ As noted in the FerroVen HM Verification Report, FerroVen is in charge of supplying the domestic market, while FASA is in charge of all exports.²² However, we note that FerroVen obtained authorization from FASA to sell to a known customer of FASA's in certain markets during the POI.²³ This indicates not only that FASA is in charge of FerroVen's operations and exerts a high level of control over FerroVen's export activities, but also that FerroVen itself is able to act as an exporter and is able to service export markets, a distinction that has served to support other single entity determinations.²⁴ Further demonstrating the intertwined operations of the companies is FerroVen's adoption of FASA's accounting system in 2013, which indicates a standardization of activities between the two companies and coordinated operations.²⁵ Additionally, the fact that FASA purchases a majority of raw materials for FerroVen's production of ferrosilicon²⁶ further supports the presence of intertwined operations. Finally, all U.S. sales are channeled through FASA and FASA is involved in every step of the U.S. sales transactions, including receipt of revenues for export sales to the United States.²⁷ Because FASA plays a significant role in both production decisions and pricing decisions, we find that the operations of FASA and FerroVen are sufficiently intertwined within the meaning of 19 CFR 351.401(f)(2)(iii).

Accordingly, based on the totality of circumstances, we find that there is significant potential for manipulation between FerroVen and FASA such that the two affiliates should be treated as a single entity pursuant to 19 CFR 351.401(f). Further, because we are finding that FerroVen and FASA should be treated as a single entity, we will not apply the major input rule, which only applies to transfers between affiliates rather than transfers within a single entity.²⁸

Petitioners argue that the facts in this case are fundamentally distinct from the facts in other cases where the Department has treated as a single entity a producer in the subject country with a reseller/exporter in a third country because FASA is more than a reseller in a third country, and because it also has extensive ferrosilicon production operations in countries other than Venezuela. However, the existence of affiliated producers in other countries does not preclude

²¹ See Preliminary Affiliation Memo, at 1.

²² See FerroVen HM Verification Report, at 4.

²³ *Id.*, at 12.

²⁴ See, e.g., Certain Oil Country Tubular Goods From Ukraine: Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 79 FR 10482 (February 25, 2014) and accompanying Decision Memorandum, at "Affiliation and Single Entity" ("OCTG from Ukraine Prelim") ("Interpipe NTRP and Niko Tube also conducted some sales on their own, demonstrating that they are able to carry out certain sales functions normally provided by Interpipe Ukraine") unchanged in Certain Oil Country Tubular Goods From Ukraine: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 79 FR 41969 (July 18 2014) ("OCTG from Ukraine Final"); Stainless Steel Butt-Weld Pipe Fittings From Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination, 76 FR 79651, 79652 (December 22, 2011) ("ownership, management and operations of a producer and an affiliated exporter were so intertwined that management could switch the role of producer and seller between the two companies without substantial retooling of either company"), unchanged in Stainless Steel Butt-Weld Pipe Fittings From Italy: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 24459 (April 24, 2012).

²⁵ *Id.*, at 6.

²⁶ See, e.g., FerroVen Cost Verification Report, at 17.

²⁷ See FerroVen CEP Verification Report, at 4.

²⁸ See section 773(f)(3) of the Act.

treating FASA and FerroVen as a single entity, nor is the Department required to encompass all affiliates in a single entity determination.²⁹ The Department's single entity analysis and determination aims to capture those elements of a corporate entity that are closely involved in the sale and production of the merchandise under consideration in the investigation or review, and to identify whether the relationship between the entities is such that there could be a significant potential for manipulation of price or production. The fact that FASA may have affiliations with producers of ferrosilicon in other countries does not mean that we cannot collapse FASA and FerroVen. It only means that we would not collapse FerroVen with those affiliates of FASA who produce ferrosilicon in other countries.³⁰

The Department disagrees with Petitioners' argument that the Department should continue to apply the major input rule, even if we determine that FerroVen and FASA should be treated as a single entity. The Department's practice is to disregard the major input and transactions disregarded rules when dealing with a single entity.³¹ However, we agree with Petitioners' contention that there may be some expenses overlooked if we were to disregard certain costs incurred when FASA provides raw materials to FerroVen.³² Therefore, in order to appropriately capture the cost to FASA of providing raw materials to FerroVen we have added to FASA's acquisition price, which in this case equals the transfer price, an amount for general and administrative ("G&A") expenses.³³

Comment 2: FerroVen's Purchases of Quartz

Petitioners' Comments:

- The Department should adjust the reported cost of quartz FerroVen purchased from Rocas, Acillas y Minerales, S.A. ("RAMSA"), to reflect the market price of quartz.
- The market price for quartz should be based on the amount paid by FerroVen to extract the quartz that remained in FerroVen's mine.

