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December 18, 2002

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

SUBJECT: Issues and Decision Memorandum for the Second Administrative Review of Stainless Steel Sheet and Strip in Coils from France: July 1, 2000 through June 30, 2001

SUMMARY:

We have analyzed the comments and rebuttal comments of interested parties in the second administrative review of the antidumping duty order covering stainless steel sheet and strip in coils from France. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming errors in the margin calculation. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttal comments by interested parties:

GENERAL COMMENTS:

1. **Negative Dumping Margins**
2. **Adverse Facts Available on Sales to Affiliated Reseller**
3. **Conversion of Pounds to Kilograms**
4. **U.S. Inventory Carrying Costs**
5. **U.S. Interest Revenue**
6. **Date of Sale**
7. **Freight Revenue and Freight Adjustments for Delivered Prices**
8. **Price Manipulation Between Affiliated Parties**
9. **Facts Available on Sales to Ugine France Service**
10. **U.S. Sales Commissions**
11. **Ugine's Financial Statement Information**
12. **Hague's Scrap Revenue Calculation**

13. U.S. Interest Cost
14. Hague's Financial Statement Information
15. Home Market Interest Revenue
16. Home Market Rebates
17. Home Market Affiliated Common Carrier Prices
18. Home Market Credit Expenses
19. Completeness of the Record

BACKGROUND:

On August 7, 2002, the Department of Commerce ("Department") published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from France. See Notice of Preliminary Results of Antidumping Administrative Review: Stainless Steel Sheet and Strip in Coils from France ("Prelim Results") 67 FR 51210 (August 7, 2002). The merchandise covered by the order is stainless steel sheet and strip in coils ("SSSS") as described in the "Scope of the Review" section of the Federal Register notice. The period of review ("POR") is July 1, 2000, through June 30, 2001. In accordance with 19 C.F.R. 351.309(c)(ii), we invited parties to comment on our Prelim Results. On September 20, 2002, Ugine[1] and the Petitioners[2] filed comments. On September 27, 2002, Ugine and the Petitioners filed rebuttal comments.[3]

DISCUSSION OF THE ISSUES:

1. Negative Dumping Margins

Ugine argues that, in the Prelim Results, the Department found that the U.S. price for many of Ugine's

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[1] Ugine, in the instant review, refers to Ugine, S.A. and Imphy Ugine Precision ("IUP") as a single entity as they were collapsed by Ugine prior to submitting its antidumping duty questionnaire response. We note that Ugine and IUP were also treated as a collective entity during the first administrative review. See Notice of Final Results of the Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France and accompanying Issues and Decision Memorandum ("First Review Final") 67 FR 6493 (February 12, 2001) at Comment 1.

[2] The Petitioners in this case are Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union and Zanesville Armco Independent Organization.

[3] Pursuant to 19 CFR §351.309d(2), the Petitioners were asked to re-submit their rebuttal comments and omit certain arguments that were not raised by Ugine. See Letter from the Department to Collier, Shannon, Scott, PLLC, counsel to the Petitioners, dated October 4, 2002. Consequently, the Petitioners submitted their revised rebuttal comments on October 7, 2002.

U.S. sales were above normal value and that, as a result, the calculated dumping margins for those transactions were negative. According to Ugine, the Department did not include the negative margins on these transactions in the calculation of the amount by which fair market value exceeds the U.S. price, but instead treated the negative margins for these sales as if they were zero margins, which has the effect of increasing Ugine's overall margin.

Citing Bowe Passat Reinigungs-und Waschereitechnic GMBH v. United States, 926 F. Supp. 1138, 1150 (Ct. Int'l Trade 1996) and Serampore Indus. PVT, Ltd. v. United States, 675 F. Supp. 1354, 1360-61 (Ct. Int'l Trade 1987), Ugine argues that the reviewing courts have ruled on several occasions that the Department's practice of "zeroing," although admittedly longstanding, is not required by law. Moreover, Ugine states 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. See 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. 1185, 1199 (Fed. Cir. 1990). In addition, Ugine argues that the World Trade Organization's ("WTO") Appellate Body recently ruled that the practice of "zeroing" is not consistent with the international obligations of the signatories to the Uruguay Round Antidumping Agreement. See Report to the Appellate Body: European Communities—Antidumping Duties on Imports of Cotton-Type Bed Linen from India ("Bed-Linen from India"), WT/DS141/AB/R (March 1, 2001) at 16. Ugine notes that the WTO Dispute Settlement Body approved the Appellate Body's report; therefore, it is clear that the Uruguay Round Antidumping Agreement does not allow its signatories to use the practice of "zeroing" in calculating dumping margins.

Ugine states that one of the principles of U.S. law is that U.S. statutes should be interpreted, whenever possible, to be consistent with international law. Ugine notes that U.S. courts routinely rely on this principle in interpreting U.S. statutes and it is equally applicable to federal agencies. See Weinerberg 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), George E. Warren Corp. v. United States Environmental Protection Agency, 159 F. 3d 616, 624 (D.C. Cir. 1998). According to Ugine, the Department should, therefore, 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 dumping margin for Ugine in this review.

The Petitioners argue that Ugine contends that the Department should change its practice and follow the decision on assigning zero margins to sales at or above the normal value reached by the WTO Appellate Body in Bed Linen from India. The Petitioners argue that contrary to the premise of Ugine's claim, nothing in the Department's practice is inconsistent with the Bed Linen from India case, and the Department has previously rejected each of the arguments raised by Ugine.

Citing several recent cases, the Petitioners note that in every instance that this issue has been raised since the issuance of the Bed Linen from India decision, the Department has properly rejected this argument and retained its current practice of assigning zero margins to U.S. sales made at or above normal value. See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Spain and accompanying Issues and Decision Memorandum, 67 FR 35482 (May 20, 2002) at Comment 15, Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod from India and accompanying Issues and Decision Memorandum, 67 FR 37391 (May 29, 2002) at Comment 5 and Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Germany and accompanying Issues and Decision Memorandum ("Wire Rod from Germany") 67 FR 55802 (August 30, 2002) at Comment 10. The Petitioners argue that as the Department has fully and properly explained in these recent decisions, the antidumping methodology used by the Department is factually and legally distinct from that used in the Bed Linen from India case and therefore, the WTO's decision in that case is not applicable to the dumping calculations performed by the Department under U.S. law. Consequently, the Petitioners argue, there is nothing inconsistent between the Department's practice and the WTO obligations of the United States.

In addition, the Petitioners note that as recently as August 30, 2002, the Department affirmed that its current methodology is consistent with its statutory obligations, which do not permit the canceling out of dumped sales by sales with no dumping margin. See Wire Rod from Germany at Comment 10. The Petitioners assert that in that case, the Department stated that Sections 771(35)(A) and 771 (35)(B) of the Act, 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." See Id. Moreover, the Petitioners noted that the Department added that "the singular term 'dumping margin' found in Section 771(35)(A) applies on a comparison-specific level, and does not itself apply on an aggregate basis." Thus, the Petitioners claim, the treatment of 'negative dumping margins' by the Department in the Prelim Results in this case is wholly consistent with the statute and has been found explicitly by the Department to be WTO consistent. Therefore, the Petitioners argue that the Department should reject Ugine's request to alter the Department's standard calculation methodology in this case.

Department's Position:

We agree with the Petitioners and disagree with Ugine.

Section 771(35)(A) of the Tariff Act of 1930, as amended ("the Act") defines "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Additionally, Section 771(35)(B) of the Act 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."

As discussed in a recent antidumping duty review of iron castings from Canada, "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. See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Canada and accompanying Issues and Decision Memorandum ("Wire Rod from Canada") 67 FR 55782 (August 30, 2002) at Comment 1. In addition, as noted by the Petitioners, in Wire Rod from Germany, the Department noted that the "directive to determine the 'aggregate dumping margins' in Section 771(35)(B) makes clear that the singular 'dumping margin' in Section 771(35)(B) 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." See Wire Rod from Germany at Comment 10. However, "it is important to note that the weighted-average margin will reflect any 'non-dumped' merchandise examined during the review; 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." As we have discussed in prior cases, including the most recently completed review of this order, our methodology is consistent with our statutory obligations under §771(35)(B) of the Act. See Wire Rod from Germany at Comment 10, Wire Rod from Canada at Comment 1, Notice of Final Results of Antidumping Duty Administrative Review: Iron Construction Castings from Canada and accompanying Issues and Decision Memorandum ("Castings from Canada") 67 FR 53564 (August 16, 2002) at Comment 1, and First Review Final at Comment 3.

Furthermore, we articulated the importance of this methodology with respect to the U.S. Customs Service. "The deposit rate we calculate for future entries must reflect the fact that the Customs Service is not in a position to know which entries of merchandise are dumped and which are not. Further, by spreading the liability for dumped sales across all reviewed sales, the weighted-average dumping margin allows the Customs Service to apply this rate to all merchandise subject to review." See Notice of Final Determination of Antidumping Administrative Review: Ball Bearings (other than tapered roller bearings) and Parts Thereof from France, Germany, Italy, Japan and the United Kingdom and accompanying Issues and Decision Memorandum ("Bearings from France") 67 FR 55780 (August 30, 2002) at Comment 2.

With respect to Ugine's argument concerning the Department's WTO obligations, we disagree. We note that U.S. law, as implemented through the Uruguay Round Agreements Act ("URAA"), is fully consistent with WTO obligations. See SAA at 669. Consequently, since our calculation is consistent with U.S. law, we have not changed our calculation of the weighted-average dumping margin for the final determination.

2. Partial Adverse Facts Available

Ugine argues that at the onset of this review, Ugine indicated that it sold the subject merchandise to a number of affiliated resellers. Ugine argues that very early in the proceeding, Ugine informed the Department that due to the enormous administrative burdens involved, it would not be able to report downstream sales for all of its affiliated resellers. Ugine notes it therefore requested that the Department clarify the reporting requirements for downstream sales in order to avoid the unnecessary burden of reporting downstream sales that were superfluous to the calculation of an accurate dumping margin. See Letter from Ugine, dated February 6, 2002.

Ugine states that the Department issued another request for Ugine to report downstream sales of all its affiliated resellers on May 31, 2002, after the U.S. verification was completed and the home-market verification was about to begin. According to Ugine, at that time, Ugine's officials informed the Department that, given the limited amount of time permitted, it simply was unable to provide downstream sales for all of its affiliated resellers.

Ugine states that in the Prelim Results, the Department found that it needed downstream sales from only one affiliated reseller, whose purchases represented less than one percent of total home-market sales. Ugine claims that because information on that reseller's resales was not on the record, the Department applied adverse facts available for comparisons that involved sales by Ugine to that reseller in the Prelim Results. Ugine argues that in this context, such treatment is unwarranted. According to Ugine, it cooperated fully with the Department in all respects and that there is no basis for punishing Ugine for its inability to supply information on downstream sales, considering the burden imposed was so disproportionate when compared to the negligible utility that such a minuscule quantity of additional sales would have had on the accuracy of the Department's margin calculation. Therefore, Ugine argues 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. See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat Carbon-Quality Steel Products from Japan 64 FR 24329, 24346 (May 6, 1999).

Citing Section 776(a)(2) and Section 782(c)-(e), the Petitioners argue that if an interested party withholds information that has been requested; fails to provide such information in a timely manner or in the form or manner requested; significantly impedes a determination under the statute, or provides such information but the information cannot be verified, the Department can use facts otherwise available in reaching its determination. In addition, the Petitioners argue that if the Department finds that a Respondent has failed to cooperate to the best of its ability, the Department may use an inference adverse to the Respondent. According to the Petitioners, Ugine failed to report a great deal of material in this case. The Petitioners argue that Ugine has been uncooperative in a significant and critical way by failing to meet the Department's repeated requests that it supply its downstream sales information in the home-market for all sales made by affiliated parties and has apparently done this to manipulate the sales matches and reduce its margin.

The Petitioners note that the original questionnaire required Ugine to provide downstream sales information for Ugine's affiliated resellers, but throughout the proceeding, Ugine failed to provide that information. Additionally, the Petitioners state that on May 31, 2002, the Department sent Ugine a supplemental questionnaire instructing Ugine to submit certain affiliated customers' downstream sales. See Prelim Results at 51211. The Petitioners argue that in the May 31, 2002, questionnaire, the Department noted the total number of affiliated customers and the percentage of home-market sales to affiliated customers, highlighting the significance of the request. According to the Petitioners, the Department limited the reporting of downstream sales to those affiliated customers who resold the subject merchandise during the period of review ("POR").[4] The Petitioners note that Ugine never responded to the request for downstream sales information on those affiliated resellers. Therefore, the Petitioners argue that Ugine withheld information specifically requested by the Department, thereby impeding the proceeding within the meaning of Section 776(a)(2)(c) of the Act and providing grounds for the Department's use of facts available.

The Petitioners argue that the Department's request for the downstream sales was not conditional, despite the language in the request that stated that the information was required "in the event that those affiliates fail the arm's-length test." Moreover, the Petitioners explain that in addition to the request for information being unconditional, the Department could find other reasons that it might need to use the downstream sales information. The Petitioners argue that as the Department noted in the Prelim Results, sales to one affiliated home-market reseller did not pass the arm's-length test. The Petitioners explain that such sales cannot be used for matching of U.S. sales, and downstream sales by that affiliated home-market reseller are required for these sales. Therefore, the Petitioners argue, the margin for each U.S. sale matching a sale from that affiliated home-market reseller, should be calculated based on facts available. Moreover, the Petitioners argue, because such downstream sales were purposefully not provided by Ugine, the Department should apply adverse facts available.

