

DATE: August 27, 2010

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

FROM: Edward C. Yang
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the 2008-2009
Administrative Review of Stainless Steel Bar from India

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on stainless steel bar (“SSB”) from India. As a result of our analysis, we have made certain changes in the margin calculations. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of the issues for which we received comments and rebuttal comments by parties:

- Comment 1: Whether to Include Venus’ Home Market Sample Sales**
- Comment 2: Correction of Clerical Error in Venus’ Sales Database**
- Comment 3: Offsetting Negative Margins**
- Comment 4: Alleged Reporting Deficiencies for Venus and Sieves**
- Comment 5: Whether the Department Should Repeat its Linkage Test**
- Comment 6: Whether Linkage Exists Between Venus’ and Sieves’ Costs and Sales Prices**
- Comment 7: Ministerial Error**

BACKGROUND

On March 15, 2010, the Department of Commerce (the “Department”) published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India. See Stainless Steel Bar from India: Preliminary Results of Antidumping Duty Administrative Review, 75 FR 12199 (March 15, 2010) (“Preliminary Results”). The period of review (“POR”) is February 1, 2008, through January 31, 2009. This review covers imports of stainless steel bar from two producers/exporters: Ambica Steels Limited (“Ambica”) and Venus Wire Industries Pvt. Ltd.¹ The Department conducted a post-preliminary analysis and released

¹ For the reasons explained in the Preliminary Results, we have determined that Venus Wire Industries Pvt. Ltd. and its affiliates, Precision Metals and Sieves Manufacturers (India) Pvt. Ltd., should be treated as a single entity and

the results of the analysis on May 19, 2010. See Memorandum from Susan Kuhbach through John M. Andersen to Ronald K. Lorentzen: “2008-2009 Administrative Review of the Antidumping Duty Order on Stainless Steel Bar from India - Post-Preliminary Analysis Calculation Memorandum for Venus Wire Industries Pvt. Ltd.” dated May 19, 2010 (“post-preliminary analysis”). We gave the interested parties an opportunity to comment on the Preliminary Results and the post-preliminary analysis.

CHANGES SINCE THE PRELIMINARY RESULTS

Based on our analysis of the comments received, we have made the following changes to the margin calculation: (1) we corrected two errors identified by Venus; and (2) we adjusted the transfer price for inputs purchased from affiliates to market price pursuant to section 773(f)(2) of the Tariff Act of 1930, as amended (“Act”). See Comments 2, 4, and 7 below. For further details on how these changes were applied in the calculation, see “Analysis for the Final Results of Antidumping Duty Administrative Review of Stainless Steel Bar from India: Venus Wire Industries Pvt. Ltd.,” dated August 27, 2010.

DISCUSSION OF THE ISSUES

Comment 1: Whether to Include Venus’ Home Market Sample Sales

Venus’ Affirmative Comments:

Venus reported certain sales in its home market sales database as sample sales. The Department included these sample sales in its calculations for the Preliminary Results and post-preliminary analysis.

Venus argues that the Department incorrectly included Venus’ sample sales in its calculations. Venus states that its sample sales are not within the ordinary course of trade and, moreover, that it is the Department’s practice to consider only those sales which are commercial in nature for the calculation of normal value. To support its claim, Venus argues that its sample sales are not commercial in nature because they are not representative of the pricing or terms of normal sales made in the home market. Venus further contends that the quantity of its home market sample sales is much smaller than the quantity of similar merchandise sold in the U.S. market and, therefore, Venus argues because of these low quantities, the sample sales should not be used for comparison with U.S. sales. As evidence of this claim, Venus compares the low quantity involved in a specific sale of SSB in its home market to the high quantity involved in a U.S. sale of similar merchandise.

collapsed for the purposes of this review. See Memorandum from Erika McDonald to the File, “Relationship of Venus Wire Industries Pvt. Ltd. and Sieves Manufacturers (India) Pvt. Ltd.,” dated September 15, 2009; see also Memorandum from Erika McDonald to the File, “Relationship of Venus Wire Industries Pvt. Ltd. and Precision Metals,” dated September 14, 2009. The collapsed entity is referred to as “Venus.”

Petitioners' Rebuttal:

Petitioners argue that, as illustrated in its decision in Ball Bearings, it is the Department's practice to exclude home market sample sales from the margin calculation if such transactions are found to be outside the ordinary course of trade.² Petitioners assert that it is the respondent's responsibility to demonstrate that the sales were made outside the ordinary course of trade by providing ample narrative explanation and documentation.³ In Ball Bearings, the Department excluded sample sales because the respondent 1) provided documentation clearly showing that it used a consistent method to identify sales as sample sales in its system, 2) used a special prefix to identify products as samples, and 3) submitted evidence that showed that its sample sales were of products with unusual product specifications. Therefore, Petitioners assert that in Ball Bearings, the Department had enough information to determine the respondent's sample sales were outside the ordinary course of trade.

In the instant case, however, Petitioners assert that Venus failed to provide the Department with enough information for it to effectively determine that Venus' sample sales were made outside the ordinary course of trade. Petitioners note that the sample sales documentation Venus provided in its responses only shows basic sale information (i.e., invoice number, invoice date, customer name, grade, quantity, and price of sample sale) and that the company did not provide any definitive documentation indicating that the sales were made outside of the ordinary course of trade.

Department's Position:

The Department's normal practice is to exclude home-market sales transactions from the margin calculation if we determine such transactions are outside the ordinary course of trade, based on consideration of all the circumstances particular to the sales in question.⁴ This practice is explicitly articulated in 19 CFR 351.102(35):

The Secretary may consider sales or transactions to be outside the ordinary course of trade if the Secretary determines, based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question. Examples of sales that the Secretary might consider as being outside the ordinary course of trade are sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's-length price.

² See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and Singapore: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not To Revoke Order in Part, 68 FR 35623 (June 16, 2003), and accompanying Issues and Decision Memorandum at 49-50 ("Ball Bearings").

³ See Zenith Electronics Corp v. United States, 988 F.2d 1573, 1583 (CAFC 1993); see also NTN Bearing Corp v. United States, 997 F.2d 1453, 1458 (CAFC 1993).