²⁹ See, e.g., OCTG from Ukraine Prelim, (finding six companies affiliated, but determining that five companies should be treated as a single entity), unchanged in OCTG from Ukraine Final; Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review, 76 FR 8338, 8339-40 (February 14, 2011) (finding seven companies affiliated, but determining that four companies should be treated as a single entity), unchanged in Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940 (August 19, 2011).

³⁰ See Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea, 71 FR 29310 (May 22, 2006), and accompanying Issues and Decision Memorandum, at Comment 15.

³¹ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum, at Comment 5 ("Specifically, it is the Department's practice not to apply the 'transactions disregarded' or the 'major input' rules in accordance with section 773(f)(2) and (3) of the Act to transfers when we treat affiliates as a single entity." (citations omitted)).

³² See Petitioners Rebuttal Brief, at 4-5.

³³ See Final Cost Calc Memo.

FerroVen's Comments:

- The transfer price (i.e., the price FerroVen paid RAMSA for the quartz) is almost double RAMSA's cost of production ("COP"), therefore, the Department should use the price paid by FerroVen to RAMSA for valuing its quartz purchases.
- FerroVen paid two companies a service fee for removing leftover quantities of quartz from a closed mine which FerroVen owned.
- An extraction fee paid to unaffiliated parties is not a purchase of quartz and is not representative of a market price for quartz.
- There are no market prices for quartz that are available for the Department's use in the major input analysis. Therefore, FerroVen argues that no adjustment is warranted.

Department's position: We agree with FerroVen that there is no need to adjust the value of quartz obtained from RAMSA. In the Preliminary Determination, we applied the major input rule in valuing the quartz purchased from FerroVen's affiliated supplier RAMSA. We found that the transfer price exceeded RAMSA's COP. There was no market price because FerroVen did not purchase quartz from any unaffiliated supplier nor did RAMSA sell quartz to any other company. Therefore, we relied on the transfer price of the quartz obtained from RAMSA in valuing the input. During the POI, FerroVen did pay two companies to remove the leftover quartz in its own mine which had been closed. This activity represents an insignificant amount of the total quartz obtained by FerroVen. Further, the extraction fees FerroVen paid to the extraction company are not purchases of quartz but rather fees for a service.³⁴ Record evidence shows that FerroVen owned the quartz involved in these transactions and thus it did not purchase the quartz.³⁵ Accordingly, we are relying on the transfer price paid to RAMSA for the quartz and not adjusting the cost of quartz for the final determination.

Comment 3: FerroVen's HM Interest Rate

FerroVen's Comments:

- The use of a U.S. dollar ("USD") denominated interest rate to calculate FerroVen's HM credit expense fails to accurately measure FerroVen's cost of extending credit on its HM sales.
- HM sales are denominated in USD so they could be based on convertible currency rather than inflation-affected Venezuelan bolivars ("Bs") and so that sales prices could be easily compared to costs of production ("COP").
- While HM invoices specify both a Bs and USD price, the customer always pays in Bs.
- Although FerroVen attempted to recoup the difference after a devaluation of the exchange rate in February, those attempts were often unsuccessful.
- The U.S. Court of Appeals for the Federal Circuit ("CAFC") has stated that credit costs should conform to commercial reality, which would require the use of FerroVen's interest rate in Bs.
- Policy Bulletin 98.2 states that a company is lending a currency to its purchaser between the time it ships and the time it receives payment for merchandise and that the rate

³⁴ See FerroVen Cost Verification Report, at 13.

³⁵ Id.

realized by the respondent in the relevant currency is the best measure of the time value of money and cost incurred in extending credit to customers.

