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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of Stainless Steel Bar from France

Summary

We have analyzed the case and rebuttal briefs of interested parties in the 2003-2004 review of the antidumping duty order of stainless steel bar from France. As a result of our analysis, we have made changes in the margin calculation for the final results. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments from parties:

Comment 1: The Treatment of the Impairment of Assets Recognized in UGITECH's 2003 Financial Statements

Comment 2: The Treatment of Certain Research and Development Expenses in the Total Cost of Production Calculation

Comment 3: The Treatment of Non-Realized Restructuring Expenses in the General Administrative Expense Calculation

Comment 4: Level of Trade in the Home Market

Comment 5: Whether to Combine Certain Grade Codes for Product Matching

Comment 6: The Treatment of Early Payment Discount for Unpaid Home Market Sales

Comment 7: The Date of Shipment for Certain U.S. Consignment Sales

Comment 8: The Date of Payment for Unpaid U.S. Sales

Comment 9: Alleged Additional Direct Expenses on Certain U.S. Sales

Background

On April 6, 2005, the Department of Commerce (the Department) published the preliminary results in the 2003-2004 antidumping duty administrative review of stainless steel bar from France. See Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar from France, 70 FR 17411 (April 6, 2005) (Preliminary Results). The product covered by this review is stainless steel bar. The period of review (POR) is March 1, 2003, through February 29, 2004.

We invited parties to comment on the preliminary results. We received comments from UGITECH and the petitioners (i.e., Carpenter Technology Corporation, Crucible Specialty Metals Division, Crucible Materials Corporation and Electroalloy Corporation (a division of G.O. Carlson, Inc.)). Based on our analysis of the comments received, we have changed the weighted-average margin from the preliminary results.

Margin Calculations

We calculated constructed export price (CEP) and normal value (NV) using the same methodology described in the preliminary results, except as follows below**:**

1. We recalculated UGITECH's G&A expense ratio to exclude the impairment losses attributed to UGITECH's subsidiary companies (i.e., Techalloy, SMEZ, and Bedini) (see Comment 1 below and the August 4, 2005, Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Ugitech, S.A., Memorandum (COP and CV Calculation Memorandum) from Joseph Welton, Accountant, to Neal Halper, Director).
2. We revised Bedini's G&A expense ratio in order to include impairment losses. See Comment 1 below and the COP and CV Calculation Memorandum.
3. We recalculated UGITECH's G&A expense ratio in order to avoid double-counting certain R&D expenses and to account for its R&D expenses on a fiscal year basis. See Comment 2 below and COP and CV Calculation Memorandum.
4. For product matching purposes, we combined grade codes 0850 and 0860 into a single grade code. See Comment 5 below.
5. We corrected a clerical error by applying a commission offset to NV, where appropriate. See August 4, 2005, UGITECH S.A. Final Results Calculations and Notes, Memorandum to the File (Calculation Notes).
6. We corrected a clerical error by revising the calculation of the CEP offset to include the inventory carrying costs incurred in the United States. See Calculation Notes.

<u>Discussion of the Issues</u>

<u>Comment 1</u>: *<u>The Treatment of the Impairment of Assets Recognized in UGITECH's 2003 Financial Statements</u>*

In the preliminary results, the Department added impairment losses which were recognized in UGITECH's normal books and records to UGITECH's general and administrative (G&A) expenses. The impairment losses had been excluded by UGITECH from the reported cost of production.

UGITECH argues that the Department's preliminary results were grossly distorted because the Department treated UGITECH's 2003 impairment of assets as a G&A expense attributable entirely to the 2003 period. UGITECH argues that, to correct the distortion, the Department should allocate the impairment loss over the remaining useful lives of the impaired assets.

UGITECH maintains that the impairment of assets is not an ordinary, recurring, business expense, noting that the company specifically recognized the impairment loss as an extraordinary expense in its 2003 financial statements. Furthermore, UGITECH maintains that the impairment loss was recognized in fiscal year 2003 only because UGITECH chose to apply early a recently adopted French accounting regulation (CNC Avis 2002-07) which required the company to record the large, one-time impairment loss.

According to UGITECH, the purpose of recognizing the impairment loss was to create accurate asset valuations on the balance sheet. The corresponding loss does not result in an accurate recognition of period costs on the income statement during the period in which the loss is recognized. In addition, UGITECH argues that the impairment loss recognized in fiscal year 2003 does not relate to the production of merchandise during 2003. Rather, UGITECH maintains that the impairment more appropriately relates to the remaining useful lives of the revalued assets. UGITECH argues that the Department should only be concerned with period costs associated with the production and sale of the subject merchandise, and whether certain significant expenses are being appropriately reflected over the course of multiple periods. The Department should not be concerned with the value of the company's assets, according to UGITECH.

UGITECH notes that the Department has consistently recognized that costs associated with productive assets with extended useful lives should be allocated over the entire useful life of the asset, rather than be assigned only to the year of acquisition. UGITECH argues that the Department has regularly adjusted current period costs as necessary to allocate nonrecurring costs between current and future production periods. UGITECH also notes that normal depreciation methodologies allow such allocation, and emphasizes that such allocation principles are incorporated directly in section 773(f)(1)(B) of the Tariff Act of 1930, as amended (the Act).

UGITECH asserts that the Department often adjusts misallocated costs, citing <u>Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from The United Kingdom</u>, 67 FR 3146 (January 23, 2002), and accompanying Issues and Decision Memorandum (SSB from UK) at Comment 4, wherein the Department stated, "where it is determined that a company's normal accounting practices result in a misallocation of productive costs, the Department will adjust the respondent's costs or use alternative calculation methodologies in order to more reasonably reflect the costs incurred to produce the merchandise." UGITECH argues that the Department has refused to adopt changes to a company's amortization methodologies even when that change was in accordance with generally accepted accounting principles (GAAP) because the change did not maintain a consistent and appropriate cost of production. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From South Korea, 65 FR 41437, (July 5, 2000), and accompanying Issues and Decision Memorandum (SSB from Korea) at Comment 6.

UGITECH notes that in Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 66 FR 52097 (October 12, 2001), and accompanying Issues and Decision Memorandum (DRAMs from Korea) at Comment 1, the Department determined that fixed asset revaluations should not be included in the cost of production. Specifically, the Department excluded gains associated with asset revaluations because the revaluation "does not result in an economic gain." UGITECH compares its current situation to DRAMs from Korea in that the ability of the revalued assets to produce merchandise has not been reduced. Furthermore, UGITECH notes that the revaluation of a productive asset does not change the cost to maintain and operate the asset, nor the useful life of the asset.

UGITECH also asserts that the Department determined in DRAMs from Korea at Comment 1 that the cost of production should appropriately include fixed asset depreciation, not the gain associated with the asset revaluation, as the "notion of depreciation expense is to spread the initial cost of acquiring a fixed asset over the useful life of that asset in order to match the resulting expense to the revenues of the corresponding period."

To demonstrate the alleged distortion created by including the impairment loss in the cost of production in this instance, UGITECH illustrates that the impairment loss dramatically increases the current period cost of production, while reducing the production costs of future periods in comparison to an alternative methodology in which the assets are never revalued. The difference in costs between the two methodologies will create a distortion of the cost test for multiple years, according to UGITECH.

UGITECH asserts that this distortion may be avoided by treating the impairment loss as a one-time extraordinary loss, and by requiring UGITECH to recognize the full historic depreciation for the current and future review periods based on the unimpaired asset values. Under this proposed alternative methodology, UGITECH notes that assets would continue to be based on the original historic cost, and the original depreciation schedule of the assets would not be altered. UGITECH argues that this proposed methodology would create a more accurate cost of production in the current and future review periods. UGITECH proposes another possible methodology in which the full impairment loss is allocated over the average useful life of UGITECH's impaired assets.

Finally, UGITECH alleges that the Department's preliminary calculation of the impairment loss added to the numerator of UGITECH's G&A expense ratio incorrectly includes amounts associated with UGITECH's subsidiaries Techalloy, SMEZ, and Bedini. The respondent alleges that the comparative cost of goods sold by these subsidiaries are not included in the denominator of the G&A ratio. As such, the respondent asserts that the G&A expense ratio is overstated. UGITECH argues that, should the Department continue to include the impairment loss in the cost of production, either in entirety or as an allocated portion, the Department should correct its G&A expense ratio by excluding the impairments associated with the separate subsidiaries.

