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Investigation
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September 23, 2002

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Joseph A. Spetrini
Deputy Assistant Secretary
AD/CVD Enforcement Group III

SUBJECT: Issues and Decision Memorandum for the Antidumping Investigation of Certain Cold-Rolled Carbon Steel Flat Products from France; Notice of Final Determination of Sales at Less Than Fair Value

Summary

We have analyzed the comments and rebuttals of interested parties in the antidumping duty investigation of certain cold-rolled carbon steel flat products (cold-rolled steel) from France (A-427-822). As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments and rebuttals by parties:

1. Downstream Sales to Affiliated Parties
2. Collapsing of Downstream Producers
3. "Exempted" Steel Service Centers that Failed the Arm's-Length Test
4. Constructed Export Price (CEP) Offset
5. CEP Profit
6. Home Market Indirect Selling Expenses
7. Home Market Credit Expense
8. Home Market Credit Expense for Sales by SLPM
9. Home Market Inventory Carrying Cost
10. Home Market Movement Expenses
11. Home Market Warranty Expense
12. Home Market Adjustment to Normal Value
13. Commissions Paid to Affiliated Parties
14. Inland Freight to Warehouse Expense for Sales by SLPM
15. U.S. Indirect Selling Expense

16. USC's Accounts Receivables Securitization Program
17. U.S. Credit Expense Calculation
18. U.S. Movement Expenses
19. U.S. Sales Not Previously Reported
20. U.S. Sales of "Non-Prime" Merchandise
21. Weighted-Average Margin Calculation - Zeroing Negative Margins
22. Unreconcilable Differences
23. By-Product Offset
24. Rail Rental Revenues
25. Major Input Rule - Sales to Affiliated Resellers
26. Major Input Rule - Usinor Purchases from Affiliates
27. Disregarded Transactions
28. Miscellaneous Selling, General and Administrative (SG&A) Related Accruals and Provisions
29. SG&A Expenses - Accelerated Tax Depreciation
30. SG&A Expenses - Foreign Exchange Losses

Background

The Department of Commerce (the Department) published in the *Federal Register* the negative preliminary determination in this investigation on May 9, 2002. *See Notice of Preliminary Determination of Sales at Not Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from France*, 67 FR 31204 (May 9, 2002) (*Preliminary Determination*).

On May 21, 2002, the Department published in the *Federal Register* its amended preliminary determination. *See Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from France*, 67 FR 37387 (May 29, 2002) (*Amended Prelim*).

On May 23, 2002, Usinor requested that the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the *Federal Register* and requested an extension of the provisional measures. On June 6, 2002, the Department extended the final determination until not later than 135 days after the publication of the preliminary determination in the *Federal Register*. *See Notice of Postponement of Final Determination of Antidumping Duty Investigation: Certain Cold-Rolled Carbon Steel Flat Products from France,* 67 FR 40911-01 (June 14, 2002).

The period of investigation (POI) is July 1, 2000, through June 30, 2001. We invited parties to comment on our amended preliminary determination. We received case briefs from respondent (Usinor) and petitioners (Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., WCI Steel, Inc., and Weirton Steel Corporation (collectively, petitioners)), on August 7, 2002. We received rebuttal briefs from the same parties on August 12, 2002. On August 9, 2002, and August 12, 2002, petitioners withdrew their requests for a public hearing in this investigation.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. A full description of the scope of this investigation is contained in "Appendix I" attached to the *Notice of Correction to Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Australia*, 67 FR 52934 (August 14, 2002). For a complete discussion of the comments received on the *Preliminary Scope Rulings*, *see* the memorandum regarding "Issues and Decision Memorandum for the Final Scope Rulings in the Antidumping Duty Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea," dated July 10, 2002, which is on file in the CRU.

Changes since the Amended Preliminary Determination

1. CEP Offset - *See* Comment 4 below.
2. Home Market Indirect Selling Expenses - *See* Comment 6 below.
3. Home Market Credit Expense for Sales by SLPM - *See* Comment 8 below.
4. Home Market Inventory Carrying Costs - *See* Comment 9 below.
5. Home Market Movement Expenses - *See* Comment 10 below.
6. Home Market Warranty Expenses - *See* Comment 11 below.
7. Home Market Adjustment to Normal Value - *See* Comment 12 below.
8. Commissions Paid to Affiliated Parties - *See* Comment 13 below.
9. Inland Freight to Warehouse Expense for Sales by SLPM - *See* Comment 14 below.
10. U.S. Indirect Selling Expense - *See* Comment 15 below.
11. U.S. Movement Expenses - *See* Comment 18 below.
12. U.S. Sales Not Previously Reported - *See* Comment 19 below.
13. U.S. Sales of "Non-Prime" Merchandise - *See* Comment 20 below.
14. Unreconcilable Differences - *See* Comment 22 below.
15. Rail Rental Revenues - *See* Comment 24 below.
16. Disregarded Transactions - See Comment 27 below.
17. SG&A - Accelerated Tax Deprecation - *See* Comment 29 below.
18. SG&A - Foreign Exchange Losses - *See* Comment 30 below.
19. We have excluded sales by PUM where the shipment date is prior to the beginning of the POI.
20. We have corrected two sales made by SLPM per our verification findings (*e.g.*, reported gross unit price, quantity, inland freight, etc.).
21. We are applying the last day of the U.S. sales verification (June 19, 2002) as the date of payment for unpaid home market sales.

22. We revised Etilam S.A.'s SG&A rate to exclude net exchange gains on accounts receivable.

For business proprietary details of our analysis of the above mentioned changes to our amended preliminary margin calculations, *see* Memo to the File regarding Antidumping Duty Investigation on Certain Cold-Rolled Carbon Steel Flat Products from France; Final Determination Analysis for Usinor Group (September 23, 2002) (Final Analysis Memo). See also Memorandum to Neal Halper regarding Antidumping Duty Investigation on Certain Cold-Rolled Carbon Steel Flat Products from France; Cost of Production and Constructed Value Calculation Adjustments for the Final Determination (September 23, 2002) (COP Memo).

Discussion of the Issues

We noted that petitioners, in their rebuttal brief dated August 12, 2002, raised a new issue that did not specifically rebut an issue discussed by respondent in its case brief. This issue regards, according to petitioners, mis-classified subject merchandise that the Department found during verification. We also noted that petitioner Nucor Corporation, Inc., in its rebuttal brief dated August 13, 2002, raised a new issue that did not specifically rebut an issue discussed by respondent in its case brief. This issue regards, according to the petitioner, discrepancies between Usinor's revised sales databases (July 31, 2002), and its previous sales databases (May 6, 2002).

19 C.F.R. § 351.309(d)(2) states that rebuttal briefs may respond only to arguments raised in case briefs. Since both of these issues do not respond to issues raised in case briefs, we do not address these issues in this final determination.

Comment 1: Downstream Sales to Affiliated Parties

During the investigation, the Department requested that Usinor report downstream sales by affiliated resellers/steel service centers (SSCs). At the same time, the Department granted Usinor's request that it be excused from reporting downstream sales by five smaller affiliated resellers. After Usinor submitted the data containing the purported downstream sales, the Department discovered that some of these sales were actually made to other affiliated parties. The Department applied Adverse Facts Available to these reseller sales to affiliates which did not pass the arm's-length test.

Petitioners claim that the Department should continue in its final determination to apply adverse facts available to home market sales by affiliated resellers to affiliated customers that fail the arm's-length test. Petitioners state that the Department warned Usinor on January 31, 2002, that it would be subject to the application of facts available if it failed to report downstream sales by all affiliated resellers and if sales to the resellers were found to fail the arm's-length test. Petitioners contend the Department appropriately applied adverse facts available to sales made by the four reporting resellers (*i.e.*, Cisatol, Service Acier Rhenan (SAR), Société Lorraine de Produits Metallurgiques (SLPM), and Sotracier), and one reseller/producer (Produits d'Usines

Metallurgiques (PUM)) to affiliated customers that failed the arm's-length test in its preliminary determination.

Petitioners assert that the Department provided ample opportunity for Usinor to report all resales to the first unaffiliated customer made by affiliated entities before and after its preliminary determination. Petitioners state that Usinor refused to report these sales to the Department in its May 6, 2002, response, as Usinor claimed that it could not complete this task in 10 days. Petitioners believe that Usinor's objection that it would be burdened by reporting these sales is without merit. Petitioners contend that Usinor was on notice for a minimum of four months prior to its May 6, 2002, submission (*i.e.*, at a minimum from the date of the Department's January 31, 2002, instruction) that it would be required to report all downstream sales by all affiliated resellers if those resellers failed the arm's length test. Petitioners argue that because Usinor has not reported these downstream sales as instructed by the Department, the Department should continue in its final determination to apply adverse facts available to those sales made by the five affiliated resellers to affiliated customers that fail the arm's-length test.

In its case brief, respondent Usinor maintains that the burdens of reporting all downstream sales of subject merchandise by all affiliated resellers would have been enormous. Respondent claims that the Department agreed with Usinor, and therefore, instructed Usinor to provide questionnaire responses only for the five affiliated resellers (the "reporting resellers") that accounted for the largest share of the resales in France.

Usinor admits that the re-resales by other affiliated resellers of subject merchandise purchased from the reporting resellers were not included in its submitted home market sales database (March 5, 2002). Usinor contends that the volume of the resales from the reporting resellers to other affiliated resellers is very small and the number of these other affiliated resellers is quite large. Therefore, Usinor argues that the burden of reporting the re-resales by these affiliated resellers would have been enormous. Usinor further argues that in light of the small volume of merchandise involved, the value of having information on these re-resales would have been insignificant.

Usinor believes that the Department inappropriately applied adverse facts available for comparisons that involved sales by the reporting resellers to their affiliated reseller customers. Usinor maintains that it has cooperated fully with the Department's investigation in all respects (*e.g.*, raising the issue of sales through affiliated resellers, and receiving the Department's permission to limit the reporting of resales by those affiliates). Usinor contends that at least three of the resellers for which the Department did not require responses individually accounted for more purchases of subject merchandise from the producing mills than all of the non-reporting affiliated resellers purchases from the reporting resellers.

Usinor, citing section 782(c)(1) of the Act (19 USC 1677m(c)(1)), claims that the antidumping statute specifically authorizes the Department to modify its reporting requirements "to avoid imposing an unreasonable burden" on the parties to the proceeding. Usinor argues that the Department should utilize that authority to excuse Usinor from what it contends is an unreasonable burden of requiring the large number of affiliated resellers to individually report their re-resales of subject merchandise. Usinor further argues that the Department has no basis on the record for penalizing it for failing to submit data that could not feasibly be submitted, especially after Usinor had specifically requested, and the Department had agreed, that the reporting requirements in this investigation should be limited to avoid precisely such impossible burdens (citing *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24346 (May 6, 1999)).

In rebuttal briefs, petitioners reiterate that Usinor has made no attempt whatsoever to cooperate with the Department's instructions to report resales by all resellers and, therefore, application of partial adverse facts available is appropriate. Petitioners assert that Usinor misstates the record when it claims that the Department "agreed" to limit reporting to the sales of the five main affiliated resellers. Moreover, petitioners argue that at no point in time did Usinor request to be excused from reporting these re-resales. Petitioners believe that Usinor's claim that the "value of having information on these re-sales would have been insignificant" is unsupportable. Petitioners argue that these sales may well be the most appropriate matches to sales made in the United States by Usinor Steel Corporation, Inc. (USC). Petitioners further argue that without a full reporting of these resales, as required by the Department, there is no way for the Department to determine that the "value" of having the information it instructed Usinor to provide is insignificant. Thus, petitioners conclude that because Usinor made no attempt to cooperate with the Department's instructions, and because it has failed to report downstream sales that may be the most appropriate matches to U.S. sales, the Department should continue in its final determination to apply partial adverse facts available to the unreported downstream sales.

In its rebuttal brief, respondent reiterates that because computer systems and sales processes for these companies differed, providing complete questionnaire responses for all of these resellers would have been impractical. Respondent asserts that the antidumping statute specifically authorizes the Department to modify its reporting requirements, which in this case the Department appropriately invoked, in response to Usinor's request, and permitted Usinor to report only the sales by its five largest affiliated resellers. Respondents contend that even with such limited reporting requirements, the burden on Usinor was still enormous, in the context of an investigation in which Usinor was required to provide data on seven producers/sellers (Sollac Atlantique S.A., Sollac Lorraine S.A., Usinor Packaging S.A., Etilam, Beautor S.A., Haironville S.A., and PUM) and four other home-market resellers (SLPM, Cisatol, SAR, and Sotracier).

