

MEMORANDUM TO: Jeffrey May
Acting Assistant Secretary
for Grant Aldonas, Under Secretary

FROM: Louis Apple
Director, Office 2
Office of AD/CVD Enforcement

SUBJECT: Issues and Decision Memorandum for Final Results of the Antidumping
Duty Administrative Review on Certain Preserved Mushroom from
India - February 1, 2001, through January 31, 2002.

Summary

We have analyzed the comments of the interested parties in the 2001-2002 administrative review of the antidumping duty order covering certain preserved mushrooms from India. As a result of our analysis of these comments, we have made changes in the margin calculations as discussed in the "Margin Calculations" section of this memorandum. 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 administrative review for which we received comments from parties:

Company-Specific Comments:

Agro Dutch

Comment 1: Calculation of the Work-in-Process Offset
Comment 2: Application of Adverse Facts Available

Weikfield

Comment 3: Home Market Quantity Discounts
Comment 4: Affiliated Party Commissions
Comment 5: Home Market Indirect Selling Expenses
Comment 6: U.S. Indirect Selling Expenses for Commission Offset
Comment 7: Calculation of U.S. Credit Expense
Comment 8: CESS for Observation 33
Comment 9: Offset to Direct Material Costs
Comment 10: Depreciation of Idle Assets
Comment 11: Addition of WPCL General and Administrative Expenses
Comment 12: Weikfield General and Administrative Expense Calculation

Comment 13: Gain on Debt Restructuring as Offset to Financial Expenses

Comment 14: Interest Expenses from ICICI Loan

Comment 15: Cost of Goods Sold for the Financial Expense Ratio

Comment 16: Offsetting Positive Margins with Negative Margins

Background

On March 7, 2003, the Department of Commerce published the preliminary results of the third administrative review of the antidumping duty order on certain preserved mushrooms from India. See Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 11045 (Preliminary Results). The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced or as stems and pieces. The period of review (POR) is February 1, 2001, through January 31, 2002. We invited parties to comment on our preliminary results of review. The petitioner, Agro Dutch Industries Limited (Agro Dutch), and Weikfield Agro Products, Ltd. (Weikfield) filed case briefs on May 2, 2003. The petitioner and Weikfield filed rebuttal briefs on May 13, 2003.

Margin Calculations: Changes from the Preliminary Results

We calculated export price, constructed export price, normal value (NV), and cost of production (COP) using the same methodology described in the preliminary results, except as explained below:

Weikfield

- We revised the calculation for indirect selling expenses to exclude the amounts for commissions and discounts Weikfield and WPCL paid to unaffiliated parties. See Comment 5.
- We revised the U.S. indirect selling expenses used as an offset to home market commissions to include inventory carrying expenses. See Comment 6.
- We excluded a deduction from the home market price for “Discount Program 2.” See Comment 3.
- We did not make a deduction for the Indian export tax to the price of one U.S. sale. See Comment 8.
- We revised Weikfield’s reported general and administrative (G&A) expenses to include idle depreciation costs experienced during the POR. See Comment 10.
- We revised Weikfield’s reported financial expenses to exclude long-term financial and non-financial income. In addition, we included all financial expenses incurred during the POR, including certain expenses associated with debt restructuring. Finally, we calculated the financial expense ratio based on the highest level of audited fiscal year financial statements prepared by Weikfield. See Comments 13, 14, and 15.

Agro Dutch

- As Agro Dutch had no comparison market during the POR, and its constructed value selling expenses and profit rate were based on the weighted-average selling and profit amounts incurred on home market sales by Himalya and Weikfield, we revised the selling expenses and profit used to calculate Agro Dutch's constructed value to account for the revisions to the Weikfield margin calculation outlined above.

Discussion of the Issues

Agro Dutch Comments:

Comment 1: *Calculation of the Work-in-Process Offset*

In the preliminary results, the Department recalculated Agro Dutch's work-in-process (WIP) balances by multiplying total manufacturing costs by the number of days remaining in the year, that are not part of a complete mushroom growing cycle, and then divided that result by 365 days in a year. We applied this adjustment to direct material, labor, variable and fixed overhead in the same proportion that Agro Dutch applied its calculated WIP adjustment.

Agro Dutch argues that the Department's preliminary results methodology is distortive and does not take into account the fact that production is a continuous process involving multiple cycles of production, each involving WIP at the same time. Agro Dutch contends that the Department's methodology would make more sense if Agro Dutch completed each step of the production cycle before continuing to the next stage, until the production cycle begins all over again.

Agro Dutch claims its WIP calculation reflects actual WIP costs at any given time because it accounts for the varying lengths of the production cycle without yielding the alleged distortive results of the Department's methodology. Moreover, Agro Dutch points out that its methodology has been accepted by its financing banks, independent auditors, and by the Department in the preceding segments of this antidumping duty proceeding, including the LTFV investigation. Accordingly, Agro Dutch urges the Department to use its reported WIP methodology in the final results.

The petitioner contends that the Department's methodology does take into account that production is a continuous process, while Agro Dutch's methodology makes the unwarranted and unverified supposition that Agro Dutch's production processes are perfectly continuous. The petitioner asserts that, in the Agro Dutch model, there is no period in which supplies wait to be distributed, no down time for cleaning growing beds or replacing material between cycles, no down time for processing machinery, and 24-hour 7-days a week processing. The petitioner notes that down times have been observed during verifications throughout this proceeding.

The petitioner supports the Department's methodology, which relies on Agro Dutch's own data to modify Agro Dutch's WIP methodology. On the other hand, according to the petitioner, the production models presented by Agro Dutch in its case brief to point out alleged flaws in the Department's methodology are distortive because they are not based on Agro Dutch's actual production experience, but rather on unrepresentative exaggerations that have no basis in reality. The petitioner continues that, in light of Agro Dutch's failure to provide growing batch records, labor hours, or machine hours, the Department's methodology is reasonable and should continue to be applied.

DOC Position:

The Department has continued to use the WIP adjustment calculated for the preliminary results for these final results as the restated WIP value is reasonable. In accordance with section 773(f)(1)(A) of the Tariff Act of 1930, as amended (the Act), the Department normally relies on data from a respondent's normal books and records where those records are prepared in accordance with the home country's Generally Accepted Accounting Principles (GAAP), and where they reasonably reflect the costs of producing the merchandise under consideration. Normal GAAP accounting practices provide both respondents and the Department with a reasonably objective and predictable basis by which to compute costs for the merchandise.

However, in those instances where it is determined that a company's normal accounting practices result in a mis-allocation of production costs, the Department will adjust the respondent's costs or use alternative calculation methodologies to capture more accurately the actual costs incurred to produce the merchandise. See, e.g., Notice of Final Determination of Sales At Less Than Fair Value: Certain Preserved Mushrooms from India, 63 FR 72246,72249 (December 31, 1998) and Final Determination of Sales at Less Than Fair Value: New Minivans from Japan, 57 FR 21937, 21952 (May 26, 1992).

Both the petitioner and Agro Dutch agree that the most accurate method of calculating WIP in this case would be to calculate a value for every incomplete batch of in-process mushrooms at the beginning and end of the POR based on the actual days the in-process mushrooms had been in production. Agro Dutch did not maintain records to support a WIP calculation based on this methodology. Agro Dutch's methodology used the number of days in the production cycle up to the mushroom harvesting period, divided by the number of days in the year, to arrive at a percentage which represented the portion of days in a year for one mushroom production cycle. Agro Dutch then multiplied the percentage by the total costs for the year to obtain expenses for one mushroom growing cycle, which was used as a component of WIP.

