A-274-804
Investigation
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MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Bernard T. Carreau
Deputy Assistant Secretary
for AD/CVD Enforcement II

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

Summary

We have analyzed the case briefs and rebuttal briefs of interested parties for the final determination of this antidumping duty investigation covering carbon and certain alloy steel wire rod (steel wire rod) from Trinidad and Tobago. Comments were received from the petitioners and the respondent. We recommend that you approve the positions we have developed in the Department Position sections of this memorandum.

Background

On April 10, 2002, the Department of Commerce (the Department) published the preliminary determination of the antidumping duty investigation of steel wire rod from Trinidad and Tobago. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 67 FR 17379 (April 10, 2002) (*Preliminary Determination*). The respondent in this case is Caribbean Ispat Limited (CIL), along with its affiliates, Ispat North America (INA), Ispat Inland Bar Products, A Division of Ispat Inland Inc. (Inland Bar), and Walker Wire (Ispat) Inc. (Walker Wire), (collectively Caribbean Ispat Ltd.). We verified the information submitted on the record by the respondent, and issued verification reports on May 20, and June 11 and 12, 2002. On June 28, and July 3, 2002, we received case briefs and rebuttal briefs, respectively, from the petitioners[1] and the respondent. The petitioners requested a public hearing, which was held on July 9, 2002. The period of investigation (POI) is July 1, 2000, through June 30, 2001.

[1] The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, the petitioners).

Issues Covered in Decision Memorandum

I. ISSUES SPECIFIC TO SALES

Comment 1: Sales of Non-Prime Merchandise
Comment 2: 201 Duties
Comment 3: Critical Circumstances
Comment 4: Minor Corrections (Sales Verification)

II. ISSUES SPECIFIC TO COSTS

Comment 5: Depreciation on Revalued Assets
Comment 6: Iron Ore Offset
Comment 7: General and Administrative Assets Depreciation

DISCUSSION OF ISSUES

I. ISSUES SPECIFIC TO SALES:

Comment 1: *Sales of Non-Prime Merchandise*

CIL claims that the Department should not include in its margin calculation sales of damaged or defective merchandise or sales of "free stock" by its U.S. affiliate INA. According to CIL, these sales should be excluded because they are unrepresentative of the company's normal business practices and because they constitute an insignificant portion of the total volume of INA's U.S. sales and, consequently, have an insignificant impact on the dumping margin. CIL maintains that it is the Department's practice to exclude small volumes of atypical sales in the U.S. market. *See, e.g.*, *Gulf States Tube v. United States*, 981 F. Supp. 630, 639 (CIT 1997) citing the Department's November 28, 1994 Memorandum on Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy at 3, where the Department stated that "we generally consider that outlier sales of less than 5% based on volume may be excluded from analysis." Furthermore, because there were no sales of damaged or defective merchandise or free stock in the home market, CIL states that keeping the sales in question in the margin calculation results in an unfair comparison between non-prime and prime merchandise. According to CIL, this is contrary to the intent of the antidumping statute which is to allow an "apples to apples" comparison between normal value and U.S. price. *See Micron Techonology, Inc. v. United States*, 243 F.3d 1301, 1313 (Fed. Cir. 2001) *citing Torrington Co. v. United States*, 68 F.3d 1347, 1652 (Fed. Cir. 1995). CIL contends that the Department has the authority to exclude these sales and should do so based on its past practices. *See, e.g.*, *Bowe Passat Reinigungs v. United States*, 926 F. Supp. 1138, 1148 (*Bowe Passat*) (*citing Ipsco Inc. v. United States*, 687 F. Supp. 633 (CIT 1988)).

The petitioners contend that it is the Department's usual practice not to exclude any U.S. sales from its dumping analysis. *See, e.g.*, *Granular Polytetrafluoroethylene Resin from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 50343 (September 27, 1993) at Comment 5 where the Department stated that "{i}n general, {it} does not exclude any U.S. sales from its calculation of USP." Any request to exclude certain U.S. sales, the petitioners claim, must be carefully examined by the Department, as these sales may be the very ones that are causing the injury. With regard to the sales of free stock, the petitioners maintain that they are simply sales of merchandise that has sat in inventory for a long period of time and has accumulated a certain degree of rust. According to the petitioners, rusting is to be expected on carbon products and CIL has not provided any evidence that this merchandise could not still be used for its intended purpose. Therefore, the petitioners argue, sales of free stock should be kept in the Department's analysis.