Respondent argues against petitioners' contentions regarding the Department's decision to limit the reporting requirements for resellers, stating that this argument disregards the tremendous discretion the Department has in formulating reporting requirements in investigations - and the specific discretion granted to the Department by the statute "to avoid imposing an unreasonable burden" on the parties to the proceeding. Therefore, respondent asserts that the Department's exercise of that discretion in this case was plainly appropriate.

Department's Position: We agree with petitioners. On January 15, 2002, respondent requested that the Department limit its reporting requirements regarding downstream sales of subject merchandise made by affiliated steel service centers. On January 31, 2002, the Department used its statutory discretion to limit Usinor's reporting requirement for these downstream sales, and requested that Usinor submit data on downstream sales of subject merchandise made by its five largest (by volume) affiliated SSCs to the first unaffiliated customer. We received sales data in response to this request on March 5, 2002. We reviewed the submitted data and found that the reported sales included resales to other affiliated parties.

On April 5, 2002, Usinor admitted that its March 5th submission included all sales of subject merchandise by the reporting resellers to affiliated and unaffiliated home-market customers - including sales to other reporting resellers and to other affiliated customers (non-reporting). In a supplemental questionnaire, dated April 23, 2002, the Department requested that Usinor submit the downstream sales of subject merchandise from the reporting resellers' affiliated customers to their first unaffiliated customer. On May 5, 2002, Usinor responded that due to burden of compiling necessary information within the time allowed, it simply was not feasible for Usinor to compile the necessary data.

We disagree with respondent's argument that the Department's reporting requirements were burdensome. The Department met with respondent's counsel to discuss reporting requirements (*See* memorandum to the file, January 18, 2002) and asked that respondent submit a proposal, which Usinor did (*See* Letter from Usinor to the Department of Commerce, January 17, 2002). In its letter, Usinor proposed that, should the Department require the reporting of downstream sales, it report the downstream sales of the four largest SSCs. The Department's January 31, 2002, letter requests that Usinor report the five largest SSCs. For Usinor to argue now that it is burdensome to report downstream sales for SSCs that Usinor itself proposed to report is without merit.

Furthermore, we clearly stated, in our January 31, 2002, letter, that "should the quantity or percentage of these sales change, or Usinor demonstrates the lack of completeness and reliability of its information on the record on this issue, the Department may resort to the application of facts available." At no point during this proceeding did Usinor request to be excused from reporting these resales. Moreover, we find Usinor's claims that the value of these resales are insignificant to be unsupportable. Usinor did not provide us with the opportunity to determine the value of these resales. Because Usinor failed to provide fully all downstream sales from the five affiliates required to report sales to unaffiliated customers pursuant to the Department's request for this information, we continue to find, in accordance with section 776(a) of the Act, that the use of partial adverse facts available is appropriate. Further, because the requested information was within Usinor's control, Usinor's failure to provide adequate explanations for its inability to provide the requested information indicates, and we find, that Usinor has not acted to the best of its ability in responding to the Department's request for information.

Thus, application of an adverse inference, pursuant to section 776(b) of the Act, is warranted. Accordingly, we have applied the highest gross unit price of subject merchandise sold to unaffiliated customers by model to those sales of cold-rolled steel made by the five affiliated resellers to affiliated customers by model that fail the arm's-length test, with the exception of sales made to those affiliated resellers which were excused from reporting downstream sales. For those sales that did not have a model match, we applied the weighted-average gross unit price for those models with a match. (*See* Memorandum to the File regarding Antidumping Duty Investigation on Certain Cold-Rolled Carbon Steel Flat Products from France; Preliminary Determination Analysis for the Usinor Group, dated April 26, 2002, (Prelim Sales Analysis Memo).)

Comment 2: “Exempted” Steel Service Centers that Failed the Arm’s-Length Test

Petitioners note that the Department requested that Usinor report downstream sales from five specific affiliated resellers, but that Usinor was not required to report downstream sales from any other affiliated resellers. Petitioners believe that the Department should have required Usinor to report those downstream sales not otherwise reported. Petitioners believe that the Department based its decision on allowing Usinor not to report some downstream sales on an incorrect reading of Section 351.403(d) of the Department’s regulations. Specifically, the Department did not take into account the aggregate sales of the excluded resellers.

Regardless of this decision, petitioners believe that the Department’s decision did not excuse Usinor from reporting downstream sales if sales to the affiliated parties failed the arm’s-length test. Therefore, where sales to an affiliate fail the arm’s-length test, and Usinor failed to report the subsequent downstream sales, the Department should apply adverse facts available to those sales which failed the arm’s-length test. Petitioners contend that the Department simply disregarded these sales in the preliminary determination and did not use them in the margin calculations. Petitioners want the Department to apply adverse facts available for the final determination.

Usinor responds that the antidumping duty statute, at 782(c)(1), gives the Department the authority to modify reporting requirements in order to avoid imposing an unreasonable burden on reporting parties. Usinor states that the Department has exercised this authority in the past, and cites *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan* (64 FR 24329, May 6, 1999), in support of this contention. Usinor states that the resellers excluded from reporting downstream sales to the Department account, in aggregate, for less than five percent of total home-market sales of subject merchandise by the Usinor Group.

As for the contention that all downstream sales by affiliated resellers be reported whenever those resales account for more than five percent of all home-market sales in the aggregate, Usinor states that petitioner does not recognize the Department’s discretion in setting reporting requirements. In this instance, Usinor contends that the Department used its discretionary authority in an appropriate manner when excluding these sales from the reporting requirements.

Department’s Position: We disagree with petitioners. The Department utilized its discretion to limit Usinor’s reporting of downstream sales in its January 31, 2002, letter. Section 351.403(d) of the Department’s regulations states “{i}f an exporter or producer sold the foreign like product through an affiliated party, the Secretary may calculate normal value based on the sale by such affiliated party. However, the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign-like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter’s or producer’s sales of the foreign-like product in the market in question or if sales to the affiliated party are comparable, as defined in paragraph (c) of this section.” Since the exclusion of the sales by the affiliated resellers not requested to report downstream sales would collectively constitute a percentage of sales in the home market significantly below 5 percent, it was not necessary for Usinor to report these downstream sales.

Usinor requested, and the Department agreed, to those exceptions. Petitioners do not point to any information that would require us to revisit our decision, nor do we find any basis for doing so. Consequently, we find that it would be inappropriate to apply facts available. We will continue to apply the methodology from our preliminary determination with respect to sales to and from the resellers which were excused from reporting downstream sales.

Comment 3: Collapsing of Downstream Producers

Petitioners argue that the Department should treat Usinor's eight SSCs as producers, and collapse all of these entities along with the known Usinor producers. Petitioners argue that each of the SSCs substantially transforms subject merchandise by changing the physical characteristics sufficiently to change the CONNUM. Therefore, their activities fit the statutory definition of 'production' and the SSCs should be treated as producers. As producers, the SSCs should be collapsed with the other Usinor producers.

Petitioners argue that the Department should define a 'producer' by output rather than input. If cold-rolled steel is further processed in an SSC, and all other criteria are met, then the 'production costs' associated with these activities can be captured if these entities are treated as producers and collapsed. Defining a 'producer' by its input raw materials, according to petitioner, would place the definition of 'producer' in conflict with the regulations defining 'cost of production' at section 773(b)(3) and the definition of 'exporter and producer' at section 771(28) of the Act. The definition of cost of production includes other processing of any kind employed in producing the foreign like product, according to petitioner. Thus, argue petitioners, 'production' is defined as the entire process through to the final form of the foreign like product. The same reasoning, according to petitioners, is supported by the definition of an exporter or producer. That definition includes language which, for purposes of calculating normal value, defines an exporter or producer as "the producer of the same subject merchandise to the extent necessary to calculate accurately the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise." Petitioners state that the SSCs produce some of the "same subject merchandise" and thus fall under the definition of a producer.

Petitioners believe that a failure on the part of the Department to collapse the SSCs will result in a precedent which will create problems with both the major input rule and the Department's sales below cost of production test. The problem, according to petitioners, would occur if a company separated each stage of production into a separate entity, forcing the Department to weigh the transfer price of an intermediary product against intermediary COP where the intermediary product falls within the scope of the investigation. Such a result, according to petitioners, would render the COP test ineffective by performing the test where a product becomes subject merchandise, rather than at the final finished form. This is contrary to the intent of the statute, according to petitioners.

In support of their contention, petitioners cite *Stainless Steel Bar from France* (67 FR 3143, January 23, 2002). Petitioners contend that, in that case, the Department found that cutting services provided by SSCs were properly considered to be part of production. The Department thus treated the transfer prices and expenses between affiliated entities as manufacturing costs.

The parties involved in that case, notes petitioners, are the same entities involved in the current investigation. Therefore, the decision is particularly relevant to the instant investigation.

Finally, petitioners assert that the Department has previously recognized tolling operations to be 'producers' of subject merchandise. Citing to *Stainless Steel Wire Rod from Sweden* (63 FR 40449, July 29, 1998), petitioners note that the Department collapsed a respondent company and subsidiary based upon a tolling operation. Petitioners argue that the sale from an affiliated party to a SSC constitutes a transfer of inventory from one division to another, which fulfills the definition of a producer with regards to tolling operations under 19 C.F.R. § 351.401(h). For all of the reasons stated above, petitioners believe that the SSCs should be treated as producers and collapsed with the other previously-identified producers within the Usinor Group.

Usinor states in response that it is unclear why petitioners wish to collapse the affiliated resellers with the producers. Since the resellers do not export, Usinor speculates that petitioners wish to collapse the affiliated resellers for the purpose of changing the cost methodology. Specifically, Usinor believes that petitioner might be advocating collapsing the affiliated resellers based on the method used to value inputs transferred between producing mills and the affiliated resellers.

If so, Usinor states that it has already reported the value of the cold-rolled coil inputs based on fully allocated total costs incurred by the mills, rather than transfer prices. Therefore, a decision to collapse the affiliated resellers with the production mills would not require a change in the cost methodology and would be irrelevant.

Department's Position:

Petitioners appear to advocate collapsing these affiliated resellers in order to capture all costs of production. The Department is currently capturing all of the actual costs of the resellers for slitting and other processing, and adding these to the actual costs of production for the substrate. Thus, the Department is treating all of the expenses as costs, as petitioners advocate and consistent with *Stainless Steel Bar from France.* In that case, the Department stated "[b]ecause we view the downstream sale as one continuous sales process, we appropriately are treating the inter-company expenses incurred between U-SI and UFS/U-SF in making the sale to the first unaffiliated home market customer as manufacturing costs rather than selling expenses . ." *See* Unpublished Decision Memorandum, *Stainless Steel Bar from France* at Comment 8. Also, *see* Comment 25 in this analysis.

Comment 4: CEP Offset

Petitioners state that the information regarding levels of trade in the home market that is contained in Usinor's submissions to the Department was unverified. Petitioners contend that Usinor ignored the Department's instruction which requested Usinor to review at verification the functions and services offered by Usinor and its affiliated SSCs to different classes or groups of customers (*e.g.*, steel service centers and end users). Therefore, the Department should deny Usinor's request for a constructed-export price (CEP) offset.

Petitioners contend that to qualify for a CEP offset, a respondent in an antidumping duty investigation must meet certain regulatory criteria. Petitioners cite 19 CFR 351.412(f)(ii), which specifies that a CEP offset will be granted only where normal value is determined at a more advanced level of trade than the level of trade of the constructed export price. Petitioners argue that because the Department was unable to verify Usinor's level of trade claims in the home market, there is no record information concerning the home market level of trade on which the Department may legally rely in its final determination. Petitioners conclude that in accordance with its regulations, the Department should deny Usinor a CEP offset in the final determination.

Respondent asserts that the Department, during verification in France, reviewed in detail the services provided by the Usinor companies to their home-market customers. The review, according to respondent, adequately supports Usinor's claim that the home-market sales by the mills and the home-market sales by the service centers constituted distinct levels of trade. Respondent contends that the Department found that, for the producing mills (*e.g.*, Sollac Atlantique S.A. and Sollac Lorraine S.A.), sales were typically made through direct shipments from the plants to the customers, in large quantities (involving mill-sized coils), with long delivery times, and little technical support to the customers. By contrast, respondent asserts that the service centers (*e.g.*, SLPM and PUM) typically stored material to meet customer requirements, and sold in smaller quantities with extremely short-lead times and with more hands-on customer support.

Respondent further asserts that the evidence on the record demonstrates that the level of trade for the home-market sales by the mills was far more advanced than the constructed level of trade of the mills' sales to its U.S. affiliate, USC.

Respondent believes that the issue is not whether Usinor had the time to compile a separate package on level of trade. Instead, respondent argues, the issue is whether the facts that were submitted and subject to verification support the claimed differences in the levels of trade. Respondent contends that those facts plainly support Usinor's description of the distinct levels of trade at which it sells, and therefore the appropriate adjustments should be made.

