

should not rely on OAB's reported fictional payment dates and fictional payment periods and should reject the credit expense amounts OAB claimed for its unpaid U.S. sales. Petitioners argue that the Department should follow its past practice and recalculate OAB's credit expense for these unpaid sales using as partial BIA the date of the notice of the final results for this administrative review as the date of payment (see *Certain Hot-Rolled Carbon Steel Flat Products*, *Certain Cold-Rolled Carbon Steel Flat Products*, and *Certain Cut-to-Length Carbon Steel Plate from Belgium*; *Final Determinations of Sales at Less than Fair Value*, 58 FR 37083, 37087 (July 9, 1993) (*Belgian Steel*), and *Certain Stainless Steel Wire Rods from France*; *Final Determination of Sales at Less than Fair Value*, 58 FR 68865, 68871 (December 29, 1993) (*SS Wire Rods*)).

OAB contends that there is no justification for the application of either complete or partial BIA to these unpaid sales. First, OAB argues that because the cases cited by petitioners involve entirely different facts than those in the case at hand, they are inappropriate precedents. Not only did *SS Cooking Ware*, *Belgian Steel*, and *SS Wire Rod* not involve sales to bankrupt customers, but in all three cases respondents either failed to report any data whatsoever regarding unpaid sales or they failed to provide an explanation as to why payment had not been received on those sales. OAB contends that it has responded to all information requests regarding U.S. sales, has reported invoice prices which were successfully verified by the Department, and has provided a clear explanation why its sales to a certain U.S. customer are still unpaid. Furthermore, OAB points out that *SS Cooking Ware* involved unpaid sales which constituted an entire market, whereas the unpaid sales in this case only represent a limited number of sales to a single customer, not sales to an entire market. Furthermore, OAB argues that the prerequisites for the use of BIA, as outlined in sections 776 (b) and (c) of the Act and the Department's regulations implementing section 776 (b) and (c), do not exist in this case, as they did in the others cited by the petitioners. Therefore, OAB contends that the Department should not reject the invoice prices, payment periods, or credit expenses OAB reported for its unpaid U.S. sales. Rather, citing various decisions, OAB urges the Department to act in accordance with its prior practice in a variety of cases where a customer failed to pay a respondent for merchandise it purchased, accept the

reported invoice prices, and calculate credit expenses for the unpaid sales using an average credit period based on similar sales or some other non-punitive measure (see, e.g., *New Minivans from Japan*; *Final Determination of Sales at Less than Fair Value*, 57 FR 21937, 21945 (May 26, 1992)).

The respondent argues that the Department's use of the date of the final results notice as the payment date for unpaid sales in both the *Belgian Steel* and *SS Wire Rod* original investigations was not punitive, whereas such a decision in this review would be punitive. OAB explains that both of these cases were original investigations, which, unlike administrative reviews, were of a shorter duration and subject to stricter statutory deadlines. Because this proceeding is not only an administrative review, but an administrative review that has taken longer than normal to complete, a decision by the Department to use the date of the notice of the final results of review as the payment date for these sales would create some payment periods in excess of three years, and as such would result in an extremely unwarranted punitive outcome.

Finally, the respondent contends that, in accordance with the Federal Circuit's decision in *Olympic Adhesives v. United States*, 899 F.2d 1573 (Fed. Cir. 1990) (*Olympic Adhesives*), to the extent that the actual payment dates for these unpaid sales do not exist, the Department may not penalize OAB by using as BIA payment dates which would grossly distort any reasonable credit calculation.

Department's Position: We agree in part with both the respondent and the petitioners. Prior to verification OAB had not indicated in its original questionnaire response or its subsequent supplemental responses that it had not yet received payment for certain of its U.S. sales to a particular customer. Nor did OAB indicate that it had reported estimated payment dates and corresponding payment periods for these unpaid sales, which it knew when it submitted its questionnaire response were not actual payment dates and periods. It was only because one of the sales we selected in the sales trace portion of our verification happened to be an unpaid U.S. sale that we discovered at verification (1) that OAB had unpaid U.S. sales, (2) that OAB had reported estimated payment dates for these sales and that these dates had already passed without payment, (3) that OAB had left its books open on these sales, and (4) that one of OAB's U.S. customers had been unable to pay OAB for merchandise it purchased

during the review period due to financial difficulties (i.e., bankruptcy). When we asked the respondent at verification to identify all of its unpaid U.S. sales, OAB indicated that only a few sales to this bankrupt customer were unpaid, and explained that it would be too difficult to isolate these sales in the time allotted for verification. As a result, because we were only first aware of the nature of these sales at verification and because the respondent was unable to identify these unpaid sales at verification, we were unable to verify the extent of these unpaid sales and unable to verify the accuracy of OAB's explanation why the sales were unpaid. However, by means of our sales traces, we were able to verify some limited information concerning sales to the U.S. customer, such as the invoice prices OAB reported for them. After verification we conducted our own analysis of OAB's sales to this U.S. customer and discovered that only one sale did not have an estimated payment date and corresponding estimated payment period. As a result, we determined that all but one of OAB's sales to this customer were unpaid. Based on these facts, we disagree with the respondent's contention that the prerequisites for the application of BIA do not exist in this instance and that, based on *Olympic Adhesives*, we cannot use BIA for information that simply does not exist. Although we recognize that OAB included these sales in its original U.S. sales listing, the fact remains that OAB failed to inform us of the nature of these sales, and failed to inform us that the "estimated" payment dates and payment periods it reported were not actual payment dates and periods. This, along with the fact that OAB was unable to identify these sales at verification and only first offered at verification any explanation why these sales were unpaid, impeded our ability to accurately and completely verify these sales. Therefore, because OAB provided incomplete and inaccurate information concerning the nature of these sales, and because at verification we were able to verify only a limited amount of information concerning these sales, we have determined for these final results, in accordance with section 776(b) and 776(c) of the Act, that the application of BIA to these sales is warranted. Furthermore, *Olympic Adhesives* is not applicable in this case because the Department is not applying BIA because OAB failed to provide non-existent payment dates. Rather, we are applying BIA because the payment information OAB provided in its questionnaire responses was incomplete