- Because FerroVen invoices in both USD and Bs, statements from previous cases shed no light on the appropriate exchange rate in this case because those cases involved invoices only in USD.³⁶
- Policy Bulletin 98.2 does not offer guidance on the rate that should be used when the transaction is invoiced in two currencies.
- The purpose in calculating credit expenses is to capture the company's real cost of extending credit, which means that a Bs interest rate must be used.
- Interest rates in Venezuela during the POI did not move in tandem with exchange rates because the government enacted currency controls, but cannot control the inflation rate built into interest rates.
- Policy Bulletin 98.2 recognizes that foreign market borrowing rates do not provide an accurate valuation of loans extended to U.S. customers in dollars because interest rates and exchange rates do not always move in tandem, as is the case in Venezuela.
- The currency of FerroVen's HM transactions should be the currency in which the customer is obligated to make payment to FerroVen.
- The expense incurred by FerroVen waiting for payment in Bs cannot be captured by a USD interest rate that reflects market conditions in the United States.
- When FerroVen extends credit to its HM customers and finances that credit via loans from a credit institution, the credit is received in Bs rather than USD and FerroVen paid for that credit based on the prevailing interest rate for Bs.
- HM verification documents demonstrate that subsequent to the devaluation a customer paid the original amount invoiced in Bs rather than the value of the dollars appearing on the invoice.
- HM verification documents demonstrate that FerroVen's largest customer's debt to FerroVen and FerroVen's growing debt to banks to finance that debt was in Bs.

Petitioners' Comments:

- Despite FerroVen's claims that its HM sales are transacted in both USD and Bs, the record clearly shows that they are transacted in USD.
- FerroVen has stated that the invoice is stated in Bs as a requirement of Venezuelan law.
- For HM sales invoiced prior to a devaluation of Bs but paid after devaluation, the fact that FerroVen was able to recoup the difference in exchange rates further demonstrates that the USD price at which FerroVen invoiced its HM customers was the price at which the merchandise was sold.
- In circumstances where a respondent negotiated prices in USD and those prices did not change after they were agreed upon but the purchaser merely paid the foreign currency equivalent at the time of payment, the Department has found that the respondent set the price in USD and has used a USD borrowing rate for credit expenses.³⁷

³⁶ Citing to Hornos Electricos de Venezuela, S.A. v. United States, 285 F. Supp.2d 1353, 1358 (CIT 2012) ("Hornos Electricos").

³⁷ Citing to Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty, 66 FR 56274 (November 7, 2001) ("Rebar from Turkey (1999-2000)") and accompanying Issues and Decision Memorandum, at Comment 4.

- In circumstances where HM customers were invoiced in USD and the respondent received the local currency equivalent upon payment, the Department has calculated HM credit expenses on a USD borrowing rate.³⁸
- Because the record demonstrates that the currency of the HM sales was USD, the Department must use a USD-denominated interest rate to calculate credit expenses.
- The record contradicts FerroVen’s claim that there is a clear relationship between the amount of its Bs-denominated debt and the amount of credit extended to one customer because other factors reported by FerroVen were likely to have influenced the level of FerroVen’s short-term debt in Bs.
- Given that FerroVen has insulated itself from the hyperinflationary economic environment in Venezuela by adopting the USD as its functional currency, it would be distortive to measure FerroVen’s cost of extending credit to HM customers using an interest rate in Bs with a hyperinflationary inflation rate built into it.

Department’s Position: We disagree with FerroVen that we should use a Bs-denominated interest rate in the calculation of imputed credit expense for FerroVen’s HM sales. In the Preliminary Determination, we stated that “{b}ecause FerroVen has consistently stated that ‘. . . both domestic and home market sales are invoiced in U.S. dollars. . . ,’³⁹ we have recalculated FerroVen’s home market credit expense using the {USD}-denominated interest rate based on the U.S. Federal Reserve published short-term lending rates submitted by FerroVen.”⁴⁰