In rebuttal, petitioners counter that at verification the Department found that Usinor could not support and the Department could not verify the company's submitted data regarding Usinor's home-market selling functions relating to level of trade and thus, its claimed CEP offset. Therefore, petitioners believe that the Department is legally prohibited from making a final determination on the basis of information it has been unable to verify.

Department's Position: We agree with petitioners. In the preliminary determination, the Department determined that Usinor was entitled to a CEP offset. The Department based its decision on information presented in Exhibit SSA-4 of Usinor's March 13, 2002, second supplemental Section A response. In preparation for verification, we requested that Usinor review the functions and services offered by Usinor and its affiliated SSCs (those that reported downstream sales) to different classes or groups of customers (*e.g.*, steel service centers and end users). At verification, however, we found that Usinor had not prepared any documents explaining the selling functions claimed in its submissions to the Department.

Usinor claims, in its rebuttal brief, that during verification the Department found sufficient evidence of the different selling functions/services offered by Usinor and its affiliated resellers to its customers and the different levels at which these services were offered. To support its argument, Usinor references its own questionnaire responses. We find that Usinor tacitly admits that its questionnaire response on this issue was not verified, otherwise Usinor would have referenced something other than the questionnaire responses themselves.

Moreover, we have reviewed the information contained within the verification reports, and find that there is insufficient information to support Usinor's level of trade claims.[1] We determine that because Usinor's description of its distinct levels of trade was unverifiable and unsupportable, there is no basis for granting to Usinor a CEP offset. For further details, please *see* Final Analysis Memo.

Comment 5: CEP Profit

Petitioners believe that the Department must make adjustments to the CEP profit calculation when the Department is not using actual costs to calculate COP. Specifically, where the Department's use of the major input rule results in the use of a market price or actual costs of the supplier, petitioners believe that the Department is creating a surrogate for the actual costs. The resulting total cost of manufacturing (TOTCOM), according to petitioners, may be appropriate for calculating COP, but not for calculating CEP profit. Petitioners urge the Department, when calculating CEP profit, to use actual acquisition costs instead of such market prices.

Usinor states that petitioners' argument is based on the statutory provision that the Department is required to include expenses incurred with respect to subject merchandise in the CEP profit adjustment. Usinor believes that petitioners interpret the word 'incurred' to mean that the Department must use the actual input costs recorded in the producers' accounting records, rather than adjusted values given to inputs through application of the statute governing input valuation. Usinor disputes this interpretation, stating that the word 'incur' does not indicate a particular input valuation methodology, but instead indicates only the creation of a liability.

In support of this argument, Usinor points to the statute governing the calculation of CEP profit. Specifically, Usinor notes that the statute requires the Department to use expenses that were requested by the administering authority for purposes of establishing normal value. The requested expenses, notes Usinor, are a reflection of statutory valuation principles and not necessarily the valuation methodologies of the respondent company. Those principles, notes Usinor, include valuation of inputs purchased from affiliates based upon either market price or actual cost. The use of the Department's valuation methodology is no better or worse than using

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[1] *See* Memorandum For the File; "Home Market Sales Verification of Section B Questionnaire Responses Submitted by Usinor in the Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products," July 25, 2002 (Verification Report), and to Richard Weible, Director, Office 8; "United States Sales Verification of Section C Questionnaire Responses Submitted by Usinor in the Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from France," July 24, 2002 (U.S. Verification Report).

the values recorded in the company's accounting records. Therefore, petitioner's argument is without merit, and Usinor urges the Department to reject it.

Department's Position: We agree with respondent and have not used two different TOTCOMs for the calculations of COP and CEP profit in the final determination.

For the calculation of COP and CV, section 773(f)(2) and (3) of the Act directs the Department to examine transactions between affiliates to determine whether they are at arm's length prices. In the instant case, we found that certain affiliated transactions did not reflect fair value and adjusted the TOTCOM used in the COP and CV calculations accordingly.

Section 772(f)(2)(C)(i) of the Act directs the Department to base total expenses used to calculate CEP Profit on the expenses "...requested by the administering authority for the purpose of establishing normal value and constructed export price." As noted above, the COP and CV used for the "purpose of establishing normal value" includes an adjustment to the transactions between affiliated parties. Thus, in accordance with 773(f)(2)(C)(i) of the Act, the adjustments made for the purposes of calculating COP and CV should be included for the purposes of calculating CEP Profit.

Comment 6: Home Market Indirect Selling Expenses

Citing the verification report, petitioners state that Usinor could not provide a breakout of the entries within one of the accounts from which Usinor derived its indirect selling expense figures. Petitioners contend that, because the Department was unable to verify the accuracy of the numbers presented and did not take an exhibit on this expense for the Sollac companies (*i.e.*, Sollac Atlantique S.A., Sollac Lorraine S.A., and Usinor Packaging S.A.), the Department should deny Usinor's claimed home market indirect selling expenses.

Respondent believes that while it is true that documentation for certain details could not be obtained within the limited time available, such problems do not provide a basis for questioning the reported indirect selling expense amounts. Usinor contends that during the sales verification, the Department was able to tie the amounts for each account included in the reported indirect selling expenses to the trial balance for each company. Usinor further contends that, similarly, at the cost verification, the Department verified the reported indirect selling expenses for Sollac Atlantique and Sollac Lorraine, as well as the classification of expenses between selling and general and administrative expenses.

Usinor contends that the total indirect selling expense amounts were traced to the companies' trial balance, which, in turn, was reconciled to the companies audited financial statements. Usinor argues that its inability to provide documentation for details within certain accounts, while unfortunate, does not call into question the accuracy of the reported total amounts - which were the figures actually used in the calculation of the reported expense ratio.

In rebuttal, petitioners assert that Usinor mistakenly characterizes its failure at verification to support its claimed indirect selling expenses as a mere "inability to provide documentation for details within certain accounts." Petitioners contend that Usinor's assertion is really an assertion that the Department's verifiers need not look past the surface of a company's claims, and that when the Department's verifiers do perform a thorough investigation and discover problems, they should ignore these problems.

With respect to Usinor's claim that indirect selling expenses were also verified during the cost verification, petitioners argue that, in fact, the Department's cost verifiers simply confirmed that Usinor had included the proper account headings in its reported selling expenses and that those reported expenses tied to the financial statements. Petitioners claim that when the Department attempted to verify the substance of the accounts that constituted these expenses during the sales verification, it was unable to do so. Petitioners believe that Usinor's request that the Department ignore the findings of its sales verification team and rely only on the findings of the cost verification team cannot stand. Petitioners conclude that despite Usinor's attempt to downplay its failure to support claimed home market indirect selling expenses, those expenses failed verification and, thus, should be denied in the Department's final determination.

In rebuttal to petitioners, respondent asserts that both the sales and cost verification teams were able to reconcile the amounts for each account included in the reported indirect selling expenses to the trial balance for each company and then to the companies audited financial statements. Respondent reiterates that the only materials that could not be provided at verification were the details of sample individual transactions within the relevant accounts and that Usinor's inability to provide such documentation should not call into question the accuracy of the reported data. Respondent also contend that the reliability of Usinor's accounting system was tested throughout both the sales and costs verifications. In these circumstances, there is no basis for the Department to question the reliability of the reported data. Respondent concludes that the Department should, therefore, accept Usinor's reported selling expense adjustment.

Department's Position: We agree with petitioners in part. During verification, the Department attempted to verify the reported indirect selling expenses for the Sollac group of producers, SLPM, and PUM. The Department was able to verify the indirect selling expenses for SLPM and PUM. Both of these companies are resellers, though PUM also has the capability to produce cold-rolled merchandise and was thus collapsed together with other Usinor affiliated producers.

As petitioners point out, the Department was unable to verify the details of the reported indirect selling expenses for the Sollac companies examined during verification. The sampling and testing of the various line-items which make up this expense determine whether it is verified. The purpose of verification is to test information provided by a party for accuracy and completeness. *See Bomont Industries v. United States*, 733 F. Supp 1507, 1508 (CIT 1990). It is therefore imperative that the tests performed on the information are reasonably thorough. This includes testing the line items which make up a reported expense, to ensure that the amounts and the categories used to calculate the expense are correct. Without these tests, the Department cannot assume that the total reported expense is accurate.

Since we were able to verify the indirect selling expenses for PUM and SLPM, we will continue to use the reported indirect selling expenses for all affiliated resellers. However, for all collapsed producers, except for PUM, we will set the indirect selling expenses to zero. For further details, please *see* Final Analysis Memo.

Comment 7: Home Market Credit Expense

Petitioners argue that the Department should deny Usinor's claimed home market credit adjustment. Petitioners state that during verification, Usinor failed to provide complete support documentation for its reported short-term interest rate and to support its claim that issuance of short-term commercial paper accounts for the "vast majority" of Usinor's short-term borrowings. Petitioners further contend that company officials, who were in charge of providing financing for the entire group, could not indicate whether the company had drawn down on credit lines for short-term loans. Moreover, petitioners state that Usinor officials omitted other accounts relating to short-term financing from the short-term interest rate calculation presented to the Department. Petitioners state that evidence on the record indicates that there were at least three other categories of interest expenses not used in the calculation of Usinor's reported home market short-term interest rate.

Petitioners contend that Usinor did not disclose these facts to the Department until the last day of verification and only did so when specifically asked by the Department whether other relevant accounts had been omitted. Petitioners argue that Usinor's claim that short-term commercial paper accounts for the "vast majority" of its short-term borrowings is completely unsupported by the record. Petitioners further argue that the Department was unable to verify this claim because company officials failed to provide all relevant accounts they knew were used for short-term borrowings and were unable to state whether other accounts had in fact been used for short-term borrowings. Therefore, petitioners conclude that the Department should not base its final determination on the unsupported assertions of a respondent, particularly where the respondent fails to provide all information the verification agenda specifically instructs it to provide. Accordingly, petitioners believe that the Department should deny Usinor's claimed home market credit adjustment.

Petitioners also note that Credit Lyonnais, a French bank, is a member of Usinor's Board of Directors and thus an affiliated party under section 771(33)(B). Since Usinor placed a large portion of its commercial paper with Credit Lyonnais, and did not demonstrate that the interest rate on the commercial paper is arm's-length in nature, petitioners believe that the Department cannot rely on that portion of the commercial paper to calculate the short-term rate of interest for the credit expense calculation.

Usinor retorts that the fact that Credit Lyonnais may appoint one director to Usinor's board does not give it control of Usinor. Regardless, Usinor states that the record clearly indicates that any transactions between Usinor and Credit Lyonnais were at arm's length. To support this statement, Usinor points to the fact that commercial paper is made available through public offerings where Credit Lyonnais and others have the opportunity to purchase some or all of the commercial paper offered for sale at various times. Credit Lyonnais does not receive more favorable treatment or terms through this system. Usinor states that the Department verified the nature of the system.

Regarding the valuation of the CREDITH field, Usinor states that of the four short-term interest expense categories identified by petitioner, two involve inter-company transfers and are properly excluded from the calculation. The third account, labeled EIBQ, relates to interest from bank overdraft charges. Usinor states that these could not be included because it was not possible to identify the loans to which these charges applied. Therefore, the only short-term interest which could be used in the interest rate calculation was the EMIP interest on commercial paper. Usinor notes that the Department was able to reconcile the interest expense and loan balance figures to Usinor's accounting records.

Finally, in response to the theory that the calculation may not be complete due to unknown and unreported interest expenses, Usinor claims that the statement is without support. While the statement exists in the verification report, Usinor claims that it was made by a company official who did not have personal knowledge of such accounts. Furthermore, Usinor claims that the accounting records did not have any such financing recorded. As a result, Usinor urges that the Department maintain the current interest rate calculation for CREDITH.

Petitioners counter that at verification the Department found that Usinor could not support, and the Department could not verify, the company's submitted data regarding Usinor's home-market credit expenses. Therefore, petitioners believe that the Department is legally prohibited from making a final determination on the basis of information it has been unable to verify.

Department's Position: We agree with respondent. Evidence on the record indicates that Usinor's incurred credit expenses are segregated into four categories. Of these, evidence on the record supports the respondent's contention that two of the accounts are inter-company transfers and should be excluded from the interest rate calculation. The category labeled EIBQ involves what Usinor paid in bank charges for overdrafts on account balances. While these charges are related to the commercial paper transactions, we found no evidence to indicate how these charges could be linked to specific transactions. Regardless, the Department notes that the total amount of bank overdraft charges paid by Usinor is small compared to the reported interest charges paid by Usinor in connection with the commercial paper transactions. Therefore, their effect on the interest rate calculation would be small and would not materially affect Usinor's credit expense.