⁴ See Murata Mfg. Co. v. United States, 820 F. Supp. 603, 607 (CIT 1993).

Venus did not provide adequate documentation to demonstrate that its claimed “sample” sales are outside the ordinary course of trade. As Petitioners noted, these sales were merely labeled as sample sales in Venus’ database. Venus did not provide any evidence showing that the sample sales differed from other home market sales in terms of price, quantity, or product characteristics.⁵ Furthermore, analysis of Venus’ home market sales database showed several “normal” sales that were comparable to Venus’ sample sales, indicating Venus’ sample sales are, in fact, within Venus’ ordinary course of trade. Thus, contrary to Venus’ argument, there is no information suggesting that its sample sales are not representative of the pricing or terms of normal sales made in the home market.

In response to Venus’ argument that its sample sales should be excluded from consideration because of the low quantities, there is no provision in the statute or in our regulations permitting such an exclusion, nor is it the Department’s practice to exclude sales solely based on their relative quantity.⁶

After evaluating information on the record and circumstances regarding Venus’ sample sales, we find that Venus has not demonstrated that the sales in question were made outside the ordinary course of trade, nor has it provided any other reasoning for the Department to exclude these sales from consideration. Therefore, the Department has continued to include Venus’ home market sample sales in its calculations for the final results.

Comment 2: Correction of Clerical Error in Venus’ Sales Database

Venus’ Affirmative Comments:

Venus states that it made a clerical error by incorrectly reporting international freight expenses for two invoices in its U.S. sales database and asks the Department to correct this error. Venus states that it shipped merchandise covered by three separate invoices in a single container. Rather than allocating the freight cost across the three invoices, Venus claims it erroneously assigned the total freight cost to each of the three invoices. Venus asserts that this error greatly distorts the freight expenses incurred for these sales and contends that the Department should make an adjustment to correct this error in its calculations for the final results.

Petitioners’ Rebuttal:

Petitioners argue that the Department should reject Venus’ request to correct its international freight expenses because the request was untimely. Because it was untimely, Petitioners maintain that Venus hindered both the Department’s and Petitioners’ ability to comment and investigate the authenticity of the alleged reporting error. Moreover, Petitioners argue that Venus’ alleged reporting error in its international freight expenses brings the accuracy of all the data reported in that field into question because the Department does not have enough time to

⁵ See Venus’ December 15, 2009, Section B and C supplemental questionnaire response at Annexure SQR-46.

⁶ See, e.g., Ball Bearings; Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People’s Republic of China, 69 FR 20594 (April 16, 2004).

verify the accuracy of the data submitted in Venus' case brief. Therefore, Petitioners argue that the Department should reject Venus' untimely request as it has done with other untimely requests for corrections in previous cases.⁷

Petitioners also argue that the documentation Venus provided in its brief as evidence of the clerical error constitutes new factual information. Petitioners note that pursuant to 19 CFR 351.301(b)(2), the deadline for submission of factual information for the final results in an administrative review is no later than 140 days after the last day of the anniversary month. Petitioners further note that the Department has a practice of rejecting new factual information submitted by parties in their case briefs⁸ and, therefore, argue that the Department should reject the information Venus provided in its case brief regarding its international freight expenses.

Department's Position:

We agree that Venus made a clerical error in recording the freight expenses for the two invoices relating to subject merchandise and find that Venus provided sufficient documentation and evidence in its case brief to support its claims.

Petitioners cite to Garment Hangers to support their argument that the Department's practice is to reject untimely filed submissions after the preliminary results. However, in Garment Hangers, the Department rejected a respondent's comments pursuant to 19 CFR 351.224(c)(3), which governs replies to ministerial errors made by the Department, not clerical errors made by interested parties. According to 19 CFR 351.224(c)(3), "replies to comments submitted under paragraph (c)(1) of this section must be filed within five days after the date on which the comments were filed with the Secretary. The Secretary will not consider replies to comments submitted in connection with a preliminary determination." Therefore, the Department rejected the respondent's comments pursuant to 19 CFR 351.224(c)(3). Accordingly, as instructed by 19 CFR 351.301(b)(2), the Department returned this untimely submission. In contrast to the situation in Garment Hangers, Venus was simply notifying the Department of a clerical error Venus made in its sales database, not submitting comments on ministerial error allegations. As explained below, these clerical error allegations are not subject to the deadlines in 19 CFR 351.224(c)(3) or 19 CFR 351.301(b)(2).

The Department has an established set of guidelines it uses to determine whether to make corrections to alleged clerical errors. In accordance with this test, as outlined in Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833, 42834 (August 19, 1996) ("Fresh Cut Flowers"), we find that Venus' erroneous calculation of international freight meets these established guidelines. Specifically, we find that (1) Venus' error was clerical, not methodological, (2) the Department is satisfied that the

⁷ Steel Wire Garment Hangers from the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 20018 (April 14, 2008) ("Garment Hangers") where the Department removed a respondent's comments on ministerial error allegations.

⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Kazakhstan, 66 FR 50397, 50399 (October 3, 2001); see also Notice of Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof from the People's Republic of China, 69 FR 60980, 60981 (October 14, 2004).

corrective documentation provided in support of the clerical error allegation is reliable, (3) Venus availed itself of the earliest reasonable opportunity to correct the error, (4) the clerical error allegation and corrective documentation were submitted to the Department no later than the due date for the respondent's administrative case brief, (5) the clerical error did not entail a substantial revision of the response; and (6) Venus' corrective documentation does not contradict information previously determined to be accurate at verification. Furthermore, as stated by the Court of Appeals for the Federal Circuit ("CAFC") in Timken U.S. Corporation and Timken Nadellager, GMBH, v. United States, 434 F.3d 1345 (Fed. Cir. 2006) ("Timken"), "Commerce is free to correct any type of importer error--clerical, methodology, substantive, or one in judgment--in the context of making an antidumping duty determination, provided that the importer seeks correction before Commerce issues its final results." Venus' request to correct its clerical error meets these criteria, as it was submitted in its case brief, prior to the final results. Accordingly, we disagree with Petitioners' claim that the Department should not consider correcting Venus' error because it made the request too late in the proceeding.

