

purchase order and found that, only rarely, were sales shipped prior to receipt of the purchase order.

Thus, based on our findings at verification, we determine that the date of purchase order is the appropriate date of sale, except when date of shipment occurred prior to the purchase order, which occurred rarely. In those instances, date of shipment was the appropriate date of sale. TAMSAs, therefore, properly reported its POI sales.

*Comment 2: Cancellations.*

The petitioner asserts that, in the instances where purchase orders were received prior to the shipment date, a substantial number of those purchase orders in Mexico were cancelled. The petitioner contends that TAMSAs erred in its reconciliation of its reported sales to its financial statements at verification because the pre-shipments cancelled orders would not have been recorded as shipments in the financial statements, thus, arguing that TAMSAs must have sold and shipped this merchandise during the POI prior to issuing the unexplained cancellations.

In 64K Dynamic Random Access Memory Components from Japan: Final Determination of Sales at Less Than Fair Value (DRAMs from Japan) (51 FR 15943, April 29, 1986), the Department determined that no binding agreement had been entered into as of the purchase order date (because there were significant cancellations) and found that the appropriate date of sale was the shipment date since this was the earliest point in the transaction at which any sort of binding commitment could be inferred. The petitioner thus argues that the purchase order does not constitute a binding commitment between the parties; and, consequently, the Department should find that the shipment date represents the date of sale as it did in DRAMs from Japan.

Moreover, the petitioner contends that if the Department accepts the order date as the basis for determining home market sales and if the Department disallows post-petition credit memos and order cancellations, the home market was viable during the POI. It notes that disallowing post-petition credit memos and order cancellations is consistent with the Department's policy of not allowing rebates which are instituted retroactively after the filing of a petition (see Antidumping Manual and Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Antidumping Duty Investigation of Color Negative Photographic Paper from Japan (59 FR 16177, April 6, 1994)).

TAMSAs argues that the invoice cancellations did not affect the terms of the purchase order and had no contractual significance. TAMSAs states that the amounts in question represent credit memos, corrections to the booking and invoicing processes, or cancelled invoices, not cancellations in the orders, and that they had no effect on the quantity ordered.

TAMSAs asserts that DRAMs from Japan does not support the petitioner's date of sale argument. In that investigation, the Department determined that neither party to the purchase order intended it to be a binding agreement or treated it as such. TAMSAs argues that this situation does not apply to its home market sales process because the customer's order constitutes the binding sales agreement between the parties, and the Department found there were no changes in the sales terms from the order date to the invoice date. Thus, its date of sale methodology is correct.

*DOC Position*

We agree with TAMSAs. At verification, we found that these "cancellations" were, for the most part, changes to invoices (e.g., correcting for a wrong shipment date) or were credit memoranda; they were not similar to post-petition rebates as the petitioner claims.

DRAMs from Japan is inapposite because, in that case, the respondent argued that it did not normally acknowledge purchase orders, but instead stated that its normal acceptance of an order occurs when the order is actually shipped. Furthermore, the Department found, in that case, in addition to cancellations by both parties, that there were frequent price revisions.

At verification, we thoroughly examined TAMSAs's sales process and found that the purchase order is the binding agreement; the terms did not change between the order date and the shipment date. Thus, we determine that the order date, when used as the basis for date of sale, was appropriate.

*Comment 3: Possible Exclusion of a Certain Saudi Arabian Transaction.*

The petitioner argues that a certain Saudi Arabian transaction should be excluded because the date of sale was misreported and incorrectly included in the POI. Because the essential terms of sale, specifically the payment terms, for this transaction were not fixed on the reported date of sale, the Department should determine that the date of sale is outside the POI. The petitioner notes that it is the Department's policy to determine the date of sale to be the date

on which all substantive or material terms of sale are agreed upon by the parties (see Antidumping Manual). In Roller Chain from Japan, the Department found that the shipping documents were the first written evidence of the merchandise, price, quantity, and payment terms and, therefore, determined that the shipment date was the appropriate date of sale.

The petitioner also contends that its claim is supported by Mexican Commercial Law and notes that the Department has recognized that this type of foreign contract law analysis is relevant in determining when a sale occurs for the purposes of the antidumping laws (see DRAMs from Japan).

TAMSAs argues that the verification report acknowledged that the purchase order by the Saudi customer is the "culmination of the negotiating process," establishing the essential terms of sale, which did not change between order and shipment. It argues that communications between the parties between the quote and the order normally are not referenced in the order, and that it is "not unusual for negotiation during this period to take place."

In addition, TAMSAs contends that the Department verified that the customer's order constitutes the contract between the parties and that before the order is issued (including the time between bid and order), the parties may conduct negotiations. Since the purchase order is the earliest date of agreement between the parties on the terms of sale, the purchase order date is the proper date of sale.

TAMSAs states that the Department normally finds that the purchase order constitutes the date of sale, focusing on the intent of the parties to be bound by the order (see Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof from Taiwan (54 FR 42543, October 17, 1989)). TAMSAs notes that, in Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China (60 FR 22359, May 5, 1995), the Department considered the date of sale to be the date on which all substantive terms of sale (normally price and quantity) are agreed to by the parties, and that, in Roller Chain from Japan, the Department found that payment terms are not an essential term of sale.

In DRAMs from Japan, TAMSAs maintains that the Department based its date of sale determination on the intent of the parties. TAMSAs argues that the opinion by the Mexican lawyer on