According to the Petitioners, there is no question that Ugine was uncooperative with regard to its deliberate decision not to provide downstream sales for its affiliates in the home-market. The Petitioners note that after several requests, the most recent being on May 31, 2002, Ugine through its silence, refused to submit the requested information. The Petitioners argue that this is clearly a refusal to cooperate to the "best of its ability" with the Department's request for information within the meaning of Section 776(b) of the Act. The Petitioners explain that had Ugine wished to cooperate with the Department's request, it could have asked for an extension of time to provide the information or sought additional guidance from the Department. The Petitioners argue that the Department cannot and should not permit a Respondent to dictate what information the Department may obtain from a Respondent. The Petitioners assert that Ugine knew that adverse facts available was the alternative to not providing downstream sales if for any reason the Department deemed that it could not use the sales that Ugine did provide.

[4] Affiliated customers who purchased the subject merchandise from Ugine during the POR and resold it as subject merchandise are also hereinafter referred to as resellers.

The Petitioners claim that in other cases, the Department has imposed total adverse facts available to Respondents that deliberately withheld information. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Germany ("SSSS from Germany"), 64 FR 30710, 30728 (June 8, 1999). The Petitioners explain that in SSSS from Germany, the Department made multiple requests to KTN, the Respondent, for the submission of its home-market downstream sales. According to the Petitioners, in that final determination, the Department applied adverse facts available to KTN for its failure to submit the requested downstream sales data. See SSSS from Germany at 30728. Furthermore, the Petitioners explain that KTN's argument that the Department did not need the balance of the downstream sales because the affiliated party passed the arm's-length test was rebutted by the Department's response that "the question is not whether a specific subset of KTN's sales to NSC are or are not at arm's-length; rather, it is KTN's failure to provide requested data on downstream sales through affiliated parties which caused us to apply adverse facts available." Id. In addition, the Petitioners argue that the Department's decision to apply adverse facts available in the SSSS from Germany case was upheld by the Court of International Trade ("CIT"). See Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products, Inc. v. United States, Slip-Op. 01-84 (Ct. Int'l Trade July 9, 2001).

The Petitioners argue that the Department made a number of attempts to obtain Ugine's reporting of downstream sales. Specifically, the Petitioners note, the Department's last request to Ugine to report downstream sales was not responded to by Ugine; a clear statement that Ugine made the tactical decision not to cooperate to the best of its ability in the Department's review of the antidumping order. According to the Petitioners, this case is not different in principle from SSSS from Germany. The Petitioners assert that just as is the case here, in that case, the primary question is not whether a specific subset of home-market affiliated sales is or is not at arm's-length; rather, it is the Respondent's failure to provide requested data on downstream sales through affiliated parties which causes the Department to apply adverse facts available. Thus, the Petitioners argue, for all these reasons, the Department should assign total adverse facts available to Ugine, or in the alternative, should assign adverse facts available to all sales matches with the affiliated reseller who failed the arm's-length test.

The Petitioners note that Ugine admits that it was asked on at least two occasions to provide the Department with downstream sales information from its affiliated resellers. According to the Petitioners, those affiliated resellers accounted for a significantly large percentage of home-market sales. The Petitioners state that while Ugine claimed in its February 6 submission that the burden on Ugine of providing those sales was great, the Department did not excuse Ugine from this obligation. In fact, the Petitioners contend, after Ugine had asked to be excused from providing the downstream sales information, the Department specifically denied Ugine's request by again requiring Ugine to place the information on the record. The Petitioners argue that, more specifically, the Department noted that it needed the downstream sales of a certain affiliated reseller, who failed the arm's-length test.

According to the Petitioners, Ugine claims that after the Department's May 31 request for information, Ugine informed the Department that it would be unable to provide downstream sales information in the time allotted. The Petitioners note that there is no evidence on the record that Ugine officially communicated this statement to the Department. The Petitioners argue that having been instructed in writing to provide the sales information, it was incumbent upon Ugine to provide a written response to the Department that is served on other interested parties. The Petitioners assert that there is no such document on the record of this case. The Petitioners claim that on May 31, the Department specifically warned Ugine that if the sales information was not provided, Ugine may be subject to the application of facts available. Therefore, the Petitioners argue, having been specifically warned of this outcome, Ugine cannot reasonably claim that the application of facts available is plainly unwarranted.

The Petitioners argue that Ugine misrepresents the facts when it claims that it is being punished for its inability to furnish this information. According to the Petitioners, Ugine's computer systems have the capability to be programmed to track sales. The Petitioners argue that Ugine did not provide sales information for a certain affiliated reseller and the burden of Ugine to provide this information was no greater than that normally imposed on Respondents. The Petitioners claim that because certain affiliated resellers' downstream sales were purposefully not provided by Ugine, the Department should apply adverse facts available rather than the neutral facts available used in the Prelim Results.

Department's Position:

We disagree with Ugine and agree with the Petitioners in part.

Ugine did not provide the requested downstream sales information after numerous requests, including the final May 31 request. Prior to filing the comments on the Prelim Results, there was no evidence on the record from Ugine explaining why the downstream sales information was not submitted. Furthermore, if Ugine needed additional time to submit the downstream sales information, Ugine should have, at a minimum, submitted a letter explaining its concern. It is not the Department's responsibility to determine what a Respondent is going to do after receiving a request. Additionally, prior to the Prelim Results, Ugine had not requested an extension of time to submit the downstream sales information or any other information regarding the burden of providing the data. Moreover, Ugine did not seek clarification of the request, as it did in a previous request that it made on February 6, 2002. In addition, in our request to Ugine we noted that not providing the requested information could subject Ugine to the application of facts available.

In our Prelim Results, we stated that "consistent with Section 776(a)(2)(A) and (C) of the Act, Ugine withheld information that had been requested by the Department, failed to provide such information in a timely manner, and significantly impeded the determination under the antidumping statute, justifying the use of facts otherwise available in reaching the applicable determination." See Prelim Results at 51215. Ugine has provided no basis for reaching a different conclusion for these final results.

With regard to the Petitioners' argument that the Department should apply adverse facts available rather than the neutral facts available, we agree. However, the Petitioners have mischaracterized our use of facts otherwise available for the affiliated reseller who failed the arm's-length test. In our Prelim Results, we stated that "in selecting from facts otherwise available, for these preliminary results, for those sales to the affiliated reseller that failed the arm's-length test, for which Ugine did not provide downstream sales, the Department used the highest gross unit price of an identical model purchased by another affiliated customer. For that customer's sales of models that were not sold to other affiliated customers, we applied the highest gross unit price for those models with a match." We recognize that our Prelim Results, did not fully articulate whether the facts available chosen were adverse or neutral. We hereby clarify that we used adverse facts available in the Prelim Results and note that, by applying the highest gross unit price for the same model, the Department did not apply neutral facts available, but instead used adverse facts available by replacing the gross unit price paid by the affiliated reseller with the highest possible price for that model. We note that, in contrast, we applied neutral facts available by excluding the unreported home-market sales in this review.

Additionally, in our Prelim Results, we noted that a similar methodology was used in the preliminary determination of cold-rolled steel flat products from France. This methodology was similar to that applied in cold-rolled steel flat products from France because in both cases, the Department replaced the affiliate's price with the highest gross unit price of comparable merchandise purchased from another customer that passed the arm's length test. Since the publication of our Prelim Results, the Department has concluded the cold-rolled investigation from France and continued to apply the same methodology in this type of situation. See Notice of Final Determination of Sales at Less Than Fair Value: Cold-Rolled Carbon Steel Flat Products from France and accompanying Issues and Decision Memorandum ("Cold-Rolled from France") 67 FR 62114 (October 3, 2002) at Comment 1. In this case, we applied a similar facts available methodology because the fact pattern of both cases is almost identical and the cold-rolled flat products from France investigation is a recent precedent, which is relevant here. Consequently, for the final results, we have continued to apply adverse facts available to sales from Ugine to the affiliated reseller that failed the arm's-length test for which Ugine did not provide downstream sales information.

3. Conversion of Pounds to Kilograms

According to Ugine, in the Prelim Results, the Department applied an incorrect conversion formula to convert the sales quantity reported on the U.S. sales file from pounds to kilograms. Ugine claims that the correct method for converting a quantity expressed in pounds is to multiply that quantity by 0.4536 (the pounds to kilograms conversion factor), and the resulting product equals the sales quantity expressed in kilograms. In the Prelim Results, the Department divided the sales quantity expressed in pounds by 0.4536. Therefore, Ugine argues, the Department should correct error in the final results.

The Petitioners did not comment on this issue.

Department's Position:

We agree with Ugine.

In our Prelim Results, we applied an incorrect conversion formula to convert the sales quantity reported on the U.S. sales file from pounds to kilograms. For the final results, we have applied the correct method for converting the U.S. sale file from pounds to kilograms by multiplying the quantity by 0.4536 (the pounds to kilograms conversion factor). See Memo to the File from Alex Villanueva, Case Analyst to James C. Doyle, Program Manager: Analysis for Ugine S.A. for the Final Results of the 2nd Administrative Review on Stainless Steel Sheet and Strip in Coils from France for the period July 1, 2000 through June 30, 2001 ("Analysis Memo"), dated December 18, 2002 at 1-2.

4. U.S. Inventory Carrying Costs

Ugine argues that in the Prelim Results, the Department reduced the constructed export price ("CEP") by the amount of the inventory carrying costs incurred prior to the date the merchandise entered the United States (i.e., the amount reported in the DINVCARU field of the U.S. sales file). Ugine argues that as the Department has recognized in past cases, such inventory carrying costs incurred prior to entry of the merchandise into the United States are not costs associated with business activities occurring in the United States after importation. Accordingly, Ugine argues, they should be deducted from the CEP starting price. See Notice of Final Results of Administrative Review: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea ("CR-CR from Korea"), 64 FR 12927 (March 16, 1999). "The inventory carrying costs in question relate to time prior to entry into the United States, and are not to be deducted from the CEP starting price." See CR-CR from Korea at 12943. Therefore, Ugine argues that the Department should correct its Prelim Results margin calculation by removing the deduction of these inventory carrying costs from the calculation.

In their rebuttal brief, the Petitioners argue that while they agree with Ugine that the Department's program incorrectly deducted the costs in DINVCARU, the Petitioners contend that Ugine has not provided the proper correction to the SAS program for this error. The Petitioners argue that the Department must treat the inventory carrying costs identically in both markets.

Department's Position:

We agree with Ugine and the Petitioners in part.

Although we agree with Ugine and the Petitioners that in the Prelim Results, we erroneously deducted U.S. inventory carrying costs incurred prior to the date the merchandise entered the United States from the CEP, we do not agree with Ugine's proposed programming language correcting the error. Ugine proposes that the U.S. inventory carrying costs simply be left out of the indirect selling expenses in the U.S. (INDEXUS) calculation, which is deducted from the net CEP. However, Ugine neglects to add the U.S. inventory carrying costs when calculating the offset on U.S. commission by the sum of domestic inventory carrying costs and domestic indirect selling expenses, not to exceed the amount of the U.S. sales commission. We agree with the Petitioners, that if the Department were to apply Ugine's programming language, we would not be accounting for a situation where there are no commissions paid on the U.S. sale, but there is a commission on the home-market sale. In the Prelim Results, we offset the home-market commission with the domestic indirect selling expenses related to U.S. sales, up to the amount of the home-market commission, but we did not calculate the offset as the sum of domestic indirect selling expenses related to U.S. sales plus domestic inventory carrying costs related to U.S. sales, up to the amount of the home-market commission. See Preliminary Margin Program. As the Petitioners note, this correction provides a parallel treatment for instances where commissions are paid in one market, but not the other. Therefore, we agree that the domestic inventory carrying costs should not have been deducted from the U.S. price, but also agree with the Petitioners that the inventory carrying costs be treated the same in both markets with respect to commissions and indirect selling expenses as appropriate. See Analysis Memo at 2-3.

5. U.S. Interest Revenue

Ugine explains that it reported interest revenue related to U.S. sales in the INTREVU field of the U.S. sales file. According to Ugine, the Department's practice is to treat such interest revenue as an adjustment to the CEP. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Spain, 59 FR 66931, 66933 (December 28, 1994), Notice of Final Determination of Sales at Less Than Fair Value: New Minivans from Japan, 57 FR 21937, 21938 (May 26, 1992), Notice of Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong, 55 FR 30733 (July 27, 1990) and Notice of Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers from Colombia, 55 FR 20491, 20500 (May 17, 1990). In the Prelim Results, however, the Department's preliminary margin calculation program did not make an adjustment to CEP in order to account for the interest revenue related to U.S. sales. Therefore, Ugine argues, the Department should correct its preliminary margin calculation to make this adjustment.

The Petitioners did not comment on this issue.

Department's Position:

We agree with Ugine.

In our Prelim Results, we did not take interest revenue into account when calculating the net CEP. In this review, Ugine's U.S. affiliate earned interest revenue from sales of subject merchandise during the POI. Therefore, for the final determination, we have added the interest revenue (INTREVU) earned by Usinor Stainless USA on U.S. sales of the subject merchandise to the net U.S. price. See Analysis Memo at 3-4.

6. Date of Sale

Ugine claims that the Department's regulations provide that "when normal value is based on the weighted average of sales of the foreign like product, the Secretary will limit the averaging of such prices to sales incurred during the contemporaneous month."[5] Ugine argues that sales occurring on August 31, 2000, should be included in the calculation of the average normal value for August; however, the Department's preliminary margin calculation program excluded from consideration home-market sales with a date of sale August 31, 2001. Therefore, the Department should correct the preliminary margin calculation program to include these home-market sales.

The Petitioners did not comment on this issue.

Department's Position:

We agree with Ugine.