Consistent with this practice and the CAFC's decision in Timken, we further disagree that the supporting information submitted by Venus should be considered untimely filed factual information. Venus only provided documentation necessary to justify its request for the Department to correct the clerical error. Specifically, Venus submitted copies of the three invoices related to the clerical error along with copies of the corresponding shipping documentation, bills of lading, customs documentation, and brokerage and handling documentation. Each of the invoice numbers is directly linked to one container number, as indicated by the bills of lading, brokerage and handling. Additionally, the costs shown in the international freight documentation Venus provided can also be traced to the expenses reported in Venus' U.S. sales database, further substantiating Venus' claim.⁹ Therefore, we find that supporting documentation Venus provided regarding its clerical error is both sufficient and reliable. We disagree with Petitioners' claim that the information regarding Venus' international freight expenses hindered either Petitioners' or the Department's ability to properly investigate the alleged reporting error and find that in order for Venus to effectively bring forth its clerical error claim, it was necessary for it to provide pertinent documentation. We find that our acceptance of this information does not otherwise prejudice any of the parties involved in this proceeding.

For these reasons, we determine that Venus did, in fact, make a clerical error and the Department will correct this error in its calculations for the final results. See Memorandum from Austin Redington to Patricia Tran, "Final Results Calculation Memorandum for Venus Wire Industries Pvt. Ltd.," dated August 27, 2010, at 2 ("Venus Final Calc Memo").

Comment 3: Offsetting Negative Margins

Venus' Affirmative Comments:

Venus objects to the Department's practice of zeroing negative margins in administrative reviews, alleging that the practice is not in accord with the United States' obligations under the

⁹ See Venus' December 15, Section B and C supplemental questionnaire response at Annexure CR-1.

WTO agreement. Moreover, Venus claims that it is discriminatory for the Department to apply zeroing only in cases initiated before April 2007. Venus insists that because reviews are only initiated upon request and because each review is based on new facts, the Department should treat each review as an entirely new case.

Venus also contends that because the information presented in this administrative review is new and has no connection to the original case investigation in 1995, there is no administrative burden as identified by the Department in its Zeroing Notice.¹⁰

Petitioners' Rebuttal:

Petitioners assert that the Department should reject Venus' zeroing arguments because the agency recently considered, and rejected, the same arguments in Frozen Warmwater Shrimp from Vietnam.¹¹ Specifically, Petitioners refer to the Department's statements in Frozen Warmwater Shrimp from Vietnam, that the current WTO proceedings with respect to zeroing (US – Zeroing (EC II) and US-Zeroing (Japan)) had no bearing on whether the Department's denial of offsets was consistent with U.S. law and the Department continued to deny offsets to dumping based on export transactions that exceeded normal value.¹² Petitioners maintain that the Department has noted on several occasions that section 771(35)(A) of the Act defines the dumping margin as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Petitioners assert that the Department interprets this definition to mean that a dumping margin only exists when the normal value is greater than the export price ("EP") or constructed export price ("CEP"), and, thus, no dumping margin exists when normal value is equal to or less than EP or CEP. Petitioners note that the CAFC has consistently upheld this interpretation.¹³

In support of their position to continue zeroing in administrative reviews, Petitioners note that the Secretary has broad discretion in interpreting and executing the antidumping law. See Smith-Corona Group v. United States, 713 F.2d 1568, 1571 (Fed. Cir. 1983). Moreover, Petitioners argue that in interpreting the antidumping statute, the Department has long recognized that the statutory regime as a whole is best (and most fairly) effectuated when negative margins of dumping are treated as non-dumped sales, but not allowed to cancel out positive margins.

¹⁰ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722, 77725 (December 27, 2006) ("Zeroing Notice").

¹¹ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) ("Frozen Warmwater Shrimp from Vietnam"), and accompanying Issues and Decision Memorandum at Comment 3.

¹² See id. and accompanying Issues and Decision Memorandum at Comment 3, citing United States-Measures Relating to Zeroing and Sunset Reviews, WT/DS322/AB/R (January 9, 2007) ("US-Zeroing (Japan)"), and United States – Continued Existence and Application of Zeroing Methodology, WT/DS350/AB/R (February 9, 2009) ("US-Zeroing (EC II)").

¹³ See id. and accompanying Issues and Decision Memorandum at Comment 3, citing Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir. 2004); and Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005) ("Corus I").

Moreover, Petitioners argue that it is not the responsibility of the Department to interpret and apply the WTO agreements or the decisions of its dispute settlement bodies, as Venus contends. Petitioners point out that Congress has provided a procedure as part of the Uruguay Round Agreements Act (“URAA”) process through which the Department may change a regulation or practice in response to a WTO report. See 19 USC 3533(g). According to Petitioners, it is clear that Congress did not intend for WTO reports to supersede the Department’s discretion to interpret the Act. See 19 USC 3533(g)(4). Therefore, Petitioners assert that the Department should base its determination on its own assessment of the purposes and goals of the statute.

Finally, Petitioners note that the Department similarly rejected these same arguments when raised by Venus in prior reviews.¹⁴

Department’s Position

We reiterate our position that outside the context of antidumping investigations involving average-to-average comparisons, we interpret the language found in section 771(35)(A) of the Act to mean that a dumping margin exists only when normal value is greater than EP or CEP. Thus, we have not changed our calculation of the weighted-average dumping margins for these final results of review with respect to our zeroing methodology.

Section 771(35)(A) of the Act defines “dumping margin” as the “amount by which the normal value exceeds the export price and constructed export price of the subject merchandise.” Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than EP or CEP. As no dumping margins exist with respect to sales where normal value is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute. See, e.g., Timken, 354 F.3d at 1342, Corus I, 395 F.3d at 1347-49, and SKF v. United States, 537 F.3d 1373, 1381 (CAFC 2008).

Section 771(35)(B) of the Act defines weighted-average dumping margin as “the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.” The Department applies this provision by aggregating all individual dumping margins, each of which is determined by the amount by which normal value exceeds EP or CEP, and dividing this amount by the value of all sales.

The use of the term “aggregate dumping margins” in section 771(35)(B) of the Act is consistent with the Department’s interpretation of the singular “dumping margin” in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the normal value permitted to offset or cancel the dumping margins found on other sales.