Under Agro Dutch's methodology, if a mushroom growing cycle is theoretically 80 days, then one divides the 80 days by 365 days to obtain the percentage representing the number of days of a growing cycle in a year, which, in this example, would be 22%. Agro Dutch would then multiply the total costs of growing mushrooms for the year - for example, Rs. 1,000,000 - by 22% and thus value WIP at Rs. 220,000. Inherent in this methodology is the assumption that the costs for a full growing cycle are

included in WIP, which we find anomalous with the physical reality of mushroom growing and canning. Production of the subject merchandise involves various stages. The assumption that the value of one full growing cycle is WIP overstates the value of WIP by failing to consider the fact that individual batches are in different stages of production.

Although the Department has accepted Agro Dutch's WIP methodology in past segments of this proceeding, based on our analysis of the information in this record and the results of the verification, we do not believe that this methodology reasonably captures WIP costs. Agro Dutch's methodology understates reported production costs by reclassifying production costs from expenses incurred for production of merchandise to WIP, a balance sheet account. This result derives from the assumption that all production is at one, advanced production stage when, in reality, batches of mushrooms are at different production stages before harvesting. As a result, Agro Dutch's method unreasonably allocates costs to the merchandise under consideration. Agro Dutch's methodology would more reasonably approximate the true value of WIP if the result of its calculation was divided by two. If, according to Agro Dutch's arguments, they had numerous batches in process at various stages of production, both early in the process and late, the reasonable approach to approximate the WIP would be the mid-point in the production process. One half of the costs of a full mushroom growing cycle is more accurate than the full costs of a cycle because WIP by definition is unfinished production. Using the example above this variation to Agro Dutch's methodology would result in a WIP of Rs. 109,589 $((80/365) \times 1,000,000) / 2$.

Under the Department's methodology, beginning and ending WIP balances are reasonably calculated by multiplying total manufacturing costs by the ratio of the number of days remaining in the year that are not part of a complete mushroom production cycle to 365 days in a year. For example, if a complete mushroom production cycle is 80 days, theoretically, there would be four complete cycles during the year, and 45 days left over until the end of the year $(365 - (4 \times 80))$. This method reasonably approximates WIP because it only includes costs associated with the incomplete mushroom production cycle. Using the above example and total mushroom growing costs of Rs. 1,000,000, the Department's calculated WIP would be Rs. 123,288 $((45/365) \times 1,000,000)$.

Agro Dutch argues that the Department's methodology does not recognize the fact that production is a continuous, multi-stage process. However, it is Agro Dutch's methodology that fails to recognize this fact, as it assumes all WIP is at the same production stage. For the aforementioned reasons, the Department finds Agro Dutch's WIP methodology distortive and continues to apply the WIP methodology from the preliminary results.

Comment 2: *Application of Adverse Facts Available*

At verification, we found that Agro Dutch incurred brokerage and handling expenses on all of its U.S. sales, but had reported no expense incurred on certain sales. In the preliminary results, the Department applied adverse facts available to these U.S. sales where brokerage and handling expenses were

incurred but not reported. As adverse facts available, the Department applied the highest reported brokerage and handling expense amount to the affected sales.

According to Agro Dutch, it reported brokerage and handling expenses for the vast majority of its sales and explained at verification that, due to a computer problem, the expense was deleted from a small number of sales. Agro Dutch agrees that under these circumstances the Department is justified in resorting to facts available, but argues that there is no cause for applying adverse facts available. Agro Dutch contends that the omitted brokerage and handling expense for certain sales was inadvertent and due to a clerical error, not an unwillingness to provide the information. Furthermore, Agro Dutch claims that it volunteered to immediately correct this error, but the Department did not permit the correction. Agro Dutch argues that, instead of applying the highest expense, the Department should apply the average brokerage and handling expense incurred by Agro Dutch during the POR.

The petitioner argues that the Department correctly applied partial adverse facts available under 19 USC 1677e(a) (section 776(a) of the Act) to the brokerage and handling expenses that Agro Dutch failed to report. According to the petitioner, Agro Dutch had multiple opportunities to identify and correct the missing expenses but failed to do so, including during preparation for verification, when it should have noted that one of the “pre-selected” sales did not include the brokerage and handling expense. The petitioner notes further that Agro Dutch’s claim that it explained at verification that the cause of the missing data was a computer glitch is incorrect because the verification report states that the absence of the data was due to “an unspecified error,” and thus, according to the petitioner, it could have resulted from any number of causes. Finally, the petitioner asserts that applying the average reported charge for facts available, as advocated by Agro Dutch, would introduce no adverse effect, and may actually fall below the level of the missing expenses, thereby rewarding a respondent for its failure to cooperate.

DOC Position:

We agree with the petitioner. The need for complete brokerage and handling expense information was discussed in the April 12, 2002, questionnaire. Agro Dutch reported an amount for each sale, including a zero on some sales (i.e., Agro Dutch reported no brokerage and handling expense on these sales). As noted by the petitioner, it was the Department, not Agro Dutch, which identified the error in the course of verification. More specifically, in the course of examining sales documents for sample transactions selected for verification, the Department discovered that Agro Dutch incurred the brokerage and handling expenses on all of the U.S. sales during the POR. Agro Dutch was unable to explain the reason for the expense reporting discrepancy. Accordingly, we were unable to verify the brokerage and handling expense amount of zero that Agro Dutch reported on certain sales.

Section 776(a)(2)(D) of the Act instructs the Department to apply the facts otherwise available when a party provides information but that information cannot be verified. Under section 776(b), the Department may use an inference that is adverse to the interests of a party in selecting from among the

facts otherwise available when that party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

As the record of this case indicates, the Department provided Agro Dutch with ample opportunity to prepare and submit a correct and verifiable U.S. sales data set that properly reported brokerage and handling expenses for all sales. Yet, despite numerous opportunities to provide the Department with the correct U.S. sales data, at verification the Department discovered that Agro Dutch's reporting of the brokerage and handling expense on certain sales was flawed. Agro Dutch's actions prevented the Department from establishing a reliable basis for the brokerage and handling expense reported for the affected sales. Moreover, as these errors were discovered during verification, the deadline for submission of factual information had passed. As such, the use of facts available for this expense on the affected sales is warranted pursuant to section 776(a)(2)(D) and 782(d) of the Act.

As discussed in the preliminary results, an adverse inference with respect to the brokerage and handling expenses is warranted in this case under section 776(b) of the Act. In this case, Agro Dutch failed to cooperate to the best of its ability with respect to the brokerage and handling expense by not reporting correctly the data it controlled, and by not being adequately prepared to substantiate this expense at verification. Moreover, at verification it provided the Department with no explanation as to why this expense had been misreported (see December 10, 2002, verification report at page 20). Therefore, we affirm our finding in the preliminary results and continue to apply adverse facts available to those sales where Agro Dutch reported zero for the brokerage and handling expense. As in the preliminary results, we applied the highest per-unit brokerage and handling expense that Agro Dutch reported to the affected sales.