With regard to unreported interest expenses such as swaps or short-term loans, Usinor officials stated that while these types of financing were available during the POI, there was no knowledge of their use during the POI. Additionally, we found no evidence on the record to indicate that such events did indeed take place during the POI. Absent such information, the Department will rely on its verification findings. Those findings support respondent's contention that the vast majority of Usinor's short-term financing is a result of its commercial paper obligations. Therefore, the Department will not make an adjustment to Usinor's reported credit expense.

Regarding the question of affiliation between Credit Lyonnais and Usinor, the focus of the statute is to collapse entities where there is sufficient evidence of control by a party or parties. The appointment by Credit Lyonnais of one member of the board, out of 18, clearly does not constitute control. Therefore, the Department does not consider the two entities to be affiliated within the meaning of section 771(33) of the Act.

With regard to the issue of arm's-length transactions with Credit Lyonnais, the record supports respondent's contention that the transactions are made at arm's-length. The verification exhibit for Usinor's credit expense includes three agreements regarding the rates charged by the banks for overdrafts. See Sollac Verification Exhibit 36. The rate charged by Credit Lyonnais is identical to the rate charged by another bank, and similar to the rate charged by the third bank. In addition, the exhibit contains a sample transaction supporting respondent's statement that commercial paper is made available through public offerings where all banks have the opportunity to purchase some or all of the commercial paper offered for sale. In summary, there is no evidence on the record to indicate that Credit Lyonnais provided preferential financing to

Usinor. On the contrary, the evidence indicates that the interest charges incurred by Usinor with Credit Lyonnais were no different than those incurred with other banks.

Comment 8: Home Market Credit Expense for Sales by SLPM

Respondent notes that SLPM is unable to link payments to individual invoices. Accordingly, the reported payment date for home market sales by SLPM was calculated by adding the average payment period to the reported shipment date. Usinor calculated the payment period by conducting an accounts receivable turnover analysis. However, according to respondent, the last digit in the calculated payment date for many sales was truncated due to a computer programming error.

Respondent notes that the Department adjusted the credit expense and set such payment dates to the shipment date in its preliminary determination. Respondent states that the error was found, corrected, and verified by the Department during verification. Therefore, respondent requests that the Department remove the adjustment for credit expense for home market sales by SLPM, and base the expense on the revised home market sales listing.

Petitioners did not comment on this issue other than to state that all home market credit expenses should be set to zero (*see* above).

Department's Position: We agree with respondent. During verification, Usinor pointed out as a minor correction that it had erred in calculating its reported payment date. The Department verified this error and the corrected payment period. Therefore, we will remove the adjustment for credit expense for home market sales by SLPM, and base the expenses on the verified payment period submitted by respondent in its revised home market sales database. For further details, please *see* Final Analysis Memo.

Comment 9: Home Market Inventory Carrying Cost

Petitioners argue that the Department should deny Usinor's claimed home market inventory carrying cost adjustment. Petitioners contend that Usinor failed to provide the Department with supporting documents, including inventory and production ledgers used to develop the average inventory days included in Usinor's reported per unit home market inventory carrying costs.   Petitioners argue that because Usinor failed to provide the Department with any information on how it calculated the reported per unit inventory carrying cost for sales by the Sollac companies, the Department could not verify any of the reported inventory carrying costs.

Moreover, petitioners state that when the Department attempted to verify the inventory carrying costs submitted by PUM, company officials indicated that they could not recreate the numbers previously submitted to the Department. Therefore, petitioners argue that because the Department could not verify claimed inventory costs for the collapsed entity, and because Usinor failed to provide the information it was specifically instructed to provide for verification purposes, the Department should deny Usinor's claimed home market inventory carrying cost adjustment.

Petitioners maintain that at verification the Department found that Usinor could not support and the Department could not verify the company's submitted data regarding Usinor's home-market inventory carrying costs. Petitioners believe that the Department is legally prohibited from making a final determination on the basis of information it has been unable to verify.

Respondent did not comment on this issue.

Department's Position: We agree with petitioners in part. During verification, the Department attempted to verify the inventory carrying costs for the Sollac companies, PUM, and SLPM. The Department was unable to verify the inventory carrying costs for the Sollac companies and for PUM. However, the Department was able to verify these expenses for SLPM.

As the Department has stated before, verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness. Given that Usinor has numerous affiliated producers and resellers, it is impossible to audit all of the affiliates. Therefore, the affiliates which the Department visited must act as surrogates for the rest of the affiliates. Under these circumstances, it is clear that the inventory carrying costs for the companies representing the producers (Sollac companies and PUM) were not verified. However, the inventory carrying costs for the company representing the SSCs (SLPM) were verified.

The Department will set the inventory carrying costs of all producers within Usinor to zero. However, for the SSCs, the Department will use the reported costs. For further details, please *see* Final Analysis Memo.

Comment 10: Home Market Movement Expenses

Usinor states that in its preliminary determination, the Department found reporting discrepancies with respect to movement expenses for several home-market transactions. Therefore, Usinor notes, the Department preliminarily applied a weighted-average movement expense (based on reported actual expenses) to the relevant transactions, as facts available.

Usinor believes that, in light of verification, there no longer should be any doubts about the accuracy and reliability of its reported home-market movement expenses. Usinor contends that during verification in France, the Department confirmed the methodology used to report the home-market movement expenses and reconciled these expenses to the relevant companies' normal accounting system and trial balance. Because the Department verified that there were no discrepancies in the reported data and instructed Usinor to submit a revised sales database that incorporated the verified home market movement expenses, Usinor believes that the Department should base its final determination on this verified data.

Citing the home market verification report, petitioners state that the Department was unable to verify Usinor's freight expenses. Therefore, petitioners urge the Department to apply adverse facts available and set all freight expenses to zero.

In its rebuttal, Usinor responds by stating that petitioners' argument is based upon a distortion of the Department's findings at verification. Usinor claims that the Department verified the methodology used to report home-market movement expenses and reconciled the expenses to the accounting system without any discrepancies. Therefore, Usinor contends that there is no reason to disallow the reported movement expenses.

Petitioners respond that the verification report clearly states that the Department did not verify the accuracy of Usinor's home market inland freight expenses. Specifically, petitioners assert that during the Department's review of three Usinor Group/Sollac observations at verification, the Department found at least one aspect of the freight charge was inaccurate or not verifiable for each observation. Petitioners further assert that similar problems existed during the Department's review of SLPM's freight charges.

Petitioners also argue that because Usinor admitted at verification that its reported variances do not account for unusual events, its variance reporting is incomplete. Petitioners claim that had the Department performed a more exhaustive search, it is likely that the Department would have found more unreported charges. Thus, petitioners believe that the Department should disregard Usinor's claimed freight expenses for home market sales as unverifiable in the final determination.

Department's Position: We agree, in part, with petitioners. Usinor's submissions indicated that it had two accounts which tracked freight costs. According to Usinor, the BDR system booked the actual expenses, while the BDT system booked budgeted costs. Usinor reported data from both systems, as well as the variance between the two, and indicated that the Department would be able to verify the BDT system, the variance, and most of the BDR system at verification.

Although the Department did verify the reported freight variance for the Sollac entities, we found several inconsistencies. Not only were we unable to verify the reported BDR expenses, but we were also unable to verify the BDT expenses (*see* pages 64-67 of Verification Report). At times the verified figure would be lower than the BDT and/or BDR figures, at times higher. In one instance, we found the reported BDT and BDR figures to be identical, but the actual freight paid (as discovered at verification) to be completely different. Because we found such inconsistencies, we believe that information on the record regarding Usinor's movement expenses for the Sollac entities is unreliable. Accordingly, since the Sollac entities are comparable to the other collapsed entities, we also find that the movement expenses reported by most of the collapsed entities (*i.e.*, Sollac Atlantique S.A., Sollac Lorraine S.A., Usinor Packaging S.A., Etilam, Beautor, and Harionville) are flawed. However, we were able to verify the variance and reported freight expenses for PUM (one of the collapsed entities) and SLPM.

For our final determination, we are denying freight expenses for all collapsed entities, except PUM. However, we will use the reported freight expenses provided by the reporting resellers in our normal value calculation. For further details, please *see* Final Analysis Memo.

Comment 11: Home Market Warranty Expense

Petitioners believe that the Department should deny Usinor a home market warranty adjustment in the final determination. Petitioners state that the Department instructed Usinor to demonstrate how it calculated product-family and customer-specific claim rates in order to verify Usinor's March 5, 2002, warranty expense worksheet. Petitioners contend that Usinor ignored the Department's instruction with regard to customer-specific rates because the company did not prepare any explanation of that calculation during verification and subsequently the Department was unable to verify these expenses.

Petitioners argue that granting an adjustment in this investigation would not be appropriate even had the Department been able to verify Usinor's home market warranty expenses, because Usinor's reporting of warranty expenses in the U.S. and home markets are inconsistent. For U.S. market sales, petitioners explain, Usinor reported no warranty expenses and no sales on which a warranty was paid. Specifically, petitioners state that for those U.S. sales on which a warranty was paid, Usinor reported only the resales of subject merchandise returned under a warranty claim. Therefore, Usinor did not report any additional warranty expenses for U.S. sales made by USC. Petitioners claim that unlike in the U.S. market, Usinor reported home market sales on which warranties were paid, and it has reported the warranty expenses associated with those sales. Therefore, petitioners believe that the Department should not treat warranty expenses incurred in the U.S. market differently from those incurred in the home market.

Petitioners concede that Usinor supported at verification the product-specific warranty data it presented in its submissions. However, petitioners assert that Usinor failed to support the customer-specific information the Department required it to provide. Petitioners argue that Usinor cannot rightly claim that its failure to comply with the Department's instructions with regard to customer-specific warranties and its failure to fully support its claimed home market warranty adjustment are of no consequence simply because it provided information at verification which it considered more relevant. Therefore, petitioners maintain that because the Department was unable to verify Usinor's claimed warranty expenses, it should deny Usinor's claimed home market warranty adjustment. In the alternative, petitioners argue that because Usinor has treated warranty expenses differently in its reporting to the Department and has failed to report U.S. warranty expenses, the Department should disregard Usinor's reported home market warranties in its final determination.

Usinor believes that the information provided at verification did, however, support the calculation of product-specific warranty expenses - and these expenses were verified without any noted discrepancies by the Department. Usinor contends that the allocation of warranty expenses on a product-specific basis is appropriate for these expenses and is consistent with the methodology set forth in the Department's Antidumping Manual (Chapter 8 at 35).

Respondent claims that petitioners' arguments are mis-characterizations of what actually occurred at verification. Respondent maintains that the information provided at verification supported the calculation of product-specific warranty expenses - and these expenses were verified without any noted discrepancies by the Department. Respondent also maintains that the allocation of warranty expenses on a product-specific basis is appropriate for these expenses and is consistent with the Department's established methodology.

Respondent asserts that petitioners' claims about the differences between the U.S. and home-market warranty calculations are incorrect. Respondent explains that it revised its U.S. sales listing to exclude the initial sales of merchandise that was later returned and/or associated with warranty credits, and reported instead the resales of returned merchandise as requested by the Department. In the end, respondent further explains that it excluded all sales on which warranty credits were issued because the only warranty credits issued by USC were related to returned merchandise. Respondent contends that, by contrast, it was unable to identify which home-market sales involved returned merchandise under warranty credits. Respondent argues the warranty costs relating to those sales were, therefore, properly included in the home-market database.

Petitioners respond that the Department should not use Usinor's product-specific warranty expenses simply because it failed to support the customer-specific warranty expenses that it provided in its Supplemental Section B Response at Appendix B-12. Petitioners contend that by reporting a customer-specific warranty expense, Usinor has shown that it can report on a more specific basis than its product-specific expenses. Therefore, petitioners further contend that even though the Department may sometimes allow warranty expenses on a model-specific basis, as Usinor argues, Usinor has not satisfied Section 351.401(g) of the Department's regulations. Petitioners conclude that it is not the Department's policy to "fall back" to a less accurate allocation where a respondent has failed verification because to do so would undermine petitioners' role in this proceeding and would remove the Department's ability to compel answers to its future questionnaires for this or any other case.

Department's Position: We agree with petitioners in part. In our home market verification outline, dated May 6, 2002, we requested that Usinor describe in detail its adjusted warranty expense as reported in its March 5, 2002 supplemental response. Specifically, we requested that Usinor demonstrate how it calculated product-family and customer-specific claim rates. At verification, we were unable to verify how the Sollac companies calculated their customer-specific rates because Usinor failed to prepare any explanation of that calculation. (*See* page 74 of Verification Report.) Subsequently, we were only able to verify reported warranty expenses on a product-specific basis.