With regard to the sales of damaged or defective merchandise, the petitioners point out that the merchandise was still sold as steel wire rod and not as scrap. This, the petitioners claim, shows that the material was able to be used for its intended purpose. Furthermore, the petitioners question whether this merchandise was in fact damaged or defective at all. They state that the nature and extent of any damage or defects is not evident in the documents gathered by the Department at verification. According to the petitioners, these are the sales that are injuring the domestic industry and, for this reason, they should not be excluded.

Finally, the petitioners point out that if it were true that neither the sales of free stock nor of damaged or defective merchandise have a significant impact on the dumping margin, then there is no reason for CIL to ask for them to be excluded as CIL has already had the burden of reporting them to the Department.

<u>The Department's Position</u>:

We agree with CIL in part and with the petitioners in part. CIL originally requested on December 12, 2001, that U.S. sales of damaged and defective merchandise be excluded from the Department's analysis. The Department declined that request, but stated it would reevaluate the matter upon receipt of additional information regarding the cause and nature of the damage or defects and further justification of their exclusion. We have verified the nature and extent of the damage or defects by way of survey reports, one of which has been placed on the record at attachment 13 of CIL's February 25, 2002, response to the Department's supplemental B and C questionnaire, and by way of warranty claims, several of which appear in exhibit 6 of the Memorandum from Magd Zalok and Tisha Loeper-Viti to Gary Taverman re CEP Verification of the Sales Response (June 12, 2002) (INA Verification Report). We have also verified that such sales are not representative of the seller's behavior or practices, but, instead, are resales of merchandise that could not be used for its intended purpose as the result of damage sustained during shipment or the discovery of defects upon receipt and testing by the original customer. Furthermore, we agree with CIL that the sales in question constitute a small percentage of INA's U.S. sales. *See* Respondent's June 28, 2002, case brief at 17 and Attachment 2. While there is nothing in the Department's regulations, nor in the Tariff Act of 1930 as amended (the Act), that would compel us to exclude certain U.S. sales from our analysis, the Department has previously disregarded small quantities of aberrant U.S. sales of damaged or defective merchandise in other proceedings. *See, e.g., Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 57 FR 42942 (September 17, 1992) at Comment 14 where the Department excluded a small number of U.S. sales "because of the aberrant nature of these sales {of} damaged or defective merchandise." Accordingly, we find it appropriate to exclude INA's sales of damaged or defective merchandise from our final analysis.

Concerning the sales of free stock merchandise, we find that a similar exclusion is not warranted. As the petitioners have pointed out, this merchandise is characterized by the fact that it has been sitting in inventory in Trinidad and Tobago for a long period of time and therefore has a certain amount of atmospheric rust. While free stock may require more cleaning or descaling than more recently produced product, there is nothing on the record to suggest that this merchandise cannot be sold and used as intended. Although CIL claims that it is not in the business of selling non-prime merchandise, we find evidence to the contrary in regard to free stock. In fact, unlike the damaged and defective merchandise, the free stock was specifically ordered as such by INA's customers. *See* INA Verification Report Exhibit 10. For these reasons, we are continuing to include sales of free stock in our analysis.

<u>Comment 2</u>: *201 Duties*

In their case briefs, interested parties raised issues pertaining to the proper methodology for the allocation of duties collected under section 201 of the Trade Act of 1974 in the calculation of export price (EP) and constructed export price (CEP). Before addressing the proper allocation methodology, the Department noted it had never addressed the broader issue of the legal basis for deducting section 201 duties from U.S. price. Therefore, on August 13, 2002, the Department issued a preliminary recommendation memorandum addressing this issue and inviting interested parties in this investigation to comment on the matter. In response, the Department received comments from the petitioners and the respondent in this investigation, as well as other parties expressing an interest in what they consider a cross-cutting issue that could affect other cases. As a procedural matter, most parties objected that the Department had raised this broader issue too late in the proceeding to allow for sufficient analysis and comment, that the Department had allowed insufficient time to comment, and that there was no opportunity for rebuttal or hearing. As a legal matter, while the respondent argued that section 201 duties should not be deducted from U.S. price, most other parties argued that deducting section 201 duties was in full accord with the antidumping statute and consistent with Department practice.

