

68 FR 42005, July 16, 2003

A-533-809
POR: 02/01/01 – 01/31/02
Public Document
DAS III/8: SAP

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Grant Aldonas, Under Secretary

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

SUBJECT: Issues and Decision Memorandum for the Final Results of
the Antidumping Administrative Review of Stainless Steel
Flanges from India (A-533-809)

Summary

We have analyzed the comments of interested parties in the antidumping duty administrative review of Stainless Steel Flanges (“SS flanges”) from India. As a result of our analysis, we have made changes to the margin calculations. We recommend that you approve the positions we have developed in the Discussion of the Issues section of the memorandum. Below is the complete list of the issues in this review for which we received comments from Echjay Forgings Pvt. Ltd. (“Echjay”), and Snowdrop Pvt. Ltd. (“Snowdrop”), respondents in this case. Viraj Forgings Ltd. did not submit comments. We also corrected a ministerial error in the calculation of Echjay’s direct selling expenses, about which we did not receive a comment.

Echjay

1. Partial Adverse Facts Available for Direct Materials
2. Partial Adverse Facts Available for Packing Costs
3. Duty Drawback
4. Calculation Errors for Direct Material
5. Calculation Errors for Direct Labor
6. Calculation Errors for General and Administrative Expenses
7. Calculation Error for Variable Overhead

Snowdrop

8. Use of Total Adverse Facts Available
9. Corroboration of Antidumping Duty Margin

We published the preliminary results of review in the *Federal Register* on March 10, 2003. See *Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Forged Stainless Steel Flanges from India*, 68 FR at 11361 (March 10, 2003) (“*Preliminary Results*”).

The period of review (“POR”) is February 1, 2001, through January 31, 2002. We invited parties to comment on our *Preliminary Results*. Echjay requested a hearing on March 13, 2003. On April 9, 2003, we received case briefs from respondents Echjay and Snowdrop. On April 15, 2003, the Department rejected Echjay’s case brief because it had new factual information and requested that Echjay refile its case brief on April 16, 2003, at 8:30 a.m., prior to the public hearing. On April 16, 2003, the Department held a public hearing.

Changes Since the Preliminary Results

For business proprietary details of our analysis of the changes to our final margin calculation, see Echjay Forgings Final Analysis Memorandum, July 8, 2003. For the Final Results, we made the following changes to our programs for Echjay:

1. Weight Conversion for Direct Material Costs

We agree with Echjay that its costs were already reported on a per kilogram basis in its constructed value (“CV”) database, and have decided to use the direct material cost as reported without further conversion.

2. Direct Labor Costs

We are deducting the labor costs incurred from tolling for unaffiliated third parties because they were already included in Echjay’s employee cost and labor charges and should not be included a second time under labor sales, and because we are not including the quantity of subject merchandise tolled for unaffiliated parties as a part of total export sales for Echjay.

3. General and Administrative Expenses

We are removing transport expenses from general and administrative expenses because this amount has already been reported separately.

4. Variable Overhead Expenses

We double-counted the deferred revenue expense under variable overhead expenses. Hence, for the final results we are removing this amount.

5. Direct Selling Expenses

We did not include the value of export sales by an affiliated party (*i.e.*, Pushpaman Exports, “PE”) in the calculation of the direct selling expenses. Hence, for the final results we are adding the export sales for PE.

Comment 1: Partial Adverse Facts Available for Direct Materials

Echjay contends that the Department should not apply partial adverse facts available to direct materials because it failed to report to the Department a substantial percentage of direct material cost (“DIRMAT”) supplied by PE. Echjay argues that it did not have to report the billets purchased by PE because those billets were not sold or transferred to Echjay’s ownership, but

were only processed by Echjay for sales made by PE. Echjay noted that when it calculated the total number of tons produced during the year, it included purchased billets as well as the billets it tolled, which were supplied by PE and unaffiliated customers. Echjay argues that correct allocation of all expenses during the year requires it to include the weight of all the billets processed.