Weikfield Comments:

Comment 3: *Home Market Quantity Discounts*

Weikfield reported three discount programs for home market sales. In the preliminary results, we deducted the reported discount amounts granted under each of these programs from the home market starting price.

Weikfield states that the Department should set the factor for "Discount Program 2," a quantity discount program, to zero in the final results because its auditors have disallowed this program in the audited financial statement prepared after the questionnaire response filing.

The petitioner agrees that, based on Weikfield's auditors' decision, the Department should disallow the discounts granted under Discount Program 2.

DOC Position:

We agree with both parties and have revised the net home market price calculation by excluding the deduction for Discount Program 2.

Comment 4: *Affiliated Party Commissions*

Weikfield reported home market commissions paid to its affiliate, WPCL, and to unaffiliated parties. In the preliminary results, we determined that, based on our analysis of Weikfield's questionnaire responses in the review, and WPCL's sales and marketing activities in support of its sister company, Weikfield's payments to WPCL were not arm's-length commissions. We found that WPCL's activities to promote Weikfield's preserved mushroom sales appeared integrated with WPCL's own sales promotion efforts for its product line, and that the expenses incurred in support of these sales promotion activities would be incurred whether or not a specific sale is made. Thus, we did not deduct the reported commissions to WPCL from the home market price, but accounted for the costs incurred in support of the sales promotion activities by treating them as indirect selling expenses.

Weikfield contends that the record evidence proves that Weikfield's commission payments to WPCL are at arm's length, since the WPCL commission payment is comparable to the commission payments made to unaffiliated "C&F agents" combined with cash discounts paid to these agents, as well as the commission payment made to another unaffiliated party. Moreover, Weikfield contends that the slightly higher payment to WPCL is consistent with the arm's-length nature of the agreement between Weikfield and WPCL because it is supported by the additional tasks that Weikfield hired WPCL to perform. Furthermore, Weikfield argues that the commission payments to WPCL are tied directly to sales since Weikfield does not pay WPCL a commission unless there is a sale made by WPCL.

The petitioner argues that the record evidence does not demonstrate that the commission payments to WPCL were made at arm's length. The petitioner claims that Weikfield's payment schemes to its unaffiliated distributors fail to provide an accurate basis for comparison with the commissions paid to WPCL because different distributors receive different commissions even though, according to Weikfield, there is no quantitative or qualitative difference in services provided. In addition, the petitioner contends that the monies paid by Weikfield to WPCL are substantially different because these payments are not commissions, but rather inter-company transfers covering a variety of selling and marketing functions performed by WPCL to find, maintain, and support unaffiliated customers. According to the petitioner, these functions are far beyond those of a normal commission agent.

DOC Position:

We agree with the petitioner that the evidence on the record of this review fails to demonstrate that Weikfield's payments to WPCL were "arm's length" commissions. The Department's practice is to treat payments to affiliated parties providing services that relate to the sale of merchandise as commissions if they are actual expenditures resulting from specific sales and are not intra-company

transfers. The Department allows these expenses as direct deductions to price if they are at arm's length and tie directly to sales. To establish whether commissions are made at arm's-length, the Department normally compares the commissions paid by the respondent to affiliated selling agents to those paid by the respondent to any unaffiliated selling agents in the same market (exporting or U.S.) or in any third-country market (see e.g., Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland, France, Germany and the United Kingdom, 56 FR 56359, 56363 (November 4, 1991).)

In this case, while we noted in the preliminary results that the payments are effectively transfers of funds between affiliated parties,¹ we have no evidence to dispute Weikfield's statements that the payments to WPCL are tied directly to sales. Therefore, for purposes of this analysis, we will consider these payments as if they were "commissions" and thus we must determine their arm's-length nature in accordance with our normal practice.

The only basis for comparing the commission rate Weikfield paid to WPCL is the commission rates Weikfield paid to unaffiliated parties. As the petitioner notes, the reported commission rates to unaffiliated commissionaires are substantially lower than those paid to WPCL. Weikfield responds that the payments to WPCL are comparable to the unaffiliated commission rates if the Department also considers cash discounts offered to the commissionaires in addition to the commission rate. However, there is no basis on the record to include cash discounts as part of the commission rate to unaffiliated parties.

More importantly, Weikfield states that the commission rates are different because the responsibilities of the unaffiliated commissionaires are different. The unaffiliated commissionaires maintain an inventory of Weikfield products and ship the products to customers. In all but two Indian states, these commissionaires resell the merchandise to distributors. Weikfield does not report any commission payment to WPCL for these sales. In the two remaining Indian states, Maharashtra and Goa, Weikfield pays an unaffiliated commissionaire a payment for the same inventory and shipping services as it pays the unaffiliated commissionaires in the other states.

According to Weikfield, the services WPCL provides are substantially different. Weikfield reports that

WPCL is responsible to procure business for WAPL's (i.e., Weikfield's) products....Weikfield uses its own sales employees to develop and win business for WAPL's products. Further, WPCL is responsible for the development and growth in the States of Maharashtra and Goa. In order to develop sales, WPCL must engage in its own market development efforts by, among other things, participating in Exhibitions / Consumer Shows, creating and supplying in-

¹ Weikfield and WPCL are affiliated "sister companies" in the Weikfield Group, as described at pages A-3 - A-4 and Exhibit A-3 of Weikfield's July 17, 2002, Section A questionnaire response.

store promotions and displays, and the like. (See Weikfield's January 7, 2003, supplemental questionnaire response (SQR) at page S-12.)

Given the significant differences in the services performed by WPCL as compared to the services performed by the unaffiliated commissionaires, we have no basis to determine whether Weikfield's commission payments to WPCL are at arm's length. Accordingly, as in the preliminary results, we continue to reject these payments as direct deductions from price, but include these payments as part of the indirect selling expense calculation, as discussed further under Comment 5 below.

Comment 5: Home Market Indirect Selling Expenses

Weikfield did not report home market indirect selling expenses. As discussed above, the Department calculated home market indirect selling expenses to reflect the sales promotion expenses incurred by both Weikfield and WPCL. We calculated these expenses based on the information in the consolidated Weikfield Group Financial Statement submitted in a supplemental questionnaire response.

Weikfield contends that, if the Department rejects its position on accepting affiliated commissions (see Comment 4 above), the Department should recalculate the home market indirect expenses by excluding certain expenses included in the numerator of the preliminary results calculation. Weikfield states that the Department should exclude the amounts for WPCL's "Commission on Sales" and "Discount on Sales," as set forth in its 2001 - 2002 audited financial statement, because these are direct selling expenses and WPCL did not pay these expenses to third parties in support of Weikfield products. Weikfield adds that the Department should also correct the home market indirect selling expense calculation to deduct a portion of Weikfield's "commission, discounts, schemes" amount to avoid double-counting these expenses which are also reported as Weikfield's direct selling expenses. Weikfield indicates that the record includes information to deduct from this amount the commission amounts paid to unaffiliated parties, and the discounts granted under discount programs 1 and 3.

The petitioner responds that the record does not support Weikfield's contention that allocating all of WPCL's selling expenses, including the "commissions, discounts, schemes" total, duplicates or double-counts WAPL's reported direct selling expenses. In particular, the petitioner asserts that, contrary to Weikfield's claim, the record fails to show that WPCL did not pay selling expenses to third parties in support of Weikfield products.