Based upon our review of the record, we have determined that the adjustment at issue would have an insignificant effect in this case. Therefore, for purposes of the final determination in this investigation, we are invoking the discretionary authority set forth in section 777(A)(a)(2) of the Act to "decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise." Section 351.413 of the Department's Regulations defines "insignificant adjustments" as "any individual adjustments having an *ad valorem* effect of less than 0.33 percent, or any group of adjustments having an *ad valorem* effect of less than 1.0

percent, of the export price, constructed export price, or normal value, as the case may be." In this case, an adjustment for section 201 duties would have an *ad valorem* effect substantially less than 0.33 percent of the export price and constructed export price, no matter how such duties are allocated. In addition, section 201 duties in this case were paid on an extremely limited number of import transactions, and the effect on the overall dumping margin would be inconsequential. For further details, see Final Analysis Memorandum for Caribbean Ispat Ltd. from Magd Zalok and Tisha Loeper-Viti to the File, dated August 23, 2002. As a result, we are not addressing the merits of this issue here and will do so in a future proceeding, as appropriate, with full opportunity for comment by all parties.

<u>Comment 3</u>: ***Critical Circumstances***

CIL states that the Department should make a negative final determination of critical circumstances because the criteria for an affirmative determination have not been satisfied in this case. First, CIL contends that a single antidumping duty order that was issued in 1983 and subsequently revoked in 1987 is not sufficient to establish a history of dumping. CIL points to the *Final Determination of Sales at Less Than Fair Value for Certain Cut-to-Length Carbon-Quality Steel Plate Products from Japan*, 64 FR 73215 (December 29, 1999) (*CTL Plate from Japan*), where the Department found that "{d}ue to the fact that the dumping finding on carbon steel plate from Japan is twenty-one years old and was revoked thirteen years ago, {the Department} no longer consider{s} there to be a relevant history of dumping with respect to the subject merchandise." CIL claims that the Department should apply the same reasoning in this case. Furthermore, CIL points out that the more recent 1993 and 1998 investigations are more relevant and they both resulted in negative injury findings by the International Trade Commission (the ITC).

Second, CIL notes that the Department relied upon the margin in the petition to determine knowledge for the preliminary determination of critical circumstances. For the final determination of critical circumstances, however, CIL claims that the Department should use the calculated margin in the final determination of sales at less than fair value, as it has done in other cases. *See, e.g.*, *Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from the People's Republic of China*, 66 FR 33522 (June 22, 2001), and Memorandum re Final Affirmative Determination of Critical Circumstances, (June 14, 2001) where the Department relied on the final dumping margin to determine whether there was a reasonable basis to impute knowledge of dumping. Assuming that its margin remains below 15 percent, CIL claims that there would be no basis for finding knowledge of dumping.

Lastly, CIL purports that there was no massive surge of imports if the Department looks at the appropriate shipment data. For its preliminary determination of critical circumstances, issued in February 2002, the Department examined six months of data, June 2001 through November 2001, from the month of imputed knowledge and compared it to the preceding six months, December 2000 through May 2001. CIL maintains that, although the Department's regulations dictate a minimum of three months in the comparison period and the base period, the Department frequently utilizes longer periods in its analysis when the data are available, including data up to the month prior to the issuance of the preliminary determination of critical circumstances. *See, e.g., Softwood Lumber from Canada Final*, where the Department chose to compare periods of six months in length because the shipment data for these time periods were available. Similarly, CIL reasons, the Department should examine an additional two months of data in the comparison period, December 2001 and January 2002, and an equivalent two months in the base period, October and November 2000, in making its final critical circumstances determination because this additional data are now available. According to CIL, such a comparison will demonstrate that there was no massive surge of imports.