In accordance with 19 C.F.R. §351.414(e)(2), in the Prelim Results, we included the two contemporaneous months after the POR (July 2000 and August 2000). However, we failed to include the last day of August as part of the month of August. In the Prelim Results, we limited the data from August to end as of August 30, 2000. Therefore, for the final determination, we have considered the averaging of prices to sales incurred during the complete months of July 2000 and August 2000. See Analysis Memo at 4-5.

7. Freight Revenue

According to Ugine, the Department's practice is to treat freight revenue as an adjustment to increase the sales price (i.e., freight revenue is revenue, not a negative expense). See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Steel Flat Products from the Netherlands, 67 FR 31268, 31270 (May 9, 2002), Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Carbon and Alloy Steel Wire Rod from Canada, 67 FR 17389, 17392 (April 10, 2002), Notice of Final Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods other Than Drill Pipe from Korea, 67 FR 12520 (March 19, 2002), Notice of Preliminary Results of Antidumping Administrative Review: Stainless Sheet and Strip in Coils from France, 66 FR 41538, 41540 (August 8, 2001) and Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils from France, 66 FR 40201, 40204 (August 2, 2001). Ugine argues that in the Prelim Results, the Department's calculation treated freight revenue earned on U.S. sales as a negative CEP movement expense. Therefore, the Department should correct this error in the

[5] See 19 C.F.R. §351.414(e)(2)(ii).

final determination.

Citing 773(a)(6)(B)((ii) of the Act, the Petitioners note that freight expenses are subtracted from the gross unit price only if the price of the merchandise includes the cost of freight. The Petitioners assert that Ugine stated that it generally quotes a price for the material that includes a charge for freight to deliver the product to the customer, and in most cases, the price shown on the invoice includes the freight charges. According to the Petitioners, in such cases, the gross unit price reported in the GRSUPRH field in the home-market sales listing reflects the freight-inclusive price, and the associated freight costs are reflected in the freight expenses variable, INFLTCH. Therefore, the Petitioners argue, under these circumstances, the statute directs the Department to reduce the gross unit price by the associated freight expenses.

However, the Petitioners claim, Ugine has also stated that it has home-market sales where the invoice separately lists the price of the merchandise from the freight revenue. The Petitioners note that in these instances, Ugine has stated that the gross unit price reported in the GRSUPRH field in the home-market sales listing reflects the invoice price for the merchandise (which does not include freight charges), and the amount reported in the FRTREVH field reflects the additional freight charge shown on the invoice. The Petitioners argue that the associated freight costs are shown in the freight expense variable, INFLTCH. According to the Petitioners, under these circumstances, the statute directs the Department to begin with the price of the merchandise; however, because the price of the merchandise does not include the cost of freight, the Department should make an upward adjustment for freight revenue or a downward adjustment for freight expenses. Thus, the Petitioners argue, for the final results, the Department should abide by the statute and adjust for freight revenue/expenses only in situations where the price of the merchandise includes the cost of delivery.

In their rebuttal brief, Ugine notes that the Petitioners contend that the Department should exclude both freight-revenue and freight costs from its normal value calculations, when the line-item invoice price is net-of-freight, and the freight charges to the customer are listed separately. Ugine claims that, according to the Petitioners, Section 773(a)(6)(B)(ii) of the Tariff Act allows the deduction of freight costs only when those cost are “included in the price” and because petitioners do not consider separate freight charges to be part of the “price,” they argue that no adjustment for the freight costs is permitted unless the line-item invoice price itself includes the freight.

Ugine argues that although the Petitioners neglect to mention it, the same argument can also be made with respect to the CEP calculation. According to Ugine, Section 772(c)(2)(A) of the Tariff Act provides that freight costs may be deducted from the CEP only if they too are “included in {the} price.” Thus, Ugine argues, if the Petitioners’ argument were accepted, the Department would be permitted to make adjustments for freight costs on U.S. or home-market sales only if the individual line-item prices on the invoice included freight. Ugine argues that no adjustment would be permitted in the more common circumstances in which freight charges are listed as a separate item on the invoice.

According to Ugine, the Petitioners' argument is contrary to the Department's longstanding practice, which has consistently added freight revenue to the "price" for U.S. and home-market sales, and then deducted actual freight costs incurred by the seller from the freight-included price. See Notice of Preliminary Results of Antidumping Duty Review: Stainless Steel Bar from France ("Bar from France") 66 FR 40201 (August 2, 2001); Notice of Preliminary Results of Antidumping Duty Review: Stainless Steel Sheet and Strip in Coils from France ("First Review Prelim") 66 FR 41538 (August 8, 2001); Notice of Final Results of Antidumping Duty Review: Oil Country Tubular Good, Other than Drill Pipe from Korea and accompanying Issues and Decision Memorandum ("OCTG from Korea") 67 FR 12520 (March 19, 2002). Moreover, Ugine argues that adhering to the Petitioners' argument would invite manipulation because Respondents facing an antidumping duty case could effectively raise its U.S. price by raising the line-item prices of the merchandise it exports to the United States, while lowering the accompanying freight charges far below the actual freight costs. Alternatively, Ugine notes, the Respondents could effectively lower its normal value by lowering the line-item prices of the merchandise it sells in the home-market, while raising the accompanying freight charges far above the actual freight costs. Ugine argues that in either case, the total amount paid by the customer would be the same; the only difference would be in the division of that amount between the merchandise "price" and the freight "charges" for purposes of the Department's analysis. Ugine argues that the Petitioners have presented no basis for the Department to depart from this established practice in the current review.

In their rebuttal brief, the Petitioners argue that the Department should not subtract freight expenses and add freight revenue on home-market sales for which the gross unit price was reported net any freight expenses. According the Petitioners, Ugine makes the converse argument that the Department should consider its claimed U.S. freight revenue on all sales, and treat U.S. freight revenue as revenue earned from the sale of merchandise (by upwardly adjusting the gross unit price) rather than a movement adjustment (by netting freight revenue against freight expenses). The Petitioners argue that the Department should treat gross unit price, freight revenue and freight expenses in both markets consistently. The Petitioners assert that where the reported gross unit price does not include freight expenses, no adjustment to that price should be made for freight revenue and expenses.[6]

According to the Petitioners, the Department should reject Ugine's claim for an upward adjustment for freight revenue (and any associated freight expenses), because the reported U.S. gross unit price of the merchandise does not include such revenue or expenses. Referencing 772(c)(2)(A) of the Act, the Petitioners claim that the statute instructs the Department to calculate the net U.S. price by taking the

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[6] According to the Petitioners, differences between freight revenue and expenses are usually the result of freight equalization by the seller and freight equalization allows the reseller to sell to a purchaser at the same unit price as a competitor located closer to the purchaser. The Petitioners state that the seller that is located farther away, and presumably has larger freight expenses, charges only that amount of freight to the purchaser that his competitor would charge.

starting price and reducing it by "the amount if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States." Thus, the Petitioners argue, under the statute, freight expenses are subtracted from the gross unit price only if the price of the merchandise is inclusive of the freight costs.

The Petitioners argue that Ugine's reporting of U.S. freight revenue separately from the U.S. gross unit price demonstrates that the U.S. gross unit price is for the merchandise only and does not include associated freight expenses. According to the Petitioners, it would appear that the reported U.S. price of the merchandise does not include the cost of freight. Therefore, the Petitioners argue, the Department should not make an upward adjustment for freight revenue or a downward adjustment for freight expenses, because such adjustment is not permitted under the statute. The Petitioners argue that to do so would only serve to mask or enhance the potential for dumping by the differential between the freight revenue charge to the customer and the freight expenses incurred on shipment. Thus, for the final results, the Petitioners argue that the Department should abide by the statute and adjust for freight revenue/expenses only in situations where the gross unit price of the merchandise is reported inclusive of delivery expenses. Additionally, the Petitioners argue that where the gross unit price in either market is reported on a separate line item on the invoice, exclusive of freight costs or revenues, such costs or revenues should not be used to adjust the reported unit price.

Department's Position:

We agree with Ugine.

In the Prelim Results, we erroneously deducted, instead of adding, freight revenue from the U.S. price. See Preliminary Margin Program. With respect to the Petitioners' argument that the Department should exclude freight costs from the normal value calculation, when the line-item invoice price does not include price and the freight charges to the customer, we disagree. In a recent case, the Department stated that "based upon the facts on the instant case, both the freight revenue and inland freight from the warehouse to the customer expense should not be deducted from the total gross unit price. Instead, we have added freight revenue to the gross unit price to calculate the total gross unit price and then deducted the inland freight costs from the plant to the customer as part of U.S. movement expenses." See OCTG from Korea 67 FR 12520 (March 19, 2002) at Comment 1. In addition, we agree with Ugine that it has long been the Department practice to deduct freight costs incurred by the seller from the freight-included price. "Where freight and movement charges are not included in the price, but are invoiced to the customer at the same time as the charge for the merchandise, the seller may consider its return on both transactions in setting the price." See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada, 59 FR 18791, 18796 (April 20, 1994). Consistent with this precedent, where costs have been invoiced at the same time as sales of the subject merchandise, the gross unit price of the subject merchandise is properly considered to include such revenue and expenses. Therefore, we have added any such revenue to the gross unit price and deducted any such freight expenses as appropriate. We have treated both the normal value and the CEP consistently in this manner. See Analysis Memo at 5-6. Furthermore, where freight costs incurred by the seller are on a freight-included price we continue to deduct actual freight costs from the freight-included price.

8. Price Manipulation Between Affiliated Parties

The Petitioners state that, as noted by the Department in its supplemental questionnaires, Ugine's home-market sales to affiliated parties were significant when compared to all of Ugine's home-market sales. According to the Petitioners, the Department must consider this fact when it deems five percent to be the test for whether unreported sales could have a material effect on the calculation of the margin. See 19 C.F.R. § 351.403(d). The Petitioners argue that the reason the Department performs the arm's-length test on sales to affiliated parties is that "prices {to affiliates} may have been manipulated to lower the normal value." See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27356 (May 19, 1997). Furthermore, the Petitioners argue that while the arm's-length test is one method to test for such manipulation, it should not preclude other evidence that such manipulation has occurred. The Petitioners argue that when sales to home-market affiliates are significant, the Department must consider whether the likelihood of manipulation increases to an unacceptable level, and whether other evidence of such manipulation exists. The Petitioners state that the data provided by Ugine indicates a strong likelihood of such manipulation.

Specifically, the Petitioners argue that approximately thirty-four percent of the unique combinations of customer code, control number, and prime variable indicator that were sold to affiliated parties during the POR could be tested against arm's-length prices, while the remaining portion of the unique combinations could not be tested against arm's-length prices. Therefore, the Petitioners argue, two-thirds of home-market sales, whether or not they matched U.S. sales, could not be tested against the arm's-length price. Moreover, the Petitioners note that seventy-one percent of the tested affiliated party sales that passed the arm's-length test passed by an unusually high percentage. The Petitioners assert that the unusually high arm's-length test results appear to have occurred because the affiliated party test sales were compared to unaffiliated party sales that ultimately failed the below cost test, thus yielding the unusual results. For example, the Petitioners claim that a home-market sale with a certain control number was sold to an affiliated party at a price which was approximately sixty-nine percent higher than the price for the same control number sold to an unaffiliated party in the same market. Furthermore, the Petitioners argue that all sales of this control number failed the sales below-cost test. The Petitioners assert that while the Department's arm's-length test found that certain affiliated home-market customers passed the arm's-length test, that result was based on a comparison of affiliated home-market sales to below-cost unaffiliated home-market sales. In addition, the Petitioners note that approximately one-third of U.S. sales were compared to home-market affiliated party sales and of that one-third, ninety-five percent were matched to untested home-market affiliated sales, while only five percent were matched to tested home-market affiliated sales.

The Petitioners argue that the implication of these figures is that Ugine's affiliated party sales passed the arm's-length test due to the significant amount of unaffiliated sales that were made at below-cost prices and nearly all U.S. sales compared to the affiliated party home-market sales matched to untested home-market sales. The Petitioners conclude that Ugine has engineered a passing result on the affiliated party test. The Petitioners explain that neither the Department's current arm's-length test nor its proposed test take into account the disproportionate effect that below-cost sales can have on the arm's-length test and product matching. The Petitioners claim that the ultimate effect on the margin calculation cannot be known without the actual downstream sales prices. However, the Petitioners assert that Ugine prevented the Department from obtaining that information.

The Petitioners argue that the Department has "inherent power of an administrative agency to protect the integrity of its own proceedings." See Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada, 64 FR 56738, 56743 (October 21, 1999), quoting Alberta Gas Chemical Ltd. v. Celanese Corp., 650 F. 2d 9, 12 (2d Cir. 1981). According to the Petitioners, even where the data passes the arm's-length test, the Department may, at its discretion, require the submission of downstream sales and use those sales for the antidumping calculation, where other evidence of potential manipulation is apparent in order to protect the integrity of its proceedings.

The Petitioners claim that the information on the record shows a pattern of manipulation that calls into question the use of affiliated party sales prices, even those that passed the arm's-length test, in the margin calculation. The Petitioners argue that Ugine has moved its sales of products like those sold in the United States predominantly through affiliated party resellers where it can manipulate the prices in a manner to mask dumping and Ugine's failure to provide downstream sales information is, therefore, material to the Department's margin calculation, calling for the application of adverse facts available.

In their rebuttal brief, Ugine argues that the Petitioners' assertion that the Department's normal arm's-length analysis should be disregarded because Ugine has manipulated its home-market sales somehow to take advantage of the Department's standard analysis is incorrect because the Petitioners presented no evidence of such manipulation. According to Ugine, the Petitioners simply offered links only by speculation and innuendo. Ugine argues that the Petitioners' statistics show that: (1) Ugine had a relatively large number of sales to affiliates; (2) many of these sales could not be compared to sales of unaffiliated customers because of product differences; (3) the prices for sales to affiliates that could be compared were, in some instances, significantly higher than the prices for sales of comparable products to unaffiliated customers; and (4) that, in the case of one second quality product (control number 18-0-01-00-01-01-08-00-02), all of the sales to unaffiliated customers were at below-cost prices that were much lower than the prices for sales to affiliated customers (which nevertheless were also below cost). Ugine claims that even if these assertions were correct, they do not stand up to scrutiny.