Echjay argues that the Department's application of adverse facts available to all of Echjay's direct material cost is inappropriate because the Court of International Trade ("CIT") does not allow adverse inferences to be made against an exporter that did not understand directions but acted to the best of its ability. Echjay claims that as there is no direct proof that it would benefit by not reporting direct material costs for PE, the Department may not penalize it for the omission, citing the CIT's decision in *Heveafil Sdn. Bhd. and Filati Lastex Sdn. Bhd. v. United States*, Slip Op. 01-22 (Feb. 27, 2001) ("*Heveafil*"). Echjay further states that although it is affiliated with PE, the entities are separate and their financial statements are unconsolidated. Echjay argues that it is therefore impermissible for the Department to combine them. Echjay claims that the Department is obliged to use the DIRMAT data as reported because the Department did not request COP data for third-country sales, hence making it impermissible for the Department to conclude that the costs of sales to Belgium were underreported, citing *Stainless Steel Butt Weld Pipe Fittings from the Philippines; Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 81823 (December 27, 2000) ("*SSBWPF*").

Echjay states that it advised the Department of its inability to report manufacturing costs using the physical characteristics of individual products as specifically requested in the Department's questionnaire due to the absence of a cost accounting system. Echjay notes that it informed the Department by letter dated September 2, 2002, prior to answering Section D, and also prior to verification, that it would use a weighting factor based on total cost of production *i.e.*, direct labor, variable overhead, fixed overhead, general and administrative (GNA) costs over the quantity produced to report their costs. Echjay also explained that it would report direct material costs as an average of the total material costs for the particular merchandise purchased during the entire year. Echjay argues that when the Department did not address the methodology issue in subsequent supplemental questionnaires, it believed that the Department was satisfied with the methodology. Echjay argues that when it informed the Department of its inability to report the data in the manner required by the Department's questionnaire, it became the Department's responsibility to offer guidance and assistance, and to modify its requirements, if necessary, before using adverse inferences. Echjay claims that by applying adverse inferences to its DIRMAT, the Department violated the court's decisions in *World Finer Food, Inc. v. United States*, 2000 Ct. Intl. Trade LEXIS 72; Slip Op. 200-72 at 8-11 (CIT June 26, 2000) ("*World Finer Food*") and *Allied Signal Aerospace Co. v. United States*, 996 F. 2d 1185, 1192 (Fed. Cir. 1993) ("*Allied Signal*").

Echjay contends that since it acted to the best of its ability, adverse inferences may not be applied in calculating their antidumping margin, citing *Steel Authority of India, Ltd. v. United States*, 149 F. Supp. 2d 921-31 (CIT 2001) ("*SAIL*"); *Mannesmannrohren-Werke AG v. United States*, 77 F. Supp 2d 1302, 1322 (CIT 1999) ("*Mannesmannrohren*"); and, *American Silicon Technologies v. United States*, 110 F. Supp. 2d 992, 1003 (CIT 2000) ("*AST*").

Department's Position:

