

unreported sales of subject merchandise discovered at verification; stating that there is no evidence on the record that Dalmine made a request to have these sales excluded. Additionally, the petitioner asserts that the respondent's unilateral exclusion of certain pipe sales without notice to or permission from the Department was a deliberate and material omission which affected the Department's decision to excuse the respondent from reporting certain categories of sales. Had the Department known about the totality of the exclusion being requested, it would not have excused the respondent from reporting these sales.

The respondent argues that its non-reported sales fall into the category of merchandise produced to a subject specification, but which are used in a non-subject application. Thus, these sales are outside the scope and therefore need not be reported. Since these unreported sales involved non-subject merchandise, no exclusion request was necessary. The respondent contends it only requested exclusions for products produced to subject specifications and used in subject applications, in accordance with the Department's published scope language.

DOC Position

We agree in part with the petitioner. With respect to certain unreported sales of merchandise which was the subject of the respondent's exclusion request, we agree that BIA is appropriate. In the early stages of this investigation, the respondent made several requests to be excused from reporting particular categories of U.S. sales which were clearly covered by the scope of this investigation. The respondent based this exclusion request on the claim that these sales represented a certain percentage of total U.S. sales. Based on this representation, we granted the request but indicated that the claim would be subject to verification. At verification we found additional unreported sales of the same merchandise that was the subject of the respondent's exclusion request. These additional unreported sales constitute a significant additional quantity than was represented in the exclusion request. Accordingly, we have assigned a margin based on BIA to the U.S. sales involved in the exclusion request, as well as the additional unreported sales of the same merchandise.

With regard to the other unreported sales discovered at verification, we agree that the merchandise is within the scope of this investigation. However, we have decided that the use of adverse BIA for these unreported sales is

unwarranted. As discussed above (see the Miscellaneous Scope Clarification Issues and Exclusion Requests section of this notice) the scope language, as published in the notice of initiation and the preliminary determination, was unclear as to whether the products in question are subject merchandise. The respondent did not report these sales based on its reading of the scope of the initiation. Since the scope language in the initiation is ambiguous (and hence has been clarified in the final determination), it is not appropriate to penalize the respondent.

Comment 2

The petitioner urges the Department to apply a BIA margin to one unreported U.S. sale of subject merchandise discovered during verification. According to the petitioner, the Department should view Dalmine's failure to report this sale against the background of the respondent's failure to report other sales of subject merchandise, and apply an adverse BIA margin.

The respondent acknowledges that it inadvertently failed to report this sale. According to the respondent, the order for this unreported sale appeared to be filled when it reported its U.S. sales data. However, two months later, the respondent made an additional shipment pursuant to this order, which was mistakenly not loaded with the first two parts of the order. The respondent claims it did not attempt to identify subsequent shipments pursuant to this order, since it considered this order filled at the time it prepared the sales listing. Only in the course of preparing for verification did the additional invoice amount come to the company's attention.

DOC Position

We agree with the petitioner, in part. The respondent made several shipments of subject merchandise pursuant to a customer's order. Each of the shipments were separately invoiced. Two of the invoices were reported in the respondent's sales listing. However, the respondent failed to report one invoice for a small amount of subject merchandise sold pursuant to this order. The facts do not support applying an adverse BIA margin to this sale. Instead, as BIA, we applied the average of all positive margins calculated for the remaining U.S. sales.

Comment 3

The petitioner claims the respondent misreported home market freight charges because it reported a calculated amount based on certain assumptions

rather than an actual amount. Therefore, the petitioner urges the Department to use the lowest freight expense in the home market response as the freight expense for all sales for its price to price comparisons. For the Department's price to cost comparisons, the Department should consider the highest freight charge for any home market sale to be the freight charge for all home market sales.

In reply, the respondent argues that it would have been extraordinarily burdensome, if not impossible, to match specific freight invoices to specific shipments because freight invoices are not computerized. At verification, the respondent demonstrated it was impractical to link thousands of freight invoices to the specific shipments to which the invoices related. Therefore, the respondent calculated the reported freight charges from published tariff rates by assuming all shipments were part of a full truck load that was delivered to more than one location. The respondent claims that the Department verified that its freight estimates are reasonable and any differences between estimated amounts and actual freight charges are minor.

DOC Position

We agree with the respondent. At verification, we noted that, while Dalmine maintained computerized databases regarding all sales and cost information, it did not maintain invoice-specific expense data in its computerized sales database. At verification the invoice-specific actual expenses, calculated to check the information in the sales response, had to be calculated manually and there was some difficulty in obtaining source documentation.

At verification, we examined the respondent's methodology for calculating estimated freight expenses. We compared actual freight expenses with the reported estimated freight expenses, and noted only minor discrepancies between these two figures. Therefore, the use of BIA for this adjustment is not warranted.

Comment 4

The petitioner urges the Department to disallow the home market credit expense adjustment in its dumping margin calculation because the respondent overstated substantially credit costs by reporting March 6, 1995, as the payment for all sales unpaid as of November 1994. The petitioner also claims the home market credit expense adjustment should be disallowed because verified credit differed from the actual credit for six of the eight