The Department notes that FerroVen went to great lengths to explain to the Department why it need not consider the hyperinflationary economic environment in Venezuela during the POI because FerroVen had effectively insulated itself from the effects of hyperinflation by adopting the USD as its functional currency. To that end, counsel for FerroVen met with Department officials on December 18, 2013, to discuss this matter⁴¹ and FerroVen filed comments on the record of this investigation reiterating its position.⁴² FerroVen stated in its Comments on Inflation that “home market sales are negotiated in {USD} and FerroVen invoices its customers based on a {USD} price converted to Bs at the official exchange rate” and that the “invoice price shows both the USD price and the derived price in Bs.”⁴³ Also in its Comments on Inflation, FerroVen stated that “{t}he customer pays in Bs because this is the official currency in Venezuela, but the sales value in Bs is simply a function of the USD sales price and the official

³⁸ Citing to Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses From Columbia, 60 FR 6980, 7006 (February 6, 1995).

³⁹ See FerroVen SAQR, at 25; Letter from FerroVen “Response to Sections B and C of Initial Antidumping Questionnaire” (November 25, 2013), at B-21; Letter from FerroVen “Information Concerning the Effects of Inflation in Venezuela” (December 19, 2013) (“Comments on Inflation”), at 4-5 (“. . .because FerroVen’s home market prices are denominated in U.S. dollars, the Department should use these actual U.S. dollar prices in its dumping margin analysis.” (citations omitted)).

⁴⁰ See Memorandum to the File from Kabir Archuleta, Senior International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V “Calculations Performed for FerroAtlantica de Venezuela for the Preliminary Determination in the Antidumping Duty Investigation of Ferrosilicon from Venezuela” (March 4, 2014), at 5-7.

⁴¹ See Memorandum to the File from Kabir Archuleta, Senior International Trade Analyst, Office V “Meeting with Counsel for FerroAtlantica de Venezuela (‘FerroVen’)” (December 19, 2013).

⁴² See Comments on Inflation.

⁴³ Id., at 4-5 (citations omitted).

exchange rate.”⁴⁴ FerroVen explained that “because FerroVen’s home market prices are denominated in {USD}, the Department should use these actual {USD} prices in its dumping margin analysis,”⁴⁵ citing to Rebar from Turkey (1999-2000).⁴⁶

Having argued the case for the Preliminary Determination that the Department should consider FerroVen’s HM sales denominated in USD and that it need not consider inflationary accounting in the dumping analysis, FerroVen now argues that the currency of FerroVen’s HM transactions should be the “currency in which the customer is obligated to make payment to FerroVen.”⁴⁷ FerroVen’s prior statements that the “inflation in Venezuelan {Bs} did not affect FerroVen’s prices or costs”⁴⁸ stands in contrast to its admission that the interest rate incurred on local borrowings by FerroVen includes a built-in portion tied to inflation rates.⁴⁹ This argument also comes at a time that is far too late for the Department to reconsider its decision⁵⁰ not to examine further the effects of inflation in the Venezuelan economy on FerroVen’s operations or whether the sharp decline in value of the Venezuelan bolivar did, in fact, have a significant effect on FerroVen’s expenses and income.⁵¹

In Rebar from Turkey (1999-2000), the respondent argued with respect to sales that were negotiated on USD terms, invoiced in Turkish lira, and paid for in the USD-equivalent in lira with an adjustment for inflation, that “the appropriate credit costs in this case are those which are calculated in the currency in which the sale is invoiced to, and paid by, the customer because the firm’s opportunity cost over the payment term is the opportunity cost of not having those funds at its disposal on a sight basis.”⁵² The Department disagreed and concluded that it should value credit expenses on sales negotiated in USD using a USD short-term interest rate because the credit terms of those sales were based on a USD amount, regardless of the rate of devaluation of the Turkish lira against the USD.⁵³ Here, FerroVen also negotiates its prices in USD, invoices in Bs because that is the official currency in Venezuela, and receives the USD-equivalent at the official exchange rate.

FerroVen’s argument that it “attempted to recoup the difference in {Bs} after the devaluation in February” but that “those attempts were frequently unsuccessful”⁵⁴ indicates, as noted by Petitioners, that FerroVen was successful in recouping the difference in USD-value at the time of invoice and the Bs-equivalent at the time of payment on some occasions.⁵⁵ The record does not

⁴⁴ See Comments on Inflation, at 5.

⁴⁵ Id.