We disagree with Echjay. Pursuant to section 351.308 of the Department's regulations, the application of partial adverse facts available to Echjay's DIRMAT is warranted because Echjay failed to cooperate to the best of its ability by withholding critical information necessary to the Department's analysis. There was no ambiguity or plausible difficulty in comprehending, the Department's repeated requests that Echjay report all of PE's functions and costs. *See* Supplemental I, Section A, June 4, 2002, Question 2; Supplemental II, Section B-D, November 1, 2002, Question 3; and, Supplemental III, Section B-D, December 2, 2002, Question 3. Echjay never indicated that it did not understand these requests or otherwise had any questions. In applying facts available for Echjay's DIRMAT, the Department used Echjay's own data, selecting the highest average price it reported for stainless steel billets. For all other costs, the Department used data from Echjay's own financial statements as neutral facts available. Abundant information on the record of this review indicates that Echjay and PE are corporate entities under the same ownership, control and management. Echjay's Section A response shows that the five Doshi family members who collectively hold a majority of Echjay's shares are equal partners in PE. Therefore, there is no legal foundation to Echjay's objections to the Department's collapsing their financial statements. Further, the Chairman and Managing Director of Echjay is PE's Manager for Purchase, Finance and Accounts, and Echjay's Commercial Director is PE's Manager for Exports and Marketing. *See* response dated May 18, 2002, Annexures B, C1 and C4. As noted in the Department's sales verification report, PE has the same offices as Echjay, and company officials explained that PE exists solely for the purpose of facilitating financing. *See* Memorandum to The File on Sales Verification of Echjay Forgings Pvt., Ltd. ("Echjay"), in the Antidumping Administrative Review of Certain Stainless Steel Flanges ("SS Flanges") from India (February 28, 2003), at 3 ("Verification Report"). Further, during verification company officials explained that PE is Echjay's exporting arm and does not solicit orders, and that Echjay's director and president decide when to assign an export sale to PE on the basis of financing variables and scheduling. Moreover, Echjay's and PE's accounting records are maintained within one accounting system. *Id.*, at 5. Thus, Echjay and PE are functionally one company and Echjay's argument that it was not obligated to report PE's costs because the financial statements are not consolidated is without merit. Furthermore, in its responses to the Department's questionnaires, Echjay reported export sales to third countries made through PE in the same sales listings with Echjay's exports. The only distinction between them was the invoice numbering system. The Department repeatedly asked Echjay to confirm that it had included all of PE's costs in the reported costs. Stainless steel billets account for the major part of manufacturing costs, yet Echjay only disclosed at verification that a substantial percentage of the billets it processed during the POR were supplied by PE, its wholly-owned affiliate, and that these costs were not reported.

Section D of the Department's questionnaire instructs respondents to calculate reported cost figures on a weighted-average basis using the CONNUM (*i.e.*, product) specific production quantity, regardless of market sold, as the weighting factor. This is the simplest and most objective methodology of allocating costs to products, taking into account differences in yield losses among products. Echjay claimed in its responses and letters to the Department that it was allocating its costs based on production quantities, but at verification informed the Department's team for the first time that instead it had allocated each element in the reported costs per product (direct materials, direct labor, variable and fixed overhead, general and administrative expenses

and interest) by dividing each cost element by the total weight of production (including products tolled for third parties and PE), and then multiplying this per kilogram amount by the ratio of the weight of the steel billet inputs to the unit weight of the product. Thus, even selling expenses were allocated in this fashion. See Verification Report, page 11, and Verification Exhibit 7. Echjay argues that this methodology, which it did not disclose prior to verification, is necessary to account properly for its tolling operations and yield losses. However, while Echjay included the weight of all the billets it processed in its calculations, it did not include the costs of the billets purchased by PE. Echjay's accounting system provides enough information for Echjay to have reported and allocated its costs in accordance with the Department's instructions. It chose not to do so. Echjay underreported and distorted its costs by including the tonnages processed for PE and unaffiliated third parties in the denominator, but failing to include the value of all the billets consumed and PE's expenses in the numerator. Because of the cited deficiencies in the reported costs, the Department could not use them to calculate CV. The Department had to resort to CV in the first place because Echjay failed to report product-specific variable and total costs in its sales listings, thus making it impossible to calculate the difference-in-merchandise adjustments necessary to match sales of non-identical merchandise in the U.S. and foreign comparison markets. Because Echjay did not disclose until verification that it had not reported the cost of the steel billets purchased by PE and processed by Echjay, despite repeated requests by the Department to explain fully PE's role and to certify that all of PE's costs had been reported, in the *Preliminary Results* we applied partial adverse facts available to direct material costs, using the highest per-kilogram cost reported by Echjay. For all other cost calculations, we used neutral facts available, taking the expenses reported in Echjay's and PE's financial statements, categorizing them under the appropriate cost elements, and dividing them by the total weight of production Echjay reported. This methodology results in uniform per-kilogram costs for all products, so that the differences in the calculated costs per piece depend only on the weight of the finished product. We could not take into account yield losses because of the absence of verified evidence on the record.