DOC Position:

We agree with Weikfield that most of the "commissions, discounts, schemes" expenses should be excluded from the indirect selling expense calculations. Expenses in this category are normally direct expenses, either commissions paid to unaffiliated parties, or reductions in the net sales price to the customer. In this instance, the expenses in this category consist of three types of expenses for purposes of our indirect selling expense calculation:

- A) Commissions paid and discounts granted by WPCL to WPCL's unaffiliated commissionaires and customers on non-subject merchandise,
- B) Commissions paid and discounts granted by Weikfield to Weikfield's unaffiliated commissionaires and customers on subject and non-subject merchandise, and
- C) Commissions paid by Weikfield to WPCL (as discussed above under Comment 4).

The expenses under B), paid by Weikfield to unaffiliated parties, are deducted from the home market price either as discounts or as commissions. Therefore, we agree with Weikfield that including those expenses in the indirect selling expense calculation would be double-counting and have removed them.

With respect to the expenses under A), as the nature of these expenses is the same as those under B), we agree with Weikfield that the amount should be excluded from the numerator of the indirect selling expense calculation.

Based on our discussion under Comment 4 above, we continue to include the expenses under C), Weikfield's commission payments to WPCL, in the indirect selling expense calculation. The revised indirect selling expense calculation is included in Weikfield Sales Data Adjustments for the Final Results, Memorandum to the File dated July 7, 2003 (Weikfield Memo)).

Comment 6: U.S. Indirect Selling Expenses for Commission Offset

Weikfield incurred commission expenses on certain home market sales, but did not incur commission expenses on any U.S. sales. In the preliminary results, we made an adjustment to NV to account for commissions paid in the home market but not in the U.S. market, in accordance with 19 CFR 351.410(e). As the offset for home market commissions, we applied the lesser of home market commissions or U.S. indirect selling expenses. For U.S. indirect selling expenses incurred in India, we applied the same indirect selling expense ratio as calculated for home market indirect selling expenses and described above.

Weikfield contends that the Department should base the commission offset on U.S. inventory carrying cost expenses because these expenses are the only indirect selling expenses incurred in India involving U.S. sales. Weikfield claims that WPCL did not otherwise assist Weikfield in India with respect to Weikfield's sales to the United States. Accordingly, Weikfield argues that the Department erred in using home market indirect selling expenses as "U.S. indirect selling expenses incurred in India," for purposes of the commission offset, violating section 772 of the Act.

The petitioner responds that the Department correctly identified the expenses used for the commission offset for EP sales. According to the petitioner, Weikfield's argument is flawed because it is based on the assumption that the consolidated combination of WPCL and Weikfield indirect selling expenses does not pertain to U.S. sales. Therefore, for purposes of the final results, the petitioner contends that the Department should make no adjustment to the commission offset for EP sales.

DOC Position:

We agree with the petitioner with respect to the use of Weikfield's indirect selling expenses. The calculation for the indirect selling expense ratio includes all expenses incurred by both Weikfield and WPCL, for all selling activities, world-wide, and are allocated over all revenues received, world-wide because we are unable to segregate Weikfield's and WPCL's indirect selling expenses by market in order to calculate separate ratios by market. Accordingly, the indirect selling expense ratio is based on expenses attributable to sales in all of Weikfield's and WPCL's markets. Therefore, the indirect selling expense calculation methodology is consistent for both U.S. and home market sales. We note that, as reported by Weikfield and described by Weikfield in Comment 7 below, WPCL is involved in the U.S. sales process by assisting Weikfield with its accounts receivables.

However, Weikfield's position points out that the inventory carrying expense incurred on U.S. sales should also be part of the commission offset. Accordingly, we have revised the commission offset for EP sales to include the reported inventory carrying expense on U.S. sales along with the indirect selling expense discussed above in Comment 5.

Comment 7: Calculation of U.S. Credit Expense

For certain U.S. sales, Weikfield reported that it arranged export financing through WPCL, under which WPCL paid Weikfield in advance for the shipment, less a fee, and WPCL assumed the financial risk of the sale. As the credit expense for these sales, Weikfield reported the amount of the fee paid to WPCL. For other U.S. sales, Weikfield did not involve WPCL in its payment arrangements. In the preliminary results, we rejected Weikfield's fee paid to WPCL as the imputed credit expense. Instead, we stated that we considered it appropriate to calculate imputed credit based on the period from shipment to the date that a member of the Weikfield Group first received payment from an unaffiliated party (i.e., the unaffiliated bank used by the Weikfield Group). Thus, we recalculated imputed credit on all U.S. sales to reflect the period from shipment to bank payment. In addition, we included a separate circumstance-of-sale adjustment for the bank fee paid by Weikfield or WPCL.

Weikfield claims that the Department double-counted its imputed U.S. credit expenses by applying both the imputed credit expense and the bank fee. Accordingly, Weikfield contends that the Department should only make a circumstance-of-sale adjustment for the bank fee as this fee represents the actual imputed credit expense incurred by Weikfield on these sales. Alternatively, Weikfield contends that, if the Department rejects this argument, the Department should recalculate imputed credit to subtract the bank fee amount from the sales price. Weikfield asserts that the bank fee should be deducted from the sales price in performing the imputed credit expense calculation because Weikfield's opportunity cost associated with the loss of monies involved pending payment which does not include the bank fee. To do otherwise would mean, according to Weikfield, that an imputed credit expense would be applied to the fee Weikfield owes the bank.

For those sales in which Weikfield made export financing arrangements with WPCL, Weikfield contends that the export financing fee paid to WPCL should be used as the credit expense, rather than the Department's imputed expense and the bank fee, because this expense is the actual credit expense for these transactions. Weikfield contends that the export financing arrangements between Weikfield and WPCL are at arm's length because they are comparable to those offered by an unaffiliated company. On the other hand, if the Department rejects Weikfield's argument with respect to the calculation of imputed credit expenses, Weikfield submits that the Department should alter its calculation of the imputed expense to exclude the export financing fees, as these fees are not part of Weikfield's opportunity cost. Finally, Weikfield adds if the Department calculates an imputed U.S. credit expense for these sales, because Weikfield and WPCL operate at arm's length with respect to export financing arrangements, the imputed credit period should be based on the date WPCL paid Weikfield.

The petitioner argues that the Department should continue to deduct both the actual bank fees and the imputed credit expenses from U.S. sales prices. According to the petitioner, Weikfield's argument is based on the incorrect position that the deduction of actual bank fees for the process of collecting payment pertains to the same cost as measured by the imputed credit expenses. In fact, the petitioner continues, these expenses are for two entirely separate economic events; the imputed credit expense measures the opportunity cost to the seller between shipment and payment, while the bank fee represents an actual expense paid to the bank for facilitating or expediting payment.

As to Weikfield's alternative argument that imputed credit should be recalculated to be based on prices net of bank charges, the petitioner contends that Weikfield ignores the fact that the imputed interest calculates the value extended to the customer by Weikfield. The petitioner notes that the opportunity cost for extending credit is measured based on the value of the good when it is shipped from the seller to the buyer, normally the gross sales price or the gross sales price less discounts. The petitioner continues that the Department does not deduct movement charges, direct selling expenses, commissions, or even post-sale rebates such as annual quantity rebates, in determining the value of the good for which credit has been extended from shipment to payment, because these expenses, like the bank fee, are recognized as separate costs and do not change the value of the good transacted between the buyer and the seller.