According to Ugine, during the review period, Ugine had a substantial quantity of sales to affiliated customers in the home-market that consumed the merchandise in the production of non-subject downstream products. Furthermore, Ugine argues that even if the sales to those affiliates had failed the arm's-length test, there would have been no basis for the Department to require Ugine to report the downstream sales by those affiliates, because the downstream sales involved non-subject merchandise.

Ugine explains that it had a much smaller quantity of sales to affiliated resellers that resold the subject merchandise to customers in France and other markets. Ugine argues that these sales from Ugine to both of these categories of affiliated customers were, with few exceptions, "comparable" to the sales to unaffiliated customers under the Department's longstanding arm's-length test. Thus, Ugine claims, under those regulations, normal value was properly based on the sales from Ugine to these customers, and not on the resales from affiliated resellers to their customers. Furthermore, Ugine argues that the Petitioners have attempted to avoid the clear provisions of the regulations by suggesting, without any evidence, that Ugine has somehow manipulated the arm's-length analysis and withheld relevant information from the Department. Therefore, Ugine argues that the Department should continue to include the arm's-length sales from Ugine to its affiliated customers in the calculation of normal value for purposes of the final results. Citing 19 C.F.R. §351.403, Ugine argues that contrary to the Petitioners' argument, the Department will include sales to affiliated customers in the calculation of normal value as long as those sales are found to be "comparable" sales to unaffiliated customers. Moreover, Ugine argues, if the Department finds that these sales to affiliated resellers are at arm's-length, it will not include the reseller's resales to its customers in the normal value calculation.

Ugine argues that while it is true that many sales to affiliates could not be compared to sales to unaffiliated customers, it is also true that a large number of sales could be compared. In fact, Ugine asserts, the Department was able to compare sales to affiliated and non-affiliated customers for 155 unique combinations and in every case, the sales to the affiliated parties were found to be at arm's-length prices. In addition, the affiliated parties identified by the Petitioners as having paid unusually high prices in most cases accounted for only a small percentage of Ugine's home-market sales. Ugine also notes that the apparently large differences in prices for the control numbers identified by the Petitioners reflects comparisons of second-quality products and the Petitioners have not identified any similar price differences for prime quality merchandise.

Ugine argues that the Department has found home-market sales to unaffiliated customers at below-cost prices in many cases in which sales to affiliates were not an issue. Thus, Ugine argues, the mere existence of below-cost sales is not probative of anything. Moreover, Ugine contends that the fact that home-market sales to both affiliated and unaffiliated customers were found to be at below-cost prices (in roughly the same magnitude) is confirmation that the sales to affiliated customers were made under the same conditions as the sales to unaffiliated customers. According to Ugine, it should be noted that, the results about which the Petitioners complain are not primarily a function of the sales to affiliated customers. Ugine argues that as the Petitioners admit, the dumping margins for roughly two-thirds of the U.S. sales were based on comparisons to sales to unaffiliated home-market customers. Ugine argues that the Petitioners have not shown that the dumping margins on the sales matched to affiliates were any different from the dumping margins on the sales matched to unaffiliated customers. Ugine claims that an analysis of the Department's Prelim Results reveals that the margin calculated for U.S.

sales that match to home-market sales made to affiliated customers is actually higher than the margin calculated for U.S. sales that match to home-market unaffiliated customers. Thus, Ugine argues, there is no basis for the Petitioners' claim that the sales to affiliated customers were engineered to avoid dumping, when the sales to unaffiliated customer had an equally low dumping margin.

In summary, Ugine claims that the Department's obligation is to conduct its reviews in accordance with the requirement of the statute, its regulations and its past precedents. Ugine argues that the Department's determination that Ugine's sales to affiliated customers were made at arm's-length prices is fully consistent with these requirements, therefore the Petitioners' arguments are without merit and should be rejected.

Department's Position:

We disagree with the Petitioners and agree with Ugine.

The Petitioners provided a brief analysis of a particular model to support their claim that Ugine has manipulated the prices between itself and Ugine. Although factually correct, we recognize that the Petitioners based their price manipulation analysis on a model which failed both the cost test and the arm's-length test. In addition, we note that this model was properly classified as a second by Ugine. The Petitioners provide no other evidence to suggest that this analysis could be applied to prime (non-second) models sold in the home-market or that this analysis was applicable to the majority of the models sold in the home-market. Moreover, although we agree with the Petitioners that a percentage of the models sold to unaffiliated customers in the home-market were untested, we agree with Ugine that a significant number of unique models were tested.

While the Department may consider whether there are circumstances in a particular case that cause the arm's-length test not to operate as intended, the facts in this case do not support such a conclusion. Furthermore, the Petitioners provided no alternative test, but only suggested the option of applying facts available.

19 C.F.R. 351.403(c) states that "if an exporter or producer sold the foreign like product to an affiliated party, the Secretary may calculate normal value based on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller." The Department's standard practice is to conduct an analysis of the prices paid by the affiliated customers to the prices paid by unaffiliated customers to determine if the prices paid by the affiliated customers are at arm's-length. In this case, when sales to affiliated customers were made at arm's-length prices, we included them in the normal value calculation. Conversely, if the prices were not found to be at arm's-length, we excluded them from the normal value calculation. In fact, in the instant case, we excluded sales made by Ugine to a certain affiliated customer because that customer failed the arm's-length test (i.e., the prices paid for comparable merchandise to unaffiliated customers were lower). See Preliminary Arm's-Length Test.

Consequently, for these final results, the Department continues to include the sales from Ugine to certain affiliated customers who pass the arm's-length test in the calculation of normal value.

9. Facts Available on Sales to Ugine France Service ("UFS")

Citing Badger-Powhatan, A Div. of Figgie Intern v. United States, 10 CIT 241, 250, 633 F. Supp. 1364, 1373 (Ct. Int'l Trade 1986), appeal dismissed, 808 F. 2d 823 Fed. Cir. (1986) and Koyo Seiko Co., Ltd. v. United States, 746 F. Supp. 1108, 1110 Ct. Int'l Trade (1990), the Petitioners argue that without the proper reporting of Ugine's downstream affiliated parties' sales, the Department cannot uphold its legal mandate to calculate the most accurate dumping margin possible. The Petitioners claim that Ugine's statements that "UFS performed processing on virtually all of the SSS&S[7] it purchased from Ugine during the review period and that UFS either transforms into out-of-scope merchandise or sells outside of France about three-fourths of the SSS&S that it purchased from Ugine" confirm that the Department would be relying on inaccurate data, leading to inaccurate margins, should it accept Ugine's reporting of sales to its affiliate, UFS. Moreover, the Petitioners claim that the reporting of transactions between Ugine and its affiliated resellers/processors would be inaccurate because, for the majority of the sales between Ugine and UFS, the Department is relying on the sales price of products Ugine knew at the time of sale to be partially manufactured subject merchandise, sales known to be made to third countries, and merchandise that was transformed into out-of-scope merchandise. The Petitioners assert that at the very least, it appears that Ugine has incorrectly reported third country sales in its home-market database, without any way to discern those sales from actual home-market sales.

The Petitioners argue that such third country sales, as well as sales of products further finished and resold, should not be included in the home-market sales database. The Petitioners state that only the downstream sales of finished in-scope merchandise to the home-market should be in the UFS database. The Petitioners claim that Ugine admits that a portion of U.S. sales match to sales to UFS, thereby producing an incorrect dumping margin. Therefore, the Petitioners argue that for every U.S. sale matching to a UFS home-market sale, the Department should calculate the margin for those matches on facts available.

According to the Petitioners, Ugine made the claim, repeated in the verification report, that reporting of the downstream sales information was not possible for UFS. Citing Ugine's March 19, 2002 submission, the Petitioners argue that the record does not support this claim. In fact, the Petitioners note that Ugine claims in the March 19 submission that while UFS can identify the source of the coils used for particular sales, it can only do so by "manually querying its sales and order processing databases." See Ugine's March 19, 2002, submission at 6. The Petitioners explain that later in the

[7] In this context, SSS&S refers to stainless steel sheet and strip in coils (i.e., subject merchandise).

response, Ugine states that this manual querying process is in actuality the creation of a computer program to link the currently reported Ugine sales that were made to UFS, to the subsequent sale by UFS. Id. at 7. The Petitioners argue that a review of the verification exhibits demonstrates the ease with which Ugine could report UFS' downstream sales information.

According to the Petitioners, exhibit AY from Ugine's verification shows that Ugine can use some standard product information to trace the merchandise that was sold downstream by UFS to Ugine-supplied merchandise. The Petitioners argue that a relatively simple computer program, sorting by standard product information, would have allowed UFS and Ugine to correlate all downstream sales to transactions between Ugine and UFS. Moreover, the Petitioners argue, the Department should find that Ugine and UFS have the information and the electronic capability to submit the downstream sales of UFS of Ugine material. In addition, the Petitioners argue that the burden described by Ugine to obtain this material is equivalent to that which all Respondents face in a normal anti-dumping proceeding. Therefore, the Petitioners argue that the Department should find that this was an acceptable and manageable task for Ugine.

Bearing this in mind, the Petitioners claim that the current home-market database is wrong, as it includes merchandise that was converted into non-subject merchandise or was known to be exported by UFS. Furthermore, the Petitioners argue that no additional burden exists for Ugine than for any other Respondent in reporting the requested downstream sales information. Thus, the Petitioners argue, for all these reasons, the Department should assign total adverse facts available to Ugine, or in the alternative, should assign adverse facts available to all sales matches with UFS.

In its rebuttal brief, Ugine contests the Petitioners' claim that the Department must use facts available for sales made by Ugine to UFS. Ugine argues that Petitioners' argument is based on a mis-characterization of Ugine's sales to UFS because the reported sales from Ugine to UFS only included in-scope subject merchandise. Ugine argues that UFS does make sales of out-of-scope merchandise and sales in third country markets, but those are not sales reported by Ugine. Ugine argues that because UFS is a service center located in France, Ugine's sales to UFS are home-market sales. According to Ugine, the nature of Ugine's sales to UFS is not in any way altered by the fact that UFS consumes some of the subject merchandise it purchases from Ugine in the production of non-subject merchandise, or by the fact that UFS exports some of this merchandise.

Ugine argues that its reported sales to UFS are sales of finished subject merchandise - no further manufacturing is required to transform the reported sales to UFS into subject merchandise. Ugine notes that the character of the subject merchandise sold by Ugine to UFS is not changed whether the subject merchandise sold to UFS is later processed by UFS into in-scope subject merchandise (e.g., by slitting) or out-of-scope merchandise (e.g., by cutting to length). In this regard, Ugine states that it is worth noting that the Petitioners advanced this same argument in the prior review, referring to Ugine's sales to UFS as sales of "semi-finished" merchandise. According to Ugine, in the prior review, the Department rejected the Petitioners' argument that Ugine's sales to UFS were unusable and, consequently, rejected the Petitioners' argument that UFS' downstream sales had to be included in the final results. Ugine argues that the Petitioners' claims provide no basis for the Department to apply facts available to Ugine's properly reported sales of subject merchandise to UFS at arm's-length prices and, accordingly, the Department should continue to use the reported sales to UFS in its margin calculation.

Department's Position:

We agree with Ugine and disagree with the Petitioners.

We agree with Ugine that the sales reported by Ugine to UFS were sales of in-scope merchandise and therefore were properly included in the margin calculation of this review. Ugine is not obligated to report out-of-scope merchandise as it is not covered by the order of stainless steel sheet and strip in coils from France and would not be used by the Department. Ugine reported all subject merchandise sales to UFS whether or not the merchandise was consequently consumed in the production of non-subject merchandise or re-sold for export.

As noted above in Comment 9, although Ugine made a significant number of sales in the home-market to UFS, the prices paid by UFS to Ugine passed the arm's-length test. See Preliminary Arm's-Length Test. As noted in the most recently completed review of this order, "it has been the Department's practice that if an affiliated party passes the arm's-length test, the Department would not use that affiliates' sales in its analysis." See First Review Final at Comment 2.

Additionally, it appears the Petitioners are challenging the integrity of the arm's-length test because it produces inaccurate results where the products sold to the affiliated customers may not be the same type or quantity as the products sold from the affiliate. We note that section 351.403(d) states that "the Secretary normally will not calculate normal value based on the sale by an affiliated party....if sales to the affiliated party are comparable, as defined in paragraph (c) of this section.[8]" Furthermore, the Preamble to the regulations addresses a comment that the Department adopt a separate test for situations where the vast majority of a firm's sales are to affiliated parties.

> We have not adopted this suggestion, because we believe that, in this context, the appropriate means to make this determination is by comparison to known arm's-length prices. In order to perform such an arm's-length test, the Department first must establish that sales to unaffiliated purchasers are

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[8] Section 351.403(c) provided that "if an exporter sold the foreign like product to an affiliated party, the Secretary may calculate normal value on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller."

> sufficient in number of quantity sold to serve as a benchmark for testing affiliated party transactions. If sales to unaffiliated purchasers are sufficient, we simply will not use sales to affiliated purchasers to determine normal value." See Preamble at 27355

To the extent that the Petitioners are seeking to alter the arm's-length test, we note that they have provided no alternative other than the use of downstream sales as facts available. In the instant case, the facts on the record do not support the use of facts available or a further request to Ugine to report the downstream sales from UFS. Consequently, we have not requested that Ugine provide the downstream sales from UFS to the first unaffiliated customer and we continue to use Ugine's sales to UFS in our margin calculation for the final results.