The petitioners argue that the impairment loss recognized by UGITECH should not be classified as an extraordinary expense under U.S. or French GAAP, because "costs associated with an impairment loss are the same costs that would flow through operations and be reported as part of continuing operations" had they not been impaired. See Intermediate Accounting, Kieso & Weygandt, 8th Edition (Intermediate Accounting) at p. 544. Citing Notice of Final Results and Recision in Part of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina, 68 FR 13262 (March 19, 2003), and accompanying Issues and Decision Memorandum (Oil Country Tubular Goods from Argentina) at Comment 4; Silicomanganese From Brazil: Preliminary Results of Antidumping Administrative Review, 62 FR 1320 (January 9, 1997); and Floral Trade Council v. United States, 67 F.3d 318 (Fed. Cir. 1995), the petitioners note that the Department considers "extraordinary expenses" to be unusual in nature and infrequent in occurrence, and the petitioners assert that impairment losses do not meet that definition.

Moreover, the petitioners assert that impairment losses, by definition, cannot be allocated over the remaining useful life of the asset, UGITECH's preferred methodology. The petitioners note that impairment losses occur when the carrying amount of an asset is not recoverable. Thus, because the impairment loss does not have a "useful life," the amount of the loss cannot be capitalized and depreciated over a useful life. Rather, impairment losses must be recognized as a one-time period cost associated with a company's operations in the year in which the asset is impaired. Further, the petitioners argue that the impaired value of the asset should not be restored, as the impaired asset should not be on an "equal basis with other assets that are not impaired." See Intermediate Accounting at pp. 545-546. The petitioners emphasize that there is no basis for allocating the impairment loss between current and future periods.

Furthermore, the petitioners argue that the Department's practice under section 773(f)(1) of the Act is to rely on a respondent's normal books and records in accordance with the home country GAAP. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago, 67 FR 55788 (August 30, 2002), and accompanying Issues and Decision Memorandum (Wire Rod from Trinidad and Tobago) at Comment 5. The petitioners note that UGITECH recorded the impairment loss in its 2003 financial statements in accordance with French GAAP. Therefore, the petitioners assert that there is no reason for the Department to deviate from this practice. Accordingly, the petitioners conclude that the Department should continue to include the impairment loss in UGITECH's cost of production.

Finally, the petitioners rebut UGITECH's argument that the total amount of the impairment loss was miscalculated due to the inclusion of impairment losses attributed to various subsidiary companies. The petitioners note that, in the preliminary results, the Department calculated a company-wide G&A expense ratio for UGITECH, rejecting the division-specific ratio reported by UGITECH. The petitioners argue that the Department should continue the preliminary methodology of calculating a company-wide G&A ratio. As such, the petitioners conclude that the impairment losses for the subsidiary companies should be included in UGITECH's G&A ratio for the final determination. However, the petitioners argue that, should the Department exclude the subsidiary companies' impairment losses from UGITECH's G&A ratio, it should revise the G&A ratio for Bedini to include Bedini's impairment loss.

<u>Department's Position</u>

There is no basis for allocating the impairment loss between current and future periods, as proffered by UGITECH. Section 773 (f)(1)(A) of the Act requires the Department to rely on data from a respondent's normal books and records where those records are prepared in accordance with home country GAAP and reasonably reflect the costs of producing merchandise. <u>See</u> <u>e.g.</u>, <u>Wire Rod from Trinidad and Tabago</u> at Comment 5. In those instances where it is determined that a company's normal accounting practices result in a misallocation of production costs, the Department will adjust the respondent's costs or use alternative calculation methodologies in order to more reasonably reflect the costs incurred to produce the merchandise. <u>See</u> <u>e.g.</u> <u>SSB from UK</u> at Comment 4; <u>SSB from Korea</u> at Comment 6. In this case, as described in more detail below, UGITECH's books and records concerning the impairment do not distort its costs.

An impairment loss is an ordinary loss recognized upon the determination by management that the recorded historical value of an asset is unrecoverable through future use of the asset, <u>i.e.</u>, that the asset's productive value is impaired. <u>See</u> <u>e.g.</u>, Statement of Financial Accounting Standards 144. UGITECH proposes that we depart from its normal books and records that are kept in accordance with French GAAP, by allocating the impairment loss between the current and future periods. Section 773(f)(1)(B) of the Act requires the Department to adjust a respondent's cost of production for nonrecurring costs that benefit current or future production, or both. However, an allocation of the impairment loss to future periods would be inappropriate and would create a distortion because the costs do not benefit future production.

Costs associated with the purchase of assets are capitalized because the asset is presumed to generate revenue over a number of years. By taking the impairment loss in its normal books and records, UGITECH is recognizing that certain assets will not generate enough revenue to justify the historical amounts recorded for those assets in their books. It would be distortive, and contrary to accounting principles, to continue to allocate the impairment loss to future periods as UGITECH suggests, since there is apparently no reasonable likelihood of future economic benefit. We agree with the petitioners that the impairment loss should be treated separately and apart from any depreciation expense. Depreciation of an asset is a systematic method of allocating the historic cost of an asset to future periods because economic benefits arise from the use of the asset during those periods. <u>See</u>, <u>e.g.</u>, Statement of Financial Accounting Concepts 6.

In contrast, impairment losses occur when the recorded historical value of an asset is determined to be unrecoverable through future use. By definition, impairment losses cannot be associated with any clear-cut benefits in future periods, and are not contingent upon or related to future events or conditions. Thus, the amount of the impairment loss cannot be reasonably allocated to benefits in future periods. According to U.S. GAAP, costs which cannot be matched to future revenues and are not reasonably allocable to future periods are expensed in the period incurred. Because the impaired amount of the asset cannot be associated with future benefits, U.S. GAAP, French GAAP, and International Accounting Standards (IAS) require that the impairment loss be recognized in full in the period incurred. <u>See</u>, <u>e.g.</u>, Statement of Financial Accounting Standards 144.

We also agree with the petitioners that an impairment loss is not an extraordinary loss. An extraordinary item is defined as being both unusual in nature and infrequent in occurrence. <u>See</u>, <u>e.g.</u>, <u>Oil Country Tubular Goods from Argentina</u> at Comment 4. Impairment losses are not unusual in nature. According to U.S. GAAP, impairment losses should be classified under ordinary continuing operations, not extraordinary items. Furthermore, UGITECH has not provided any evidence or argument that the nature of this particular impairment loss can somehow be distinguished in any way from impairment losses which are regularly recognized by companies in the normal course of business. UGITECH suggests that because the company recently adopted a new French accounting code relating in part to impairment losses, the impairment loss should be excluded from the company's current cost of production. The respondent implies that the impairment loss may be some sort of accumulation of loss over time which was only recognized in 2003 due to the adoption of the new accounting code. The Department often considers the appropriateness of newly adopted accounting principles in calculating a respondent's cost of production. <u>See</u>, <u>e.g.</u>, <u>SSB from Korea</u> at Comment 6 and <u>SSB from UK</u> at Comment 4. However, we note that the adoption of a new principle does not by itself create a distortion. Rather, as explained in both <u>SSB from UK</u> and <u>SSB from Korea</u>, it is the effects of a change in principle which may create distortions, such as by inappropriately shifting costs from one period to another or by avoiding a cost entirely in the antidumping proceeding.

Even prior to the adoption of CNC Avis 2002-07 by the French accounting regulatory body, French GAAP required regular tests for the impairment of fixed assets, with the resulting losses recognized in full in the year incurred. <u>See</u> National Accounting Code (*Plan Compatible General*) of the Accounting Regulation Committee, Regulation No. 99-03, (April 29, 1999) at article 322-2. Thus, in the interest of reporting accurate financial statements, had UGITECH's assets been impaired in a previous period, the company would have recognized the related impairment loss in that period under French law. The fact that the impairment loss was recognized in 2003, and not prior, leads to the obvious conclusion that the impairment loss was actually incurred in 2003, not in a prior nor a subsequent period. The recognition of the loss in

2003 under the new accounting code, therefore, does not result in an inappropriate shifting of costs between periods, or in an avoidance of costs. Thus, we disagree with UGITECH that distortions or inappropriate calculations result from the adoption of the new French accounting rules, and we find that the impairment loss attributed to continuing operations should not be excluded from the current cost of production or allocated over future years.

We also disagree with UGITECH's argument that the impairment loss should be ignored because it does not directly relate to manufacturing the subject merchandise. While we agree with UGITECH that the impairment loss does not directly relate to production, it is a period cost like most general expenses. In accordance with section 773(B)(3)(b) of the Act, the Department captures such general operating costs in the cost of production as a part of G&A expenses. The impairment loss represents the loss in value incurred by assets, and thus is a real cost which should be included in the G&A expenses.