For PUM, Usinor stated that it could not separate the warranty expenses from billing adjustments and suggested that this field be set to zero. For SLPM, we were able to verify the warranty expenses. *See* pages 74 - 75 of the Verification Report.

In our preliminary determination, we based our analysis of warranty expenses on both a product- and customer-specific basis. Because we were unable to verify the customer-specific portion of the allocation for the Sollac companies' and PUM's warranty expenses, we are denying a warranty adjustment for the collapsed producing companies in our final determination. However, for the SSCs, because we verified SLPM's warranty expenses, we are using those expenses in our final determination. For further details, please *see* Final Analysis Memo.

Comment 12: Home Market Adjustment to Normal Value

Petitioners believe that the Department should recode certain home market adjustments to normal value reported by Usinor and should disregard adjustments paid to a particular customer. Petitioners note that during verification the Department discovered that certain home market adjustments were actually in French Francs, instead of Euros. Petitioners further note that the Department also discovered that certain expenses incurred by Usinor for sales in 2001 were inappropriately reported. Accordingly, petitioners believe that the Department should convert the expenses reported in French Francs to Euros and remove from the home market database all expenses incurred by Usinor for 2001 sales in its final determination. Due to the proprietary nature of this issue, please *see* Final Analysis Memo for more detail.

Usinor did not comment on this issue.

Department's Position: We agree with petitioners. Accordingly, for our final determination, we will adjust this expense per verification findings. For further details, please *see* Final Analysis Memo.

Comment 13: Commissions Paid to Affiliated Parties

Petitioners believe that the Department should deny any adjustment to the home market price for commissions paid to affiliated parties. Petitioners note that in this investigation, Usinor has reported commissions to affiliated sales agents for sales in France. Petitioners contend that Usinor has not demonstrated that reported commissions paid to its affiliated selling agents were made at arm's length levels.

Petitioners, citing *The Torrington Company v. United States, et al.*, 146 F. Supp. 2d 845, 889 (Ct. Int'l Trade 2001), claim that where respondents fail to provide sufficient evidence that commissions paid to affiliated commissionaires were made at arm's length, the Department properly and consistently with its practice denies adjustments to gross home market price for the commissions. Petitioners, also citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.*, 66 FR 36551 (July 12, 2001) (*Issues and Decision Memorandum*) at comment 15, note that a respondent's claim of impracticability or impossibility in explaining the arm's length nature of commissions does not absolve it of its responsibility for demonstrating that its commissions paid to its affiliates in the home market are at arm's length. Petitioners contend that where there are no bases of comparison the Department would have to deny the adjustment because it would be impossible to determine whether the commissions were at arm's length.

Petitioners believe that the Department in its preliminary determination appropriately denied all reported commissions to affiliated selling agents because Usinor did not sufficiently demonstrate that the reported commissions it paid to affiliated selling agents were made at arm's-length. Petitioners claim that the Department has provided Usinor with ample opportunity before and after its preliminary determination to submit detailed evidence that commissions paid to affiliated agents were paid at arm's length. Usinor, petitioners note, in response to the Department's third request for it to submit such evidence stated that it could not compare commissions paid affiliated sales agents to transactions between unaffiliated parties.

In summary, petitioners argue that Usinor has provided no basis of comparison that would demonstrate that reported commissions to its affiliated sales agents on home market sales were made at arm's length. Accordingly, petitioners contend that the Department should refrain from making an adjustment to the gross unit home market price for these reported commissions.

Respondent contends that the amounts of commissions that Usinor companies paid to Usinor Auto on sales to automobile companies were reported in its databases, where appropriate. Additionally, respondent notes that the actual indirect selling expenses incurred by Usinor Auto were also separately reported and verified. Respondent reiterates that it was not possible to demonstrate that commissions paid to Usinor Auto were arm's-length transactions.

Respondent argues that petitioners fail to observe that, if the commissions to Usinor Auto are disregarded, then an adjustment would be appropriate for Usinor Auto's actual indirect selling expenses. Therefore, respondent contends that if the Department decides not to make an adjustment for the actual commissions paid to Usinor Auto, it should ensure that an adjustment for Usinor Auto's actual expenses is made for those sales on which Usinor Auto provided services.

Department's Position: It is the Department's practice to use the actual indirect selling expenses incurred by an affiliated selling agent when the respondent cannot prove that commissions are made at arm's-length. *See* Unpublished Decision Memorandum, *Stainless Steel Bar from France,* 67 FR 3143 (January 23, 2002) at Comment 8; Unpublished Decision Memorandum, *Stainless Steel Sheet and Strip in Coils from France,* 67 Fr 6793 (February 12, 2002) at Comment 7.

In its supplemental responses, Usinor has stated that it cannot prove that commissions paid to Usinor Auto were made at arm's-length. In our initial and supplemental questionnaires, we requested that if Usinor could not provide evidence that the paid commissions were at arm's length then Usinor was to report Usinor Auto's actual selling expenses. *See, e.g.,* Department's Antidumping Duty questionnaire to Usinor, November 16, 2001, at page C-28. Usinor reported the expenses in its supplemental responses. Furthermore, the Department verified these expenses during verification. (*See* page 78 of Verification Report). Thus, for the final determination, we will apply Usinor Auto's actual selling expense rate to the gross unit price for those transactions where Usinor Auto was the selling agent. For further details, please *see* Final Analysis Memo.

Comment 14: Inland Freight to Warehouse Expense for Sales by SLPM

Petitioners state that Usinor's latest home market sales database contains a number of sales for which SLPM reported inland freight to warehouse expenses. Petitioners contend that the Department was unable to verify certain inland freight to warehouse expenses reported by SLPM and that SLPM was unable to explain to the Department during verification how it derived these expenses. Therefore, petitioners argue that the Department should deny an adjustment for the claimed inland freight to warehouse expenses for these sales. Due to the proprietary nature of this issue, please *see* Final Analysis Memo for more detail.

Respondent did not comment on this issue.

Department's Position: We agree with petitioner. As noted in our home market verification report, SLPM was unable to explain how it derived the costs in question. Therefore, for the final determination, we are denying these adjustments. For further details, please *see* Final Analysis Memo.

Comment 15: U.S. Indirect Selling Expense

Petitioners believe that the Department should include expenses incurred by Usinor's Michigan office in Usinor's U.S. indirect selling expense calculation. Petitioners claim that at the U.S. verification, the Department discovered that USC did not include in its indirect selling expense calculation all appropriate expenses; specifically, expenses associated with its Michigan office. Petitioners believe that because expenses incurred in Michigan are paid in New York by

USC and since the Michigan office reports to USC and is not an independent entity, that the Department should therefore include expenses incurred by Usinor's Michigan office in Usinor's U.S. indirect selling expense calculation.

Respondent notes that the expenses of its Michigan office were reported in Usinor's questionnaire responses. However, respondent asserts that because Usinor did not have any sales of subject merchandise to the U.S.-based automobile manufacturers, these expenses were not included in the calculation of the reported U.S. indirect selling expenses. Instead, respondent states these expenses were allocated solely to the products that Usinor did sell to those customers. Respondent contends that the issue is whether the expenses of its Michigan office relate to sales of subject merchandise.

Respondent asserts that it is the Department's practice, when analyzing companies in which a single sales department is divided into sections that handle sales of separate products or customer or markets, to include in its calculations only the expenses of the sales sections that handle sales of subject merchandise in the relevant markets.

Respondent clarifies that the Michigan office of USC is a separate section whose activities are focused on sales to specific customers that do not purchase subject merchandise from Usinor for the United States or French markets. In accordance with the Department's practice, respondent believes that the expenses of that section should not be included in the calculation of the indirect selling expenses for sales of subject merchandise in the United States or France.

Department's Position: We agree with petitioner. Evidence on the record indicates that the sales made by USC, and used in its indirect selling expense calculation, are total sales inclusive of subject and non-subject merchandise. Evidence on the record also indicates that the financial statements of the Michigan office are consolidated with those of USC. Since the reported sales by USC must therefore include all consolidated sales of subject and non-subject merchandise, it is appropriate to include the selling expenses for subject and non-subject sales in the calculation as well.

For the final determination, we are using total indirect selling expenses for USC, including those from the Michigan office, as reported by Usinor, and dividing them by the total sales as reported in USC's quantity and value submission during verification. For further details, please *see* Final Analysis Memo.

Comment 16: USC's Accounts Receivables Securitization Program

<u>Fees and Expenses</u>

Petitioners believe that the Department should adjust export price to account for fees and expenses incurred by USC as part of its securitization of accounts receivable program, and adjust credit and indirect selling expenses as well. Petitioners argue that Usinor failed to report all of the fees associated with the securitization program, as well as fully describe the nature of the program, despite numerous requests from the Department to do so. Therefore, petitioners believe that the Department should apply adverse facts available.

After examining the verification report and exhibits from the Department, petitioners believe that Usinor failed to report a number of fees and expenses related to the securitization program. According to petitioners, two of these fees, a facility fee and a master servicer's fee, are quantifiable, while an owner trustee fee, various miscellaneous fees, and cost of funds and startup costs, are not quantifiable. However, in all of the cases mentioned, petitioners assert that Usinor failed to report these expenses and has not been forthright in revealing the true costs of the securitization program. In fact, petitioners assert that Usinor, by not explaining the program in detail prior to verification, impeded the Department's attempts to examine the program in detail. Therefore, an adverse inference is warranted and the Department should apply adverse facts available.

At a minimum, petitioners urge that the Department make a direct adjustment to export price of a certain percentage. Petitioners suggest that the Department obtain the percentage by taking the amount of administrative and financing costs incurred for this program, and divide this by the amount of sales of receivables from the program. Both figures are available in USC's financial statements. However, because the information on the record cannot quantify all of the expenses incurred, petitioners believe that the Department should assume that the difference between the dollar amount involved in the securitization process and the dollar amount received by USC consists entirely of the expenses, costs and fees mentioned above. Therefore, the Department should reduce export price for all sales by the percentage difference between the dollar amounts involved and the dollar amounts received by USC.

Usinor retorts that the facts on the record do not support petitioners' claims. With regard to receivables not converted into cash through the securitization program, Usinor notes that the vast majority of these receivables are held as reserves for non-payment, with only a small percentage being fees and expenses. Therefore, it is unreasonable to consider the entire amount as an expense. Usinor cites to the verification report in support of its contention that the receivables not converted to cash are, in fact, reserves against lack of payment.

Concerning petitioners' argument that there are unreported fees, and that these fees should be treated as selling expenses, Usinor states that it has reported all fees and properly accounted for them. Rather than consider the administrative fees to be direct selling expenses, Usinor argues that they should be considered costs for arranging financing and thus are indirect selling expenses. Usinor states that they were reported as indirect selling expenses and verified by the Department. As for financing fees, Usinor states that these would have been included in the calculation of the reported short-term interest rate if the borrowings associated with them had been included in the reported credit expense. Therefore, all fees and expenses have been reported in the proper way.

As to the statement that the reserve requirements are a factor affecting short-term interest rates, Usinor states that the reserve requirement occurs between USC and an affiliate involved in the securitization process. Therefore, the transaction is not included in the calculation of short-term interest rates because it does not include transactions with unaffiliated parties.

Interest Expense and Compensating Deposits

Petitioners state that Usinor failed to report the reserve requirements for the securitization program as a factor affecting its short-term interest rate. Petitioners categorize the reserves as a compensating balance, which increase the effective rate of interest on borrowings. As the Department's questionnaire has a question about compensating balances, and since Usinor did not report this balance, petitioners assert that an adverse inference is warranted and the Department should apply facts available when calculating USC's credit expense.

Usinor states that the issue is moot, since the transaction in question is between USC and another affiliated party. Given that this does not involve an unaffiliated lender, Usinor argues that the transaction has no bearing on the weighted-average interest rate for USC's short-term borrowings from unaffiliated parties.

Department's Position: We disagree with petitioners. To begin, it is important to understand what Usinor submitted as its U.S. credit expense. Usinor used the time period between the purchase date and the date of payment by the customer, and used an interest rate based on short-term borrowings which were unrelated to the securitization program. Thus, Usinor did not use any part of the securitization program as part of its credit expense calculation.