¹⁴ See Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review, 74 FR 47198 (September 15, 2009), and accompanying Issues and Decision Memorandum at Comment 8; Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 72 FR 51595 (September 10, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

This does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to recognize that the weighted-average margin will reflect any non-dumped merchandise examined during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

We disagree with Venus' claim that the Department's practice of zeroing negative margins in administrative reviews is not in accord with the United States' obligations under the WTO agreement. To support its argument, Venus cites to the Zeroing Notice, where the Department stated that it would no longer make average-to-average comparisons in investigations without providing offsets for non-dumped comparisons. However, in doing so, the Department also declined to adopt any other modifications concerning any other methodology or type of proceeding, including administrative reviews.¹⁵ The fact that reviews are only initiated upon request does not put reviews in the same posture as investigations, as Venus suggests. As previously mentioned and as outlined in the Zeroing Notice, the Department's practice regarding the offsetting of negative margins specifically relates to the investigation segment of a proceeding. Furthermore, the WTO has not found the denial of offsets in administrative reviews to be inconsistent with the Antidumping Agreement.¹⁶

With respect to United States-Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS294/ABR (April 18, 2006), the Department has modified its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations. See Zeroing Notice. In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. See id. at 77724.

With regard to US - Zeroing (Japan), the steps taken in response to these reports do not require a change to the Department's approach of calculating weighted-average dumping margins in the instant administrative reviews. Furthermore, in response to United States-Sunset Review of Antidumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan, WT/DS244/AB/R (December 15, 2003) ("US - Corrosion-Resistant Steel"), and European Communities-Antidumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R (March 1, 2001) ("EC - Bed Linens"), the CAFC has refused to find the Department's interpretation of the Act unreasonable on the basis of these reports. See Corus I, 395 F.3d at 1348-49. As discussed above, the CAFC found that WTO reports are without effect under U.S. law until they are implemented pursuant to the statutory scheme provided in the URAA. Id. Additionally, the CAFC noted that, in US- Corrosion-Resistant Steel, the WTO Appellate Body ("AB") never made a finding regarding the Department's denial of offsets. Id.

¹⁵ See Zeroing Notice.

¹⁶ See id.

Further, the CAFC noted that, in EC - Bed Linens, the United States was not a party to the dispute. Id.

With respect to United States-Final Determination on Softwood Lumber from Canada, WT/DS764/AB/R (Appellate Body Report, August 31, 2004), the WTO AB's finding only related to the denial of offsets in the Softwood Lumber from Canada antidumping investigation. That report, and the Department's implementation of that report, did not address the Department's denial of offsets in other antidumping investigations or in any administrative review. See Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products from Canada, 70 FR 22636 (May 2, 2005). Moreover, ultimate resolution of that WTO dispute was achieved through a mutually agreed solution and not through an elimination of the denial of offsets. See Notification of a Mutually Agreed Solution, United States – Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/29/Add. 1 (March 9, 2007).

For all these reasons, the various WTO AB reports regarding zeroing do not establish whether the Department's denial of offsets in these administrative reviews is consistent with U.S. law. Accordingly, and consistent with the Department's interpretation of the Act described above, in the event that any of the export transactions examined in this review are found to exceed normal value, the amount by which the price exceeds normal value does not offset the dumping found in respect of other transactions.

Finally, Venus claims that because the specific case facts in this administrative review are different from those used in the original investigation in 1995, the Department would not require any new information to change its methodology and, therefore, there is no administrative burden for it to offset negative margins. However, in the Zeroing Notice, the Department considered a number of factors in determining administrative burden. Specifically, the Department considered the number of concurrent investigations that would be affected, whether it would need to acquire any new information, and whether any of the parties involved in the investigations would be prejudiced by the decision. Whether the Department needs more information to depart from its practice of zeroing in this review is not enough to prove there is no administrative burden. Thus, as no administrative burden has been demonstrated, and consistent with the Department's practice for administrative reviews, we will continue to use zeroing for the final results.

Comment 4: Alleged Reporting Deficiencies for Venus and Sieves

Petitioners' Affirmative Comments:

Petitioners assert that Venus and Sieves failed to provide complete and accurate responses to the Department's questionnaires within the deadlines established by Department in the form and manner requested. As such, Petitioners conclude that Venus and Sieves have significantly impeded this proceeding and rendered it impossible for the Department to perform an accurate

dumping calculation.¹⁷ Petitioners allege that Venus' and Sieves' cost of production ("COP") data are incomplete because Venus and Sieves failed to submit any material costs for certain CONNUMs during certain quarters of the POR.¹⁸ Given the nature and scope of this problem, Petitioners conclude that the Department cannot rely on the submitted costs of the affected CONNUMs and should, instead, reject Venus' and Sieves' costs for those CONNUMs in their entirety and determine that the use of adverse facts available ("AFA") is warranted. Petitioners acknowledge that the Department generally uses partial facts available to fill minor gaps in a record. However, Petitioners claim the information missing from this record is so fundamental to this proceeding, that the Department, in accordance with its practice,¹⁹ should not attempt to engage in gap-filling measures but instead should apply the highest margin found in any segment of this proceeding to these CONNUMs.

Petitioners argue that Venus' and Sieves' cost data for the CONNUMs in question have three significant problems. First, Venus and Sieves underreported the total cost of remelted billets²⁰ for these CONNUMs. According to Petitioners, the remelted billets were undervalued because Venus relied on its sales prices of scrap, rather than the purchase costs of scrap, to value the scrap used in the production of the remelted billets. Second, Petitioners allege that Venus and Sieves inappropriately weight-averaged the undervalued remelted billets with the cost of purchased semi-finished stainless steel rounds/rods. Petitioners argue that Venus should have first calculated the actual cost of the remelted billets and then calculated an overall average cost of the semi-finished stainless steel rounds/rods. Finally, Petitioners allege that Venus and Sieves did not include the cost of the ferroalloys consumed by the subcontractor to obtain the desired remelted billet in the costs reported for these CONNUMs.

Petitioners also allege that Venus and Sieves failed to report quarterly conversion and fixed overhead costs. Therefore, Petitioners assert that the Department should apply AFA. As AFA, Petitioners suggest that the Department assign the highest POR conversion and fixed overhead values reported as the quarterly conversion and fixed overhead costs for all CONNUMs in each quarter.