The petitioner rejects Weikfield's contention that the export financing fees represent arm's-length transactions. Accordingly, for the same reason outlined above that the bank fee should not be substituted for imputed credit expense, the petitioner contends that this inter-company transfer executed by discounting receivables between the affiliates should also not be substituted for it. With respect to the financing fees between Weikfield and WPCL, the petitioner asserts that the Department should continue to substitute a total consolidated indirect selling expense which, according to the petitioner, will cover the true cost of the non-arm's-length transactions, just as it does for the non-arm's-length commissions recorded between Weikfield and WPCL. Finally, the petitioner contends that Weikfield's suggestion that the Department reduce gross price by the WPCL financing fee if the Department

calculates imputed credit expenses on these sales should be rejected for the same reason that the petitioner states for not reducing gross price by bank fees prior to calculating interest expenses.

DOC Position:

We agree with the petitioner. The imputed credit expense and the bank fee represent two different expenses incurred by Weikfield. The imputed credit expense estimates the opportunity cost to Weikfield for shipping its asset, the merchandise, to the customer prior to receiving the customer's payment. During that period, Weikfield has neither the asset nor the payment and thus incurs a cost for extending the credit to the customer in anticipation of payment. The bank fee is an actual expense, billed to and paid by Weikfield, in exchange for payment services rendered by the bank. There is no information on the record that the bank fee relates to interest expenses that arguably are already captured in the imputed credit expense.

As noted above under Comment 4, Weikfield and WPCL are "sister companies" (i.e., affiliated). Given this affiliation, we find it reasonable to consolidate them for purposes of payment transactions. That is, we ignore the discounting of accounts receivable and payment transactions between Weikfield and WPCL and instead focus on imputed and actual expenses between the Weikfield group and the first unaffiliated party. Consequently, in the final results we continue to calculate imputed credit based on the period from shipment date to the date Weikfield or WPCL first received payment from an unaffiliated party for the sale, and to treat as a direct selling expense bank fees incurred by WPCL in connection with Weikfield's sales.

In addition, we reject Weikfield's contention that bank fees should be deducted from the selling price in calculating imputed credit. As the petitioner notes, the imputed credit expense measures the opportunity cost of the credit extended to the customer. The customer owes Weikfield the amount of the sales price less any discounts or price adjustments granted at the time of sale. All other direct expenses Weikfield incurs related to the sale, including bank fees, are accounts payable owed to third parties. As a result, the imputed credit expense is properly measured without deducting these costs incurred to third parties from the net selling price.

Comment 8: CESS for Observation 33

In the Section C questionnaire response at page C-11, Weikfield stated that it reported the expense for the Indian export tax known as "CESS" under the computer variable USOTHRTU, "Other U.S. Transportation Expense." However, Weikfield also noted that, for U.S. sales observation 33, the Indian export authorities failed to collect CESS. For that sale, Weikfield reported the weighted-average per-unit expense based on the amounts reported for all other sales. The Department used that figure in the preliminary results calculations.

Weikfield contends that the Department should set the USOTHRTU “other transportation expense” amount for U.S. sales observation 33 to zero because, as noted in Weikfield’s questionnaire response, the Indian export authorities failed to collect CESS for this sales transaction.

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The petitioner asserts that Weikfield should not benefit from its evasion, whether inadvertent or not, of the applicable Indian export tax. However, the petitioner states that, consistent with the principle that the Department’s analysis should reflect the respondent’s actual business experience during the POR, the petitioner acknowledges that the Department may not deduct CESS from the starting price of this sale.

DOC Position:

As Weikfield reported in its Section C questionnaire response that it did not actually incur a CESS expense on this sale, we have adjusted the reported “Other U.S. Transportation Expense” for this sale by setting it to zero.

Comment 9: Offset to Direct Material Costs

Weikfield reported a gain in other income for “credited balances appropriated” and included a portion of this gain as an offset to its interest expense ratio calculation. In the preliminary results, the Department stated that Weikfield failed to demonstrate that the nature of this account is associated with Weikfield’s current financing and thus did not include any of the gain as an offset in the financial ratio calculation (see Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination, Memorandum to Neal Halper dated February 28, 2003, at page 2).

Weikfield contends that it made a mistake when it allocated income booked as “credit balances appropriated” as an offset to its financial expense instead of an offset to its raw material costs. According to Weikfield, the record confirms that this income pertains to the settlement of claims made against Weikfield’s suppliers for various defective goods and services and that these claims were made and realized in fiscal year 2001-2002. Furthermore, Weikfield contends that the record demonstrates that a portion of this gain should be appropriately allocated to the subject merchandise, and the Department has otherwise accepted similar “other income” accounts in this proceeding, such as spawn sales, scrap sales, spent compost and fine & penalties recovered, as offsets to raw material costs. Therefore, the Department should correct Weikfield’s error and offset raw material costs by that portion of “credit balances appropriated” allocable to the subject merchandise.

The petitioner contends that the record does not substantiate that the “credit balance appropriated” reflected POR production of any kind. The petitioner maintains that, given the amount at issue and the nature of litigation and settlement negotiations that occur when defective goods and services are rejected and/or payment is refused or disputed, the claims relate to items from prior periods.

Furthermore, the petitioner argues that Weikfield did not correctly report, classify, allocate, and document its request for an adjustment on POR material costs, and, because of this failure, the Department should not accept its claim for this unsubstantiated offset.

DOC Position:

We agree with the petitioner that Weikfield's costs should not be offset by the gain reported in the "credit balance appropriated" account. Weikfield reported in its questionnaire responses, up until the preliminary results of this review, that the other income item "credit balance appropriated" should be used as an offset to its financial expenses. After the preliminary results, the Department issued a questionnaire requesting additional information with respect to the nature of the "credit balance appropriated" account and requested that Weikfield provide supporting documentation that the account was related to short-term financial income. In its response to the supplemental questionnaire, Weikfield changed its earlier assertion and stated that the income was instead related to the settlement of claims received from Weikfield's suppliers for various defective goods and services. As a result, according to Weikfield, the other income should have been reported as an offset to raw material costs and not financial expenses.

However, Weikfield did not provide any supporting documentation that the gain was based on defective goods and services that were supplied during the POR, despite the Department's March 11, 2003, request for such documentation (*see, e.g.* Weikfield's March 21, 2003, Section D supplemental questionnaire response). Additionally, Weikfield did not provide evidence to substantiate its late claim that any portion of this gain was generated from defective goods or services provided for the purpose of producing the merchandise under review. Further, Weikfield did not provide an explanation or support for the methodology used to allocate a portion of the income offset to the merchandise under review. Thus, the Department was unable to determine, based on the record evidence, that any portion of the "credit balance appropriated" account should be included in the reported costs as an offset. Therefore, for the final results, we have disallowed the gain as an offset to the COM and financial expenses.

Comment 10: Depreciation of Idle Assets

In the preliminary results, the Department revised Weikfield's reported fixed overhead expense to include the depreciation expenses for idle assets associated with the production of the subject merchandise.