Echjay's citation of *SSBWPF* as supporting its contention that the Department is obligated to use the reported DIRMAT data because it did not request COP data for third-country sales is inappropriate. In that case, the Department agreed with the respondent that it should not apply adverse facts available to all of its costs because it never formally initiated a cost investigation, but it disagreed with the contention that it could not apply **partial** adverse facts available. See *Stainless Steel Butt Weld Pipe Fittings from the Philippines; Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 81823 (December 27, 2000), and accompanying Issues and Decision Memo at comment 1.

Echjay's claim that *Heveafil* supports its argument that use of adverse inferences is impermissible, because Echjay asserts it had no advantage to underreporting production costs for sales to Belgium, is unsupported by the methodology the Department uses to calculate CV. CV is the cost of producing the subject merchandise as though it were sold in the foreign comparison market. That is, the selling expenses incurred for sales to Belgium are added to the production costs of the products sold in the United States. Echjay distorted its production costs by dividing costs by total production, including products made for sales through PE, and not including the cost of billets processed for sales made through PE in direct material costs.

Echjay stated in its November 21, 2002, response to the Department's Second Supplemental Section B-D Questionnaire, page 2:

In our previous responses, we have already included expenses made by Pushpaman Exports as far as Ocean Freight, Marine Insurance, Packing are concerned. As per the instructions of this questionnaire we are now providing the other costs incurred by Pushpaman Exports, in the appropriate fields.

However, Echjay did not provide the significant expense of procuring billets for Echjay. The Department specifically asked Echjay questions regarding its affiliation with, and costs for PE. See Supplemental I, Section A, June 4, 2002, Question 2; Supplemental II, Section B-D, November 1, 2002, Question 3; and, Supplemental III, Section B-D, December 2, 2002, Question 3. Echjay's responses to each of the questions regarding PE were incomplete and unverifiable. Echjay could have submitted the information for PE's direct material cost before verification in response to the Department's questionnaires. When a respondent withholds information, the Department reserves the right to apply facts available. The facts available rule is designed to prevent a respondent from submitting partial information, thereby controlling the results of the administrative review to its benefit. See *Rhone Poulenc, Inc. v. United States*, 13 CIT. 218, 225, 710 F. Supp 341; 347 (1989), *aff'd*, *Rhone Poulenc*, 899 F.2d 1185.

Contrary to Echjay's argument, *World Finer Food* does not support its argument because Echjay and PE are 100 percent affiliated, whereas World Finer Food was an importer who had difficulty in obtaining full cooperation from its unaffiliated foreign producer. In contrast, Echjay is an exporter and producer who had the ability to supply the requested information for direct material costs.

Contrary to Echjay's claim, the Department did not arbitrarily conclude that Echjay failed to act to the best of its ability. We provided Echjay with guidance, but its responses remained incomplete and deficient, lacking both sufficient detail and supporting worksheets showing calculation methodologies. The Department has articulated specific reasons for not using Echjay's cost data. Echjay did not calculate CONNUM-specific costs as described in its responses, and Echjay withheld information for direct material costs. See *Preliminary Results* 68 FR at 11362-11364; Memorandum to the File on the Administrative Review of the Antidumping Duty Order on Certain Forged Stainless Steel Flanges from India, Preliminary Results Analysis for Echjay Forgings Pvt. Ltd., February 28, 2003, pages 3 to 6, and Verification Report, February 28, 2003, page 4.