Petitioners state that Usinor failed to report various expenses and fees associated with the securitization program, naming some seven fees and expenses which it states were not reported. However, our examination of the record indicates that the first two fees mentioned by petitioners, the facility fee and the master servicer's fee, were in fact reported. *See* Letter from Usinor to the Honorable Donald L. Evans, July 11, 2002. As for the other fees and expenses, Usinor reported a figure independent of the two expenses previously mentioned which appears to be a basket of various expenses associated with the securitization program. The total expenses from the securitization program were reported in Usinor's indirect selling expenses. While there is no way to break out this figure and assign its constituent parts to the various expenses named by petitioners, there is no evidence on the record to suggest that the reported expense totals are anything but those named fees and expenses. Given that the record indicates that Usinor paid fees and expenses associated with the securitization program, including two which the petitioners specifically named, we will not make any adjustment based upon these fees other than those adjustments which are already being made concerning indirect selling expenses.

As to the argument that the reserve requirements constitute unreported fees and expenses, and that the Department should make an adjustment to export price using the percentage which represents the amounts held in reserve, we believe that the percentages of securities held in reserve do not constitute fees. Instead, these receivables are like any other and, once paid by the purchasing customer, result in revenue for the selling company. So long as USC's customers pay, USC receives all funds from the receivables securitized, less the fees and expenses already mentioned. Therefore, an adjustment to export price for the reserves is not warranted.

Finally, as to the statement that the reserve requirements are a factor affecting short-term interest rates, the Department notes that Usinor did not use the interest rates from the securitization program in its calculation of credit expense. Rather, the rates used were short-term borrowings unrelated to the securitization program. Therefore, the reserves are not compensating balances which impact the calculated credit expense, and the Department will not make an adjustment to the calculated interest rate on that basis.

Comment 17: U.S. Credit Expense Calculation

Respondent notes that, in the preliminary determination, the Department applied non-adverse facts available to the U.S. credit expense because of questions involving the securitization program by USC. In the preliminary determination, the Department calculated the date of payment for each transaction as the payment term applicable to each sale where the difference between the payment date and the shipment date is less than the indicated payment term.

Respondent argues that the Department examined the securitization program in great detail during verification, and that the sale of receivables from USC were made at arm's-length. Furthermore, respondent states that the Department verified that the sale of accounts receivable occurs on the closing day of each month. Therefore, respondent believes that the Department should use the reported payment dates when calculating the U.S. credit expense for sales by USC.

Petitioners' comments with regard to U.S. credit expense are contained above in Comment 16.

Department's Position: We agree with respondent. The Department's verification of the securitization program indicates that none of the expenses, payment dates, and interest rates associated with the program were used in the calculation of USC's credit expense. Instead, the company reported a conservative expense based upon short-term borrowings unrelated to the securitization program as well as the purchase and payment dates by the individual customers. Therefore, we will not make any adjustments to the reported U.S. credit expense in the final determination.

Comment 18: U.S. Movement Expenses

Citing a memorandum filed by the Department, petitioners note that Usinor informed the Department prior to the U.S. verification that it would be unable to verify the INLFWCU, USOTHRU, and USDUTY fields. In addition, new fields reported by Usinor just prior to verification (USOTHT2U, INLFWC2U, and USDUTY2U) were also unverifiable. Petitioners object to the fact that Usinor presented corrected figures at verification. Furthermore, petitioners argue that the Department should not accept these changes. Stating that the scope of the changes is significant, petitioners argue that acceptance of these changes at verification raises due process concerns and would undermine the investigation/verification process. Stating that the provision of these changes constitutes new information, petitioners point out that the record for providing new unsolicited information closed on May 6, 2002, or about one week before the U.S. verification began. Therefore, petitioners urge that the Department find that Usinor failed to report the transportation expenses correctly and apply adverse facts available to all three fields. As adverse facts available, petitioners urge the Department to deduct the largest of the three values.

Usinor notes that the Department used facts otherwise available in the preliminary determination for the U.S. movement expenses, as these had originally been reported on an estimated basis. Furthermore, Usinor acknowledges that the final movement expenses submitted to the Department prior to verification were incorrect.

However, Usinor states that the misreported expenses were not the result of intentional actions, but instead from a computer programming error which the Department verified. In addition, once the Department examined the expenses submitted at verification, it found no discrepancies.

Moreover, Usinor states that the petitioner's focus is misdirected. Rather than punish respondents for any errors discovered, Usinor argues that the Department's role is to calculate dumping margins as accurately as possible based upon verified information. Since the error was unintentional, and since the Department indeed verified the reported expenses, Usinor urges the Department to accept and use these expenses for the purposes of the final determination.

Department's Position: We agree with respondent in part. Usinor correctly notes that it did inform the Department of the error prior to verification. The Department examined the computer program used to calculate INLFWCU, USOTHRU, and USDUTY, and determined that a computer error was the source of the problem. After the Department examined the program, we then examined figures which Usinor indicated were correct, and found no discrepancies. As the Department did verify the corrected figures at verification, and Usinor cooperated to the best of its ability to notify the Department of the problem and rectify the situation, we are accepting those revised figures.

With regard to other U.S. moving expenses, marine insurance and international (ocean) freight (field DBROKU, HMOTHTRU, MARNINU, and INTNFRU), the Department was unable to verify the reported expenses. *See* Verification Report, July 25, 2002 at 66. For international freight, we examined the reported expenses and attempted to tie these to the BDR and BDT systems. We were unable to verify any of the reported international freight expenses that we examined. For all expenses, Usinor was unable to explain how it derived the reported costs.

Therefore, for international freight expenses, we determine that facts available is warranted in accordance with section 776(a) of the Act. Usinor's failure to provide an adequate explanation for its inability to provide the requested information at verification, information which was under Usinor's control, indicates that Usinor has not acted to the best of its ability in responding to the Department's request. Therefore, the Department, pursuant to section 776(b) of the Act, has determined that Usinor has not acted to the best of its ability and that application of an adverse inference is warranted.

As adverse facts available, we used the following methodology. For INTNFRU, we are applying a figure which we determined at verification should have been reported for a particular sale to those U.S. sales with a reported value at or below the figure found at verification. Otherwise, we used the highest reported figure for all other sales for this variable.

For sales with the variables DBROKU and HMOTHTRU, where the reported figure is above a reported figure close to the mean value of the reported expense, those sales will receive the highest reported number for that expense. Otherwise, we used the reported figure which is close to the mean of each expense.

For MARNINU, we applied the highest reported non-aberrational figure to sales with a reported value greater than a number which represents approximately half the value of the highest reported figure. For those sales equal to or below the half-value number, we used this value. *See* Final Analysis Memo for a further explanation of the methodology used.

Comment 19: U.S. Sales Not Previously Reported

Petitioners note that Usinor reported a small number of sales at the start of the U.S. verification which had previously been unreported. However, petitioners also note that Usinor did not report figures for any field other than gross unit price. Petitioners urge the Department to include these sales in the margin calculations, and assign the highest reported value for other sales in the fields for these sales.

Usinor acknowledges that a small number of invoices were not reported due to a minor computer coding problem. However, Usinor believes that these sales should not be included in the margin calculation based solely on verified information. Instead, given the small amount of sales in question, Usinor believes that the Department should exclude these sales from its analysis. However, should the Department decide to use these sales, Usinor believes that the Department should use the average amounts for sales for which complete information was reported as surrogates for any missing data.

Department's Position: We agree with petitioners. Usinor presented and the Department verified the existence of these sales during its U.S. verification. (*See* page 1 of U.S. Verification Report.) We requested on July 28, 2002, that Usinor report these sales in its revised U.S. database. On July 31, 2002, Usinor did so. However, it failed to provide sufficient information on these sales for us to use the sales in our final margin analysis. Usinor reported only the gross unit price of these sales, but did not report any adjustments or even the CONNUMs associated with the sales. Consequently, it is not possible to calculate export prices or compare these sales to home market sales of identical or similar merchandise.

Usinor's failure to provide adequate explanation for its inability to provide the requested information at verification indicates that Usinor has not acted to the best of its ability in responding to the Department's request for information. Therefore, the application of an adverse inference is warranted, pursuant to Section 776(b) of the Act. Because these were sales of subject merchandise and sold in the U.S. during the POI, we will include them in our final margin analysis. We are, however, applying the highest non-aberrational margin for these sales. For further details, please *see* Final Analysis Memo.

Comment 20: U.S. Sales of "Non-Prime" Merchandise

Respondent Usinor reported 30 sales of merchandise in the United States which it claimed were non-prime sales. These sales were originally sales of prime merchandise which were returned to Usinor, and subsequently resold. For the preliminary determination, the Department treated these sales as prime merchandise sales. The Department reasoned that it did not have sufficient evidence showing that these sales were actually sales of non-prime merchandise.

Respondent argues that the U.S. verification provided sufficient evidence that the sales in question are of non-prime merchandise. Therefore, respondent requests that the Department code these sales as non-prime for the purposes of the final margin calculation.

Petitioner Nucor responds that the verification report does not indicate an examination of non-prime merchandise by the Department. Additionally, petitioner states that there is no conclusion by the Department that these sales should be reported as non-prime. In fact, petitioner notes that the Department rejected this narrative explanation in the preliminary determination. The mere recitation of claims at verification, according to petitioner, does not constitute verification or acceptance of said claims. Therefore, petitioner urges the Department to continue treating these sales as prime merchandise.

Petitioner Bethlehem Steel Corporation et. al states that while the Department's verification report found that the sales "indeed consisted of non-prime merchandise," this statement is not conclusive. The findings at verification, according to respondent, indicate that the sole basis for treating such merchandise as seconds is the small selling price. Petitioner states that the Department should not allow Usinor to use differing methodologies for identifying prime and non-prime merchandise in the home and U.S. markets. Therefore, for a number of sales in the home market which have a unit price equal to or less than the price reported for the U.S. sales designated as non-prime, petitioner urges the Department to designate these home-market sales as non-prime merchandise for the purpose of its final margin calculation.

Department's Position: We agree with respondent. At verification, we reviewed sales of non-prime merchandise. During our review of sales documents (*e.g.*, salvager reports), we verified that these sales were properly coded as sales of non-prime merchandise. *See* pages 21 and 22 of the Verification Report. Therefore, for the final determination we will classify them as sales of non-prime merchandise. For further details, please *see* Final Analysis Memo.

Comment 21: Weighted Average Margin Calculations - Zeroing Negative Margins

Usinor argues that the Department should take into account Usinor's negative margins in calculating Usinor's overall weighted-average margin. Usinor notes that in its preliminary determination, the Department found that the average U.S. price for a number of Usinor's products exceeded the normal value - and that, as a result, the calculated dumping margins for these products were negative. Usinor claims that in accordance with its usual practice, however, the Department did not include the negative margins on these products in its calculation of the overall weighted-average margin on Usinor's sales. Usinor further claims that instead the Department set such margins equal to zero and subsequently, the overall average dumping margin was then calculated by averaging these "zeroed" margins with "positive" margins on a relatively small number of products for which dumping had been found. Usinor contends that this methodology increased the overall dumping margin for Usinor substantially.

Usinor, citing *Bowe Passat Reinigungs-und Washereitechnik GMBH v. United States*, 962 F. Supp. 1138, 1149-1150 (CIT 1996) (*Bowe Passat*), notes that the reviewing courts have ruled on several occasions that the Department's practice of "zeroing," although admittedly longstanding, is not required by U.S. law. Usinor further notes that although the reviewing courts have, in the past, left this matter to the Department's discretion, the Department's practice is difficult to reconcile with its underlying obligation to calculate the fairest, most accurate margin possible (citing *Viraj Group v. United States*, 193 F. Supp. 2d 1331, 1336 (Ct. Int'l Trade 2001) citing *Rhone-Polenc, Inc. v. United States*, 899 F. 2d 1165,1199 (Fed. Cir. 1990)).

Usinor, citing *Federal Mogul Corp. v. United States*, 63 F. 3d 1572, 1581 (Fed. Cir. 1995), contends that the WTO Appellate Body has recently ruled that the practice of "zeroing" is not consistent with the international obligations of the signatories of the Uruguay Round Antidumping Agreement. Therefore, Usinor argues that it is now clear that the Uruguay Round

Antidumping Agreement does not allow its signatories to use the practice of “zeroing” in calculating the overall dumping margin for multiple products (citing *Report of the Appellate Body: European Communities - Antidumping Duties on Imports of Cotton-Type Bed Linen From India*, WT/DS141/AB/R, March 1, 2001 at 16).

Usinor, citing *Murray v. Schooner Charming Betsy*, 6 Cranch 64, 118, 2 L. ED. 208 (1804), believes that one of the cardinal principles of U.S. law is that U.S. statutes should be interpreted, whenever possible, to be consistent with international law. Usinor, also citing *Weinberger v. Rossi*, 465 U.S. 25, 31, 1982, *quoting Schooner Charming Betsy*, 2 L. ED at 208; *Ma v. Reno*, 203 F. 3d 815, 829 (9th Cir. 2000); and *George E. Warren Corp. v. United States Environmental Protection Agency*, 159 F. 3d 616, 624 (D.C. Cir. 1998), contends that U.S. courts routinely rely on this principle in interpreting U.S. statutes and it is equally applicable to federal agencies.