Although Weikfield does not dispute the Department's decision to make this revision, it disputes the extent of the revision, arguing that the Department overstated the adjustment to fixed overhead. Weikfield contends that the Department's calculation failed to take into account the record evidence that idle machine assets are depreciated on a straight-line method at a rate of ten percent of the normal

depreciation rate. Accordingly, Weikfield states that the Department should multiply the calculated depreciation expense by ten percent to derive the correct depreciation expense for idle assets.

The petitioner contends that Weikfield's position rests on the incorrect assumption that because it depreciates idle assets at ten percent of the normal depreciation rate, the Department should accept and apply that methodology. Instead, the petitioner asserts that, in accordance with section 773(f)(1)(A) of the Act, the Department accepts estimated costs such as this expense only if the costs are kept in accordance with the GAAP of the exporting/producing country, and that the costs reasonably reflect the costs associated with the production and sale of the merchandise. According to the petitioner, Weikfield has not provided any authority to support that this depreciation methodology complies with Indian GAAP, nor that it reasonably reflects costs. Moreover, the petitioner states that the methodology is unreasonable because, at Weikfield's depreciation rate, it implies that idle assets have an equivalent useful life of 200 years. Considering issues of maintenance, storage, and technological obsolescence, the petitioner does not accept that this depreciation rate reflects business reality.

DOC Position:

We agree with the petitioner. Weikfield has not provided any authority (e.g. Indian GAAP), written company policy, or citation to its notes to the financial statements to support its assertion that idle machine assets are depreciated in its normal books and records at a rate of ten percent of the normal depreciation rate used for assets in service. In fact, per our review of Weikfield's audited financial statements and its reported costs (e.g. Exhibit D-7 from Weikfield's February 3, 2003, questionnaire response), it appears that its normal accounting treatment for idle assets is to not recognize any depreciation expense.

We believe that recognizing no depreciation expense on idle assets results in per-unit costs that do not reasonably reflect the costs associated with the production and sale of the merchandise under review. Specifically, fixed assets lose value over time regardless of whether they are idle or in active service. To recognize no costs associated with these assets fails to recognize this fact. According to International Accounting Standards (IAS) 16, if an asset is impaired or no longer in active service, then the asset value should either be written-down or written-off. Otherwise, IAS 16 states, "(w)hatever the method of depreciation chosen, it must result in a systematic and rational allocation of the cost of an asset ... over the asset's expected useful life."

Weikfield's claimed depreciation methodology for idle assets is not supported by evidence on the record and does not result in a systematic and rational allocation of the assets cost (i.e., it does not reasonably reflect the costs associated with these assets). Weikfield has simply stated in its Section D response that its policy is to depreciate assets that are idle for the entire fiscal year at a rate of ten percent of the normal depreciation rate. However, Weikfield has failed to provide support for this assertion (i.e. Indian GAAP, written company policy or citation to its notes to the financial statements). Thus, based on the reasons stated above, for the final results we have used facts available, in

accordance with section 776(a) of the Act, and calculated Weikfield's depreciation expense for idle assets based on Weikfield's normal depreciation rate for operating assets.

As stated above, in the preliminary results, the Department revised Weikfield's reported fixed overhead expense to include the depreciation expenses for idle assets associated with the production of the subject merchandise. However, upon further consideration, the Department has concluded that it is appropriate to include all depreciation expenses for idle assets as part of the calculation of the G&A expense ratio. The Department considers depreciation expenses for idle assets to be general in nature and thus more closely related to the accounting period and operations of the company as a whole rather than the current manufacturing costs for specific products. The Department's practice has been to include depreciation expense on idle assets as part of G&A expenses. See Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Stainless Steel Bar from Italy, 67 FR 3155, (January 23, 2002) and accompanying Issues and Decision memorandum at Comment 48.

Comment 11: Addition of WPCL General and Administrative Expenses

In the preliminary results, the Department did not include any G&A expenses from WPCL in the calculation of Weikfield's G&A ratio.

The petitioner contends that the G&A expense ratio applied in the preliminary results does not fully capture Weikfield's G&A costs for COP and constructed value (CV) purposes because it does not capture all of the Weikfield group G&A expenses. To meet this end, the petitioner asserts that the Department should calculate a second, separate G&A expense ratio to include the G&A expenses incurred by WPCL on behalf of all Weikfield group operations, including Weikfield's operations.

Weikfield replies that the Department should reject the petitioner's argument that it calculate an additional G&A expense for WPCL's expenses. Weikfield maintains that the record evidence clearly demonstrates that Weikfield and WPCL operate completely independently of each other. According to Weikfield, no key manager works at both entities nor are operations intertwined. Weikfield adds that, while the Department has required the company producing the merchandise under review to calculate G&A expenses based on its own expenses and a proportional share of corporate expenses if it is part of a larger company, Weikfield is not part of WPCL but rather an "affiliated sister company," so that WPCL's G&A expenses have nothing to do with Weikfield or the subject merchandise.

DOC position:

We agree with Weikfield that the Department should not include additional G&A expenses from WPCL in Weikfield's reported COP. Weikfield reported, in accordance with the Department's Section D questionnaire, the full year G&A expenses reported in the company's audited financial statements for the fiscal year that most closely corresponded to the POR. Additionally, Weikfield has reported that WPCL does not perform any administrative functions that provides Weikfield with a benefit. Finally, the Department has found no evidence on the record to suggest that Weikfield

received a benefit to its general operations as a whole or in the manufacturing of subject merchandise from administrative services performed on its behalf by WPCL.

Comment 12: *Weikfield General and Administrative Expense Calculation*

The petitioner contends that Weikfield's reported G&A expenses are incomplete because certain miscellaneous expenses were excluded. According to the petitioner's analysis, Weikfield's 2001-2002 Annual Report shows that Weikfield incurred miscellaneous expenses that were neither written off nor recognized as expenses for the period, but instead were classified as liabilities outside of the income statement. More specifically, these expenses were classified as preliminary expenses, deferred revenue expenditures, and research and development expenditures. The petitioner asserts that Weikfield's treatment of these expenses is not bona fide and that these expenses should be recognized in the period in which they were incurred.

Weikfield responds that its questionnaire response demonstrates that Weikfield properly allocated the correct portion of preliminary expenses, deferred revenue expenditures, and research and development expenditures to its calculation of G&A expenses, thus the petitioner's contention is wrong. Weikfield contends that there is no information on the record to demonstrate that Weikfield's limiting this expense to preliminary expenses, deferred revenue expenditures and R&D expenditures incurred during the fiscal year period is incorrect.

DOC Position:

We agree with Weikfield that it correctly reported an amortized portion of its preliminary expenses, deferred revenue expenditures, and research and development expenditures in its reported G&A expenses. It is the Department's practice to rely on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production of the merchandise. See section 773(f)(1)(A) of the Act. In this instance, Weikfield included as part of the G&A expense ratio calculation the current portion of the above-mentioned costs. Additionally, Weikfield's capitalized expenses of the costs in question are reported on the balance sheet and determined to be in accordance with Indian GAAP. Further, we found no evidence on the record to suggest that the reported costs do not reasonably reflect the costs associated with the production of the merchandise. Therefore, for the final results, we have not included these capitalized expenses, with the exception of the already reported amortized portion, in the G&A expenses.

Comment 13: *Gain on Debt Restructuring as Offset to Financial Expenses*

In the preliminary results, the Department revised Weikfield's reported financial expense ratio to exclude the gain on debt restructuring.