10. U.S. Sales Commissions

According to the Petitioners, at verification, the Department was unable to verify U.S. commissions for Hague (Ugine's U.S. affiliate) for a significant number of its commission agents. See Memorandum to the File from Alex Villanueva, Import Compliance Specialist through James C. Doyle, Program Manager: Verification Report of the Second Administrative Review of Stainless Steel Sheet and Strip from France - - United States Sales and Cost Verification Report of Hague Steel Corporation ("U.S. Verification Report"), dated July 31, 2002. Citing the U.S. Verification Report, the Petitioners argue that the Department attempted to verify U.S. commissions by comparing the stated value of those commissions to a written commission agreement. Id. at 20. However, the Petitioners note that the Department was not able to complete the verification procedure because Hague was "unable to provide copies of written commission agreements for a significant number of its commission agents." Id. Furthermore, the Petitioners note that Hague was only able to provide written agreements for one of its agents, which was signed several years ago. Therefore, the Petitioners argue that without being able to review and compare the written commission agreement to the value reported to the Department, the Department was unable to verify U.S. commissions and should find Hague's claimed U.S. commissions to be unverified. The Petitioners argue that in response to Ugine's inability to verify U.S. commissions, the Department should recalculate U.S. commissions to equal the highest commission rate paid on home-market sales.

On a related matter, the Petitioners argue that the U.S. commissions paid to two of Ugine's U.S. affiliates were not the result of arm's-length transactions. Id. Moreover, the Petitioners argue that the commission rates for affiliated agents were significantly lower than the commission rates for unaffiliated agents, and therefore the commission rate could not have been at arm's-length. According to the Petitioners, pursuant to LMI-LA Metali Industriale S.p.A. v. United States, 912 F 2d. 455 (Fed. Cir. 1990), commissions paid to affiliated parties will be accepted at the claimed level so long as those commissions were at arm's-length prices and tied directly to sales. The Petitioners note that in this review, however, the Department verified that the sales commission paid to two of Ugine's U.S. affiliates were not the result of arm's-length transactions because they were significantly lower than the commission rates paid to unaffiliated agents. Alternatively, the Petitioners argue that if the Department does not use the highest commission rate paid on home-market sales as facts available because of lack of documentation for the unreported U.S. commission rates, affiliated-party commissions should be applied at the same rate for unaffiliated commissionaires.

In their rebuttal brief, Ugine argues that contrary to the Petitioners' assertion, however, the Department did verify the reported commissions. Ugine notes that at verification, the Department traced commission payments that were made during the review period to Hague's audited financial statements without discrepancy. In addition, Ugine argues that the Department's verifiers examined and verified a sales trace that included a U.S. sales commission. Therefore, Ugine argues, the U.S. sales commission amounts and the fact of their payment were verified by the Department. Accordingly, Ugine concludes, the Department should not adjust the properly reported and verified U.S. sales commissions.

In addition, Ugine argues that the Petitioners' suggestion as an alternative to recalculating all U.S. sales commissions, that commissions paid to affiliated commissionaires should be recalculated to be the same as the commissions paid to unaffiliated agents is incorrect. Citing its questionnaire responses, Ugine argues that it reported the actual selling expenses incurred by Usinor Stainless USA rather than the percent commission rate that was paid. Ugine notes that although Ugine believes that its reporting of selling expense in this manner is in accordance with the Department's established practices, Ugine has no objection to lowering the amount reported to reflect the Petitioners' proposed rate.

Department's Position:

We agree with Ugine and disagree with the Petitioners in part.

Although the Petitioners are correct in noting that Ugine was unable to provide written agreements for a significant number of commission agents, we disagree that the use of adverse facts available is necessary. At Hague's verification we were able to trace the "commission payments made during the POR to the Comparative Statement of Administrative Expenses, which traces to the audited financial statements without discrepancy." See U.S. Verification Report at 21. Because Ugine was able to provide payment documentation for commissions, which were linked to the audited financial statements, we determined that there was proof of payment that Ugine did incur U.S. sales commissions for some U.S. sales made by Hague.

In addition, we noted in our verification report that one of the commission agents discontinued selling Hague's subject merchandise in December 2000. See U.S. Verification Report at 20. Furthermore, another commission agent did not have an agreement because "he has sold Hague products for a significant number of years"and "the agreement is understood." See Id. For the affiliated commission agents, Ugine reported the selling expenses incurred and not actual commission payment. See Ugine's Section C Response, dated November 16, 2001. Although we did not verify a specific commission payment made to the remaining commission agent, we noted that in accordance with Monsanto Co. v.

United States, 698 F. Supp. 275, 281 (Ct. Int'l Trade 1988), the Department retains its authority to "spot check" data at verification and that checking the majority (four out of five) of the agents, clearly satisfies that standard. Therefore, we continue to use the U.S. sales commission expenses reported by Ugine when calculating the margin for the final results.

11. Ugine's Financial Statement Information

Citing Section 773(f)(1)(A) of the Act, the Petitioners argue that the statute requires that the Department rely upon costs that are calculated based on the books and records of the producer, so long as such records are in accordance with the generally accepted accounting principles ("GAAP") of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. The Petitioners argue that at verification, Ugine explained to the Department that it issues financial statements that in are accordance with French GAAP. See Memorandum to the File from Alex Villanueva, Import Compliance Specialist through James C. Doyle, Program Manager: Verification Report of the Second Administrative Review of Stainless Steel Sheet and Strip from France, Home Market Sales and Cost Verification Report of Ugine, S.A. ("Home Market Verification Report"), dated July 31, 2002 at 11. However, the Petitioners claim Ugine did not base its reported costs on French GAAP financial statements. Id. The Petitioners argue that by relying on the U.S. GAAP financial statements, Ugine was able to understate the reported costs of production. Specifically, the Petitioners state that Ugine's "retirement/pension provision under the French GAAP is recorded as whole, while U.S. GAAP allows you to defer and carry it over several years." Id. at 30.

According to the Petitioners, Ugine has not made any claim or demonstrated that French GAAP is distortive or does not reasonably reflect the cost of production of the subject merchandise. The Petitioners argue that the only reason for this adjustment was to lower its reported costs of production; therefore, in accordance with the statute, the Department should properly rely on Ugine's normal audited financial statements, which are prepared in accordance with French GAAP.

The Petitioners claim that in order to correct for the understatement of costs, the Department should increase the total cost of production of each control number to reflect the difference in how the retirement/pension provision was recorded in Ugine's normal financial statements (French GAAP) and those prepared specifically for the Department (U.S. GAAP). Thus, the Petitioners suggest that for the final results the Department should divide the value of the retirement/pension provision by the cost of goods sold, and increase Ugine's reported total costs of production (TOTCOM) by the ratio.[9]

On a related matter, the Petitioners argue that Ugine improperly adjusted certain costs in its COBRA system. Specifically, the Petitioners claim that Ugine's COBRA system improperly adjusted for (1)

[9] The specific calculation suggested by the Petitioners can be found in the Final Analysis Memo at 7.

rebates received on certain purchases, (2) changes in the inventory valuation of material costs from monthly average price to monthly moving average price, and (3) the cost of hedging operations. According to the Petitioners, the adjustment for rebates does not appear to have been part of the financial statements. In addition, for the change in inventory method, the Petitioners argue that it appears that Ugine improperly weighted the inventory value. Lastly, the Petitioners assert that the hedging of nickel costs is not normally accounted by Ugine in its materials costs, but is normally reported in its financing expenses/income, thus these adjustments should be denied for purposes of the antidumping calculation.

In its rebuttal brief, Ugine argues that it did not base its reported costs on financial statements prepared in accordance with U.S. GAAP, and it did not create any financial statements for purposes of this review. According to Ugine, the "type of activity" financial statements upon which Ugine based its cost calculations document that was prepared in the normal course of business, are part of the consolidation process for the Usinor Group, and in accordance with the accounting principles used to prepare the Usinor Group's consolidated financial statements. Citing the auditor's report to the consolidated Usinor financial statements from the October 12, 2002, submission, Ugine argues that the report indicates that the accounting practices used by the company in preparing the accompanying financial statements to conform with generally accepted accounting principles in France, but do not conform with accounting principles generally accepted in the United States. Ugine argues that since the consolidated statements were generated from statements prepared by each Group company (including Ugine), the statements for Ugine and the other Group companies that were used in the consolidation process necessarily also conformed to generally accepted accounting principles in France. Citing its explanation from the February 26, 2002, submission, Ugine argues the normal accounting practice in France (and in most European countries) has been to present income statement information using the "type of expenditure" method and that the type of activity presentation, by contrast, is considered a U.S. GAAP format. In addition, Ugine notes that in previous proceedings in this case, Ugine has based the reported costs on the "type of activity" financial statements it prepares as part of the Usinor Group consolidation process and the Department accepted these calculations both in the original less than fair value investigation and the first review. Therefore, because the Petitioners have provided no justification for departing from the "law of the case," or penalizing Ugine for following the Department's established practice, the Department should reject the Petitioners' argument as they are without merit.

In addition, Ugine argues that the Petitioners' claim that an adjustment for rebates and hedging gains should be rejected because those items are not normally classified as part of cost of goods sold in Ugine's "normal" financial statements.

Citing <u>Notice of Final Determination: Certain Granite Products from Italy</u> ("<u>Granite from Italy</u>") 53 FR 27187, 27194 (July 19, 1988), Ugine argues that the Department's longstanding practice has been to include income and expense items relating to the purchase of raw materials in the cost of manufacture, regardless of how those gains are classified in the company's normal accounting records. Ugine argues that consistent with that practice, the rebates received from raw material suppliers and the results of raw materials hedging operations were properly included in the calculation of the cost of manufacture.

Ugine argues that the adjustment for differences in inventory valuation methodologies was necessary to ensure that the reported costs reflected the figures recorded in Ugine's normal accounting system and financial systems. Ugine explains that its normal accounting system and financial statements value raw materials inventory using the moving average method (in which the value of raw materials used during the period is determined based on the average of the unit value of beginning inventory and the average unit cost of purchases during the period). Ugine notes that by contrast, the COBRA calculation system values raw materials based solely on the average unit cost of purchases during the period, without considering the beginning inventory value.

Citing Section 773(f)(1)(A) of the Act Ugine argues that the statute and the Department's longstanding practice require that the reported costs reflect the values recorded in the company's accounting system and financial statements. Ugine argues that an adjustment was required to restate the costs from the COBRA system (which valued raw material inventories based on the average purchase price) to reflect the raw materials based on the moving-average method). Ugine states that the calculation of the adjustment was submitted by Ugine in a timely manner, was verified by the Department and should be used in the Department's margin calculation for the final determination.

Department's Position:

We agree with Ugine and disagree with the Petitioners.

Ugine's reported costs are not based on financial statements prepared in accordance with U.S. GAAP and verification revealed that Ugine did not create financial statements in order to respond to the Department's questionnaires. As part of the consolidation process for the Usinor Group, the "type of activity" financial statement which Ugine used as the basis for its cost calculations is prepared in the normal course of business and is in accordance with the accounting principles used to prepare Ugine's audited consolidated financial statements. In Ugine's February 26 submission, Ugine explained that "the SIRUS[10] system is capable of presenting the income statement data in either the "type of expenditure or "type of activity" format. Because the Department's questionnaire requires reconciliations to figures that are only available in an income statement prepared under the "type of activity" format, Ugine submitted the SIRUS statements prepared in that format." <u>See</u> Ugine's Section A Supplemental Questionnaire Response, dated February 26, 2002, at 36-37. Furthermore, the Usinor Group's audited financial statements clearly states that "accounting practices used by the Company in preparing the accompanying financial statements conform with generally accepted accounting principles in France, but do not conform with accounting principles generally accepted in the

[10] The SIRUS system is used by the Usinor Group to combine and consolidate the financial statements from each subsidiary for the Usinor Group.

United States of America." See Ugine's Section A Questionnaire Response, dated October 12, 2001, at Exhibit 12, page F-2. In the Investigation Final and the First Review Final, the Department accepted Ugine's reported costs on a "type-of-activity" basis.

With regard to the Petitioners' argument that Ugine improperly adjusted certain costs in its COBRA system, we disagree. During the home-market verification, we were able to confirm that

> "COBRA enables Ugine to calculate the actual costs by grade, since the accounting system does not perform this function. Ugine's officials explained that Ugine developed COBRA to calculate the total consumption of materials for each grade. Ugine's officials explained that COBRA also generated actual yields and cost drivers by grade to obtain the actual direct cost for each grade. Ugine's officials stated that on a monthly basis, Ugine is able to reconcile the data from COBRA to the accounting system using the purchasing software system, MERCURE."
> See Home Market Verification Report at 29.

In addition, we agree with Ugine that it is the Department's practice to include income and expense items relating to purchases of raw materials in the calculated cost of manufacture. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Granite Products from Italy, 53 FR 27187, 27194 (July 19, 1988). In Granite Products from Italy, we stated that "movement costs relating to raw materials that were classified as SG&A expenses in the company's normal accounting system were reclassified as material costs for purposes of the Department's calculations." See Granite Products from Italy at 27194. Therefore, the rebates received from the raw material suppliers and the resulting hedging operations are properly included in the cost of manufacture.

With regard to the Petitioners' argument that Ugine's change in inventory method improperly weighted the inventory value, we disagree. As explained in Ugine's questionnaire responses, the cost reported by Ugine reflected the moving-average valuations used in its normal accounting system and financial statements. The adjustment was made in order to restate the costs from COBRA system that values raw material inventories based on an average purchase price to reflect the raw material values from Ugine's normal accounting system, which values materials based on the moving-average method. We note that this method was accepted by the Department in the investigation and the first administrative review. In addition, we verified the moving-average methodology, reconciled it to the financial statements and found no discrepancies.