Therefore, Usinor concludes that the Department should bring its calculations into line with the requirements of international law, as expressed by the WTO’s dispute settlement bodies, and discontinue its practice of “zeroing” negative margins for purposes of calculating the overall weighted-average dumping margin for Usinor in this investigation.

Petitioners cite the Statement of Administrative Action (SAA), asserting that reports issued by the WTO dispute settlement body and the appellate body are not binding on executive agencies. Petitioners further assert that the SAA specifically prohibits the use of the WTO dispute settlement body and appellate body’s reports not involving the United States as legal precedent on which the Department may rely to change its practices and procedures. In support of this contention, petitioners also cite to *Certain Softwood Lumber Products from Canada*, 67 FR 15539 (Issues and Decision Memorandum) (April 2, 2002) at Comment 12, which petitioners believe affirms that the Department has “no obligation under U.S. law to act on” the WTO decision in *EC-Bed-Linens*, because it “concerned a dispute between the European Union and India.”

Petitioners argue that because U.S. law mandates that the Department use a ‘zeroing’ methodology in calculating weighted-average dumping margins, application by the Department of *EC-Bed-Linens* is prohibited. Petitioners assert that because the dumping margin must reflect the amount by which normal value exceeds the U.S. price, it may not reflect the amount by which normal value is less than the U.S. price. In support of this assertion, petitioners cite again to *Softwood Lumber from Canada*, “{a}t no stage in this process is the amount by which EP or CEP exceeds normal value on certain sales permitted to cancel out the dumping margins found on other sales.” Moreover, petitioners explain that the United States and the European Communities maintain different antidumping laws. As an example petitioners note that U.S. antidumping laws provides only for retrospective duties, while the European Communities impose prospective duties. Thus, petitioners conclude that for the same reasons that the Department cannot consider a “negative” dumping margin in its calculation of the weighted-average dumping margin, it should not reduce the potential uncollected dumping duty by the amount that the normal value of the un-dumped products is lower than their U.S. sale price.

Department’s Position: We disagree with Usinor and have not changed our calculation of the weighted-average dumping margin for the final determination. First, we note that Usinor’s characterization of the methodology at issue as one that ‘ignores’ non-dumped sales and considers only dumped sales in determining the dumping rate is inaccurate. As further discussed below, non-dumped sales are included in the weighted-average margin calculation as just that –

sales with no dumping margin. The value of such sales is included in the denominator of the weighted-average margin along with the value of dumped sales. We do not, however, allow non-dumped sales to cancel out dumping found on other sales.

This methodology is required by U.S. law. Section 771(35)(A) of the Tariff Act defines "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Section 771(35)(B) defines "weighted-average dumping margin" as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." These sections, taken together, direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price or constructed export price, and to divide this amount by the value of all sales. The directive to determine the "aggregate dumping margins" in section 771(35)(B) makes clear that the singular "dumping margin" in section 771(35)(A) applies on a comparison-specific level, and does not itself apply on an aggregate basis. At no stage in this process is the amount by which export price or constructed export price exceeds normal value on non-dumped sales permitted to cancel out the dumping margins found on other sales.

This does not mean, however, that non-dumped sales are ignored in calculating the weighted-average rate. It is important to note that the weighted-average margin will reflect any 'non-dumped' merchandise examined during the investigation: the value of such sales is included in the denominator of the dumping rate, while no dumping amount for 'non-dumped' merchandise is included in the numerator. Thus, a greater amount of 'non-dumped' merchandise results in a lower weighted-average margin.

This is, furthermore, a reasonable means of establishing duty deposits in investigations, and assessing duties in reviews. In an investigation such as the present case, the deposit rate calculated must reflect that fact that the Customs Service is not in a position to know which entries of merchandise entered after the imposition of a dumping order are dumped and which are not. By spreading the estimated liability for dumped sales across all investigated sales, the weighted-average dumping margin allows the Customs Service to apply this rate to all merchandise entered after an order goes into effect.

Regarding Usinor's claim that this statutorily-required methodology is contrary to the WTO AD Agreement, we disagree. United States law, as implemented through the URAA, is fully consistent with the WTO obligations of the United States. *See* SAA at 669.

Comment 22: Unreconcilable Differences

Petitioners argue that Sollac Atlantique S.A. and Sollac Lorraine S.A.'s reported costs should be adjusted for the unreconcilable differences discovered at verification. Petitioners note that, in the preliminary determination, the Department adjusted Sollac Atlantique S.A.'s, Sollac Lorraine S.A.'s, and Usinor Packaging S.A.'s reported costs for unreconcilable variances reported in their respective overall reconciliations. Furthermore, petitioners note that the verified variances increased from those used in the preliminary determination.

Because Usinor Packaging S.A. was not verified, petitioners request that the Department adjust Usinor Packaging's variance in proportion to the largest change in the variances from the preliminary determination to the cost verification.

Respondent concedes that the reported costs should be adjusted for these variances. However, respondent protests petitioners' suggested adjustment to the submitted variance of the unverified company, Usinor Packaging S.A. Respondent argues that Usinor should not be penalized merely because the Department chose not to verify Usinor Packaging S.A. Instead, respondent requests that the Department correct Usinor Packaging S.A.'s variance based on the methodology used to correct the rates of the verified companies.

Department's Position: We agree with respondent. We note that the variances that were verified for Sollac Atlantique S.A. and Sollac Lorraine S.A. were actually submitted by respondent in the May 20, 2002, section D response. Furthermore, a revised variance was also submitted at that time for Usinor Packaging S.A. Therefore, for the final determination, we have adjusted Usinor Packaging S.A.'s TOTCOM based on the revised variance as submitted in the May 20, 2002, section D response. For further details, please *see* COP Memo.

Comment 23: By-Product Offset

Petitioners argue that the by-product offset has been double-counted in the reported costs. Petitioners point out that by-product revenue was offset against the total costs reported in Usinor's cost accounting system, while at the same time the costs related to by-products were excluded.

Respondent believes petitioners misunderstand the accounting principles at work with regard to the by-product offset. Respondent explains that it inventories the by-products generated based on estimated sales value. A corresponding credit is posted against production costs. Respondent contends that no other by-product offset was claimed in the reported costs.

Respondent states, however that, other entries are recorded in their books when the by-products are sold. At the time of the sale, the by-product sales revenue is recognized in the "PNS" account and a related receivable is recorded on the balance sheet. At the same time, the inventory account is reversed and the cost of the by-products sold is recognized in the "PNS" account. Thus, the calculation of the actual by-product offset requires the inclusion of the initial offset based on estimated sales revenue, the actual by-product sales revenue, and the estimated by-product cost (which reverses the estimated sales revenue). The net amount results in an offset of the actual by-product sales revenues against the production costs. For the reported costs, respondent states that only the initial offset was included, while both PNS revenues and costs were excluded.

In conclusion, respondent contends that petitioners have focused solely on the exclusion of PNS cost of sales without recognizing that PNS revenues were also excluded from the reported costs. Respondent argues that the Department should either ignore both the PNS by-product sales revenues and by-product cost of sales or include both in the reported costs.

Department's Position: We agree with respondent that by-product offsets have not been double-counted. While petitioners are correct in stating that the Zebu cost accounting system includes a by-product offset, they have mistakenly characterized a difference between Usinor's financial and cost accounting systems as a second by-product offset. In the overall reconciliation of the costs per the financial statements to the reported costs, Usinor shows "PNS cost of production" as a reconciling item. Because by-product costs are reflected in the account PNS cost of production, petitioners assume that this is a second offset to the costs, when, in fact, it is a difference between the financial and cost accounting systems. In the Zebu cost accounting system, Usinor recognizes a by-product offset; however, in the financial accounting system by-product revenues are recognized in the revenue section of the income statement. Thus, the cost of goods sold (COGS) from the financial statements does not include a by-product offset. Consequently, Usinor has deducted the by-product costs from COGS in reconciling to the cost accounting system.

Accordingly, we have accepted Usinor's by-product methodology for the final determination.

Comment 24: Rail Rental Revenues

Petitioners argue that the costs associated with rail rental revenues should be included in the SG&A expense calculation. Because rail rental revenues are treated as an offset to SG&A expenses, petitioners state that rail rental expenses should likewise be included in the SG&A rate calculation.

Respondent, noting that petitioners admit that these costs have been appropriately recorded by Sollac Atlantique S.A. and Sollac Lorraine S.A. as costs associated with PNS, maintains that there is no reason to reclassify them as SG&A expenses. Moreover, respondent points out that the information needed to make the adjustment suggested by petitioners is not available.

Further, respondent claims that disallowing the rail rental revenues as an offset to the SG&A expenses would be incorrect. Respondent argues that the costs associated with maintaining these rails are included in each company's total cost of goods sold, over which SG&A expenses are spread. Therefore, respondent argues that the rail rental revenues are correctly spread to all products.

Department's Position: We disagree with petitioners. As mentioned by respondent in its rebuttal brief, the costs of maintaining the rails that are rented "have been appropriately recorded by Atlantique and Lorraine as costs associated with PNS." *See* Usinor and Affiliates Rebuttal Brief (August 12, 2002) (Usinor Rebuttal) at 37. Furthermore, the Department noted in the Cost Verification Report at 13, that, "according to company officials, the costs associated with maintaining the rails are included in the PNS expense accounts." Additionally, the Cost Verification Report, at 11, illustrates that PNS costs were excluded from the reported costs. As such, we deem it inappropriate to allow an offset for the revenues associated with these costs. Therefore, for the final determination, we have excluded rail rental revenues from the SG&A expense rate calculation. For further details, please *see* COP Memo.

Comment 25: Major Input Rule - Sales to Affiliated Resellers

Petitioners argue that the transactions between the collapsed mills and the affiliated resellers should be subject to the major input rule. Petitioners state that the affiliated resellers purchase coil from the collapsed producers, then perform certain minor finishing operations which alter the physical characteristics of the coil. Petitioners maintain that these purchased coils represent substantially all of the final product's total costs. Accordingly, petitioners claim that the purchased coils meet the definition of a major input. Petitioners therefore urge the Department to adjust COP and CV to reflect the higher of transfer price, market price or the cost of production in accordance with section 773(f)(3) of the Act.

Petitioners further state that the transfer price between Usinor and the affiliated resellers is obviously below market value since the Department is using Usinor's downstream sales in its analysis. Thus, petitioners argue that even under the "minor input rule," (*i.e.*, the higher of transfer or market price), Usinor's methodology is incorrect.

Finally, petitioners maintain that the Department has the necessary data on the record to adjust the values of the purchased coils reported in the COP and CV file in accordance with the major input rule. Therefore, petitioners urge the Department to adjust variable cost of manufacturing (VCOM) and TOTCOM to reflect the higher of transfer price or cost of production. Petitioners also argue that the Department should recalculate Usinor's TOTCOM for the purpose of calculating CEP Profit, where application of the major input rule has resulted in the use of market price or the supplier's COP rather than the "actual expense" incurred by Usinor.

Respondent notes that at the same time petitioners argue for the "collapse" of the affiliated resellers with the mills (*i.e.*, the mills and affiliated resellers would be considered one company), the petitioners also argue that the coils sold to the affiliated resellers be subject to the major input rule (*i.e.*, the companies would have to be considered separate companies). Respondent believes that petitioners' dual arguments are illogical and contrary to the Department's established practice and should be rejected.

Department's Position: We disagree with petitioners and have not applied the major input rule to transfers of cold-rolled coil between the producers and their affiliated resellers. In determining whether sales of merchandise under consideration are made at less than the COP, the Department examines the "cost of producing the merchandise," in accordance with section 773(b) of the Act. However, in this case, the affiliated resellers do not have production facilities. Thus, the resellers do not have the capability to "produce" the merchandise under consideration. *See* the Department's February 26, 2002, "Memorandum from John Drury to Joseph A. Spetrini regarding the Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from France: Collapsing," (Collapsing Memo), where the Department noted that the affiliated resellers "cannot create cold-rolled subject merchandise from either hot-rolled coils or from slabs. Rather, they must purchase subject merchandise from other sources and may further process it." In such cases where the sale to an exporter or reseller is finished subject merchandise, it has been the Department's practice to rely on the COP of the producer. *See Notice of Final Determination of Sales at Less Than Fair Value: Honey from Argentina*, 66 FR 50611 (October 4, 2001) and accompanying Issues and Decision Memorandum at Comment 2 (*Honey from Argentina*) and *Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 7661 (February 25, 1991) (*Salmon from Norway*).