⁴⁶ See Rebar from Turkey (1999-2000), and accompanying Issues and Decision Memorandum, at Comment 4.

⁴⁷ See FerroVen Case Brief, at 15.

⁴⁸ See FerroVen SAQR, at 25.

⁴⁹ See FerroVen Case Brief, at 14.

⁵⁰ See Letter to FerroVen from Catherine Bertrand, Program Manager, Office V “Initiation of Investigation of Prices Below the Cost of Production” (December 20, 2013) (requesting that FerroVen submit the original Section D, not the Section D for highly inflationary economies)

⁵¹ See, e.g., Comments on Inflation, at 4 (quoting the audited consolidated financial statements of Grupo FerroAtlantica “. . . therefore, the sharp decline in value of the Venezuelan bolivar did not have a significant effect on {FerroVen’s} flow of expenses and income. . .”).

⁵² See Rebar from Turkey (1999-2000), and accompanying Issues and Decision Memorandum, at Comment 4.

⁵³ Id.

⁵⁴ See FerroVen Case Brief, at 12.

⁵⁵ See Petitioners Rebuttal Brief, at 7, fn 25.

contain the information necessary to determine how successful, or unsuccessful, FerroVen was in this regard, but it does specify the denomination in which FerroVen believed it negotiated the sales prices with its customers (*i.e.*, USD), and to the extent that some customers adjusted their payment price to the Bs-equivalent at the time of payment, that some customers also believed the price to be negotiated in USD. Further, FerroVen's argument creates ambiguity as to whether FerroVen was actually paid the invoiced USD price (*i.e.*, the price reported in its HM database) on those sales for which it invoiced before the devaluation and received payment after devaluation,⁵⁶ and for which it stressed to the Department in numerous submissions that its reported USD-price is the appropriate comparison price for the Department's dumping analysis. Finally, the record does not demonstrate, and FerroVen has not explained, whether FerroVen's attempts to recoup the difference have concluded or if it is still engaged in these attempts. Indeed, the record demonstrates that certain sales made by FerroVen during the POI remained unpaid as of February 2014,⁵⁷ and there is no evidence indicating that FerroVen's prior unsuccessful attempts necessarily preclude it from recouping the difference in the future.

FerroVen argues, citing to Hornos Electricos, that because it invoices in both USD and Bs, statements from previous cases shed no light on the appropriate exchange rate in this case because those cases involved invoices only in USD. First, as discussed above, prior case precedent is clear that we will use the interest rate tied to the denomination of the currency in which the sale is negotiated and for which it was paid the foreign-currency equivalent.⁵⁸ Second, whether the sale was invoiced in two currencies or one currency does not change the denomination in which the sale was negotiated nor the denomination on which the foreign-currency equivalent payment is based. As noted by the CIT in Hornos Electricos, the respondent in the proceeding at issue in that case stated that "local customers are supposed to pay, in {Bs}, the equivalent of the total price in {USD} on the date of payment" and that "{i}f the bolivar devalues and the customer does not do this, {the respondent} stated that it will issue a debit note to the customer for the difference."⁵⁹ In other words, the respondent attempted to recoup the difference after a devaluation of the exchange rate based on prior negotiations with the customer. Based on the record evidence, the CIT concluded that the customer was, "in effect, required to pay the {USD} invoice price (converted to Bs using the exchange rate on the date of payment), and thus the only opportunity cost born by the respondent was the cost of extending credit in USD for the period the payment was outstanding."⁶⁰ The CIT thus held that the Department's calculation of the home market credit expense using a USD-denominated short-term interest rate based on the U.S. Federal Reserve was reasonable.⁶¹ Similarly, FerroVen negotiated sales prices with its customers in USD, required its customers to pay in Bs using the exchange rate on the date of payment, and then attempted to recoup the difference after a devaluation of the exchange rate based on prior negotiations with the customer. As such, the Department finds that it is appropriate to calculate FerroVen's home market credit expense using a USD-denominated short-term interest rate.

⁵⁶ See, e.g., Letter from FerroVen "Sections B and C Supplemental Questionnaire Response" (January 30, 2014), at 9-10, for information concerning the exchange rates in effect during the POI.

⁵⁷ See FerroVen HM Verification Report, at 3 and Verification Exhibit 21.