Therefore, for the final results we continue to use Ugine's reported costs which are based on the French GAAP financial statements and COBRA costs.

12. Hague's Scrap Revenue Calculation

The Petitioners argue that Hague incorrectly revised its accounting for scrap revenue in the cost of materials. According to the Petitioners, Hague divided its scrap income by the number of pounds of scrap generated to calculate the average price of scrap income per pound. The Petitioners state this incorrectly reduced the cost of Ugine material by the average price of scrap income per pound. Specifically, the Petitioners argue that Ugine's methodology incorrectly allocated the scrap income over the number of pounds of scrap sold and then applied this scrap income per pound to the number of pounds of finished Ugine materials sold. Moreover, the Petitioners claim that Ugine's method artificially converted the scrap income into a scrap income adjustment, which results in a significant scrap income increase, which artificially reduces Hague's further manufacturing costs. For the final results, the Petitioners argue that the Department should correct Hague's further manufacturing costs so that there is no artificial increase in the value of the scrap income earned by Hague. The Petitioners argue that in order to correct Hague's scrap revenue calculation, the Department should reduce the cost of Ugine's materials by the scrap income, and then divide the net cost by the number of pounds of Ugine material sold.

In their rebuttal brief, Ugine disagrees with the Petitioners' argument that Ugine artificially converted scrap income into a much larger amount of scrap income through its scrap revenue calculation. According to Ugine, the Petitioners arrive at their erroneous figure of the scrap income by fabricating a step in Hague's calculation that simply does not exist. Ugine argues that the Petitioners multiplied Hague's calculated revenue per pound of scrap by the total quantity of finished Ugine material sold. Ugine asserts that the Petitioners' calculation makes no sense and is nowhere a part of Hague's materials costs calculation.

Ugine contends that the Petitioners' accusation is based on their misunderstanding of how the scrap revenue yield loss is used to calculate Hague's net cost of material sold. Ugine argues that there are several ways to allocate the cost of scrap losses and the revenue from scrap sales to individual products. Ugine claims that it is essential, however, that any such allocation be mathematically consistent so that the denominator used to determine per unit amounts is calculated on the same basis as the figure to which the per-unit amount will be applied. Ugine argues that under any mathematically consistent methodology, the total cost and the total revenue from Hague's generation and sale of scrap costs must equal the total cost of material lost during production, and the sum of the reported scrap revenue for all products must equal the total amount of scrap revenue.

Ugine argues that in their previous submissions, the net cost of scrap losses for each product was calculated by multiplying the net unit cost of scrap losses by the quantity of scrap losses (per unit of finished product). According to Ugine, because the net unit cost in this calculation was applied to the quantity of scrap losses, mathematical consistency required that the net unit cost of scrap losses be calculated by dividing the total net cost of the scrap losses by the total quantity of scrap losses. Moreover, Ugine argues that the Petitioners' argument is based on the assumption that the adjustment for scrap revenue would be applied to the total quantity of processed merchandise sold by Hague.

Ugine asserts that this assumption is not correct. Moreover, Ugine notes that the scrap revenue adjustment was not multiplied by the total quantity of processed merchandise, but it was combined with the cost of scrap losses, and the combined adjustment rate was multiplied by the quantity of scrap losses.

Lastly, Ugine argues that a careful review of the Petitioners' calculation reveals an error in their logic. According to Ugine, the Petitioners suggest that scrap revenue should be deducted from the total cost of imported subject merchandise to calculate the total net cost of subject merchandise. Furthermore, Ugine contends, the Petitioners then propose that this total net cost of imported subject merchandise be divided by the total quantity of material Ugine sold to determine the net cost of Ugine material sold per pound. Ugine argues that the Petitioners' calculation calculates the net cost of Ugine material sold per pound, not the costs of U.S. further manufacturing operations per pound, which is the total cost of each further manufactured product after excluding the cost of Ugine material. Ugine argues that the Petitioners' proposed methodology is wholly irrelevant and should be rejected.

Department's Position:

We agree with Ugine and disagree with the Petitioners.

The Petitioners' suggested methodology calculates Ugine's net cost of material sold, not the cost of U.S. further manufacturing operations per pound. In addition, the Petitioners' proposed methodology does not take yield losses into account. Conversely, Ugine's method begins with the total revenue from sales which is divided by the total quantity sold during the POR to arrive at the total cost of Ugine material to per pound. Next, Ugine calculated the total revenue per pound of scrap by dividing the scrap income by the total pound of scrap generated. The resulting per-unit amount of scrap revenue (negative figure) is added to the net unit cost per pound of Ugine material to calculate the final net cost per pound of scrap. Therefore, since most of the scrap income was related to sales of the subject merchandise we determine that Ugine's methodology is reasonable and reliable for purposes of our final results. Consequently, for the final results we continue to apply Ugine's calculation of scrap revenue in the cost of materials.

13. U.S. Interest Costs

The Petitioners argue that in its calculation of the interest costs that are accounted for in the U.S. cost of further manufacturing, Ugine has incorrectly reduced U.S. net interest expenses. The Petitioners claim that in calculating U.S. interest expenses for the cost of U.S. further manufacturing, Ugine improperly lowered net interest costs for expenses related to accounts receivable and finished goods inventory. The Petitioners claim that in the less than fair value investigation in this proceeding, the Department rejected the identical net interest expense offset attempted in this proceeding by Ugine. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from France ("Investigation Final"), 64 FR 30820, 30842 (June 8, 1999).

In their rebuttal brief, Ugine contends that Petitioners' argument that the Department should adjust the interest expense included in the further manufacturing cost calculation adjustment to eliminate the offset claimed by Ugine for credit expenses (i.e., interest expenses for financing accounts receivable) and for inventory carrying costs (i.e., interest expenses for financing finished goods inventories) is late. Ugine notes that the Department asked Ugine in a questionnaire to eliminate those offsets and it accordingly resubmitted its revised sales listing on May 6, which eliminated the offset as requested by the Petitioners. Ugine argues that a further adjustment to "eliminate" these offsets from an interest expense calculation that does not include them would, of course, result in an overstatement of the actual interest expense.

Department's Position:

We agree with Ugine and disagree with the Petitioners in part.

In our sections A-E supplemental questionnaire dated January 29, we asked Ugine to explain the offset in Hague's interest expense for a portion of accounts receivable and finished goods inventory. See Section A-E Supplemental Questionnaire, dated January 29, 2002, at 25. In Ugine's February 26 response, Ugine explained that "the credit expenses reported in the CREDITU field represent the imputed interest costs of financing accounts receivable, and the inventory carrying costs reported in INVCARU field represent the imputed interest costs of financing finished goods inventory. In order to avoid double-counting these interest costs, it is necessary to deduct the portion of the interest expenses attributable to financing accounts receivable and finished goods inventory from the total net interest expense." See Ugine's Sections A-E Supplemental Questionnaire Response, dated February 26, 2002, at E-8. Consequently, we asked Ugine to resubmit Hague's net interest expense calculation to exclude the adjustment to net interest for accounts receivable and finished goods inventory and include the full value of Hague's indirect expense in a Section A-E supplemental questionnaire dated April 30, 2002. Ugine resubmitted Hague's net interest expense calculation and excluded the adjustment to net interest for accounts receivable and finished goods inventory and included the full value of Hague's indirect expense. See Section A-E Supplemental Questionnaire Response, dated May 6, 2002, database.

In the Prelim Results we used the July 2, 2002,[11] database submitted by Ugine, which excluded the adjustment to net interest for accounts receivable and finished goods inventory and included the full value of Hague's indirect expense. Therefore, the Petitioners' request that the Department reject Ugine's net interest expense for Hague is not applicable. Additionally, we agree with the Petitioners that in the Investigation Final Ugine was denied the same adjustment. Specifically, we stated that "it is

[11] The database submitted on July 2, 2002 is the May 6, 2002 database including the minor corrections submitted prior to the U.S. further manufacturing verification and the home-market verification.

not appropriate for Hague to reduce the consolidated expense with imputed amounts. In fact, we have always maintained that regular interest expenses represent a legitimate production cost of a U.S. further manufacturing affiliate and therefore should not be reduced by imputed interest." See Investigation Final at 30842. Consequently, for the final results, we continue to use Ugine's reported net interest expense for Hague, which excluded the adjustment to net interest for accounts receivable and finished goods inventory and included the full value of Hague's indirect expense.

14. Hague's Financial Statements Information

According to the Petitioners, the Department's policy is to rely on the financial statement that is most contemporaneous to the period of review. Therefore, the Petitioners argue that in this review, indirect selling expenses, general and administrative ("G&A") expenses, and interest expenses should be based on the 2001 financial statements. However, Hague based these calculations on fiscal year 2000 financial statements. The Petitioners argue that the Department should gather the appropriate information to base the G&A, indirect selling and interest expense ratios on Hague's 2001 financial statements.

In its rebuttal brief, Ugine argues that the current period of review includes six months of 2000 and six months of 2001. Therefore, Ugine asserts, there is no meaningful sense in which the 2001 financial statements are more contemporaneous with the review period. Moreover, Ugine argues that there are a number of reasons for the Department not use the financial statements the Petitioners advocate.

Ugine argues that the schedule of the current review (and of subsequent reviews) requires Ugine to submit its responses before the end of the fiscal year that comprises the latter half of the review period. Consequently, Ugine argues, the financial statements that the Petitioners urge the Department to rely on were not available when Ugine initially submitted its responses to the Department's questionnaire.[12] Ugine notes that the consolidated annual financial statements that are necessary to calculate these expenses are generally not available from corporate parent companies until much later in the following year. Ugine argues that if the Department established a practice of requiring these expenses to be calculated on the basis of financial statements not available at the time of Respondents' initial questionnaire responses, then the calculation of these expenses that the Department requires to be submitted at that time would be an empty exercise. Additionally, Ugine argues that the review conducted prior to the current review (before the more recent fiscal year were available) relied on 1999 financial statements for the calculation of these expenses. Therefore, Ugine contends, if the Department were now to require Ugine to use the 2001 financial statements, then the Department's annual analysis of Ugine's imports would never take into account the results embodied in the 2000 financial statements. Ugine argues that by using the 2000 financial statements in this review, Ugine is not avoiding its 2001

[12] Ugine notes that the initial responses in this review were filed before the 2000 financial statements were finalized.

financial statements, but will use those financial statements next year, in the review of the 2001-2002 period. Consequently, Ugine claims, the Petitioners have not provided any argument or evidence to show that the 2000 financial statements are in any way aberrational or unreliable, therefore, the Department should adhere to the pattern established in the past reviews and use the 2000 financial statements for this review and the 2001 financial statement for next year.

Department's Position:

We disagree with the Petitioners and agree with Ugine.

On September 4, 2001, the Department sent Ugine an antidumping duty questionnaire. On November 16, 2001, Ugine submitted its Section A response. On December 21, 2001, Ugine submitted its response to Sections B, C, D & E of the antidumping duty questionnaire using its most recent, audited financial statement (fiscal year 2000) information to report its cost of production information. Moreover, Hague's U.S. further manufacturing costs were also based on its fiscal year 2000 financial statement information. We agree with Ugine that both Ugine and Hague were unable to report costs of production using fiscal year 2001 financial statement information because this information was not available at the time the Department requested that Ugine respond to the antidumping duty questionnaire. In addition, the Department sent Ugine a supplemental questionnaire for Sections B, C, D & E on January 29, 2002, based on fiscal year 2000 financial statement information.

Although we agree with the Petitioners' argument that more recent financial statement information is now available to Ugine and Hague, at the time the Department asked Ugine to respond to the antidumping duty questionnaire and a supplemental questionnaire, more recent information was unavailable. Hague would also not have been given the opportunity to adjust the fiscal year 2001 financial data for dumping purposes. We articulated this same position in a recent case involving stainless steel butt-weld pipe fittings from Taiwan:

> "Petitioners suggest that the Department use fiscal year 2000 data to calculate U.S. indirect selling expenses. Although Ta Chen submitted fiscal year 2000 financial data, we have not considered any of this data as the basis for calculating U.S. indirect selling expenses because Ta Chen has not been given the opportunity to adjust the fiscal year 2000 data, as it normally does for antidumping purposes." See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Butt-Weld Pipe Fittings from Taiwan and accompanying Issues and Decision Memorandum ("Fitting from Taiwan") 66 FR 65899 (December 21, 2001) at Comment 7.

In addition, as noted by Ugine, the POR is equally divided between both fiscal periods and in the most recently completed review of this order, Ugine's and Hague's fiscal data were reported using 1999 information. Moreover, based on Ugine's and Hague's verifications, we do not believe that Hague's

2000 financial statement information is aberrational or unreliable. Therefore, because the Petitioners did not provide any evidence to suggest that Hague's 2000 financial statement information cannot be used as the basis for U.S. further manufacturing expenses and the POR is equally divided between both fiscal period, we continue to use Hague's 2000 financial statement information as the basis for calculating indirect selling expenses, G&A, expenses and interest expenses. Accordingly, we have not changed our preliminary results with regard to Hague's 2000 financial statement information.

15. Home Market Interest Revenue

The Petitioners argue that in Ugine's supplemental questionnaire response, Ugine stated that it charged interest for late payments on certain home-market sales to certain customers during the POR. The Petitioners state that Ugine subsequently reported interest revenue earned on these home-market sales in the INTREVH variable. However, the Petitioners argue that in the home-market net price calculation, the Department failed to consider the interest revenue variable. Therefore, for the final results, the Department should consider the impact of interest revenue earned by Ugine on home-market sales.