Echjay's citation to *SAIL* is inappropriate, because in that case the Department applied total adverse facts available as a result of the respondent's inadequate level of cooperation and untimely submission of incomplete responses to the Department's questionnaires. That decision was affirmed by the CIT. *Mannesmannrohren* is also not germane, because that case involved the respondent's purchases of billets from an affiliate at below the purchase price from an unaffiliated party, which was more reflective of the market price. The CIT affirmed the Department's explanation for the use of adverse facts available in valuing Mannesmannrohren-Werke's billet purchases. It is not apparent why Echjay cited *AST*. American Silicon Technologies disputed the Department's use of total adverse facts available to determine the

dumping margin. The CIT sustained the Department's position that the respondent failed to act to the best of its ability by not responding to supplemental antidumping questionnaires. In *Allied Signal*, the CIT concluded that the Department had misapplied the facts available methodology by applying the rate reserved for uncooperative parties. This case is irrelevant to Echjay's because we did not apply total adverse facts available in valuing Echjay's costs.

In summary, the Department's use of partial adverse facts available is reasonable because Echjay (1) withheld information that had been requested by the Department, (2) failed to provide such information by the deadlines for submission of the information or in the form and manner requested, (3) significantly impeded the Department's proceeding in determining reliable costs for the subject merchandise, and (4) provided information that could not be verified. Section 776(a) of the Tariff Act of 1930, as amended ("the Act"), provides that the Department may make determinations on the basis of the facts available whenever necessary information is not available on the record, an interested party withholds or fails to provide information requested in a timely manner and in the form required or significantly impedes a proceeding, or the Secretary is unable to verify submitted information. Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party in selecting facts available where the Department finds that that party "has failed to cooperate by not acting to the best of its ability to comply with a request for information." Affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference. *See* the Department's explanation of the final Rules and Regulations, 62 FR 27295, 27340 (May 19, 1997). *See Certain Cold-Rolled Carbon Steel Flat Products From France; Notice of Final Determination of Sales at Less Than Fair Value*, 67 FR 62114 (October 03, 2002), and accompanying Issues and Decision Memo at comment 1. In its explanation of the adopted regulation on the use of adverse inferences, the Department rejected a suggestion by commentators that where the Department disagrees with a respondent's methodology on a given issue, the Department should provide an opportunity to provide any data necessary so that the Department's revised methodology can be based on the company's actual data rather than on adverse facts available. The Department responded that the determination of whether a company has acted to the best of its ability to comply with an information request can only be made based on the record evidence in a particular proceeding. 62 FR at 27341. In this proceeding, the Department has used Echjay's actual data in making adverse inferences for DIRMAT. Without good reason, Echjay withheld important information. We determined that Echjay should not be permitted to submit new information after verification because of the requirements that respondents provide requested information in a timely manner and consult in advance with the Department on proposed changes in methodology. Furthermore, it would have been impossible to verify this late new information.

Comment 2: Partial Adverse Facts Available for Packing Costs

Echjay claims that it reported packing costs in accordance with the Department's questionnaire and that the Department erred in failing to verify them. Echjay argues that it acted to the best of its ability in furnishing the required information for packing, and that the Department's decision to apply an adverse inference on the packing information was incorrect. Echjay states that its financial accounting system does not track the exact shape and size of boxes used for each

individual shipment. Thus, Echjay contends that it was necessary for it to arrive at weighted-average packing cost for its export shipments.

Echjay further claims that the Department's verification team decided not to verify the packing costs because Echjay did not calculate them according to the Department's instructions. Echjay claims that other respondents used its methodology with the Department's approval, and that it is the best possible way to calculate packing costs where such costs are not maintained in a company's normal accounting records on a shipment-specific basis. Echjay contends that it had informed the verification team that it estimated the figures for packing costs to account for labor and the overhead portion of the packing expenses. Echjay claims that it had shown purchase invoices of wooden cases from its unaffiliated suppliers, and that due to the shortage of time, the verifiers decided that Echjay's packing costs were estimated, and therefore unverifiable. Echjay also states that it had reported the exact labor cost that went into the making of the box, which it purchased from unaffiliated suppliers.