The petitioners call on the Department to make an affirmative finding of critical circumstances for purposes of the final determination. The petitioners cite the number of antidumping cases filed against steel wire rod from Trinidad and Tobago, as well as that from many other countries, in the United States over the past two decades. *See* the petitioners' rebuttal case brief dated July 3, 2002, at 16. Furthermore, the petitioners point to the ITC's 1999 injury finding leading to the import relief granted by the President in 2000 which is still in effect today. *See Certain Steel Wire Rod*, Inv. No. TA-201-69, USITC Pub. No. 3207 at I-3 (July 1999) and Pres. Proc. 7273, 65 FR 8624 (February 18, 2000). The petitioners note that a midterm review by the ITC showed that the domestic industry was still being injured by imports. *See Certain Steel Wire Rod,* Inv. No. TA-204-6, USITC Pub. No. 3451 (August 2001).

Regarding CIL's position that the Department should look at eight-month comparison and base periods to determine whether imports have been massive, the petitioners claim that this would dilute the surge that occurred around the filing of the petition. The petitioners observe that both the "standard" three-month period and the six-month period the Department used in the preliminary critical circumstances determination clearly show that imports have been massive and, therefore, support an affirmative critical circumstances finding in the final determination.

<u>The Department's Position</u>:

We have reexamined our preliminary critical circumstances decision and agree with CIL that, consistent with the final determination of *CTL Plate from Japan*, the antidumping order against steel wire rod from Trinidad and Tobago is no longer relevant due to the fact that it was issued and subsequently revoked almost 15 years ago. Furthermore, the two intervening cases, in 1993 and 1997, which had negative injury determinations, support a finding that there is not a history of dumping and material injury under 735(a)(3)(A)(i) of the Act. In response to the petitioners' citation of other steel wire rod cases and the ITC determination of injury from imported steel wire rod as a whole, we find that they are not pertinent to this issue as they do not specifically deal with the subject merchandise in this proceeding, *i.e.*, steel wire rod from Trinidad and Tobago.

With regard to section 735(a)(3)(A)(ii) of the Act, in preliminarily determining that CIL knew or should have known that steel wire rod from Trinidad and Tobago was being sold in the United States at less than fair value, the Department relied on the facts before it at the time the determination was made, *i.e.*, those in the petition. At this time, however, the Department has calculated a margin of 11.40 percent, less than the 25 percent or more for export price sales and 15 percent or more for constructed export price sales sufficient to impute knowledge of dumping. Therefore, knowledge of dumping and injury cannot be imputed.

Because the Department has found neither history nor imputed knowledge in this instance, it is unnecessary to evaluate whether imports have been massive over a relatively short period. We find that critical circumstances do not exist with respect to steel wire rod from Trinidad and Tobago.

Comment 4: ***Minor Corrections (Sales Verification)***

CIL maintains that the Department should incorporate the minor corrections presented at the beginning of the sales verifications of CIL, INA, and Walker Wire into the final analysis. *See* Letter from CIL to the Department re CIL Sales Verification Minor Corrections Submission (April 17, 2002); Letter from CIL to the Department re INA Sales Verification Minor Corrections Submission (May 17, 2002); and Letter from Walker Wire to the Department re Walker Wire (ISPAT) Verification Minor Corrections Submission (May 21, 2002). In addition, CIL also claims that the bank fees discovered during verification of CIL on certain sales to the United States should be deducted from the relevant U.S. prices as a direct selling expense. *See* Memorandum from Magd Zalok and Tisha Loeper-Viti to Gary Taverman re Verification of the Sales Response of Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago (May 20, 2002). Finally, CIL states that the Department should continue to accept INA's method for calculating indirect selling expenses on its U.S. sales. CIL argues that the value of both the sales INA made on its own account and the sales it made on a commission basis should be included in calculating an indirect selling expenses factor. According to CIL, the same amount of effort was expended by INA's sales staff on both types of sales.

The petitioners agree with CIL that the Department should make the corrections CIL reported at the outset of each verification. The petitioners also maintain that the Department should make adjustments for errors it identified during verification, such as unreported movement expenses and unreported bank charges incurred in Trinidad and Tobago. Lastly, the petitioners claim that the Department should adjust CIL's U.S. indirect selling expenses as suggested in the Department's INA Verification Report. The petitioners argue that INA staff did not spend the same amount of time on its commission sales as on its own sales, referencing the Department's verification report which states "that INA acted merely as a selling agent for the production mills and never took possession of the merchandise." *See* INA Verification Report at 13.

