

calculated margin for the company or the highest margin alleged in the petition.

Respondent argues that invoice date is the correct date of sale in accordance with the Department's normal methodology. It is also the date mandated by Brazilian law and accounting practices, which do not recognize a sale until the invoice is generated, and the date consistent with MSA and MCSA's recordkeeping system in the ordinary course of trade. Respondent takes issue with petitioner's assertion that the only subsequent changes in the essential terms of sale between MSA's internal order entry and shipment are a currency conversion and an inflation adjustment. Respondent states that not only did the high rate of inflation during the POI preclude any determination of the essential terms of sale (particularly price) until the time of invoicing, but also that there are significant fluctuations in price and quantity that typically occur between the order date and invoice date which the Department confirmed at verification. Citing the *Preliminary Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand* (60 FR 2734, January 11, 1995), respondent asserts that the Department has, under appropriate circumstances in past cases, specifically endorsed invoice date as the date of sale. In addition, respondent states that the purchase order is sometimes not received until after the invoice is generated by MCSA and the order shipped. According to respondent, invoice date is the most consistent and reliable basis for reporting comparable dates of sale in Brazil from both MSA and MCSA.

DOC Position

We agree with respondent and have accepted its reported date of sale. At the verification of both MSA and MCSA, respondent provided source documentation substantiating its reasons for using invoice date as the date of sale. These reasons included not only the effects of inflation between purchase order date and invoice date, but also the fact that Mannesmann's internal order is subject to numerous fluctuations in price and quantity up until the date of invoice. (See Verification Report at 11-12 and 47.) Our decision in this instance is consistent with past cases. See *Amended Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil*, 59 FR 8598, February 23, 1994).

We also note that the facts in *Brass Sheet and Strip* are different from those

in the instant case. In *Brass Sheet and Strip*, a formal contract between the buyer and seller established a price based upon a publicly quoted metal value source. The parties had agreed upon a time period during which the customer could lock in the publicly quoted rate; no further negotiations were necessary. In *Brass Sheet and Strip*, the price and quantity terms were sufficiently definite and effectively finalized as of the date of the initial contract, and the parties had no further ability to change the price by negotiation. In the instant case, not only are prices subject to fluctuation due to the hyperinflationary adjustment in Brazil, but customers often negotiate a different price or make material changes to quantity between the date of initial order entry and invoice date. While the *Brass Sheet and Strip* case involved long-term, fixed contracts where there was nothing left for the parties to negotiate, the instant case reflects the fact that when a purchase order to schedule production enters into MSA's system, the negotiating continues and a price adjustment often follows at the time of invoicing. With respect to this price adjustment, we could find no evidence in the source documentation examined at verification that, at the time of order, the customer had knowledge of the index (or indices) that would be used by respondent to make the adjustment for inflation, and that the customer therefore knew the exact price to which it had agreed. We also noted evidence of post-order cancellations, indicating that the customer was not bound by the terms set in the order.

We note that our decision in this case to accept the date of invoice as the date of sale is based upon the factual evidence on the record. In general, issues regarding the appropriate date of sale are examined on a case-by-case basis, and our decision in this case should not be interpreted as a general policy preference in future cases.

Comment 4

Consistent with its contention that the appropriate date of sale is the date of respondent's internal order, petitioner maintains that the home market prices and other cruzeiro-denominated data reported by Mannesmann must be restated in terms of the value of the cruzeiro during the month of sale. Similarly, according to petitioner, an inflation factor should not be included in any credit expense adjustment. Petitioner argues that to some extent the inflator in the credit expense adjustment can be expected to offset the inflator in the price. However, since the two inflators are derived differently and

serve different purposes, they are seldom, if ever, equal. Whereas the credit expense inflator reflects inflation from the invoice date to the actual date of payment, the price inflator is based on the number of days between the invoice and the expected date of payment. Furthermore, petitioner states that the Department verified that the rates used for the price inflator are not proportional across payment terms. Therefore, while the credit expense inflator should reflect the actual inflation rate, the price inflator may be higher or lower than the true rate depending on the date of actual payment. According to petitioner, the Department can determine the actual gross unit price in terms of cruzeiros during the month of sale by subtracting the reported inflation value from the reported gross unit price (invoice price). In addition, the indexed value of the reported (inflated) gross price should be compared to the price of the internal order, and any excess should be treated as interest revenue attributable to that sale because the price inflator may be higher than the true inflation rate.

Petitioner suggests that the reported inflation value be subtracted from gross price to obtain the price in terms of cruzeiros as valued during the month of shipment, and the resulting values can be converted to cruzeiros as valued on the actual date of sale (i.e., the internal order date) using the exchange rates provided in Mannesmann's response. The indexed value of the reported (inflated) gross price should then be compared to the price of the internal order, and any excess should be treated as interest revenue attributable to that sale.

Respondent maintains that the Department has verified the reported home market credit expenses and the rates for short-term loans available in Brazil during the POI without discrepancy and, therefore, should deduct these credit expenses as reported from FMV. Mannesmann disputes petitioner's allegation that interest revenue affects credit expenses and that, if a customer made a late payment, Mannesmann is not entitled to an adjustment for credit expenses because it would understate home market price. Respondent states that in the few instances when a customer did not pay on the expected date, interest revenue amounts were reported as an upward adjustment to the home market price, as verified by the Department. Also, if a customer did pay late, not only did Mannesmann incur the opportunity cost of not having the customer's money from the invoice date to the expected payment date, but it also suffered a