We also disagree with UGITECH's argument that the purpose of the impairment loss is only to create an accurate balance in the balance sheet, not to create accurate period costs in the income statement. UGITECH seems to argue that the impairment loss is some type of non-economic "paper" loss. However, an impairment loss represents a real economic loss in the value of the company's assets. The accounting transaction recording the impairment loss consists of a double-entry which affects both the balance sheet and the income statement: a credit to the balance sheet to reduce the value of the asset and an equal and offsetting debit to the income statement to record the impairment loss. In addition to revaluing the asset on the balance sheet, the purpose of the transaction is also to properly reflect the loss in economic value experienced by the company. We disagree with the implication of UGITECH's argument, which is that the credit is accurate while the equal offsetting debit in the same transaction is somehow inaccurate or distortive.

We also disagree with UGITECH that the accounting transaction which was excluded from the cost of production in DRAMs from Korea at Comment 1 and the impairment loss in the instant case are analogous. In DRAMs from Korea, the respondent increased the value of its assets as a result of inflation, resulting in a gain, and that gain was not allowed by the Department in determining the respondent's cost of production. The type of gain referred to in DRAMs from Korea at Comment 1 is generally allowed by GAAP only in unique situations such as high inflation. The purpose of such inflation-related revaluations is to restate the book value of an asset to a more current currency measure (e.g., 1980 dollars vs. 2005 dollars). This way, the depreciation expense, arising from a fixed asset purchase in a prior year, reflects current currency levels. As stated in DRAMs from Korea at Comment 1, such revaluation of an asset due to inflation does not represent an economic gain because the productive ability of the asset has not changed. Rather, the company has merely adopted a different unit of measurement for reporting that asset on its balance sheet.

In contrast, in the instant case, UGITECH revalued its assets as a result of an impairment loss. Impairment losses represent real economic losses in that the estimated future benefits resulting from the use of the asset have been reduced. UGITECH has not changed the unit of measurement of its assets by restating its currency values. Thus, the impairment loss in the instant case and the inflation-related gain in DRAMs from Korea are not comparable accounting transactions, and our contrasting treatments in each case do not represent inconsistent practices, but rather reflect different facts.

Finally, we agree with UGITECH that the numerator of the G&A expense ratio calculated by the Department in the preliminary results inadvertently included impairment losses attributed to UGITECH's subsidiaries, and that the corresponding denominator for the G&A expense ratio did not include the cost of goods sold of those subsidiaries. As a result, the G&A expense ratio was overstated in the preliminary results. Because G&A expense should be calculated on a company-wide basis for the respondent company, we have revised our calculation of the G&A expense ratio to exclude the impairment losses attributed to UGITECH's subsidiaries. As suggested by the petitioners, we have also revised Bedini's G&A expense ratio to include Bedini's impairment loss, which was excluded from the reported amounts. See COP and CV Calculation Memorandum.

Accordingly, for the final results, we relied on the respondent's normal books and records in accordance with home country GAAP by including in the cost of production the entire impairment loss attributable to the continuing operations of the respondent company during the period incurred. We revised our preliminary calculations to exclude amounts attributed to the impairment of unconsolidated subsidiaries.

Comment 2: *The Treatment of Certain Research and Development Expenses in the Total Cost of Production Calculation Used in the Below-Cost Test*

In the preliminary results, the Department adjusted UGITECH's reported costs in an attempt to reverse the capitalization and amortization of certain research and development (R&D) expenses recorded in UGITECH's normal books and records.

UGITECH claims that in the preliminary results, the Department double-counted certain R&D expenses in its total cost of production calculation, which resulted in an overstatement of the cost of production. Therefore, UGITECH argues that the Department should correct its preliminary results margin calculation to eliminate the double-counting for the final results.

UGITECH claims that there are two instances of double-counting of the R&D expenses in the preliminary results: 1) the amount of R&D cost that was capitalized during 2003 is double-counted in the numerator of the G&A expense ratio; and 2) the R&D expenses which the Department added to the G&A expense ratio were already reported by UGITECH in the fixed overhead costs in the cost of manufacturing.

UGITECH maintains that the first instance of double-counting occurred because the Department began its preliminary R&D calculation with a total R&D amount which included R&D expenses that were capitalized during 2003, the research expenses incurred for other companies, as well as the uncapitalized direct R&D expenses. Then the Department attempted to reverse the amortization and capitalization of certain R&D expenses by adding the capitalized R&D expenses and deducting the amortization expense from that total R&D amount. UGITECH points out that, because the amount of capitalized R&D expense was already included in the initial total, it was not necessary for the Department to attempt to reverse the capitalization. As a result, UGITECH argues that the Department double-counted the capitalized R&D expenses. UGITECH maintains that in order to avoid double-counting the capitalized R&D expenses, the Department should not attempt to reverse the capitalization of certain R&D expenses for the final results.

UGITECH claims that the second instance of double-counting occurred because the Department added UGITECH's R&D expenses to the G&A expense ratio. UGITECH maintains that the Department erred in doing so because the R&D expenses were already reported in UGITECH's fixed factory overhead cost as a component of the cost of manufacturing. UGITECH further notes that these R&D expenses should be included as either part of the company's G&A expense or as part of the fixed overhead, but not both. UGITECH maintains that its reported R&D cost, which was incorporated in fixed overhead on a POR basis, is comparable to the R&D cost added by the Department to the G&A expense on a fiscal year basis, because the reported cost in fixed overhead already includes certain R&D expenses which were capitalized in the normal books and records, as well as other comparable adjustments.

Finally, UGITECH notes that, in the preliminary results, the Department decided to reverse the capitalization of certain R&D expenses made in the company's normal books and records. Should the Department choose to continue to seek to reverse the capitalization and amortization of certain R&D expenses realized in UGITECH's normal books and records, UGITECH argues that to avoid double-counting, only the unamortized portion of the capitalized R&D expenses should be added to the G&A expense for the final results. UGITECH notes that such adjustment may be made whether the Department chooses to rely on UGITECH's R&D expenses during the fiscal year or during the POR.

In their rebuttal brief, the petitioners claim that the alleged double-counting did not occur in the Department's preliminary calculation methodology for UGITECH's R&D expenses. First, the petitioners refer to Exhibit D-17 of UGITECH's July 16, 2004, Section D questionnaire response (SDR) to argue that UGITECH included a smaller portion of R&D in calculating UGITECH's per-unit R&D cost than the amount which UGITECH argues it included. Furthermore, the petitioners argue that the per-unit R&D cost calculated in Exhibit D-17 of the SDR is not actually included in UGITECH's cost database, nor was the amount shown in UGITECH's sample calculations for unit cost of production. Thus, the petitioners conclude that the record evidence does not support UGITECH's claim that certain R&D expenses were already included in UGITECH's reported fixed overhead. Accordingly, for the final results, the petitioners argue that the Department should continue to include UGITECH's R&D expenses in the G&A ratio.

With respect to the second source of alleged double-counting, the petitioners argue that, should the Department conclude that the capitalized amount of R&D was indeed double-counted, as claimed by UGITECH, the Department should not deduct the amortized R&D from UGITECH's

G&A numerator. The petitioners claim that UGITECH reported that the capitalized amount is inclusive of the amortized amount. Thus, to remove the amortized amount from the G&A numerator in addition to removing the capitalized amount, the Department would understate UGITECH's R&D expense.

Finally, the petitioners argue that, should the Department determine that double-counting did indeed exist in the preliminary results, the Department should rely on UGITECH's fiscal year R&D expenses, rather than POR R&D expenses, to reverse the capitalization and amortization of certain R&D expenses. The petitioners note that the suggested correction offered by UGITECH to reverse the capitalization and amortization of certain R&D expenses is based on POR amounts, not fiscal year amounts. Because the R&D expenses should be part of the company's G&A expenses, and G&A expenses are normally calculated based on a respondent's fiscal year, the R&D expenses should reflect fiscal year expenses.

Department's Position:

We agree with UGITECH that we inadvertently double-counted the R&D expenses in the preliminary results. UGITECH included R&D expenses as a component of fixed overhead in the cost of manufacturing and in the Section D database. See SDR at Exhibit D-20. Thus, we agree with UGITECH that, by adding total R&D expenses to UGITECH's G&A expense ratio, we double-counted those R&D expenses which were already included in the cost of manufacturing.