The Department's Position:

The Department agrees with both CIL and the petitioners that the minor corrections submitted at the outset of verification and the errors discovered during verification should be accounted for in our analysis.

With specific regard to INA's indirect selling expenses, we find that CIL's computation double-counted the sales INA made on behalf of producers other than CIL by including both the value of these sales and the commission INA earned. We acknowledge that in our verification report the Department reevaluated the effect on the indirect selling expense factor when we included the revenue INA earned on the commissioned sales, *i.e.*, the commissions, rather than the value of those sales. However, the Department has determined that including the value of the sales made on behalf of the other producers more accurately reflects the true allocation of this expense. During verification, we found that INA does not maintain separate accounts for expenses related to its own sales and for expenses related to its commissioned sales. In addition, CIL states that INA expends the same amount of effort, in terms of selling functions, on its commission sales as it does on its own sales, and the Department has not found any information that would indicate otherwise. However, the revenue generated for INA by these two types of sales, gross sales versus commissions, varies substantially. Therefore, we have determined that INA's indirect selling expenditures are tied more closely to the value of the sales it makes than to the value of the revenue it earns on those sales. For this reason, in calculating a revised indirect selling expenses factor, we find it appropriate to allocate INA's indirect selling expenses over the total value of all sales INA made during the POI. We have made the appropriate adjustment in our margin calculation.

II. ISSUES SPECIFIC TO COSTS:

Comment 5: ***Depreciation on Revalued Assets***

CIL argues that the Department erred in its preliminary determination by relying on the financial statements prepared in accordance with International Accounting Standards (IAS) as the basis for its cost of production (COP) and constructed value (CV) calculations. According to CIL, the financial statements prepared in accordance with U.S. generally accepted accounting principles (GAAP) are its principal financial statements prepared in the normal course of business and they should therefore serve as the basis for calculating COP and CV.

CIL notes that the principal difference between its costs calculated under IAS and its costs calculated under U.S. GAAP is in the amount of reported depreciation. CIL points out that the depreciation calculated under IAS is higher due to a revaluation of its plant, machinery and equipment performed by a firm of international valuers and surveyors. CIL notes that this type of revaluation is permitted under IAS, but that it is not permitted under U.S. GAAP.

CIL notes that under section 773(f)(1)(A) of the Act costs are normally calculated based on the records of the exporter or producer if such records are kept in accordance with the GAAP of the exporting or producing country and reasonably reflect the costs associated with the production and sale of the merchandise. CIL asserts that this case presents a unique set of circumstances, and that the issue before the Department is which set of financial statements to use to calculate costs. According to CIL, this issue is not addressed by section 773(f)(1)(A), and the statute therefore gives the Department the discretion to choose between its IAS and U.S. GAAP financial statements.

CIL argues that the Act, the Department's practice, and the fact that its U.S. GAAP financial statements are its principal financial statements all warrant the use of its U.S. GAAP statements to calculate cost. CIL cites the SAA at 834, which states "in determining whether a company's records reasonably reflect costs, Commerce will consider U.S. GAAP employed by the industry in question" and asserts that this indicates a clear preference for using U.S. GAAP to calculate costs. The Department's ordinary practice, CIL maintains, is to use U.S. GAAP as a benchmark to determine whether local GAAP distorts the cost of production. *See*, *e.g.*, *Dynamic Random Access Memory Semiconductors of One Megabit and Above from Taiwan*, 64 FR 56308, 56321 (October 19, 1999) (*DRAMs from Taiwan*), *Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8923 (February 23, 1998) (*SRAMs from Taiwan*) and *Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42847 (August 19, 1996).