Finally, Petitioners allege the transfer price paid by Sieves for raw materials purchased from affiliated parties was less than the price paid by Sieves to unaffiliated parties. As such, the

¹⁷ Petitioners cite to section 773(a)(2)(C) of the Act; Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan, 64 FR 15493, 15497 (March 31, 1999); and Allegheny Ludlum Corp. et al v. United States, 215 F. Supp. 2d 1322 (CIT 2000).

¹⁸ See Petitioners' case brief at 4 and 5.

¹⁹ Final Determination of Sales at Less Than Fair Value and Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate Products From India, 64 FR 73125, 73130 (December 29, 1999), amended 65 FR 6585 (February 10, 2000), affirmed Steel Authority of India v. United States, 25 CIT 482-487, 149 F. Supp. 2d 921,928 (CIT 2001); and Reiner Brach v. United States, 206 F. Supp. 2d 1323, 1336 (CIT 2002).

²⁰ In its submissions, Venus used the term "remelted billets" for stainless steel rounds/rods that were produced by a subcontractor using scrap generated by Venus (see Venus' September 9, 2009, submission at 4). The scrap used in the production of these billets remained the property of Venus. The subcontractor, in turn, charged Venus a fee for the transformation of the scrap into the desired stainless steel rounds/rods.

Department should adjust the cost of these inputs in accordance with the Department's major input rule.

Venus' Rebuttal:

Venus and Sieves claim that Petitioners' allegation of material costs not being reported for certain CONNUMs is incorrect. Venus claims that during certain quarters of the POR, it did not buy semi-finished rounds/rods or incur any subcontracting costs for the remelting of scrap into semi-finished rounds/rods. Therefore, Venus appropriately did not report material costs for those products during those quarters. Sieves argues that it correctly reported all of its material costs.

Venus argues that the sales values it used to value scrap are reasonable because they reflect market prices. Venus also claims that any additive used to obtain the desired chemistry of the remelted billet is included in the cost of the subcontractor's remelting costs which were included in Venus' reported costs.

Sieves argues that it correctly reported its raw material costs and that Sieves' primarily sources its raw materials from unaffiliated suppliers. Sieves asserts that any materials from affiliated companies were purchased at prevailing market prices.

Department's Position:

Section 776(a)(2) of the Act provides that, if an interested party or any other person: (A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination.

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 shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the administrative review. Section 782(e) of the Act states that the Department shall not decline to consider information determined to be "deficient" under section 782(d) if all of the following requirements are met: (1) the information is submitted by the established deadline; (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; and (5) the information can be used without undue difficulties.

In addition, section 776(b) of the Act provides that, if 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, the Department may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. The Statement of Administrative Action accompanying the URAA, H.R. Doc. 103- 316, Vol. 1 (1994) at 870, reflects the Department's

practice that it may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate to the best of its ability than if it had cooperated fully." It also instructs the Department to consider, in employing adverse inferences, "the extent to which a party may benefit from its own lack of cooperation." Id.

In order to apply AFA, the Department must find, inter alia, that the respondent has failed to cooperate by not acting to the best of its ability to comply with a request for information. We do not find that Venus and Sieves failed to cooperate by not acting to the best of their ability in this case.

We disagree with Petitioners that Venus and Sieves failed to report the necessary quarterly and POR cost information for the CONNUMs in question. In Petitioners' case brief at attachments 1 and 4, Petitioners provide copies of Venus' quarterly cost exhibits 108-115²¹ and Sieves' quarterly cost exhibits 37-40,²² respectively. Petitioners have annotated the exhibits to identify the CONNUMs for which they allege that the application AFA is warranted. In each instance, the data for the CONNUM shows a production quantity greater than zero but direct material costs equivalent to zero. Venus and Sieves explained in their submissions that because the company does not segregate its production quantities between merchandise under consideration ("MUC") and non-MUC, Venus reported sales quantities rather than production quantities.²³ For purposes of responding to the Department's request for quarterly costs, Venus and Sieves reported the sales quantities of their finished products relative to the quarter in which they were sold. In regard to direct material costs, Venus and Sieves reported actual direct material purchases²⁴ made in each quarter. The quarters where the companies made no purchases reflect no material costs. Venus and Sieves relied on purchase costs rather than consumption costs because the companies do not track raw material inventory movements in their accounting systems.²⁵ Physical inventory is taken only at the end of each fiscal year and does not distinguish between the raw materials used in the production of the MUC and the raw materials used in the production of non-MUC.²⁶ Therefore, because of the lack of any existing information regarding the consumption of raw materials inventory, Venus and Sieves relied instead on purchases of materials.

Venus discussed those instances where CONNUMs were reported with a production quantity (i.e., quantity sold) but no material costs.²⁷ We find Venus' explanation of the timing differences between material purchases and sales between quarters to be reasonable. As such, we determine that it was reasonable for Venus and Sieves to have reported production (i.e., sales)

²¹ See Venus' March 8, 2010, submission.

²² See Sieves' March 8, 2010, submission.

²³ See, e.g., Venus' January 21, 2010, submission at 3 and Sieves' January 20, 2010, submission at 4.

²⁴ See, e.g., Venus' November 6, 2009 submission at 6.

²⁵ Neither Venus nor Sieves has a cost accounting system (see e.g. Venus' section D submission at 9 and Sieves' section D submission at 10).

²⁶ See Venus' November 6, 2009, submission at 10 and attachment 23 and Sieves' January 18, 2010 submission at 4.

²⁷ See, e.g., Venus' November 6, 2009, submission at 6.

quantities greater than zero for certain CONNUMs during certain quarters while reporting no direct material purchases for that specific quarter. Therefore, we find that the application of AFA is not warranted because Venus and Sieves submitted complete cost information for the CONNUMs in question.