In its normal books and records, UGITECH adopted a new accounting principle in 2003 related to R&D expenses by which UGITECH began to capitalize a portion of its R&D costs, amortizing those costs over a period of five years, rather than recognizing those costs in full as a current expense. In this instance, the new accounting methodology leads to a distortion of the fiscal year 2003 R&D costs because it effectively captures only one-fifth of the total capitalized cost. It does not capture equivalent amounts of amortized R&D costs from the four previous years because costs in prior years were not capitalized historically or retroactively.

Citing Exhibit D-17 of the SDR, UGITECH argues that the gross R&D expenses should be reduced by the capitalized R&D expenses, net of amortization. We disagree because UGITECH's financial statements in Exhibit C of the July 2, 2004, Section A response (SAR), read in combination with the overall cost reconciliation in Exhibit D-20 of the SDR, clearly indicate that the gross R&D expenses at the top of Exhibit D-17 represent only the income statement expense amount. It does not include the capitalized R&D costs which are reported separately in the balance sheet. Therefore, to reverse the inappropriate capitalization and amortization of certain R&D expenses in 2003, the capitalized costs must be added, net of amortization, to the gross R&D expenses from the financial statement. As a result, we disagree with UGITECH that the Department's preliminary results methodology for reversing the inappropriate capitalization by adding the capitalized R&D expenses to the gross financial statement R&D expenses resulted in double-counting the capitalized R&D expenses.

However, upon further review of the record, it is evident that the calculations presented in Exhibit D-17, which are the basis of UGITECH's argument, do not represent the actual methodology UGITECH used for reporting R&D in the cost of manufacturing and the Section D database. Specifically, the overall cost reconciliation in Exhibit D-20 of UGITECH's SDR demonstrates at page 5 that, for reporting purposes, UGITECH appropriately added the capitalized R&D expenditures to the gross financial statement R&D expenses in the reported cost of manufacturing overhead (rather than incorrectly subtracting the amount, as done in Exhibit D-17). See COP and CV Calculation Memorandum. As a result, because UGITECH has already appropriately added the capitalized R&D costs to its reported cost of production, it is unnecessary for the Department to take additional steps to reverse the inappropriate capitalization.

Furthermore, we agree with the petitioners that UGITECH's R&D expenses are more appropriately included on a fiscal year basis, rather than a POR basis. UGITECH confirmed in its December 16, 2004, supplemental Section D response (SSDR) at page 35, that its reported R&D costs could not be differentiated by product. R&D activities either relate specifically to individual products or are general in nature. Those which can be differentiated by product are allocable to the cost of manufacturing of that product. However, R&D activities which cannot be differentiated by product are general R&D expenses, and should be included in the G&A expenses. Thus, although UGITECH included R&D costs in the cost of manufacturing on a POR basis, the general R&D expenses should more appropriately be classified as a general expense and included in the respondent's G&A expense ratio on a fiscal year basis.

For the final determination, to avoid the double-counting resulting from the fact that certain R&D expenses were included both in the cost of manufacturing and in the G&A expenses, and to correct any distortion caused by reporting R&D expenses on a POR basis rather than a fiscal year basis, we calculated the difference between the R&D costs actually included in UGITECH's reported cost of manufacturing and the total fiscal year R&D costs which should have been included in G&A expenses. We then added the difference to UGITECH's G&A expenses. See COP and CV Calculation Memorandum.

Comment 3: *The Treatment of Non-Realized Restructuring Expenses in the General Administrative Expense Used in the Below-Cost Test*

In the preliminary results, the Department estimated the current portion of restructuring expenses as one-fifth of the total accrued restructuring expenses, as the restructuring activities were estimated to be completed in five years. We added the estimated current portion to UGITECH's G&A expenses. The total restructuring expenses were accrued in UGITECH's normal books and records, but were excluded from the reported cost of production.

UGITECH argues that the restructuring expenses which were not actually realized during fiscal year 2003 should not be included in the 2003 G&A expense for the final results of this review. UGITECH points out that in the preliminary results, the Department incorporated an allocated portion of estimated restructuring expenses in the calculation of the total cost of production.

UGITECH contends this calculation methodology is contrary to the Department's established practice. UGITECH further claims that the Department's established practice is to rely on actual current cash outlays rather than speculative estimates of likely future cost. See SSB from UK at Comment 4.

According to UGITECH, the company announced a restructuring plan in December 2003. As a result of that announcement, the company was required by French GAAP to record the total estimated restructuring costs at year-end. Therefore, UGITECH recognized an accrual in fiscal year 2003 for future restructuring costs. UGITECH maintains that during fiscal year 2003 it did not incur any actual cash outlays for restructuring. UGITECH argues that the Department should rely on its established practice for the final results of this review, and calculate the G&A expense by relying on actual cash outlays related to restructuring (i.e., none), rather than an allocation of an estimate of anticipated future expenses. UGITECH claims that the anticipated future expenses are more properly incorporated into the cost of production calculation during the period in which they are actually realized.

The petitioners argue that the Department should include the entire amount of the restructuring charges recognized by UGITECH in 2003 in UGITECH's G&A expense ratio. The petitioners note that the restructuring charges were recognized by UGITECH in its normal books and records in accordance with French GAAP.

The petitioners observe that UGITECH's normal books and records are based on accrual accounting, not cash-basis accounting. As such, French GAAP requires UGITECH to recognize the restructuring costs when such costs are probable and reasonably estimable. The petitioners comment that section 773(f)(1) of the Act requires the Department to rely on a respondent's normal books and records in accordance with the home country GAAP. See, e.g., Wire Rod from Trinidad and Tobago at Comment 5.

The petitioners argue that in Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From France, 58 FR 37125 (July 9, 1993) (Carbon Steel Products from France), at Comment 42, the Department included restructuring expenses reported in the financial statements of the respondent company, and those restructuring expenses also constituted a reserve for future expenditures related to reorganization of company affairs, such as costs associated with employee layoffs. In Carbon Steel Products from France, the Department stated that the restructuring expenses could not be matched against future revenues, and thus should be recognized in the current period.

The petitioners argue that UGITECH's proposal to rely on cash outlays is an attempt to substitute a generally accepted methodology under GAAP with a non-GAAP accounting methodology (i.e., accrual accounting for non-GAAP cash-basis accounting). The petitioners claim that UGITECH has not provided a reasonable basis for the Department to depart from UGITECH's normal books and records in accordance with French GAAP. In addition, the petitioners argue that restructuring expenses cannot be reasonably matched to benefits in future periods. Further, the petitioners note that, should the Department rely on cash outlays to measure UGITECH's restructuring expenses, the costs recognized in UGITECH's 2003 financial statements would never be captured in subsequent periods.

<u>Department's Position</u>:

We disagree with the petitioners that the entire amount of the accrued restructuring expenses should be included in the G&A expense calculation for purposes of the final results in this review. The Department's long standing practice, pursuant to section 773(f)(1)(A) of the Act, is to rely on data from a respondent's normal books and records, where those records are prepared in accordance with home country GAAP and reasonably reflect the costs of producing merchandise. We believe that the inclusion of the entire amount of accrued restructuring costs in the product cost for the POR would not reasonably reflect the cost of producing the merchandise. In instances where we determine that a company's normal accounting practices result in a mis-allocation of production costs, the Department adjusts the respondent's costs, or uses alternative calculation methodologies, in order to more reasonably reflect the costs incurred to produce the merchandise. <u>See</u>, <u>e.g.</u>, <u>SSB from UK</u> at Comment 4.

The record reflects that the restructuring costs in this case relate mostly to labor costs associated with eliminating employee positions over the next several years. If there are no directly attributable revenues, U.S. and French GAAP require that when it is probable that a reasonably estimable expense will occur in the future, that expense should be recognized for financial accounting purposes in the present period. In terms of restructuring costs, any benefits that the company hopes to attain through the restructuring are usually deemed so indirect that any such revenues cannot be matched to the restructuring expenses. Thus, they are recognized in the current period.

The question for antidumping purposes is how the Department should account for this type of expense. In this case, we agree with UGITECH that some type of allocation over future periods is warranted, primarily because the economic costs will occur starting in fiscal year 2003 and extend over several subsequent years. We note that this fact pattern is opposite of the one relevant to the impairment costs referred to above, where the economic cost occurred in 2003 does not relate to future periods. <u>See</u> Comment 1 above. With the impairment, the cash was spent in prior years in exchange for assets. The cost of the assets are then allocated through depreciation to the period when the corresponding future revenue is earned. The recognition of the impairment occurs if there will not be enough corresponding revenue, and thus the "excess" value carried on the books for the asset must be written-off. In the case of restructuring costs, the employees who will receive the future payout upon termination continue to work for the company and contribute to the earning of revenue, and will apparently do so for several more years.