The petitioner contends that the Department should eliminate all elements of the post-fiscal period, post-POR “debt restructuring” that affects Weikfield’s reported financial expenses because they do not arise from “current gains” in the fiscal period. According to the petitioner, Weikfield’s “current gains” in the fiscal period do not reflect debt restructuring but rather post-POR actions to revise Weikfield’s historical debt experience in the POR in order to artificially reduce its financial expenses. The petitioner argues that the Department should continue to reject the “refund” as an offset and also reject Weikfield’s restatement of the Canara Bank rupee term loan interest. The petitioner argues that the debt expense is properly reflected in Weikfield’s actual experience during the fiscal year, and should not retroactively be revised to account for events that took place after the period. The petitioner contends that the structure of the revamped loan defies commercial logic and clearly seeks to remove expenses incurred and normally recognized during the POR from that period. The petitioner compares the retroactive interest expense “restructuring” to retroactive post-POI price changes that are not bona fide and, according to the petitioner, are rejected by the Department. Therefore, the petitioner argues that Weikfield’s attempts to manipulate its interest expenses should be rejected, as there is no evidence that these schemes are based on any normal commercial considerations.

Weikfield argues that the Department should offset its financial expense by gains on debt restructuring for purposes of the final results because the additional information that it provided in its March 21, 2003, supplemental questionnaire response confirms that the gains on debt restructuring constitute a current gain. Citing Suspension of Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel from the Russian Federation, 68 FR 3859, 3862 (January 27, 2003), Weikfield contends that the Department has turned to audited statements as the most reliable basis on which to make a decision and that its claim is supported by the information in its audited financial statement. Weikfield asserts that there is absolutely no evidence that Weikfield, its auditor, or the independent Canara Bank have manipulated the data reported in Weikfield’s audited financial statement, as apparently suggested by the petitioner. Rather, Weikfield continues, the record supports Weikfield’s claimed gain on debt restructuring as an offset to its financial expense calculation.

DOC Position:

The Department agrees with Weikfield’s contention that its audited financial statements are a reliable basis of information and should be relied upon for purposes of calculating the COP. However, we disagree with the respondent that the entire gain on debt restructuring constitutes a current gain. It is the Department’s practice to offset financial expenses only with the current portion of gain on debt restructure. See 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 at Comment 26. The gain in the instant case was a result of a debt restructuring agreement which involved the consolidation of several loans into a single loan with a revised interest rate structure, in accordance with other current agricultural businesses. The benefit of the restructured debt covers multiple accounting periods through the maturity of the loan. Weikfield’s reporting methodology is distortive in that it recognizes the entire gain in the year of restructure, when, in fact, multiple accounting periods will benefit from the restructured debt. Thus, for the final results, the Department has included as an offset

to the financial expenses the portion of the gain that is current to this POR. Given that the Department relies on audited financial statements as a reliable basis of information for purposes of calculating the COP, the Department also disagrees with the petitioner that Weikfield's revised interest expense should be rejected.

Comment 14: Interest Expenses from ICICI Loan

In the preliminary results, the Department did not include interest expenses associated with ICICI loans in Weikfield's financial expense ratio calculation.

The petitioner claims that Weikfield has incorrectly accounted for interest on the term loan from ICICI bank. The petitioner asserts that the arrangements regarding this loan are not based on normal commercial considerations for specific reasons discussed in the business proprietary version of the petitioner's brief, and that there is no evidence on the record that the transaction involved in the arrangements has taken place. Moreover, the petitioner alleges that Weikfield has failed to provide requested information on its financial expenses and particularly information on ICICI bank interest expenses. Therefore, the petitioner calls on the Department to apply, as facts available, the historical cost for ICICI interest expenses from the immediately preceding fiscal period.

Weikfield states that there is no evidence on the record that Weikfield manipulated its independent auditors and ICICI, or otherwise manipulated its audited financial statement with respect to the ICICI loan. Weikfield cites section 773(f)(1)(A) of the Act, "[c]osts shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country ... and reasonably reflect the costs associated with the production and sale of the merchandise." Weikfield asserts that the treatment of the ICICI loan in its audited financial statement is in accordance with Indian GAAP. Accordingly, Weikfield contends that its calculation of the factor for interest expenses with respect to the ICICI loan reasonably reflects the costs associated with the production and sale of the subject merchandise.

DOC Position:

We agree with the petitioner that Weikfield has incorrectly accounted for interest on the ICICI loan. The petitioner pointed out in its case brief, for the first time in this proceeding, that Weikfield had incorrectly accounted for interest on the term loan from ICICI bank. Weikfield stated that the treatment of the ICICI loan and the transaction in question are in accordance with Indian GAAP and that its independent auditor has accepted this treatment. However, based on the business proprietary information included as Section 12 of the Directors' Report of Weikfield's audited financial statements, Weikfield's treatment of the interest for the ICICI loan does not reasonably reflect costs associated with the production of the subject merchandise. See Cost of Production and Constructed Value

Calculation Adjustments for the Final Results, Memorandum to Neal Halper from Mark Todd dated July 7, 2003, for a discussion regarding the business proprietary information.

Further, we note, that while Weikfield's fiscal year ended on March 31, 2002, and the audited financial statements were issued on September 2, 2002, there has been no evidence placed on the record that the transaction regarding the ICICI loan arrangement, which affects the interest expense for the loan, had taken place as of May 13, 2003, the date of the filing of Weikfield's rebuttal brief. Thus, in order to calculate an interest expense for the ICICI loan for this review period, it was necessary for us to use facts available under section 776(a)(1) of the Act. For the final results, as facts available, we have included the ICICI interest expenses that were incurred in Weikfield's prior fiscal year as part of the financial ratio calculation.

Comment 15: Cost of Goods Sold for the Financial Expense Ratio

The petitioner asserts that Weikfield did not remove inter-company transfers when calculating its combined group-wide cost of goods sold (COGS) for purposes of calculating the financial expense ratio. To make an appropriate adjustment, the petitioner proposes that, as facts available, Weikfield's gross value of subject merchandise reported in its home market and U.S. sales listings be removed from the COGS in calculating the interest expense ratio.

Weikfield replies that the alleged inter-company transfers did not exist. Consequently, Weikfield calls on the Department to reject the petitioner's argument and to accept WAPL's COGS as calculated.

DOC Position:

We disagree with both Weikfield and the petitioner that the combined financial statements should be used in calculating Weikfield's financial expense ratio. The Department's practice with regard to financial expenses is to base financing expenses on the full-year interest expense and cost of sales from the audited financial statements at the highest level of consolidation which corresponds most closely to the POR. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France, 64 FR 73143, 73152 (December 29, 1999). However, despite the fact that WPCL and Weikfield combine their financial statements at the group level, there are no consolidated audited financial statements prepared at this level, nor are they required by Indian GAAP. Thus, consistent with our approach in Final Results of Antidumping Duty Administrative Review: Frozen Concentrated Orange Juice from Brazil, 65 FR 60406 (October 11, 2000) and accompanying Issues and Decision Memorandum at Comment 2, where consolidated audited financial statements are not required and do not exist, we based the financial expense calculation on the audited financial statements of the respondent. Therefore, for the final results, we have calculated the financial expense ratio based on Weikfield's fiscal year ending March 31, 2002, audited financial statements.