CIL argues that this case is different from two recent cases in which the Department was presented with both historic cost depreciation figures and depreciation calculated on revalued asset amounts. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Italy*, 67 FR 3155 (January 23, 2002) and accompanying Issues and Decision Memorandum (*Stainless Steel Bar from Italy*) and *Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 67 FR 1553 (April 2, 2002) and accompanying Issues and Decision Memorandum (*Silicomanganese from India*). In *Silicomanganese from India*, CIL points out, the Department rejected the use of the respondent's historic cost depreciation figures and noted that the fact that both historic and revalued depreciation amounts were evident from the producer's financial statements did not speak to the question of which method distorted costs. CIL argues that in this case its historic cost depreciation figure appears in its principal financial statements and is the only figure permissible under the producer's principal accounting methodology, which is U.S. GAAP.

In *Stainless Steel Bar from Italy*, CIL asserts, the producer submitted two sets of financial statements, both of which were prepared in accordance with local GAAP. The financial statement that showed the historic cost depreciation, CIL points out, was prepared solely at the consolidated group level and did not show the historic cost depreciation figures of the producer itself. CIL asserts that the financial statements that showed depreciation calculated based on revalued asset amounts were the only set of financial statements that pertained directly to the respondent's productive operations. In the instant proceeding, CIL argues, its U.S. GAAP financial statements, which show depreciation on a historic cost basis, are clearly the financial statements of the producer and this fact is not diminished by the fact that they are used in the preparation of the parent's consolidated financial statements. In *Stainless Steel Bar from Italy*, CIL maintains, the only way to calculate the respondent's historic cost depreciation expense was to back it out of the consolidated figure, but in this case the figure is evident from CIL's own financial statements.

CIL claims that the facts in this case are also clearly distinguishable from the facts in *Laclede Steel Co. v. United States*, 18 CIT 965, Slip Op. 94-160, at 24 (October 12, 1994) (*Laclede*), where the CIT upheld the Department's use of depreciation calculated on revalued asset amounts. In *Laclede*, CIL asserts, the producer argued that the Department should use historic cost depreciation notwithstanding the fact that its only set of financial statements, prepared in accordance with local GAAP, calculated depreciation on the basis of revalued asset amounts. In the instant proceeding, CIL argues, it is not requesting a departure from its historical accounting practices, but rather is requesting that the Department calculate costs based on its principal financial statements.

The petitioners argue that the Department should continue to rely on CIL's financial statements prepared in accordance with IAS as it did in the preliminary determination. According to the petitioners, the Department's Preliminary Cost Calculation Memo, dated April 2, 2002, properly noted that under section 773(f)(1)(A) of the Act, the Department is required to rely on the costs of the producer or exporter in accordance with GAAP practiced in the producing or exporting country if those costs are reasonable. The petitioners assert that CIL's Trinidad and Tobago GAAP financial statements are the records kept by the producer and that they are kept in accordance with home country GAAP.

The petitioners argue that CIL's U.S. GAAP financial statements are not CIL's principal financial statements. The petitioners maintain that CIL uses its financial statements prepared under Trinidad and Tobago GAAP to pay taxes to the local government. Further, the petitioners point out, Ispat International N.V. is composed of many separate companies and the financial statements for all of those companies must be prepared on some consistent basis. The petitioners argue that CIL is not a U.S. GAAP company, but that it is instead a company that prepares its books in accordance with its home country GAAP and whose parent prepares consolidated financial statements in accordance with U.S. GAAP to gain access to U.S. equity markets.

The petitioners disagree with CIL's argument that this case can be distinguished from *Silicomanganese from India* because its historic cost depreciation appears in its principal financial statements. According to the petitioners, the fact that CIL had financial statements prepared in accordance with U.S. GAAP to make them compatible with the financial statements of its affiliated companies in no way makes them its principal financial statements.

The petitioners also disagree with CIL's arguments that the issue faced in this case is different from the issue faced in *Stainless Steel Bar from Italy*. The petitioners argue that the respondents in both cases revalued their assets to reflect their true worth, but subsequently argued that depreciation expense based on historical cost was the appropriate basis for product cost purposes. According to the petitioners, both respondents argued that depreciation calculated based on revalued asset amounts would distort costs. The petitioners point out that in *Stainless Steel Bar from Italy* the Department was not swayed by the respondent's arguments and subsequently calculated costs for subject merchandise based on revalued asset amounts because those were the costs in the producer's normal books and records, they were kept in accordance with its home country GAAP, and they reasonably reflected the cost of production. The same facts are present here, the petitioners assert, and the Department should continue to base CIL's costs on Trinidad and Tobago GAAP.