We agree with UGITECH that it would be unreasonable to relate the entire restructuring cost to the current production period. Rather, we believe that, for antidumping purposes, the restructuring costs should be attributed to the periods in which the restructuring takes place. We note that U.S. GAAP allows for similar treatment in some cases for similar costs. For example, U.S. GAAP requires that certain restructuring charges related to the termination of employees over sustained periods be recognized ratably over the periods in which the employees continue to work. See Statement of Financial Accounting Standards 146. In this instance, the terminated and transferred employees are continuing to work over a period of up to five years (2003 through 2007). Thus, we agree with UGITECH that, because the retirements, lay-offs, and transfers of employees are expected to occur over several years, it would be inappropriate to include the entire recognized expense in the current period.

However, we disagree with UGITECH that for accrued expenses of this type, cash outlays are always the preferred methodology for estimating the appropriate portion of the accrued expense to include in the current cost of production. Although in SSB from UK at Comment 4, the Department estimated the current portion of such expenses by relying on the respondent company's cash outlays during the current period, the Department stated that we relied on cash outlays only as a means to estimate the current portion of the total accrued expenses. However, cash outlays may not be an appropriate measure for accrued expenses that will take place over a number of years, as is the case here. First, the restructuring costs are based on estimates of what is likely to occur over a 4- to 5-year period. As with any accounting estimate, the actual payment amounts and timing of payments, as well as the actual restructuring that takes place, will likely differ from the original estimates. It is also presumable that part of the future payout is to keep the current employees working at UGITECH up to their termination. As such, the work performed prior to the completion of the restructuring will be compensated by the payment of future termination benefits. Finally, we note that even though UGITECH claims that it paid out no cash related to the restructuring in 2003, activities and events relating to the restructuring clearly occurred during 2003. At a minimum, management planned and designed the restructure of UGITECH, estimated the future costs, likely negotiated with the unions, and announced the restructuring plan to the public. See July 16, 2004, Section D questionnaire response at p. 45, and March 23, 2005, supplemental questionnaire response at p.8. For these reasons, we believe that, consistent with U.S. GAAP, a straight line amortization of the accrual over the period is the most appropriate method to capture the restructuring costs for purposes of an antidumping analysis.

Thus, for the final results, we attributed the total restructuring charges ratably to the periods in which terminated employees will continue to work. Consistent with the preliminary results, to do so, we divided the total accrued restructuring charges by the maximum number of years in which the terminated employees will continue to provide services.

Comment 4: *Level of Trade in the Home Market*

In the preliminary results, we found that: 1) all home market sales (i.e., inventory and non-inventory sales) were made at the same level of trade (LOT); 2) the home market sales were made at a more advanced LOT than the U.S. sales; and 3) a CEP offset to NV was warranted, in accordance with section 773(a)(7)(B) of the Act, because we had no information to determine an LOT adjustment.

UGITECH argues that, in the preliminary results, the Department should have not departed from its finding in the less-than-fair value (LTFV) investigation, in which the Department found that inventory and non-inventory sales constitute distinct LOTs in the home market. UGITECH maintains that the record of this review has no material facts that would support a departure from the Department's findings in the LTFV investigation.

Furthermore, UGITECH maintains that it is the Department's practice to find distinct LOTs where sales are made at different marketing stages. According to UGITECH, in this review, as in the LTFV investigation, the difference between its non-inventory and inventory sales[1] (referenced in the LTFV investigation as "ex-works" and "factory direct") is a text-book case of separate and distinct stages of marketing. UGITECH maintains that the selling activities it performed during this review period have not changed from those performed during the period of investigation. Moreover, UGITECH argues that the Department's LOT analysis generally compares selling activities performed (in intensity and number) for sales through each channel of distribution to determine whether the LOTs for two channels are distinct. UGITECH argues that the levels of intensity of the selling activities related to sales from inventory versus non-inventory, on a per-unit basis, are significantly different.

In addition, UGITECH points out that, in the preliminary results, the Department found that the selling activities light general warehouse services, further manufacturing and special services performed for special applications were not relevant to the LOT analysis. UGITECH argues that this finding is also contrary to the Department's determination in the LTFV investigation. According to UGITECH, the Issues and Decision Memorandum for the final determination of the LTFV investigation concludes that these selling activities, whether treated as selling functions or as manufacturing costs, are relevant to the LOT analysis, and ultimately contributed to the Department's final determination that inventory and non-inventory sales constitute distinct and separate LOTs in the home market. Therefore, UGITECH contends that for the final results of this review the Department should consider these additional activities in its LOT analysis. Finally, in the absence of any record evidence to support a departure from the LTFV investigation, UGITECH argues that the Department should find that distinct LOTs exist in the home market, for the final results of this review.

The petitioners argue that the record of this review does not support a finding of distinct LOTs in the home market, and therefore, the Department should continue to find one LOT in the home market for the final results. The petitioners argue that the Department should continue to reject UGITECH's claims for different LOTs in the home market because UGITECH failed to show whether any differences in marketing stages and selling functions, if they existed as it alleged, had an effect on the comparability of the prices for its inventory and non-inventory sales in the

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[1] Referenced in the LTFV investigation as "ex-works" and "factory direct".

home market. The petitioners point out, for example, that UGITECH failed to show that any alleged difference in selling activities had an effect on the level of selling expenses for the two alleged home market LOTs. Furthermore, the petitioners argue that UGITECH failed to show that all the facts (both qualitative and quantitative) relevant to the Department's decision remained the same in the LTFV investigation and this administrative review. Moreover, citing Hoogovens Staal BV v. United States, 4F. Supp. 2d 1213, 1217 (CIT 1998) and Citrosuco Paulista, S.A. v. United States, 12 CIT 1196, 1209, 704 F. Supp. 1075, 1088 (CIT 1998), the petitioners maintain that the court has stated that the Department is not required to follow its previous interpretation, if new arguments or facts support a different conclusion.

Department's Position:

The information on the record of this review does not support a finding of two distinct LOTs in the home market, as claimed by UGITECH. Therefore, for the final results, we continue to find that all home market sales (i.e., inventory and non-inventory sales) were made at the same LOT.

Section 773(a)(1)(B)(ii) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. See 19 CFR 351.412(c)(2); see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to Length Carbon Steel Plate from South Africa, 62 FR 61731, (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (i.e., the "chain of distribution"), including selling functions, class of customer ("customer category"), and the level of selling expenses for each type of sale.

In its SAR, UGITECH reported five channels of distribution in the home market, which included channel 3 non-inventory sales, channel 4 inventory sales of standard product, channel 5 inventory sales of non-standard product, channel 6 inventory sales of standard French-origin stainless steel bar (SSB) purchased from an affiliate, and channel 7 inventory sales of special application French-origin SSB purchased from an affiliate. In Appendix A-8 of the SAR, UGITECH provided three charts which noted the details of the selling activities performed by each of the five channels: 1) Selling Activities and Description; 2) Selling Activities and Services for Distribution Channels Chart; and 3) Selling Activities and Corresponding Fields in the Home Market and U.S. Sales Databases. According to UGITECH, these five channels of distribution constituted three distinct LOTs in the home market (i.e., non-inventory sales (channel 3), inventory sales of standard product (channels 4 and 6), and inventory sales of special applications (channels 5 and 7)).

For the preliminary results, we compared the selling activities reported in Appendix A-8 of the SAR and found that, except for inventory maintenance, all the selling functions (i.e., production planning, strategy planning and marketing, advertising, order evaluation, customer sales contact, warranty, technical service, computer system, and freight and delivery) were performed by

UGITECH in each of the five distribution channels. We determined that there were slight variances in the levels of intensity reported for a few of the sales activities being performed within a selling function. However, for other sales activities such as strategy planning and marketing, customer sales contact and production/planning/order evaluation, we noted that the level of intensity for factory direct and inventory sales (i.e., channels 4-7) was identical. Based on this analysis, we determined that the slight variances noted in a few of the selling activities being performed for the factory direct versus the inventory sales were not significant enough to constitute distinct LOTs. See Preliminary Results at 17414.