In these cases, the acquisition costs were disregarded in favor of the cost of production of the producer.

Thus, we have not applied the major input rule to the transfers of cold-rolled coil between the collapsed Usinor companies and their affiliated resellers in the final determination.

Comment 26: Major Input Rule - Usinor Purchases from Affiliates

Petitioners object to the Department's preliminary determination insofar as it treats the slabs and coils purchased from affiliated parties as minor inputs. Instead, petitioners insist that these purchases represent major inputs into the production of subject merchandise.

Petitioners argue that Usinor manipulated its calculations to minimize the impact of its slab purchases from affiliates. To determine whether slabs purchased from affiliated parties were a major input into the production of subject merchandise, Usinor divided affiliated slab purchases by the total costs of all collapsed companies. Petitioners assert that this methodology is distortive; they find fault with both the numerator and the denominator used in the calculation. Petitioners argue that the denominator should reflect only the total costs of the entities using the slabs purchased from the affiliated parties, rather than the costs of all collapsed Usinor companies involved in the investigation. Furthermore, petitioners argue that only the costs related to subject merchandise should be included in the denominator, rather than the costs of all merchandise produced. In addition, petitioners object to the inclusion of self-produced slabs in the denominator. Petitioners also believe that the numerator of the calculation is understated because the transfer price paid to affiliates, *i.e.*, the numerator in the calculation, is not at arm's length.

Petitioners state that the Department defines a major input as a significant component of the merchandise under consideration. Pointing to information on the record, petitioners claim that slab is a significant input into the production of cold-rolled steel. As such, petitioners argue that the slabs purchased from affiliated parties should be treated as a major input.

In light of the distortive calculations provided by Usinor in their response, petitioners argue that the Department should apply adverse facts available for the final determination.

Finally, petitioners argue that if the Department adjusts Usinor's affiliated party slab and coil purchases in accordance with either the transactions disregarded rule or the major input rule, the TOTCOM used for the CEP profit calculations should not reflect such adjustments.

In response to petitioners' arguments, respondent notes that the Department has collapsed the Usinor mills for purpose of its analysis; therefore, any purchases of inputs between collapsed companies should and has been reported in the suppliers' cost of production. Further, respondent notes that the overwhelming majority of the slabs and coils used in the production of subject merchandise were self-produced. Thus, respondent states that the remaining slab and hot-rolled coils, which were purchased from non-collapsed affiliates, was very small. Therefore, respondent asserts that the purchases of slabs and coils from non-collapsed affiliates did not constitute a major input.

Respondent defends the use of the total collapsed costs as the denominator in the major input calculation stating that the cold-rolled steel produced with these non-collapsed affiliated inputs could also be consumed internally or by other collapsed entities to produce non-subject merchandise. Consequently, respondent argues that comparing these purchases solely to the cost of subject merchandise for the companies purchasing the affiliated inputs is not reasonable.

Instead, the purchases must be compared to the costs of all products sold by the collapsed entities.

Finally, respondent contends that although a specific input may constitute a significant portion of the cost of an individual product, it does not necessarily meet the definition of major input for the Department's analysis. Because the reported costs reflect average costs, the costs reported for slabs and coils reflect an average of the costs incurred for both purchased and self-produced slabs and coils. Thus, respondent surmises that because the non-collapsed affiliated purchases represent such a small portion of the total costs, they could not have a significant impact on the reported costs and should not be considered a major input.

Department's Position: We disagree with petitioners. We do not find respondent's numerator and denominator in the major input calculation to be inappropriate; consequently, we do not find the purchases of slabs and coils from affiliated parties to be major inputs.

First, pursuant to 19 CFR 351.401(f) of the Department's regulations, the Department collapses producers into a single entity when certain criteria are met. In the Department's Collapsing Memo, the Department outlined these criteria and determined that Usinor and seven of its affiliates should be collapsed for purposes of this investigation. Therefore, Usinor and its "collapsed" affiliates should be treated as a single entity. As such, the Department believes it is appropriate to perform the major input analysis based on the total costs of the single entity, *i.e.*, Usinor and its affiliates.

Next, because the slabs and coils purchased from affiliates are used in the production of merchandise outside of this investigation, the Department believes it is appropriate to include the cost of non-subject merchandise in the denominator.

Furthermore, when considering major inputs, it is the Department's practice to analyze the significance of affiliated inputs to total costs, not the significance of the total inputs (*i.e.*, self-produced, non-affiliated and affiliated inputs) to total costs. Thus, while slab and coils are significant inputs into the production of the merchandise under consideration, the Department considers what portion of these inputs is obtained from affiliates when making a major input determination. As the charts submitted by Usinor and affiliates illustrate, the slabs and coils obtained from affiliated parties comprise a small portion of the total slabs and coils consumed in production at these plants. Therefore, for the final determination, we have not applied the major input rule with respect to the slabs and coils obtained from affiliated parties.

Lastly, we again disagree with petitioners that the TOTCOM used in the CEP Profit calculation should not incorporate affiliated party purchase adjustments. *See* the Department's position on Comment 5 above.

Comment 27: Disregarded Transactions

Respondent argues that the Department's preliminary adjustment for the difference between market and transfer prices of slab and hot-rolled coil purchased from affiliates is no longer needed. Respondent contends that the information submitted prior to verification compared delivered unaffiliated (*i.e.*, market) prices to undelivered affiliated (*i.e.*, transfer) prices. Respondent argues that this point was illustrated at verification and, once both prices were compared on a delivered basis, the apparent difference "largely" disappears. Thus, respondent argues that an adjustment of transfer to market price for the final determination is not appropriate.

Petitioners counter that the costs for transporting production inputs to the mill are a component of the total substrate cost. Therefore, the Department should include transport costs in the market price of slabs and coils when calculating the adjustment to the transfer price of those inputs in the final determination.

Department's Position: We agree with petitioners that freight is a component of the total substrate cost. Section 773(f)(2) of the Act states that a transaction between affiliated persons may be disregarded if the transaction does not fairly reflect the amount usually reflected in sales of such merchandise under consideration in the market under consideration. In this instance, France is the market under consideration. Thus, the prices paid for the inputs do not reflect the market under consideration unless the freight costs incurred to transport the substrate to that market are included. Therefore, we have compared the transfer and market prices of substrate on a freight-inclusive basis for purposes of the transactions disregarded rule.

Finally, we disagree with respondent that, if market and transfer prices are compared on a delivered basis, an adjustment is no longer necessary. Based on our analysis of the freight-inclusive transfer and market prices, we have adjusted the reported costs in the final determination to reflect an arm's length price for the substrate obtained from affiliated parties. For further details, please *see* COP Memo.

Comment 28: SG&A Expenses - Related Accruals and Provisions

Respondent argues that SG&A expenses should not be adjusted for miscellaneous accruals and provisions as these amounts are captured in the variance adjustment. Petitioners did not comment on this issue.

Department's Position: We agree with respondent that the miscellaneous accruals and provisions are captured in the variance adjustment. Therefore, we have not included a separate adjustment for miscellaneous accruals and provisions for the final determination.

Comment 29: SG&A Expenses - Accelerated Tax Depreciation

Respondent argues that amounts reported as tax depreciation in the extraordinary items section of the financial statements should not be included in the reported costs. Respondent contends that these amounts "did not relate to actual 'depreciation' of the companies' assets...", but instead represented a tax-shifting mechanism. *See* "Case Brief of Usinor and its Affiliates" (August 7, 2002) at page 20. Further, respondent points out that generally accepted accounting principles (GAAP) in France require the entry to be booked as a reserve in the equity section of the balance sheet, while the expense is recorded as an extraordinary item in the profit and loss statement.

Referencing the *Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Stainless Steel Angle from Japan*, 60 FR 16608, 16617 (March 31, 1995) (*Angle from Japan*) and the *Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 7661, 7665 (February 25, 1991) (*Salmon from Norway*), respondent insists that it is the Department's established practice to exclude the difference between tax depreciation (*i.e.*, accelerated depreciation) and GAAP depreciation (*i.e.*, straight-line depreciation). Therefore, respondent argues the Department should include only the "actual" cost of depreciation in the final determination.

Citing the *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Sulfanilic Acid from Portugal*, 67 FR 30362, 30363 (May 6, 2002) (*Acid from Portugal*), *Final Determination of Antidumping Duty Administrative Review: Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 63 FR 781, 804 (January 7, 1998) (*Cold-Rolled from Korea*), and *Final Results of Antidumping Duty Administrative Review: Ferrosilicon from Brazil*, 62 Fr 43504, 43510-11 (August 14, 1997) (*Ferrosilicon from Brazil*) petitioners state that the Department has frequently included accelerated depreciation expenses in the respondents' cost of production. Further, petitioners note that Usinor has failed to cite any case in the past seven years which supports its claim. Therefore, petitioners urge the Department to include these expenses in the company's SG&A rate for the final determination.

Department's Position: We agree with petitioner and have adjusted the reported costs to reflect the total depreciation recorded in respondent's audited financial statements.

The *Handbook of Accounting Practice*[2] defines depreciation as "the systematic and rational allocation of the cost of tangible assets to future years which are expected to be benefitted by the acquisition of these assets." Thus, depreciation is an estimated, allocated expense, rather than an "actual," measurable, out-of-pocket expense. Consequently, the Department's long-standing practice, codified at section 773(f)(1)(A) of the Act, is to rely on data from the respondent's normal books and records where those records are prepared in accordance with home-country GAAP and reasonably reflect the costs of producing the merchandise, especially with regard to depreciation expense. *See Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from India*, 66 FR 42507 (August 13, 2001) (*Mushrooms from India*), and accompanying Issues and Decision Memorandum at Comment 5 and *Final Results of Antidumping Duty Administrative Review: Greenhouse Tomatoes from Canada*, 67 FR 8781 (February 26, 2002) (*Tomatoes from Canada*), and accompanying Issues and Decision Memorandum at Comment 4.

In this case, Usinor recorded its depreciation expense on an accelerated basis, in accordance with French GAAP. In addition, we do not find the use of an accelerated depreciation method to be unreasonable. In *Mushrooms from India*, *Tomatoes from Canada*, and *Cold-Rolled from Korea*, respondents claimed that the depreciation expense recognized in their respective GAAP-based financial statements was based on "accelerated" tax methodologies and should be adjusted to reflect "GAAP" depreciation. The Department rejected the proposed adjustments in these cases and instead relied upon the total depreciation expense as reported in the companies' GAAP-based financial statements. These cases undermine respondent's

[2] Jay Ruben, *Handbook of Accounting Practice* (Englewood Cliffs, N.J.: Prentice-Hall, 1992) p. 151.

contention that Department's established practice is to refuse to rely on accelerated depreciation methods. Instead, it has been the Department's practice to base reported costs on the normal books and records of the respondent prepared in accordance with home country GAAP, *i.e.*, the audited financial statements.

Therefore, for the final determination, we have adjusted the reported costs to reflect the total depreciation recognized in the audited financial statements of the respondent companies. For further details, please *see* COP Memo.

Comment 30: SG&A Expenses - Foreign Exchange Losses

Respondent argues that the Department's preliminary adjustment to include company-level foreign exchange losses in the SG&A rates and consolidated foreign exchange losses in the financial expense rate double-counted these losses. Respondent argues that if a company-level adjustment for foreign exchange losses is needed, foreign exchange gains should likewise be included.

Petitioners did not comment on this issue.

Department's Position: The Department's normal practice is to include a portion of foreign exchange gains and losses in the calculation of COP and CV. Specifically, it is our normal practice to distinguish between exchange gains and losses realized or incurred in connection with sales transactions and those associated with purchase transactions. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada*, 64 17324, 17334 (April 9, 1999) (*Stainless Steel Wire from Canada*) and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago*, 63 FR 9177, 9181 (February 24, 1998) (*Steel Wire Rod from Trinidad and Tobago*). Thus, we normally include in the calculation of COP and CV the foreign exchange gains and losses that result from transactions related to a company's manufacturing activities. In addition, we normally include exchange gains and losses related to financial activities in the financial expense rate. However, in the instant case, respondent did not provide a breakdown of the exchange gains and losses between activities. Neither did respondent provide any means of allocating the exchange gains and losses between sales, financing and manufacturing activities. Consequently, we are unable to grant respondent an offset to its SG&A expense rate for exchange gains. Rather, we have included the company-level fiscal year exchange losses in the SG&A rates and the net consolidated exchange loss in the financial expense rate. For further details, please *see* COP Memo.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the positions set forth above and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination and the final weighted-average dumping margins for all firms in the *Federal Register*.

AGREE____ DISAGREE____

____
Faryar Shirzad
Assistant Secretary
for Import Administration

____
Date