For these final results, we have relied on our normal methodology of calculating annual weighted-average costs for purposes of the margin calculation. Consistent with our analysis in the Venus Post-Prelim Cost Calc Memo,²⁸ we have relied on Venus' reported POR material costs submitted in attachment 1 of the company's November 6, 2009 submission and Sieves' reported POR material costs submitted in attachment D-1 of its November 12, 2009 submission. A review of the data in those attachments shows that there are no instances of a CONNUM's production quantity being greater than zero with direct material costs equivalent to zero.²⁹ As such, Petitioners' arguments that Venus and Sieves failed to report the necessary cost information for the CONNUMs in question on a POR basis are unfounded.

We disagree with Petitioners that Venus and Sieves inaccurately reported the costs of remelted billets. Venus confirmed that its originally reported cost of remelted billets included only the remelting charges of the subcontractors.³⁰ We then requested that Venus revise its costs to include the cost of the scrap in the reported cost of the remelted billets. Because that information was not on the record in time for consideration in the Preliminary Results,³¹ we revised Venus' reported costs to exclude the remelted billets from the COP calculations³² for the Preliminary Results. On March 8, 2010, Venus resubmitted its quarterly costs which it revised to include the cost of the scrap material in the reported cost of the remelted billets.³³ However, because the Department relied on Venus' POR cost data prior to this correction for purposes of the Venus Post-Prelim Cost Calc Memo, it was necessary to adjust the POR COP data to reflect Venus' revisions to its direct material costs for the cost of the scrap (see Venus Post-Prelim Cost Calc Memo at 4). For these final results, we have continued to rely on the POR costs submitted by Venus and have adjusted those costs to account for the remelted scrap consistent with Venus Post-Prelim Cost Calc Memo (see Venus Final Calc Memo). Additionally, Sieves' January 13, 2010 submission at exhibits 21 – 24 shows that Sieves did not use remelted billets in the production of the MUC. As such, Petitioners' allegation that Sieves did not correctly report the costs of its remelted billets is baseless.

²⁸ Memorandum from LaVonne L. Clark, Senior Accountant to Neal M. Halper, Director, Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Post-Preliminary Results – Venus Wire Industries Pvt. Ltd." dated May 19, 2010 ("Venus Post-Prelim Cost Calc Memo").

²⁹ Petitioners cite to Venus' July 24, 2009, submission at exhibit D-4 as evidence that no material costs were reported for certain CONNUMs. This data was revised and resubmitted by Venus on November 6, 2009. Thus, the July 24, 2009, data is not relevant.

³⁰ See Venus' September 9, 2009, Section D supplemental questionnaire response at 4.

³¹ Venus' response was due and submitted on March 8, 2010, the date of the Preliminary Results.

³² See Memorandum from LaVonne L. Clark to Neal M. Halper "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Venus Wire Industries Pvt. Ltd." dated March 8, 2010 ("Prelim Cost Calc Memo") at 6.

³³ See Venus' March 8, 2010, Section D supplemental questionnaire response at exhibits 108-115.

The raw material inputs used by Venus in the normal course of business are stainless steel wire rounds and stainless steel rods. The scrap generated by Venus in the production of the MUC and non-MUC is either sold to unaffiliated parties³⁴ or sent to a subcontractor to be remelted into stainless steel rounds/rods. Venus confirmed in its September 9, 2009, submission at 4 that it does not purchase scrap. As such, there is no basis for Petitioners' assertion that Venus incorrectly calculated its scrap values based on scrap sales rather than scrap purchases because Venus did not make any scrap purchases during the POR. Based on the record evidence, we find that Venus appropriately valued the scrap sent to the subcontractor using sales prices, the only information available on the record.³⁵ Further, we note that these sales prices reflect market values because the sales were made to unaffiliated parties during the POR.

Because we find that Venus appropriately valued the scrap input to the remelted billets, we also find that Venus' weighted-average costs of remelted and purchased stainless steel rounds/rods to be an appropriate calculation of its direct material costs.

In regard to the issue of ferroalloys and other materials asserted by Petitioners, we point to Venus' March 8, 2010 submission at 3 where Venus confirmed that the subcontractors' charges "include the costs of any additional materials required to obtain the necessary grade requirements" (i.e., ferroalloys necessary to produce the desired grade of stainless steel bar). Because the remelted billet costs include the value of scrap, the subcontractor's processing charges, as well as the cost of any other materials used in the production of the remelted billets, we find that Venus properly reported the cost of remelted billets. As such, we do not find it necessary to rely on facts available as suggested by Petitioners.

We also find that Venus and Sieves reported complete and accurate conversion and fixed overhead costs. As such, we find the application of facts available for those costs is unwarranted. In the second supplemental section D questionnaire, issued to Venus on October 14, 2009, and the supplemental section D questionnaire issued to Sieves on December 30, 2009, the Department requested that the companies revise their reported costs so that direct material costs (i.e., the stainless steel rounds/rods) were reported on a quarterly basis while conversion and fixed overhead continued to be reported on a POR basis.³⁶ In their responses, Venus and Sieves appropriately submitted their conversion and fixed overhead costs on a POR average basis.³⁷

We disagree with Petitioners that the costs for certain inputs Sieves purchased from an affiliated party qualify as major inputs. To determine if an input is major and whether section 773(f)(3) of

³⁴ See, e.g., the detailed list of transactions with related parties provided in Venus' January 19, 2010 submission at exhibit 70 as evidence that Venus does not sell scrap to affiliated parties.

³⁵ Additionally, we note that this same sales value was used to value Venus' scrap offset to its POR material costs of MUC and non-MUC (i.e., the source of the scrap generation).

³⁶ See question 8.b of the second supplemental section D questionnaire issued to Venus and question 2.c of the supplemental section D questionnaire issued to Sieves.

³⁷ See, e.g., Venus' January 21, 2010, submission and Sieves' January 11, 2010, submission.

the Act would apply, the Department typically reviews the percentage of the input received from the affiliated company relative to total purchases of the input and the percentage that input represents to the total cost of manufacturing ("TOTCOM"). See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27362 (May 19, 1997). In the current case, Sieves submitted a chart that shows the quantities and values of the inputs purchased from the affiliated supplier as well as the invoices from the affiliated supplier (see Sieves' January 20, 2010 submission at attachments 31 and 32). We reviewed the percentage of the inputs received from the affiliate relative to the total purchases of the inputs and the percent the total inputs represent of TOTCOM and concluded that the purchases from the affiliate comprised a very small percentage of Sieves' POR purchases of the inputs and the TOTCOM. Because the purchases from the affiliate were so small, we did not apply the major input rule, pursuant to section 773(f)(3) of the Act. Instead, we analyzed the input pursuant to the "transactions disregarded" rule in accordance with section 773(f)(2) of the Act.