<u>The Department's Position</u>:

We agree with the petitioners that the Department should continue to rely on the amounts recorded in CIL's audited financial statements prepared in accordance with IAS. We find that the record of this investigation does not support CIL's assertions that its U.S. GAAP financial statements are its principal financial statements and that the Department should therefore calculate its costs based on those statements. CIL's questionnaire responses and evidence gathered at verification (*i.e.*, trial balances, management accounts, financial statements) support the conclusion that CIL's normal books and records are kept in accordance with IAS. Moreover, the notes to the audited financial statements of CIL's parent company, Ispat NV, state explicitly that the records of each operating subsidiary are maintained using the statutory or generally accepted accounting principles of the country in which the operating subsidiary is located and that for consolidation purposes the financial statements that result from such records have been adjusted to conform to U.S. GAAP. CIL itself has said in its submissions that it first issued audited financial statements in accordance with U.S. GAAP as a result of its parent company's listing on the New York and Amsterdam stock exchanges. As the petitioners have noted, CIL is clearly a company whose normal books and records are kept in accordance with home country GAAP (*i.e.*, IAS), but who also adjusts those records to conform to U.S. GAAP so that its parent company can report its consolidated results on a consistent basis and thereby gain access to foreign equity markets.

We disagree with CIL's claim that the Department's practice favors the use of U.S. GAAP to calculate costs. Although we acknowledge that the SAA states that the Department will consider U.S. GAAP in determining whether a respondent's costs are reasonable, the simple fact that treatment under U.S. GAAP is different does not negate the reasonableness of the GAAP practiced in a respondent's home country. In both *DRAMs from Taiwan* and *SRAMs from Taiwan*, for example, the Department did not find the treatment of the stock bonus distributions to be unreasonable simply because the treatment of these items was different under U.S. GAAP, but rather because the respondents had charged legitimate compensation costs to retained earnings and subsequently excluded these costs from their reported production costs. Moreover, the treatment under both sets of accounting principles may be reasonable, as is the case here, but the Department is obligated under the statute to first consider costs as they are recorded in a respondent's normal books and records and then consider whether those costs are reasonable. U.S. GAAP is merely one tool for the Department to use in its analysis, and not an end in and of itself.

Under section 773(f)(1)(A) of the Act, the Department is directed to follow the normal records of a producer if those records are kept in accordance with the producer's home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. Because CIL's depreciation costs calculated on the basis of its revalued asset amounts are recorded in its normal books and records and those records are kept in accordance with home country GAAP (*i.e.*, IAS), it therefore remains for the Department to determine whether those costs are reasonable.

Prior to the revaluation, CIL's recorded fixed asset values were materially less than their fair market value. As such, we do not find CIL's decision to write up the value of its fixed assets to fair market value to be unreasonable. Our established practice with respect to depreciation calculated on revalued fixed asset amounts has been to include that depreciation in the respondent's reported costs if it is reported in the respondent's normal books and records. This holds true in cases where the respondent's fixed assets were revalued based on a price index to comply with the requirements of inflation accounting, and also in cases where the fixed assets were revalued based on appraisal values. *See, e.g., Silicomanganese from India*; *Stainless Steel Bar from Italy*; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France*, 64 FR 73143, 73153 (December 29, 1999); *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 64 FR 6305, 6321 (February 9, 1999). This practice has been upheld by the Court of International Trade in both *Laclede* and *Cinsa S.A. de C.V. v. United States*, 966 F. Supp 1230, 1234 (CIT 1997).

Although CIL tries to distinguish the situation in the instant proceeding from *Stainless Steel Bar from Italy*, we find that the facts of this case support the opposite conclusion. In both cases, the respondent's fixed assets were being carried at historical costs that were materially less than their fair market values and the respondent revalued its fixed assets to fair market values based on the findings of outside appraisers. In both cases the respondent recorded depreciation on revalued assets in its normal books and records and adjusted its depreciation to historical cost for consolidation purposes. We did not find it appropriate to use historical cost depreciation in *Stainless Steel Bar from Italy*, and we also do not find it appropriate here. Thus, consistent with the statue and the Department's established practice, we have relied on the costs recorded in CIL's audited home country GAAP financial statements and included the depreciation calculated based on revalued asset amounts in the reported cost of manufacturing.