Ugine agrees that the Department failed to adjust normal value to reflect the interest revenue charged by Ugine on certain home-market sales.

Department's Position:

We agree with the Petitioners and Ugine.

In our Prelim Results, we failed to adjust the normal value to reflect the interest revenue charged by Ugine on certain home-market sales. Therefore, for our final determination, we have properly accounted for Ugine's interest revenue when calculating the normal value. See Analysis Memo at 6.

16. Home Market Rebates

The Petitioners argue that Ugine's rebates on home-market sales should be rejected because they were rebate accruals and not actual rebates. The Petitioners assert that Ugine's accounting system records an accrual for the rebates at the time it makes the sale. Moreover, the Petitioners argue that Ugine stated the amount of the accrual was reported to the Department. Therefore, according to the Petitioners, because such rebates may be overstated if the customer has not purchased the required volume to qualify for the rebate, no rebate would be paid by Ugine to the home-market customer. The Petitioners claim that Ugine could have easily supported its claims by comparing the accrued rebate to the actual payment of rebates. The Petitioners assert that from an accounting standpoint, Ugine would have had to complete such an exercise because the accounting books and records would have to be reconciled and adjusted for any differences between the accrual and the actual payment. According to the Petitioners, in light of the fact that Ugine failed to report the actual rebate paid and had the ability to correctly report the actual rebates through its normal accounting reconciliation, the Department should deny the rebate claimed.

In its rebuttal brief, Ugine argues that, as explained in its previous submissions, Ugine reported home-market rebates by applying the applicable rebate rates to the sales prices for the applicable home-market sales. According to Ugine, during verification, the Department verified the actual payment of the reported rebate amount and found no discrepancies. Ugine argues that the Petitioners' argument that the Department should have verified rebate payments on sales to all home-market customers that received rebates, and not just a sample, is incorrect. Citing Monsanto Co. v. United States, 698 F. Supp. 275, 281 (Ct. Int'l Trade 1988), Ugine notes that "verification is a spot check and is not intended to be an exhaustive examination of the respondents' business. ITA has considerable latitude in picking and choosing which items it will examine in detail." Therefore, Ugine argues that the Department should reject the Petitioners' misguided argument.

Department's Position:

We agree with Ugine and disagree with the Petitioners.

During the POR, Ugine gave rebates to certain large customers. In its February 26, 2002, submission, Ugine provided a sample set of documents relating to the payment of a rebate to a customer. In addition, at verification, we reviewed agreements and payment of rebates in the home-market for all customers receiving a rebate, including affiliated and unaffiliated parties. See Home Market Verification Report at 16. Specifically, Ugine provide copies of the agreement listing the rebate percentage, invoices confirming the rebate was paid on an annual basis, a chart showing the total sales value for which the rebate percentage would be applied and payment from the customers. Although the Petitioners are correct in stating that Ugine records the rebates on an accrual basis, the rebate agreement for the customer we examined at verification did not contain any discrepancies. While we did not examine all such rebate payments, we note that in accordance with Monsanto Co. v. United States, 698 F. Supp. 275, 281 (Ct. Int'l Trade 1988), "verification is a spot check and is not intended to be an exhaustive examination of the respondents' business." In addition, none of the information on the responses or presented at verification revealed inconsistent or inaccurate data. Consequently, we continue to use the rebate reported by Ugine in variable (REBATEH) for the final results.

17. Home Market Affiliated Common Carrier Prices

The Petitioners argue that Ugine's freight prices charged by its affiliated common carrier were not arm's-length prices because the freight price is on average higher than the freight prices charged by unaffiliated common carriers. According to the Petitioners, by reporting a freight charge from an affiliated common carrier that is not at arm's-length, Ugine is artificially lowering normal value.

The Petitioners assert that the Department's standard practice is to accept affiliated charges so long as those charges reflect arm's-length negotiations. The Petitioners state that when evidence exists on the record that prices charged by affiliated suppliers are not at arm's-length, the Department will modify those prices to be reflective of unaffiliated pricing. The Petitioners claim that in this case, the Department should recognize that Ugine is charged a higher price by its affiliated common carrier than by its unaffiliated common carriers, thereby artificially reducing normal value by overstating freight expenses simply because of the relationship between Ugine and its affiliated common carrier. The Petitioners argue that the Department should assure itself that it is only accepting and deducting expenses that reflect market negotiations.

According to the Petitioners, in order to properly account for the fact that Ugine was not charged arm's-length prices by its affiliated common carrier, it should reduce all home-market inland freight expenses by the difference of the average price of the unaffiliated common carrier because it is unclear which home-market sales were shipped by Ugine's affiliated common carrier and which were shipped by unaffiliated common carriers. According to the Petitioners, this partial adverse facts available, balances the fact that Ugine incurred freight expenses, but that the reporting of affiliated freight expenses do not reflect arm's-length prices.

In its rebuttal brief, Ugine argues that during the POR, it employed an affiliated common carrier for some of its home-market and U.S. sales. According to Ugine, the freight charges for shipments handled by that affiliated common carrier were slightly higher than the freight charges for shipments handled by unaffiliated carriers. Ugine notes that for U.S. sales, freight costs for shipments handled by that affiliated common carrier were a small percentage higher than the costs for comparable shipments by unaffiliated carriers. Conversely, Ugine notes, for home-market sales the freight costs for shipments handled by that affiliated common carrier were a smaller percentage higher than the costs for comparable shipments by unaffiliated carriers.

Ugine argues that the Petitioners' claim that because the freight costs for shipments by the affiliated common carrier were above arm's-length rates, the adjustment to normal value for freight costs on the home-market sales shipped by the affiliated common carrier was overstated, which had the effect of reducing the dumping margin. According to Ugine, the Petitioners' argument neglects to point out that the adjustment to U.S. price for freight costs on U.S. sales that were shipped by the affiliated common carrier was overstated, which had the effect of raising the dumping margin. Ugine argues that in lieu of the differences in freight charges between the affiliated and unaffiliated common carriers any adjustment is not warranted, however, if the Department makes an adjustment, it should be made for both U.S. and home-market sales.

Department's Position:

We agree with Ugine and disagree with the Petitioners.

During the POR, Ugine employed an affiliated common carrier for a portion of its home-market and

U.S. sales. At Ugine's home-market verification, we examined the prices paid by the affiliated common carrier to the prices paid to unaffiliated common carriers. Ugine adopted the Department's arm's-length test methodology to test the prices paid to its affiliated common carrier compared to the prices paid to the unaffiliated common carriers. We noted that the the weighted-average price paid to the affiliated party was higher than the weighted-average price to the unaffiliated party for both home-market and U.S sales. See Home-Market Verification at 21.   In the instant review, we have used the prices paid to the affiliated common carrier.

In addition, we note that in the most recently completed review of this order, Ugine applied the same arm's-length methodology to test the prices paid to the common carrier. In that case, we continued to use the prices paid to the affiliated common carrier. See Memorandum to the File from Robert A. Bolling, Senior Case Analyst and Juanita Chen, Case Analyst to James C. Doyle, Program Manager: Home Market Sales and Cost Verifications of Ugine S.A. ("Ugine"); First Administrative Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from France, dated July 31, 2001, at 16. Because the Petitioners have not provided sufficient evidence to demonstrate that the prices paid to the affiliated common carrier are unreliable, we will continue to use the prices Ugine paid to the affiliated common carrier in our margin calculation for the final results.

18. Home Market Credit Expenses

The Petitioners argue that for the final results, the Department should correct the home-market credit expense calculation for Ugine's sales to certain customers. According to the Petitioners, Ugine stated that it reported the date the merchandise was shipped to certain customers as the date of shipment for these sales to these certain customers. The Petitioners note that Ugine also stated that it calculated the home-market credit expenses as the difference between the date of shipment (SHIPDTH) and the date of payment (PAYDTH). The Petitioners stated that for sales to these certain customers, Ugine stated that it recognizes these sales when the invoices are issued, and it is at this time that Ugine extends credit terms to these certain customers for payment of the merchandise.

The Petitioners argue that the credit expense calculation is to reflect the time when the company has extended credit terms to a customer for payment. According to the Petitioners, normally the time period between the date of shipment and the date of payment is an accurate measure of the credit term, because the date of shipment is when title transfers from buyer to seller, and payment terms are extended from buyer to seller. However, the Petitioners claim, for Ugine's sales to these certain customers, the use of the date of shipment is wrong as the beginning of the payment period, because the title has not transferred from Ugine to the customer at that time. Additionally, the Petitioners note that Ugine maintains title of the merchandise and has the right to remove the merchandise from inventory until these certain customers withdraw the merchandise from inventory. Therefore, the Petitioners assert that Ugine does not extend payment terms to those certain customers until those certain customers withdraw the merchandise from inventory or at the date of invoice. Therefore, according to the Petitioners, the Department should re-calculate home-market credit expense to reflect the proper credit period that is measured from the date of invoice to the date of payment for certain customers.

In its rebuttal brief, Ugine argues that the Petitioners' contention that the credit expense and inventory carrying costs on certain home-market sales were calculated incorrectly because the wrong date of shipment was used for these sales, is directly contrary to the Department's established practice, as well as the position taken by the Petitioners' counsel in a previous antidumping duty investigation and should be rejected in this review. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from France ("Wire Rod from France") 58 FR 68865 (December 29, 1993).

However, Ugine argues if the Department were to modify the credit expense and inventory carrying cost calculations for home-market sales, then it should make a similar modification to the calculations for U.S. sales. Ugine notes that as explained in their previous submissions, Usinor Stainless USA had some sales to certain customers with a similar shipping circumstance in the U.S. market. Therefore, Ugine argues that the credit expenses and inventory carrying costs for these U.S. sales were calculated using the date of shipment to the customer's inventory as the date of sale. Ugine argues that if the Department were to depart from its established practice and treat the date of invoice as the date of shipment for home-market sales, it should use a similar methodology to calculate the credit expenses and inventory carrying costs for U.S. sales.

Department's Position:

We agree with Ugine and disagree with the Petitioners.

During the POR for certain home-market sales, Ugine shipped the subject merchandise while not invoicing the customer until the merchandise was withdrawn from inventory. The Petitioners argue that when calculating the home-market credit expense, Ugine's use of the date of shipment is wrong as the beginning of the payment period because the title did not transfer from Ugine to the customer at that time. Additionally, the Petitioners note that Ugine maintains title of the merchandise and has the right to remove the merchandise from inventory until these certain customers withdraw the merchandise from inventory.

Although we agree with the Petitioners that Ugine retains title of the merchandise until it is removed from inventory, we have determined in other cases that because the respondent is unable to sell the merchandise to any other customer while in inventory it is a direct expense. In Wire Rod from France, we articulated a position which directly addresses the issue.

> "We agree that costs incurred during the consignment inventory period are not inventory carrying costs, but are direct credit expenses. During the period that the merchandise remained in respondents' customer's consignment inventory the merchandise was not available for sale to any other of Respondent's customers.

> Since it was not available for sale, we have determined that the expense incurred by respondent while it remained in its customer's inventory is a direct expense." See Wire Rod from France, 58 FR at 68870.

Moreover, we explained that the Department determined that the "credit period for home-market consignment sales began at the time the merchandise left the producing mill en route to its consignment customer's inventory, and not when the final customer was invoiced (respondent invoiced its consignment customer when the consignment customer withdrew the material from its warehouse and invoiced its customer)." See Id.. In addition, the Department has affirmed this methodology in recent cases. See Notice of Final Results of Antidumping Duty Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands and accompanying Issues and Decision Memorandum, 65 FR 67347 (November 9, 2000) and Notice of Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Germany, 67 FR 3159 (January 23, 2002).

Therefore, for the final results we have not changed our home-market sales' credit expense calculation. Consequently, Ugine's argument regarding an additional adjustment to the U.S. sales is moot.

19. Completeness of the Record

The Petitioners argue that during the course of the administrative review, the following critical issues were raised by the Petitioners, along with a specific request for verification, but have not been addressed in the verification report or the Prelim Results:

(A) According to the Petitioners, the Department should have asked Ugine to explain and document its relationship with a number of former Ugine-owned companies. Specifically, the petitioners requested that the Department inquire about Ugine's relationship and provide copies of all contracts, agreements, and arrangements between itself and any other affiliated party and any company that appeared in Appendix 4-B of Ugine's Section A questionnaire response, including all companies in which Usinor has had an ownership interest any time since the original investigation to date.

(B) The Petitioners argue that Ugine's reporting of date of invoice as the date of sale is incorrect and that the appropriate date of sale is the date of order acknowledgment. According to the Petitioners, Ugine has stated and the Department has verified that Ugine produces to order. There is a lag between the date of order acknowledgment and date of invoice. The only apparent difference that might occur between the date of order acknowledgment and date of invoice is a result of a separate charge not controlled by Ugine or its customers, and the date of acknowledgment appears to be the most appropriate date of sale for sales to certain home-market customers. The Petitioners request that the Department should explain in its final determination why it has not used the date of order acknowledgment as the date of sale or require the sales listing to be resubmitted using order acknowledgment date.

(C) The Petitioners also argue that the Department's normal allocation method for indirect selling expenses is to allocate those expenses over sales value. The Petitioners argue, however, Ugine has proposed alternative allocation methodologies that rely on the number of items ordered. According to the Petitioners, this allocation methodology is illogical because, in its day-to-day sales, there is little to no scrutiny required by the sales person of each item ordered by its normal customer database. As a result, the Petitioners argue that the use of number of line items skews the results and request that the Department should have assessed the reasonableness of this allocation methodology at verification.