As set forth in section 773(f)(2) of the Act, transactions, directly or indirectly, between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. Therefore, we compared the average transfer price for the input to the average purchase price from non-affiliates. This comparison showed that the transfer price was less than an average market price. Based on the results of our analysis, we adjusted the transfer price for the affiliated inputs to reflect an arm's-length transaction (see Venus Final Calc Memo).

Comment 5: Whether the Department Should Repeat its Linkage Test

Petitioners' Affirmative Comments:

Petitioners allege that the underlying data used in the Department's post-preliminary linkage analysis was incorrect. Specifically, Petitioners argue that Venus' third quarter direct material costs were set to zero in the electronic data file used by the Department in the Preliminary Results released to Petitioners.³⁸ Petitioners conclude that because the Department used the incorrect data from the Preliminary Results for purposes of the Venus Post-Prelim Cost Calc Memo, the linkage analysis is also incorrect. Therefore, Petitioners contend that the Department should correct the data used in the Preliminary Results and conduct the linkage analysis using the corrected data.

Petitioners also argue that Venus and Sieves did not properly report quarterly conversion and fixed overhead costs. As such, Petitioners assert that the Department should not rely on the reported POR average conversion or fixed overhead costs, or any application of facts available for these cost components, but instead conduct the linkage analysis by comparing direct material costs to net prices. For those CONNUMs that included the cost of remelted billets, Petitioners contend that the Department should apply facts available (i.e., remove the cost of the remelted from the reported direct materials cost) prior to the linkage analysis.

³⁸ Data file "VenusCOP.sas7bdat" released to parties on May 21, 2010.

Venus' Rebuttal:

Venus and Sieves did not comment in regard to whether or not the linkage test should be repeated.

Department's Position:

We agree with Petitioners that the linkage test should be repeated for purposes of determining whether the Department should employ its shorter cost-averaging period methodology for these final results. From our analysis of the data we used in the Preliminary Results, we find that Venus' third quarter direct material costs were incorrectly set to zero by the Department. All direct material costs reported by Venus in its original Excel data files for quarters one, two, and four were reported in numerical value formats. However, the direct material costs reported in the Excel spreadsheet for the third quarter were formatted as formulas rather than numerical values. When the Department compiled Venus' data for all four quarters of the POR into a single Excel spreadsheet file, the values formatted as formulas (*i.e.*, the third quarter direct material costs) were not copied properly and the reported data was replaced with zeros. This Excel file was then converted into a SAS dataset and was used in the calculations for the Preliminary Results. Based on this finding, we have corrected the SAS input dataset to reflect the direct materials costs reported by Venus for all four quarters of the POR. We used this corrected input to recalculate the resulting costs of the five CONNUMs we used in the linkage analysis for Venus.³⁹ We relied on the same calculations we used in the Preliminary Results to calculate the costs (*see* Venus Post-Prelim Cost Calc Memo). We then repeated the linkage test and have determined that linkage does not exist between Venus' net prices and costs (*see* Venus Final Calc Memo).

We disagree with Petitioners that because Venus and Sieves did not report quarterly conversion and fixed overhead costs, we should base our comparison of net price to direct material costs rather than to the TOTCOM. The Department's practice is to compare net prices to the TOTCOM when determining whether linkage exists.⁴⁰ The Department acknowledges that increases in stainless steel rounds/rods impacted the changes in cost of manufacturing ("COM") in this case. However, the Department's practice in determining whether the use of shorter cost-averaging periods is appropriate is to analyze changes in the COM during the POR, rather than changes in a single input (*i.e.*, the stainless steel rounds/rods). *See, e.g., Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 74 FR 6365 (February 9, 2009) ("06/07 SSSS from Mexico") and accompanying Issues and Decision Memorandum at Comment 5 and SSPC from Belgium and accompanying Issues and Decision Memorandum at Comment 4. Further, it is the Department's practice to calculate costs, other than for the input experiencing the significant changes, on a POR average basis. *See id.* In the instant case, Venus and Sieves appropriately reported their conversion and fixed overhead costs on a POR average basis. Thus, we have relied on Venus' and Sieves' TOTCOM (*i.e.*,

³⁹ *See* Venus Post-Prelim Calc Memo at attachment 1.

⁴⁰ *See e.g., Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398, 75399 (December 11, 2008) ("SSPC from Belgium") and accompanying Issues and Decision Memorandum at Comment 4; *see also Stainless Steel Sheet and Strip in Coils From Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) ("07/08 SSSS from Mexico") and accompanying Issues and Decision Memorandum at Comment 6.

quarterly direct materials cost plus annual conversion and fixed overhead costs) for purposes of repeating the linkage test.

In regard to Petitioners' argument that the cost of the remelted billets should be excluded from the calculation of Venus' costs for purposes of the linkage test, we point the Venus Prelim Cost Calc Memo at 6, where the Department stated that it adjusted Venus' costs to exclude the quantities and values of remelted billets from the calculation of Venus' quarterly material costs. Because we have repeated the linkage test using the same calculations as we relied on in the Preliminary Results, the remelted billets costs were not included in Venus' TOTCOM used in the linkage analysis. As noted in the Venus Post-Prelim Cost Calc Memo, the revised costs of the remelted billets (which includes the cost of scrap) are included in the total costs calculated for purposes of the post preliminary analysis and these final results. As discussed above, the Department has repeated its linkage analysis and continues to find no linkage between Venus' net prices and costs. Thus, the quarterly costing methodology is not warranted in this case and, therefore, the Department has continued to use POR costs for the final results rather than quarterly costs.