Comment 6: ***Iron Ore Offset***

CIL argues that the Department erred in its preliminary determination by disallowing its claimed offset to the total cost of manufacturing for iron ore purchased from an affiliated party. According to CIL, the cost of the iron ore purchased from its affiliate should be removed from the cost of manufacturing steel wire rod in the final determination.

The petitioners assert that the Department should continue to deny CIL's iron ore cost adjustment factor. According to the petitioners, the Department correctly disallowed this adjustment at the preliminary determination and the information gathered at verification further supports this decision. Additionally, the petitioners maintain, CIL did not adjust the materials costs recorded in its normal books and records and should not be allowed to do so for its responses.

The Department's Position:

For the final determination, we have disallowed this offset from the calculation of CIL's reported total cost of manufacturing. As CIL has treated substantially all of the facts relating to this issue as proprietary, we are unable to address the specifics of either party's arguments fully here. For a complete discussion of this issue and the Department's treatment of this item, *see* Memorandum to Neal Halper from Robert Greger, Re: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination dated August 23, 2002.

Comment 7: ***General and Administrative Assets Depreciation***

The petitioners argue that the Department should revise CIL's submitted general and administrative (G&A) expense ratio to include depreciation attributable to G&A assets. This correction is necessary, according to the petitioners, because CIL has allocated all of its depreciation expense to cost of goods sold. The petitioners claim that this is incorrect because there is always some depreciation expense attributable to assets such as the buildings where administrative staff are located and the computer systems, phone systems and furniture that they use.

The petitioners argue that where the level of detail permits it, the Department has recognized that some portion of depreciation expense is allocable to G&A expenses. Because CIL has not provided a schedule of depreciation expenses broken out between G&A and cost of goods sold, the petitioners assert, such a breakdown needs to be estimated. The petitioners suggest that the Department can calculate such a breakdown based on the depreciation expense schedules gathered at the cost verification. The petitioners maintain that the reallocated amounts can then be applied to the G&A ratio for the final determination.

CIL argues that the depreciation attributable to G&A assets has been properly captured in its response methodology. CIL asserts that it included all depreciation expense in the cost of manufacturing and that this is the first time the petitioners have objected to this classification even though it has been well known to them. If the petitioners had raised this issue previously and the Department had requested it to do so, CIL argues, CIL would have reclassified a portion of its depreciation expense to G&A even though there would be almost no effect on the cost of production of steel wire rod.

In addition, CIL points out, the petitioners fail to acknowledge that any amount reclassified from the cost of manufacturing to G&A must also be deducted from the reported cost of manufacturing regardless of the estimation method that is used. CIL suggests that not doing so would result in double-counting. In any event, CIL argues, since any reclassification would have little or no effect on the reported cost of production there is no justification for making the change in the final determination.

The Department's Position:

We agree with CIL that the depreciation on G&A assets has been captured in the cost of production. We acknowledge the petitioners' assertion that there is normally some depreciation expense related to G&A assets and that the Department recognizes that some portion of depreciation expense is allocable to such assets where the level of detail permits it. We note, however, that CIL included its total POI depreciation expense in the cost of manufacturing and that at this late stage of the proceeding there is no record evidence that would enable the Department to accurately calculate a breakdown of CIL's depreciation expense between COM and G&A. Moreover, as CIL has noted, any G&A related depreciation expense that would be added to the G&A ratio calculation must also be deducted from the cost of manufacturing to avoid double-counting. Thus, because CIL has captured its total depreciation expense in the cost of production, and a breakdown between COM and G&A would have little or no effect, we have not adjusted CIL's G&A expense ratio for the final determination.

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 *Federal Register*.

AGREE____ DISAGREE____

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Faryar Shirzad
Assistant Secretary
for Import Administration

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Date