With respect to the inventory maintenance selling function, we noted that there was a significant difference in the level of intensity reported for the selling activities associated with this function within the channels (i.e., no activity reported for non-inventory direct sales, and high and low intensities reported for the inventory standard and AP sales). However, citing Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Bar from France, 66 FR 40201 (August 2, 2001); unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from France, 67 FR 3143 (January 23, 2002) (LTFV Final Determination Notice: SSB from France), and accompanying Issues and Decision Memorandum at Comment 6, we noted that we did not consider the selling activities of light general warehousing services and further manufacturing/special services listed under inventory maintenance to be selling functions and therefore relevant to the LOT analysis. Finally, we found that the remaining selling activity listed under inventory maintenance, pre-sale warehousing (defined by UGITECH as the holding of merchandise after production and before sale and shipment) was not a sufficient basis in and of itself to distinguish separate LOTs between factory direct and inventory sales. Therefore, based on this analysis, we preliminarily found that all home market sales were made at the same LOT. Since the preliminary results, there has been no additional information placed on the record of this review that would warrant departure from our preliminary analysis.

With respect to UGITECH's argument that the record of this review does not support a departure from the Department's findings in the LTFV investigation, in which inventory and non-inventory sales were found to constitute distinct LOTs in the home market, we disagree. In the LTFV investigation, the Department found that the selling functions associated with maintaining product in inventory prior to sale to the customer were significantly different from the selling functions associated with non-inventory sales. See LTFV Final Determination Notice: SSB from France and accompanying Issues and Decision Memorandum at Comment 6. Moreover, in the LTFV final determination, the Department found that certain selling functions (i.e., sales process/market research, sales calls, interaction with customers, freight, technical advice and warranty servicing) that were performed for inventory sales were at a higher level of intensity than the same selling functions performed for the non-inventory sales. See LTFV Final Determination Notice: SSB from France and accompanying Issues and Decision Memorandum at Comment 6.

However, in this review, the record indicates that the inventory maintenance selling function (which includes the selling activities pre-sale warehousing, light general warehouse services and further manufacturing services/special certification) is not performed for the non-inventory sales, and is performed in varying degrees of intensity among the products (i.e., standard and special application product) sold from inventory. For example, with respect to the inventory sales of standard product, UGITECH reported that there is a high level of intensity associated with the selling activity for pre-sale warehousing; a low level of intensity associated with light general warehouse services selling activity; and no level of intensity associated with further manufacturing services/special certification selling activity. See Appendix A-8 of the SAR. For the inventory sales of special application products, UGITECH reported that there is a high level of intensity associated with all of these selling activities. In our preliminary results and consistent with the LTFV Final Determination Notice: SSB from France, we did not consider most of these activities (i.e., light general warehouse services and further manufacturing services/special certification), as defined by UGITECH, to be selling activities and therefore relevant to the LOT analysis. For the remaining selling activity (i.e., pre-sale warehousing) listed under inventory maintenance, which UGITECH defined as the holding of merchandise after production and before sale and shipment, we preliminarily found that it was not a sufficient basis in and of itself to distinguish separate LOTs between inventory and non-inventory sales. See Preliminary Results.

Furthermore, the record of this review indicates that, except for inventory maintenance, as discussed above, the reported selling activities (i.e., sales process/market research, sales calls, interaction with customers, freight, technical advice and warranty servicing) were generally performed at the same level of intensity for inventory and non-inventory sales. Specifically, regarding strategy planning and marketing, UGITECH reported that it performed these activities at a high level of intensity for both inventory and non-inventory sales. With respect to customer sales contact (including various sales activities), UGITECH reported that it performed these activities at a high level of intensity for the non-inventory sales and for inventory sales, with one exception for the activity described as “promoting products,” which it performed at a low level of intensity for the special application products sales channel. Moreover, UGITECH reported a high level of intensity related to the arrangement of freight from factory to the home market customers or warehouse for both factory direct and inventory sales; and for arranging freight from warehouse to customer, UGITECH reported a high level of intensity for the inventory sales but none for the non-inventory sales. Furthermore, for technical advice, UGITECH reported that it performed this activity at a high level of intensity for the non-inventory sales and the inventory sales of standard product. This activity was not performed for the special application products. Finally, for warranty service, a high level of intensity was reported for both the non-inventory and inventory sales. See Appendix A-8 of the SAR.

With respect to UGITECH’s argument that our finding in the preliminary results that the selling activities of light general warehouse services and further manufacturing services/special certification performed for special applications were not relevant to the LOT analysis was contrary to the LTFV investigation, we also disagree. According to UGITECH, the LTFV investigation concluded that these selling activities, whether treated as selling functions or as manufacturing costs, are relevant to the LOT analysis, and ultimately contributed to the Department’s final determination that inventory and non-inventory sales constitute distinct and separate LOTs in the home market. However, UGITECH has misinterpreted the Department's position in Comment 6 (*Level of Trade)* of the Issues and Decision Memorandum of the LTFV investigation, wherein the Department stated:

> Although we do not consider the manufacturing operations UFS/U-SF performs for its ex-inventory sales to be selling functions and have treated the expenses associated with those operations (i.e., movement and claimed expenses between U-SI and UFS/U-SF[2]) as manufacturing costs rather then selling expenses, the treatment of those costs is separate from how we determine LOTs with respect to the expenses which UFS/U-SF incurred to make the sale to its customer and the selling functions it performed which are associated with those expenses.

Specifically, this statement was made in response to the petitioners' argument that inventory and non-inventory sales were made at the same LOT because the Department had included the costs associated with the manufacturing operations performed on inventory sales in the cost of production.

The record of the LTFV investigation showed that there were selling activities associated with making the sales of further manufactured product from inventory to the customer that were separate from the actual further manufacturing operations performed on these products. Therefore, for purposes of the LOT analysis, the Department made a distinction between the selling activities and the manufacturing operations for these sales.

As discussed above, the record of this review does not support the same LOT finding as that in the LFTV investigation. Therefore, we continue to find only one LOT in the home market for purpose of the final results.

Comment 5: *Whether to Combine Certain Grade Codes for Product Matching*

The petitioners contend that UGITECH has created separate grade codes for certain products that are identical or nearly identical in chemical composition with certain other products. According to the petitioners, UGITECH has failed to demonstrate that each of these products are sufficiently different to be treated as distinct products for purposes of product matching and thus the Department should collapse these grade codes into a single grade code in the final results. The petitioners assert that UGITECH's attempt to distinguish these products amounts to manipulation of the product matching process based on insignificant physical characteristics.

Specifically, the petitioners challenge UGITECH's creation of separate grade codes for three pairs of products: grade codes 0290 and 0295 (hereafter "Pair A"), 0850 and 0860 ("Pair B"), and 1050 and 1060 ("Pair C"). With respect to Pair A, the petitioners state that UGITECH's claim in its February 23, 2005, submission that grade code 0290 is distinct from 0295 because the former contains nitrogen and the latter does not, resulting in different mechanical properties and applications for each product, is not supported by the record. The petitioners assert that neither "mechanical properties" nor end use are part of the Department's matching characteristics.

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[2] In the current review, U-SI and UFS/U-SF are now known as UGITECH and DVF, respectively.

Further, the petitioners claim that the sales listing data does not support UGITECH's claims regarding the physical differences and applications of the products.

With respect to Pair B, the petitioners dispute UGITECH's contention that 0850 is physically different from 0860. According to the petitioners, UGITECH's claim that the grades are distinguishable because of the difference in the carbon content specification is without merit because UGITECH has not shown that this physical difference is significant. The petitioners also assert that UGITECH's distinction between the two grade codes with respect to the end use of knife manufacture for 0850 is not relevant as end use is not a matching characteristic. The petitioners point to their analysis of price and cost of manufacture for sales of Pair B products to further support their contention that there are no significant differences between these grade codes.

Although the petitioners' acknowledge UGITECH's claim that the products in Pair C contain different amounts of silicon, the petitioners assert that neither the Department nor Ugitech has considered silicon content to be meaningful. The petitioners note that silicon content is not included in UGITECH's grade chart submitted as Appendix B-2 to the July 16, 2004, Section B questionnaire response (SBR). According to the petitioners, UGITECH's claim that the higher silicon content product, grade code 1060, is more complicated and costly to produce is not supported by the petitioners' cost analysis drawn from the questionnaire response data.

UGITECH responds that even the petitioners acknowledge that the three grade code pairs at issue represent products of different stainless steel grades. According to UGITECH, the distinct grades represent actual differences in chemical composition and mechanical properties for which the Department properly treated each pair as similar but not identical merchandise in the preliminary results. UGITECH states that the petitioners have failed to provide any rationale as to why the differences between the grades in each pair should be considered as commercially insignificant physical differences and thus why the grades should be treated as identical.