Comment 6: Whether Linkage Exists Between Venus' and Sieves' Costs and Sales Prices

Petitioners' Affirmative Comments:

Petitioners allege that if the Department repeats its linkage test using the revisions suggested by them, the data shows that there is linkage between Venus' and Sieves' costs and prices. Petitioners point out that the Department does not require linkage in every quarter but rather only that a reasonable linkage exists between changes in costs and price.⁴¹ Further, Petitioners argue that reasonable linkage does exist because Venus informed the Department that Venus relies on an alloy surcharge mechanism that allowed Venus to pass on any increase in cost of its main inputs to its customers. Petitioners cite to SSPC from Belgium and the accompanying Issues and Decision Memorandum at Comment 4 and 06/07 SSSS from Mexico and the accompanying Issues and Decision Memorandum at Comment 5 as evidence that the Department has deemed the use of alloy surcharges as sufficient evidence of linkage. Finally, Petitioners point to the Department's analysis for Ambica, the other respondent in this proceeding, as evidence that quarterly costs varied significantly during the POR and that linkage existed between quarterly costs and prices.⁴²

Venus' Rebuttal:

Venus and Sieves argue that the use of quarterly cost methodology will result in inaccurate results because in many cases there are substantial differences in the quantity of raw materials bought and products sold within the same quarter. Further, Venus argues that Petitioners failed to establish why quarterly costing is more reliable than annual costing. Venus states that the

⁴¹ See Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results and Rescission in Part of Antidumping Duty Administrative Review, 75 FR 5947 (February 5, 2010) and accompany Issues and Decision Memorandum at Comment 6.

⁴² See Memorandum from Stephanie C. Arthur, Accountant to Neal M. Halper, Director, Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results Analysis – Ambica Steels Ltd.," dated March 8, 2010 ("Ambica Prelim Cost Calc Memo").

processing time of a sales order is more than three months in most instances. Venus concludes that given the limitation of linking each cost factor to the supply of the subject merchandise in the same quarter, a POR average cost is more reliable.

Department's Position:

We continue to find that the application of the Department's shorter cost-averaging methodology is not warranted for purposes of these final results. As such, we relied on our normal methodology of calculating annual weighted-average costs for purposes of the margin calculation. We calculated Venus' and Sieves' weighted-average annual costs based on the companies' POR costs as we did in the Venus Post-Prelim Cost Calc Memo.

Although the record evidence shows that Venus and Sieves' COM changed significantly during the POR (see Venus Prelim Calc Memo), the record evidence does not show that Venus' and Sieves' sales prices during the shorter cost-averaging periods are reasonably linked with the COM during the same shorter averaging periods. The revised linkage analysis for Venus shows that Venus' comparison market sales prices for four of the five top sales volume CONNUMs move in contradictory trends to Venus' costs during the shorter cost averaging periods.⁴³ As we noted in the Venus Post-Prelim Cost Calc Memo, Sieves' comparison market sales prices for all five top sales volume CONNUMs do not trend with Sieves' costs during the shorter cost-averaging periods. Because the changes in sales prices for nine of the ten highest sales volume CONNUMs within the comparison market cannot be linked to changes in costs during the shorter cost averaging periods, we have determined that linkage does not reasonably exist.

In response to Petitioners' assertion that the Department does not require linkage in every quarter but rather only that a reasonable linkage exists between changes in costs and price, we point to the linkage analysis for Venus (see Venus Final Calc Memo) and the linkage analysis for Sieves conducted for the Venus Post-Prelim Cost Calc Memo. The record evidence shows contradictory trends between sales prices and costs for virtually all CONNUMs analyzed. As such, we find that reasonable linkage does not exist.

In the instant case, Venus stated that it employs two alternative pricing methods, a fixed price or a price equal to a base price plus an alloy surcharge.⁴⁴ Venus' customers can choose either pricing method.⁴⁵ In two recent cases, 06/07 SSSS from Mexico and the accompanying Issues and Decision Memorandum at Comment 5 and SSPC from Belgium and the accompanying Issues and Decision Memorandum at Comment 4, we found reasonable linkage due to the fact that the respondents operated using an alloy surcharge mechanism. That is, they made sales with a provision that allowed them to pass on any increase in the cost of their main inputs to their customers. In this case, it is unclear as to which of Venus' reported sales used the surcharge mechanism to establish the final sales price. The sales data provided by Venus do not

⁴³ The remaining CONNUM was sold in only one quarter. Therefore, a trend analysis for the CONNUM cannot be conducted.

⁴⁴ See Venus' November 6, 2009, submission at 7.

⁴⁵ See Venus' November 2, 2009, submission at exhibit 17 for copies of price negotiations that show that Venus' customers can choose either pricing mechanism.

distinguish those sales for which the surcharge mechanism was used to establish the price from those sales for which a fixed price was used.⁴⁶ Because we cannot isolate those sales that include the alloy surcharge, we cannot reasonably conclude that linkage exists between all of Venus' sales prices and costs because of its use of the surcharge mechanism. Therefore, because we cannot rely on the surcharge mechanism to establish linkage in this case, we have relied instead on our analysis of Venus' sales prices and underlying costs.

In regard to Petitioners' reference to the Department's determination of linkage in the Ambica Prelim Cost Calc Memo, we point to section 773(f)(1)(A) of the Act that states that cost shall normally be calculated on the records of the exporter or producer if such records are kept in accordance with the generally accepted accounting practices of the exporting country and reasonably reflect the cost associated with the production and sale of the merchandise. Because Venus' and Sieves' reported data meets the requirements set forth by the Act, we find no basis for relying on Ambica's data to determine whether linkage exists between Venus' and Sieves' sales prices and costs. As such, we have relied on Venus' and Sieves' own data to determine that linkage does not exist and the use of shorter cost-averaging periods is not warranted for these final results.

Comment 7: Ministerial Error

Venus' Affirmative Comments:

Venus argues that the Department erred in its calculation of normal value for the post-preliminary analysis. Venus states that rather than deducting the related selling expenses from the home market price, the Department incorrectly added the expenses. Venus states that this erroneous calculation creates a distorted normal value, resulting in a higher antidumping margin than is warranted.

Petitioners' Rebuttal:

Petitioners agree that the Department should correct this ministerial error.

Department's Position:

The Department recognizes this ministerial error and has corrected the calculation for the final results. See Venus Final Calc Memo.

⁴⁶ See, e.g., Venus' March 1, 2010 submission at exhibit BR-1

RECOMMENDATION

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

AGREE _____

DISAGREE _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date