⁵⁸ See, e.g., Rebar from Turkey (1999-2000), and accompanying Issues and Decision Memorandum, at Comment 4 and 6.

⁵⁹ See Hornos Electricos, 285 F. Supp. at 1370.

⁶⁰ Id.

⁶¹ Id.

Finally, with respect to FerroVen’s claim that there is a clear relationship between the debt of one customer and the borrowing from local banks in Venezuela,⁶² we agree with Petitioners that the relationship is not as clear as FerroVen argues because the record contains information indicating that there may be additional contributing factors.⁶³ Accordingly, for this final determination we are making no changes to our Preliminary Determination to base FerroVen’s HM credit expense calculation on a USD-denominated interest rate published by the U.S. Federal Reserve Bank.

Comment 4: U.S. Import Duties

Petitioners’ Comments:

- FerroVen acknowledged that there was a period during the POI in which the U.S. Generalized System of Preferences (“GSP”) program lapsed and FerroVen was charged customs duties at the time certain shipments of ferrosilicon entered the United States.
- FerroVen stated that it had received a refund of duties paid on one shipment but that refunds are still pending for other shipments.
- At verification, the Department obtained customs entry documents showing the amounts of duties due but did not obtain any documentation regarding communications with the customs broker about refunds of duties paid.
- Because the record shows that customs duties were paid on U.S. imports of ferrosilicon from Venezuela and does not show that these duties were refunded, the Department should deduct this expense from U.S. price for U.S. sales shipped on certain vessel numbers, in accordance with the statute.

FerroVen’s Comments:

- FerroVen does not object to this revision to its U.S. sales database.

Department’s Position: We agree with Petitioners that we should make an adjustment to FerroVen’s margin program to account for duties paid and not refunded for U.S. sales that were shipped on certain vessels. Section 772(c)(2)(A) of the Act states that the price used to establish export price and constructed export price (“CEP”) shall be reduced by “the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States . . .” Therefore, as U.S. import duties are an expense explicitly referenced as a deduction to the U.S. price in the statute and no party is arguing that we should not make this adjustment, we deducted U.S. import duties from U.S. price in the margin program for this final determination.⁶⁴

⁶² See FerroVen Case Brief, at 12.

⁶³ See Petitioners Rebuttal Brief, at 9-10.

⁶⁴ See Final Analysis Memo, at 5 for details regarding the programming language used to carry out this adjustment.

Comment 5: Adjustments Based on Verification Observations

Petitioners' Comments:

- The Department should include certain freight expenses for particular U.S. sales that were not reported by FerroVen in its U.S. sales data set.
- The Department should recalculate the storage component of FerroVen's reported U.S. warehousing expenses because the Department observed at verification that the expense was allocated incorrectly.
- FerroVen reported a different U.S. packing expense in its U.S. sales database than the per unit expense verified by the Department. Accordingly, the Department should use the calculation verified in its margin calculations for the final determination.

FerroVen's Comments:

- FerroVen does not object to implementation of verification findings for freight, warehousing expenses and packing costs.

Department's Position: We agree with Petitioners that we should make the requested adjustments to FerroVen's margin calculation program in accordance with our observations at verification and record evidence.⁶⁵ For details on the coding language used to carry out the requested adjustments, see Final Analysis Memo, at 6-7.

Comment 6: Tax Adjustment to Certain HM Sales Based on Verification Observations

Petitioners' Comments:

- In its HM sales database, FerroVen reported a sales tax of three percent on sales to a certain customer as a direct selling expense.
- At verification, the Department observed that the actual tax paid was not three percent.
- The Department should recalculate the tax on sales to this customer based on the verified percentage rate that FerroVen actually paid.

FerroVen did not comment on this issue.

Department's Position: We agree with Petitioners that we should recalculate the tax reported as a direct selling expense by FerroVen in its HM sales database in accordance with our observations at verification and record evidence.⁶⁶ For details on the coding language used to carry out the requested adjustments, see Final Analysis Memo, at 5.

Comment 7: CEP Offset

FerroVen's Comments:

- In the Preliminary Determination, the Department stated that it made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act, but it did not implement that adjustment in FerroVen's margin program.