In the case of Pair A, UGITECH reiterates its earlier assertion that grade code 0290 is physically different from the 0295 product due to the former's nitrogen content, which, in turn, results in different mechanical properties such that it is used only for rebar, while the latter is used only in nuclear applications.

For Pair B, UGITECH points to the higher carbon content of grade code 0850, which provides this product with the increased ability to hold a sharper edge than the 0860 product. According to UGITECH, the higher carbon content of grade code 0850 in comparison to grade code 0860 makes these two grades distinctly different in terms of the relevant mechanical characteristics and quality of the material. With regard to the petitioners' arguments concerning the similar price and cost of Pair B sales, UGITECH states it is not the Department's methodology to match sales on the basis of similar prices or costs, but rather on the basis of distinct physical criteria. Moreover, UGITECH contends that, at any rate, the petitioners have failed to demonstrate why the price and cost differences according to their analysis are not meaningful.

As for Pair C, UGITECH notes that grade code 1050 refers to AISI grade 310, and grade code 1060 refers to AISI grade 314. These grade codes are different in chemical composition due to the higher silicon content in the 1060 product and the products are recognized by the AISI as being of two unique grades. According to UGITECH, the higher silicon content of the 1060 product provides it with the property of greater resistance to oxidation and makes it more complicated and costly to produce. UGITECH contends that the petitioners' price and cost analysis for selected observations from UGITECH's sales listing is insufficient for consideration of these products as physically different.

Department's Position:

Based on our analysis of the available information and applicable Department precedent, as discussed below, we continue to accept UGITECH's reporting of the grade pairs A and C as unique grades for purposes of model matching. However, we have combined the grade coding for the Pair B products in the final results.

Pair C involves two different AISI grades, as noted above. These products are distinguished by the difference in chemical composition specifications for silicon and are recognized by the AISI as different grades. As we have consistently held in this proceeding and the companion stainless steel bar proceedings that products of different AISI grades must be reported with unique grade codes (see, e.g., SBR, pp. B-6 - B-7), we concur with UGITECH's grade code reporting.

Pair A consists of an AISI grade, 316LN, and an internal UGITECH grade. While we agree with the petitioners that alleged differences in end use are not part of the Department's matching characteristics for physical criteria, we note that the two grades are different in chemical composition because grade code 0290 includes a specification for the inclusion of nitrogen, while 0295 does not. The inclusion of such levels of nitrogen in stainless steel is significant because it can affect properties such as yield and tensile strength[3]. Because of this physical characteristic difference, we find it appropriate to designate each of the Pair A products with a separate grade code.

Pair B consists of two internal grade products that are virtually identical in chemical composition except for the carbon content specification, where the 0850 carbon range is higher than the 0860 carbon range. While the carbon ranges for each product do not overlap, the low-end of the 0850 range is slightly higher than the high-end of the 0860 range. The issue here is whether the difference in the carbon content specification is significant enough to warrant treating these grades as distinct products.

The Department has considered price and cost differences as part of its determination as to whether physical differences between products are significant enough to warrant treatment as

[3] See, e.g., Metals Handbook, Desk Edition, 1st Ed., published by the American Society of Metals, at page 15-6.

separate models. See, e.g., Stainless Steel Bar From Japan: Final Results of Antidumping Administrative Review, 65 FR 13717 (March 14, 2000), and accompanying Issues and Decision Memorandum at Comment 2. However, the Department has also stated that the existence of any cost or price differences are not dispositive for determining whether or not products are identical or similar for model matching purposes. See Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey, 65 FR 15123 (March 21, 2000) (Cold-Rolled Steel from Turkey), and accompanying Issues and Decision Memorandum at Model Match Comment 1. Accordingly, the absence of cost or price differences does not preclude the Department from finding that products which differ in physical characteristics are unique models. Therefore, we agree with UGITECH that the petitioners have failed to demonstrate why the small differences in price and variable cost of manufacture between the Pair B products, as listed in Attachment 2 of the petitioners' case brief, are not meaningful or significant. As a result, we cannot reject UGITECH's claim on that basis.

The Department has recognized differences in carbon content level in establishing unique products for model-matching purposes in steel cases. See, e.g., Cold-Rolled Steel from Turkey. In this case, UGITECH has identified a physical difference in the Pair B products, i.e., the carbon level specification. However, UGITECH has provided insufficient evidence to demonstrate that the difference in carbon content between the Pair B products is significant and meaningful for purposes of product matching. UGITECH has not provided any support for its assertion in the February 23, 2005, submission (as repeated in its case brief) that the difference in carbon content between these particular stainless steel products makes them distinctly different in terms of the relative mechanical characteristics and quality of the material. We are unable to find any information in the product brochures in the SAR or elsewhere on the record to indicate that this small difference in carbon content is significant. Accordingly, for the final results of this review, we have revised our calculations to combine the Pair B products into a single grade code.

Comment 6: *The Treatment of Early Payment Discount for Unpaid Home Market Sales*

In the preliminary results, we followed our standard methodology for home market sales and made adjustments, where appropriate, to the starting price for, among other things, billing adjustments, discounts, and rebates.

The petitioners argue that the Department should disregard the early payment discounts for unpaid home market sales for the final results. The petitioners argue that a reduction to the price, in the form of a early payment discount, for these home market sales is not warranted because no payments were received for these sales. Therefore, the customer could not have qualified for an early payment discount. In addition, the petitioners claim that the record of this review does not support an early payment deduction to the price of the affected sales because UGITECH failed to submit documentation that could adequately demonstrate that these discounts would be honored even when the terms of the discount were clearly met.

UGITECH argues that the Department's calculation of net price in the preliminary results appropriately reflected the discounts that were actually granted to its customers during the POR and, for the final results, the Department should continue to include these discounts in the calculation of net price. UGITECH contends that the discount it identified as an early payment discount is applied in its normal course of business. Furthermore, UGITECH points out that, although in its original response the invoices that were affected by this discount were reported as unpaid, in a subsequent supplemental response the payment information was updated to reflect new information regarding payments it had received for those sales transactions. Therefore, UGITECH argues that the record demonstrates the actual application of the discount to unpaid sales for those sales that were subsequently paid and updated during the course of the review, and asserts that there is no information on the record that the discounts for the remaining unpaid sales have actually not been granted.

Department's Position:

Our preliminary calculation of NV appropriately deducted the discounts reported by UGITECH from the home market gross unit price. The facts of the record show that these discounts were applicable to certain home market sales made during the POR and reflected a reduction to the net sales revenue from these sales, a fact undisputed by the petitioners. In response to a supplemental questionnaire concerning the nature of these discounts, UGITECH explained that regardless of the actual payment period for the sales to which they apply, these discounts were granted as agreed. See UGITECH November 22, 2004, A, B, C Supplemental Questionnaire Response (SQR) at page 17; see also Appendix SB-4 of the SQR, in which UGITECH submitted certain sales documentation requested by the Department in order to support its reporting of these discounts. Based on our review of the sales documentation provided in Appendix SB-4 of the SQR, we confirmed that the reported discounts were, in fact, deductions to the sales price as noted on the invoice. Therefore, irrespective of UGITECH's classification of these discounts as "early payment discounts" or otherwise in its response, in accordance with our standard methodology in calculating net price under 19 CFR 351.401(c), we have continued to deduct these discounts in the final results calculation of the net home market price used for NV.

Comment 7: *The Date of Shipment for Certain U.S. Consignment Sales*

The petitioners argue that the Department should revise the date of shipment for certain U.S. consignment sales and recalculate the imputed credit expenses associated with these sales for the final results. According to the petitioners, for one particular consignment customer, UGITECH reported a constructed sale date based on the 15^{th} day of the month in which the monthly inventory withdrawal statement from the customer was issued, and a shipment date based on the date of the monthly statement which is issued by the customer at the end of the month. The petitioners argue that the Department should set the shipment date equal to the constructed sale date because this customer withdrew from inventory throughout the month rather than at the end of the month. The petitioners maintain that setting the shipment date equal to the constructed sale date will more accurately reflect the consignment nature of the sales made to this customer.