Comment 16: Offsetting Positive Margins with Negative Margins

Weikfield argues that the Department should calculate WAPL's antidumping duty margin by offsetting positive margins with negative margins because the plain meaning of the statute renders the Department's practice of zeroing impermissible. Weikfield contends that section 731 of the statute stipulates that the Department may impose antidumping duties only when the determination is that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value. Weikfield maintains that the Department's dumping calculation violates this basic principle because it trivializes the presence of U.S. sales above fair value by eliminating the difference by which the export price or CEP of these sales exceeds NV. Weikfield argues that the Department's methodology so biases antidumping calculations that the existence of a single U.S. sale below NV can produce a dumping margin, even though there exists hundreds of sales for which the opposite is true. Weikfield further argues that the Federal Circuit has rejected methodologies like the Department's zeroing practice as fundamentally flawed and has instructed courts to reverse it because the intent of the law is not punitive.

Moreover, Weikfield maintains that two decisions by WTO Panels further strengthen WAPL's position. First, Weikfield cites the WTO Panel on European Communities - Anti-Dumping Duties on Imports of Cotton-Type Bed Linens from India, WT/DS141/R, 6.119 (October 30, 2000) (EC-Bed Linen) which concluded "that the European Communities acted inconsistently with Article 2.4.2 of the AD agreement in establishing the existence of margins of dumping on the basis of a methodology which included zeroing negative price differences calculated for some models of bed linen." Therefore, according to Weikfield, the fact that the Department's practice of zeroing conflicts with the Antidumping Agreement lends considerable support to the argument that the practice also conflicts with the antidumping statute.

Second, Weikfield cites United States - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R (July 24, 2001) (U.S. Hot-Rolled Steel) where the WTO Panel determined that the arm's-length test failed to give equal weight to affiliated transactions that occurred above the prices of unaffiliated transactions as it did to those that occurred below the prices of unaffiliated transactions. Weikfield argues that the decision in U.S. Hot-Rolled Steel, and the Department's acceptance of it, thus underscores the determination of EC-Bed Linen that the antidumping law's "fair comparison" requirements are not met when there is an identifiable bias in the methodology employed.

The petitioner argues that the Department's margin calculation methodology has been judicially affirmed and remains in accordance with law. The petitioner cites Corus Staal BV v. United States Dept. of Commerce, Slip op. 03-25 (Court of International Trade (CIT), March 7, 2003) and Timken Co. v. United States, Slip op. 02-106 (CIT, September 5, 2002) in support of its argument that this issue has been directly addressed by the CIT, which has repeatedly upheld the Department's use of the margin calculation methodology in both original investigations and in administrative reviews.

Addressing the arguments Weikfield sets forth in this review, the petitioner contends that Weikfield's attempt to draw a parallel with the Federal Circuit's ruling in Taiwan Semiconductor Indus. Assn. v. Int'l. Trade Comm'n., 266 F.3d 1339, 1345 (Fed. Cir. 2001), which Weikfield describes as finding that "statutory injury does not exist just because imports at less than fair value exist," ignores the fundamental fact that both the ultimate purpose and methodological framework of the antidumping analysis are essentially different from the purpose and methodological framework of an injury analysis. The petitioner argues that Weikfield's claim that, in order to determine that a "class or kind of foreign merchandise" is being dumped, the Department is required to include non-dumped sales in its analysis is contrary to law and should be rejected.

The petitioner further states that the underlying purpose for the practice of zeroing is articulated in Serampore Indus. Pvt. Ltd. V. United States, 11 CIT 866, 675 F. Supp. 1354 (1987) where the court found that the Department, in applying a zeroing methodology, had interpreted the statute "in such a way as to prevent the foreign producer from masking its dumping with more profitable sales." 11 CIT at 874, 674 F. Supp. at 1360-61. The petitioner asserts that, by offsetting positive and negative margins into a net margin, foreign producers could undermine U.S. law by strategically dumping merchandise in the United States, which would frustrate the purpose of the statute. Moreover, according to the petitioner, the Department's methodology that includes only the dumped sales in the numerator while including all sales in the denominator does indeed conform to the requirements of the statute, and does not result in an improper methodology.

Finally, the petitioner points out that Weikfield admits in its case brief that WTO decisions are not binding on the Department, and thus Weikfield's discussion of the ruling in Bed-Linen is inapposite. Moreover, the petitioner notes that in every instance that the Bed-Linen case has been held up as the basis for challenging the zeroing methodology, the CIT has properly rejected this argument. Therefore, the petitioner maintains that the Department should similarly reject Weikfield's request to alter the Department's standard calculation methodology in this case.

DOC Position:

We disagree with Weikfield. As we have discussed in prior cases, our methodology is consistent with our statutory obligations under the Act. See, e.g., Final Determination of Sales at Less than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (April 2, 2002), and accompanying Issues and Decision Memorandum at Comment 12, and Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands, 66 FR 50408 (Oct. 3, 2001), and accompanying Issues and Decision Memorandum at Comment 1; see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000-2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part, 67 FR 68990 (November 14, 2002), and accompanying Issues and Decision Memorandum at Comment 9.

We include U.S. sales that were not priced below normal value in the calculation of the weighted-average margin as sales with no dumping margin. The value of such sales is included with the value of dumped sales in the denominator of the weighted-average margin calculation. We do not allow U.S. sales that were not priced below normal value, however, to offset dumping margins we find on other U.S. sales. The Act directs the Department to employ this methodology.

Section 751(a)(2)(A)(ii) of the Act requires the Department to calculate a dumping margin for each entry of the subject merchandise. Section 771(35)(A) of the Act defines “dumping margin” as “the amount by which the NV exceeds the export price or constructed export price of the subject merchandise.” 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.” Taken together, these sections direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which NV exceeds the export price or constructed export price, and to divide this amount by the value of all sales. The directive to determine the “aggregate dumping margins” in section 771(35)(B) makes clear that the singular “dumping margin” in section 771(35)(A) applies on a comparison-specific level, and does not itself apply on an aggregate basis. At no stage in this process is the amount by which EP or CEP exceeds NV on sales that did not fall below NV permitted to cancel the dumping margins found on other sales. This does not mean, however, that sales that did not fall below NV are ignored in calculating the weighted-average rate. It is important to note that the weighted-average margin will reflect any “non-dumped” merchandise examined during the 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.

This is, furthermore, a reasonable means of establishing duty deposits in investigations, and assessing duties in reviews. In an administrative review such as the present case, the deposit rate calculated must reflect the fact that the Bureau of Customs and Border Protection (BCBP; formerly the Customs Service) is not in a position to know which entries of merchandise entered during a subsequent period of review are dumped and which are not. By spreading the estimated liability for dumped sales across all sales examined in the review, the weighted-average cash deposit rate allows the BCBP to apply this rate to all merchandise entered for the subsequent review period.

Finally, the Bed Linen from India Panel and Appellate Body decisions concerned a dispute between the European Union and India. We have no WTO obligation to act based on these decisions. See also Certain Preserved Mushrooms from India: Final Results of Administrative Review, 66 FR 42507 (August 13, 2001), and accompanying Decision Memorandum at Comment 16.

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 firms in the Federal Register.

Agree ____

Disagree ____

Jeffrey May
Acting Assistant Secretary
for Grant Aldonas, Under Secretary

(Date)