(D) Next, the Petitioners state that Ugine submitted a sales agreement with a certain foreign company. The Petitioners argue that at verification, the Department should have asked Ugine to explain the role of this foreign company, which provides various services for Ugine. The Petitioners argue that Ugine should have explained whether the foreign company processed any subject merchandise and then forwarded it to the United States. The Petitioners argue that Ugine should explain and document such sales and should demonstrate that it has reported the foreign company's further manufacturing costs in its questionnaire responses.

(E) Finally, the Petitioners argue that the Department should have obtained at verification a complete list of research and development ("R&D") projects and associated costs undertaken by Ugine and one of its affiliates. The Petitioners argue that according to Ugine, it classified R&D projects by market segments. According to the Petitioners, the Department needs to understand the meaning of this term and how this classification can either attribute or segregate R&D costs from various products. In addition, the Department should have asked Ugine whether it has included in the Section D costs, the R&D costs incurred by a separate Ugine affiliate. Moreover, the Petitioners argue that Ugine should have been asked this same question with regard to any affiliate that may have undertaken R&D projects for Ugine.

Therefore, the Petitioners argue, the record is missing this critical data requested by the Petitioners and the Department should seek this information for the final results or provide an explanation for not doing so. Moreover, the Petitioners note that the Court of International Trade has held that "affirming a final determination known to be based on incorrect data would not only perpetuate the error, but would also be contrary to legislative intent. See Koyo Seiko 746 F. Supp. at 1111. The Petitioners argue that to advance in this case to the calculation of the final results, the Department must seek and obtain the necessary information from Ugine to resolve these critical issues.

In its rebuttal brief, Ugine argues that it is difficult to understand how the Department's decision not to verify an item can be equated to a decision to proceed based on the Petitioners' explanation of incorrect data. Ugine argues that as the reviewing courts have observed, verification is a spot check and it not intended to be an exhaustive examination of the respondents' business." See Monsanto Co. v. United States, 698 F. Supp. 275, 281 (Ct. Int'l Trade 1988). Ugine argues that the choice of items to be examined in the "spot check" is left to the Department's discretion. Ugine claims that failure to follow the Petitioners' every wish in conducting verification is simply not a legal error. Ugine asserts that a review of the record confirms that the issues identified by the Petitioners were, in fact, addressed to the extent necessary in Ugine's submissions and at verification. Therefore, Ugine contends, the Petitioners' argument must be rejected.

With respect to the Petitioners' argument that the Department should have asked to Ugine to explain and document its relationship with a number of former Ugine-owned companies, including a former U.S. affiliate, Ugine argues that the Petitioners did not specify who the "other former Ugine-owned companies might be, but in the case of the former U.S. affiliate, the Petitioners are simply wrong." Referencing the Home-Market Verification Report, Ugine states that the Department did ask at verification for, and Ugine did document, the termination of Usinor's interests in the former U.S. affiliate. See Home-Market Verification Report at Exhibit B. Ugine states that the Department's verification report specifically addressed this issue. See Id. Therefore, Ugine argues, the Petitioners' argument must be rejected.

Ugine argues that the Department should not accept the Petitioners' argument that the date of sale should be date of order acknowledgment, but should continue to use the date of shipment as the date of sale. As explained in a previous submission, Ugine argues that the price and quantity may, and do, change between the date of order and shipment. Moreover, Ugine notes that the price may be revised to reflect changing market conditions and that quantity may be modified when the customers' needs change between the initial order and shipment, or when Ugine's production exceeds the initial order quantity by more than the agreed-upon tolerance and the customer agrees to accept the additional quantity. Ugine argues that an analysis of the changes in base price, quantity, product specification, and delivery terms for home-market and U.S. sales was provided in Ugine's February 26 submission. Additionally, Ugine argues, during verification Ugine provided documentation demonstrating changes in the base price from order to invoice. Ugine asserts that the evidence on the record refutes the Petitioners' contention that the price and quantity are fixed on the date of order acknowledgment. Consequently, Ugine argues, the Petitioners' argument should be rejected.

Ugine argues that the allocation methodology used by Ugine to report indirect selling expenses in this review is the same followed by Ugine in its reporting of indirect selling expenses accepted by the Department in the less-than-fair value investigation and the first administrative review of this case. Ugine argues that the Petitioners do not offer a reason to indicate that this allocation methodology has become any less reasonable since the previous review. Accordingly, Ugine argues, the Department should continue to accept Ugine's indirect selling expense allocation methodology as reasonable and consistent with the established practice in this case.

Ugine argues that the Petitioners' complaint that Ugine should explain whether it sent any subject merchandise to a foreign market affiliate that may have been subsequently processed by that foreign market affiliate and then forwarded to the United States has already been addressed on the record of this review. Ugine states that in an April 30 supplemental questionnaire, the Department asked Ugine to explain whether Ugine or any of its affiliates sent any subject merchandise to this foreign market affiliate that was subsequently processed and sent by this foreign market affiliate to the United States. Ugine notes that its questionnaire response clearly indicated that neither Ugine nor any of its affiliates shipped subject merchandise to this foreign market affiliate for processing that was subsequently shipped to the United States. Accordingly, Ugine argues, there is no merit to the Petitioners' contention that this is an unresolved critical issue which prevents the Department from proceeding to the final results of this review.

Ugine argues that it reported research and development costs in the manner that they have been reported in the normal course of business and in the manner that they have been reported in the prior phases of this case. Ugine argues that it extensively described the manner in which it has reported research and development costs and the manner in which research and development costs are recorded in its accounting system. Additionally, Ugine notes, it has reconciled its reported research and development to its financial statements. According to Ugine, the Department has a complete record with respect to research and development costs and should reject the Petitioners' attempt to burden the Department and the Respondents with the pointless exercises of gathering additional extraneous items for the record.

Department's Position:

We disagree with the Petitioners in part and agree with Ugine in part.

With respect to the Petitioners' argument that the Department should have asked Ugine to explain and document its relationship with a number of Ugine-owned companies, in the Home Market Verification Report, we detailed Ugine's relationship with the specific company which Petitioners requested we examine. See Home Market Verification Report at 7. In addition, we provided copies of the agreement that indicated that Ugine purchased the company in question and the termination of Usinor's interest in the company as of the end of the last POR (January 4, 1999, through June 30, 2000). See Id. at Exhibit B. Furthermore, at Ugine's home market verification, we verified the changes in Ugine's corporate structure and changes in actual ownership percentages for every affiliated entity, every time the corporate structure changed. See Home-Market Verification Report at Exhibit A. Therefore, we disagree with the Petitioners' assessment that the Department did not ask Ugine to document and explain its affiliation with certain entities.

With respect to the Petitioners' argument that the Department should have used the date of order acknowledgment and not the date of invoice as the date of sale, we disagree. Section 351.401(i) of the Department's regulations state that

> "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other that than date of invoice if the

> Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."

In the instant case, Ugine explained that the price and quantity may, and do, change between the date of order and shipment a small percentage of the time. Furthermore, Ugine stated that price may be revised to reflect the changing market conditions and that quantity may be modified when the customer's needs change between the initial order and shipment, or when Ugine's production exceeds the initial order quantity by more than the agreed-upon tolerance and the customer agrees to accept the additional quantity. In our first supplemental questionnaire, we requested that Ugine provide the percentages of sales for which there was a change to the essential terms of sale (e.g., price or quantity) after order and if the number of instances in which there were changes is significant. In its February 26, 2002, submission, Ugine provided an analysis of the frequency of changes in prices, quantities, delivery terms and alloy surcharge amounts during the first semester of 2001. See Ugine's Section A Supplemental Questionnaire Response, dated February 26, 2002, at 57. Ugine stated that "the quantity of a sale will change after the shipment only if there is a mistake in shipping or invoicing, or if product is returned in response to a warranty claim. Such changes would result in the creation of a credit note or, if the quantity was too low, the creation of supplementary invoice." Additionally, we noted that Ugine's base price changed significantly. During Ugine's verification we verified a total of twelve home-market sales, seven "surprise sales," all credit memos and warranty expenses made during the POR. Although we noted that in some instances there was only a minor change between price or quantity, Ugine accounted for the change accordingly in their accounting system. Furthermore, because the instances of change were so significant and the terms of sale for the home-market sales are traditionally set on the date of invoice, we do not believe that it is necessary to change the date of sale from date of invoice to date of order acknowledgment. In addition, in a recent investigation, the Department addressed a similar issue:

> "to determine whether Ispat Indo properly reported invoice date as the date of sale for both home market and U.S. market sales, on December 28, 2001, we requested Ispat Indo to summarize the changes in terms of sle subsequent to the contract date. In its January 18, 2002, supplemental response, the respondent stated that there were numerous instances where the price, quantity, and product specification changed subsequent to the sales contract. For purposes of our Preliminary Determination, we accepted the invoice date as the date of sale for both the home market and the U.S. market sales." See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Indonesia and accompanying Issues and Decision Memorandum ("Wire Rod from Indonesia") 67 FR 55798 (August 30, 2002) at Comment 4.

Moreover, the position articulated in Wire Rod from Indonesia stated that "we conclude that the invoice date is when the material terms of sale are set because Ispat Indo demonstrated that the invoice date is the appropriate date of sale for both markets...." Furthermore, in the Investigation Final and the First Review Final, Ugine reported, and the Department used, Ugine's date of invoice as the date of sale. "Thus, based on respondent's representations, and as a result of our examination of Usinor and its affiliates records kept in the ordinary course of business, we are satisfied that the date of invoice should be used as the date of sale because it best reflects the date on which material terms of sale were established for Usinor and its affiliates' home market and U.S. sales." See Investigation Final at 30831. Therefore, because we verified that Ugine experienced some significant changes in the base price between the date of order acknowledgment and date of invoice, we continue to use the date of invoice as the date of sale.

With respect to the Petitioners' argument that Ugine's allocation methodology relies on the number of line items, we disagree in part. Although we recognize that Ugine uses allocated indirect selling expenses between markets based on the number of order/invoice line items, we do not believe that this allocation methodology is illogical. Ugine, as part of the Usinor Group, has sales-related cost centers that provide sales functions for sales in France and other markets. Ugine simply allocated the appropriate portion of the cost center's expenses relating to sales in France by allocating the total expenses incurred in that cost center among the geographic markets served by each respective cost center. In its February 26, 2002, Ugine explained why the order/invoice system was appropriate: "For most of Ugine's selling activities, the effort required for each sale depends primarily on the number of items ordered: Because each item in the order requires a separate evaluation, the time required is a function of the number of items ordered. On the other hand, because the evaluation of each item is essentially the same, regardless of the quantity or price of that item, the time required is not a function of the order size. Accordingly, the expenses for cost centers that provide sales functions for sales in France and other markets were allocated between markets based on the number of order/invoice line items." See Ugine's February 26, 2002, Section A-E Supplemental Questionnaire Response at 40.

In addition, in our Home Market Verification Report we noted that Ugine "used an allocation factor as the proxy as for determining how much of a particular cost center's expenses would be attributable to SSSS. Specifically, Ugine explained that some cost centers service world-wide sales, therefore in order to allocate a portion to the SSSS sales, Ugine calculated a ratio of order/invoice items for sales in France to total order/invoice items for world-wide sales." See Home Market Verification Report at 18. Ugine also provided a list of functions and the market served by each cost center included in the indirect selling expense calculation. We found no discrepancies. See Id. Therefore, because Ugine is able to allocate cost center expenses on a subject merchandise-specific and a market-specific basis, we continue to use Ugine's reported indirect selling expenses ratio.

With respect to the Petitioner's argument that the Department did not ask Ugine to explain its relationship with a certain foreign company and state whether that company processed any subject merchandise and then forwarded it to the United States, we disagree. As Ugine properly noted, in our April 30, 2002, questionnaire, we asked Ugine to explain whether it sent any subject merchandise to this foreign company which may have then been forwarded to the United States. In its May 6, 2002, submission, Ugine stated that "neither Ugine nor any of its affiliates shipped subject merchandise to the foreign company for processing and subsequent shipment to the United States." See Ugine's May 6, 2002, Second Section A-E Supplemental Questionnaire Response at 15. At Ugine's verification, we found no evidence to suggest that Ugine channeled subject merchandise to the United States through this foreign company. In addition, the reported sales listing did not identify any sales to this foreign company and the sales databases were verified and reconciled to the financial statements, which also did not indicate that there any sales to this foreign company. Therefore, we do not conclude that this is an unresolved critical issue and continue to use Ugine's reported U.S. sales data as the basis for calculating the final results.

With respect to the Petitioners' argument that the Department should have obtained a complete list of R&D projects and associated costs undertaken by Ugine and one its affiliates, we agree. Ugine reported the R&D costs recorded in its normal course of business and in the same method as they have been reported in the previous segments of this proceeding. In addition, the Department verified a sale which was made to Ugine's affiliate who incurs most of the R&D costs, the supporting documentation clearly indicated that the sale was going to be used for research. See Home Market Verification Report at Exhibit K. We found no discrepancies. Although we did not request a detailed explanation for every R&D project, at this time, we cannot alter Ugine's reported R&D costs because we have no basis to do so. In addition, Ugine's R&D costs were a small percentage of the total costs reported and were consequently, not selected for further review. Moreover, as we have noted above, the Department's responsibility at verification does not obligate it to conduct a full analysis of the company's business, but "spot check" the submitted information. See Monsanto Co. v. United States, 698 F. Supp. 275, 281 (Ct. Int'l Trade 1988). Consequently, we are satisfied, based on the information that we examined at verification, that the record is complete and reliable as the basis for calculating a margin for these final results.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the model match and margin calculation programs accordingly. If accepted, we will publish the final results of this review and the final-weighted average dumping margins for the review firms in the Federal Register.

AGREE___________ DISAGREE___________

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Bernard T. Carreau
Acting Assistant Secretary

for Import Administration

Date