UGITECH argues that the petitioners' proposal to revise the shipment date and recalculate the imputed credit expense for the sale at issue is not appropriate. First, according to UGITECH, the end of the month is when its U.S. affiliate (i.e., Ugine Stainless & Alloys, Inc. (US&A)) is notified that the merchandise in question is no longer in inventory. Second, the invoice indicating the applicable sales terms relevant to the imputed credit expense calculation (in particular, the date payment is due) is not issued until US&A receives notice of the withdrawal from inventory. Furthermore, UGITECH asserts that the Department's preliminary calculation of the imputed credit expense as well as the inventory carrying cost for this consignment customer was reasonable and consistent with the actual commercial practice.

Department's Position:

We have continued to use UGITECH's reported shipment date for the consignment sales at issue in the final results. Normally, the shipment date reported by the respondent reflects the actual date the subject merchandise was shipped to the customer. In this case, UGITECH reported the shipment date for the sales in question consistent with the consignment arrangement it has with the particular U.S. customer, and its recording of these sales in its ordinary course of business. According to UGITECH, this particular consignment customer has an arrangement with US&A under which it notifies US&A of all its withdrawals from inventory at the end of each month through issuance of a monthly notification statement. The shipment dates UGITECH reported for these transactions reflect the dates of the relevant monthly notification statements. Therefore, due to the timing of the inventory withdrawal notification under the consignment agreement, and based on UGITECH's reported record keeping for these sales, the actual shipment date does not appear to be available to UGITECH. Absent any information to the contrary on the record of this review, we consider UGITECH's reporting methodology to be reasonable and consistent with UGITECH/US&A's normal books and records.

With respect to the petitioners' proposal to revise the shipment date for these sales to the 15th of the month rather than use the end-of the-month date reported by UGITECH, we find there is no evidence to suggest that this reporting methodology more accurately reflects the actual date on which the subject merchandise was withdrawn from inventory. Therefore, for the final results, we have continued to use the shipment date as reported by UGITECH/US&A and have calculated the imputed credit expense and the inventory carrying expense accordingly.

Comment 8: *The Date of Payment for Unpaid U.S. Sales*

In the preliminary results, we used the date of the preliminary results as the date of payment for unpaid U.S. and home market sales for purposes of calculating imputed credit expenses.

The petitioners argue that the Department should use the date of the final results as the payment date for the unpaid U.S. sales. In addition, the Department should recalculate the imputed credit expenses for these sales based on this date of payment.

UGITECH maintains that the calculation of the credit expenses for unpaid sales must be consistent for both U.S. and home market sales. Therefore, UGITECH argues, if the Department uses the final results date as the payment date for its unpaid U.S. sales, as the petitioners suggest, it should treat the unpaid home market sales similarly.

Department's Position:

For the final results, we have continued to set the payment date for the unpaid home market and U.S. sales equal to the signature date of the preliminary results. We acknowledge that in the final results of past cases, the Department has set the payment date for unpaid sales equal to the date of the final results, to the last date to submit new information or the date of the last submission, depending on the circumstances. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, 70 FR 12648 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 3; Notice of Final Results of Antidumping Duty Administrative Review: Individually Quick Frozen Raspberries from Chile, 70 FR 6618 (February 2, 2005), and accompanying Issues and Decision Memorandum at Comment 11; and Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel from Germany, 67 FR 55802 (August 30, 2002), and accompanying Issues and Decision Memorandum at Comment 4. For the final results in this case, we believe that continuing to use the preliminary results date as the payment date for all unpaid home market and U.S. sales is appropriate because, after the preliminary results, we did not provide UGITECH the opportunity to update its payment date information.

Comment 9: *Alleged Additional Direct Expenses on Certain U.S. Sales*

In the preliminary results, the Department noted that UGITECH's sales agreement terms with a certain U.S. customer (hereafter "A") involved the transfer of specific equipment from UGITECH to A. While we indicated that it may be appropriate to consider the cost of this equipment to be a direct selling expense attributable to all sales covered by the agreement, the per-unit amount for such an expense was well under 0.33 percent ad valorem, the Department's threshold under 19 CFR 351.413 for insignificant adjustments. Therefore, we disregarded an adjustment for this selling expense.

The petitioners contend that the sales agreement with A includes other terms that reflect additional direct expenses undertaken by UGITECH which are not included in UGITECH's price to A. The petitioners assert that the agreement obligates UGITECH (or its U.S. affiliate, US&A) to pay or absorb the cost of such items as surcharges, antidumping duties, and section 201 duties, as well as the equipment transfer. However, the petitioners further assert that UGITECH's reported sale prices to A do not fully capture the expenses for these items. As an example, the petitioners cite a sample invoice in UGITECH's questionnaire response where there are separate columns for base price and extra charges which total the gross unit price. Although the heading description for the extra charges is illegible, the petitioners contend that these extra charges are obviously separate from the unit price and, as such, reflect charges for the additional expenses borne by UGITECH/US&A under the terms of the agreement.

As UGITECH did not report these expenses in its sales listing, the petitioners argue that the Department should apply adverse facts available and either deduct the amount of the extra charges from the reported gross unit price by applying a ratio based on the information in the sample invoice, or assign the highest calculated individual margin to sales to A. The petitioners contend that the application of adverse facts available is warranted in this circumstance because UGITECH failed to report its U.S. sales prices and expenses to the best of its ability.

UGITECH responds that, in the sample invoice, the obscured extra charges heading is for "surcharges," so that the total unit price on the invoice is the sum of the base price and the alloy surcharge. That is, the amount does not represent a charge to A for services provided to it, but rather an element of the total sales price to A. Accordingly, UGITECH insists that it has properly reported its sales prices and associated expenses to the Department.

With respect to the additional items in the sales agreement with A identified by the petitioners, UGITECH points out that the contract terms concerning the section 201 and antidumping duties are immaterial because under U.S. law, the importer of record is responsible for these expenses. As US&A is the importer of record for these CEP sales, UGITECH, through US&A, assumes these expenses and thus the agreement terms represent an assurance to A that the net sales price to A is the invoice price. In any event, UGITECH states that the Department's established policy is to exclude section 201 and antidumping duties from the margin calculation. Further, UGITECH asserts there is no basis to reverse the Department's preliminary results finding that the adjustment for the equipment transfer is insignificant and thus unnecessary to include in the margin calculation. Finally, UGITECH states that the petitioners' argument for applying adverse facts available for sales to A is without merit because there is no basis to conclude that UGITECH failed to report sales prices and expenses accurately.

<u>Department's Position</u>:

We find no basis on the record to conclude that UGITECH misrepresented its reporting of prices and expenses for the U.S. sales in question. The petitioners' allegations are based on their interpretation of the sample invoice included at Appendix SA-2 of UGITECH's SQR. Our analysis of this invoice and the inquiry slip included in that Appendix, as well as UGITECH's sales reporting, confirms UGITECH's explanation, namely that the invoice line item shows a base price and a surcharge. The sum of these two items equals the gross sales price reported in the sales listing. In turn, the total value of the transactions associated with the invoice that is reported in the sales listing (<u>i.e.</u>, sales quantity multiplied by sales price), as provided in Attachment 11 of the petitioners' case brief, ties to the total sales value shown in the invoice. Although UGITECH could have reported this transaction, and the others like it, more clearly by reporting, for example, the base price in the gross unit price field (GRSUPRU), and the surcharge amount in the surcharge field (SURCHGU), as described at page 20 of the July 16, 2004, Section C questionnaire response (SCR), the reporting method in this case does not impact the calculation of U.S. price.

Furthermore, as we have determined that the invoice field in question reflects an addition to the base price, rather than any charge to the customer of any services undertaken by UGITECH, we find no basis to support the petitioners' speculation that UGITECH or its U.S. affiliate is providing any additional services resulting in direct selling expenses. UGITECH correctly points out that section 201 duties and antidumping duties are the responsibility of the importer, US&A, with or without a contract provision, and that these expenses are not otherwise part of the U.S. price calculation. As discussed above, the surcharge is an addition to base price, not a service charge to the customer. The remaining expense alleged by the petitioners, the value of the equipment transfer, remains an insignificant amount. All other expenses incurred by UGITECH or US&A on behalf of sales to A have been accounted for elsewhere in the questionnaire response as direct selling expenses or indirect selling expenses. See, e.g., Appendix SC-3, Indirect Selling Expense Reconciliation, in the SQR. Since we have found no misrepresentation of price or expense reporting on the record of this review, there is no basis to consider the petitioners' argument that adverse facts available should be applied to the sales to A.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margins for the reviewed firm in the Federal Register.

Agree ___ Disagree ____

____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

____
(Date)