⁶⁵ See FerroVen CEP Verification Report, at 2, 12, and 14; FerroVen HM Verification Report, at 19.

⁶⁶ See FerroVen HM Verification Report, at 2 and 14-15.

- The Department should make the CEP offset adjustment in its calculation of FerroVen’s antidumping duty margin for the final determination.

Petitioner did not comment on this issue.

Department’s Position: In the Preliminary Determination we found that because the comparison market level of trade was different from the CEP level of trade and the CEP level of trade did not exist in the comparison market, a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act was warranted. However, the Department inadvertently did not to make the CEP offset adjustment in its calculation for the Preliminary Determination. Accordingly, we agree with FerroVen that we should include the CEP offset programming language in FerroVen’s margin calculation program for the final determination.⁶⁷

Comment 8: General and Administrative Expense

Petitioners’ Comments:

- The Department should revise FerroVen’s G&A expense ratio to exclude value added tax (“VAT”) and duty drawback credits and interest income for late payment of such credits from the G&A expense calculation in accordance with Department practice.
- It is the Department’s practice to not include VAT in the calculation of the G&A expense ratio⁶⁸ and consistent with this practice, the Department has excluded interest income related to VAT recovery from the calculation of the ratio.⁶⁹

FerroVen did not comment on this issue.

Department’s position: We agree with Petitioners and have revised FerroVen’s G&A expense ratio to exclude the VAT and duty drawback credits and the interest income for late payments of those credits. This is consistent with our past practice as noted by Petitioners.⁷⁰

⁶⁷ See Final Analysis Memo, at 7.

⁶⁸ Citing, e.g., Frontseating Service Valves From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 74 FR 10886 (March 13, 2009), and accompanying Issues and Decision Memorandum, at Comment 1d.

⁶⁹ Citing to Steel Concrete Reinforcing Bar From Mexico: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination, 79 FR 25571 (May 5, 2014), and accompanying Issues and Decision Memorandum at Comment 5. However, the correct citation for this case is Prestressed Concrete Steel Rail Tie Wire From Mexico: Final Determination of Sales at Less Than Fair Value, 79 FR 25571 (May 5, 2014) (“Rail Ties from Mexico”) and accompanying Issues and Decision Memorandum, at Comment 5.

⁷⁰ See Rail Ties from Mexico, and accompanying Issues and Decision Memorandum, at Comment 5 (“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. Moreover, the Department permits respondents to offset their financial expenses, not their G&A expenses, with short-term interest income generated from working capital. Accordingly, because the income in question is interest income, it is not appropriate to include it as an offset to G&A expenses.”).

Comment 9: Depreciation

Petitioners' Comments:

- The Department should adjust FerroVen's depreciation expense attributable to G&A and include it in the numerator of the G&A expense ratio based on its findings at verification.

FerroVen did not comment on this issue.

Department's position: We agree with Petitioners, and have adjusted the numerator and denominator of the G&A expense ratio to reflect the correct depreciation figures.⁷¹

Comment 10: Financial Expense Ratio

Petitioners' Comments:

- The Department determined that all of the interest income claimed as an offset to FASA's financial expenses was from long-term sources.
- The Department should revise FASA's financial expense ratio to exclude all interest income from the calculation.

FerroVen did not comment on this issue.

Department's position: While reviewing the financial expense ratio calculation with company officials, and requesting support for the interest income, company officials said that all interest income was in fact long term.⁷² Therefore, we have revised FASA's financial expense ratio for the final determination to exclude all of the interest income.

Comment 11: FASA's G&A rate

Petitioners' Comments:

- Petitioners argue that FASA's G&A expense ratio should be adjusted to include the "impairment losses on the disposal of fixed assets" and the "tax on lease backs."

FerroVen did not comment on this issue.

Department's position: We agree with Petitioners. At verification, the Department found that FASA had not included its losses on the disposal of its fixed assets or the tax it paid on lease backs.⁷³ Thus, for the final determination we have revised FASA's G&A expense ratio to include the expenses.

⁷¹ See FerroVen Cost Verification Report, at 19.

⁷² *Id.*, at 21.

⁷³ *Id.*, at 18.

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 margin in the Federal Register.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

24 July 2014
(Date)