Department's Position:

We disagree with Echjay. Echjay did not provide the Department with a complete and correct explanation of the packing expenses it reported. *See* Annex C of Echjay's response to Section B and C Questionnaires, July 23, 2002. Before verification, we asked Echjay to provide the cost of labor and overhead missing from its worksheet presenting the calculation of packing costs. Echjay informed the Department that the cost of labor for the crates is included within its price, and that it estimated the labor for the actual packing because its accounting system does not track these hours of labor. Echjay failed to address the issue of accounting for overhead. *See* Supplemental Section B and C Questionnaire, September 10, 2002, page 5; and Echjay's Response to Supplemental Questionnaire for Sections B and C, September 24, 2002, response number 12. The verification team could not verify Echjay's packing expenses because Echjay officials stated they could not readily produce the invoices for the purchases of packing materials. In addition, an Echjay official admitted to the team that the information contained in Annex C does not have supporting evidence because all of the information in it is based on its estimates and not actual figures. *See* Verification Report, page 8. The Department's decision to apply partial adverse facts available to Echjay's packing costs, using the highest reported cost, was based on the admitted fact that Echjay could not support its reported expenses with its actual packing material invoices. *See* Verification Report, page 8, and *Preliminary Results*. The letter enclosing the verification outline included the following:

It is ... {your} responsibility ... to be fully prepared for this verification. If you...{are} not prepared to support or explain a response item at the appropriate time, the verifiers will move on to another topic. If, due to time constraints, it is not possible to return to that item, we may consider the item unverified. Furthermore, if information requested for verification is not supplied, or is unverified, pursuant to section 776(a) of the Tariff Act, we may use facts available for our final determination, which may include information supplied by the petitioners.

Echjay was thus fully aware of the necessary level of cooperation, but failed to act accordingly. This failure to act to the best of its ability is grounds for an adverse inference under section 776(b) of the Act. Hence, our use of partial adverse facts available for Echjay's packing expense is justified.

Comment 3: Duty Drawback

Echjay states that an adjustment should be made for the duty drawback that Echjay receives.

Department's Position:

Section 772(c)(1)(B) of the Act provides that export price or constructed export price shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." The Department determines that an adjustment to U.S. price for claimed duty drawback is appropriate when a company can demonstrate that there is (1) a sufficient link between the import duty and the rebate, and (2) sufficient imports of the imported material to account for the duty drawback received for the export of the manufactured product (the "two pronged test"). *See Rajinder Pipes Ltd. v. United States*, 70 F. Supp. 2d 1350, 1358 (CIT 1999). *See, also, Certain Welded Carbon Standard Steel Pipes and Tubes from India: Final Results of New Shippers Antidumping Duty Administrative Review*, 62 FR 47632 (September 10, 1997) and *Federal Mogul Corp. v. United States*, 862 F. Supp. 384, 409 (CIT 1994).

We found at verification that even though Echjay did not import raw materials for the manufacture of SS flanges, it had received Duty Entitlement Pass Book ("DEPB") certificates from the Indian government, which it booked in its profit and loss statement as "Other Income" under "Export Incentives" and "Profit on sale of D.E.P.B." Echjay sold these licenses on a secondary market to importers, who then used the certificates to offset the customs duty payable on their imports. Thus, pursuant to section 772(c)(1)(B) of the Act, the Department properly denied Echjay an adjustment to its export price for duty drawback, because it received the DEPB certificates based solely on the value of its exports without any link to imports of raw materials, and therefore there is no link between Echjay's rebate certificate and import duty. Hence, we continue to find that Echjay does not qualify for a duty drawback because it failed both prongs of the duty drawback test.

Comment 4: Calculation Error for Direct Material

Echjay states that all the datasets used by the Department to calculate CV and the preliminary dumping margin already had costs and expenses on a per kilogram basis; hence, the Department did not need to convert DIRMAT to a per kilogram basis, citing Echjay's response to Supplemental Section B-D Questionnaire, November 21, 2002, Annex J.

Department's Position:

We agree with the respondent and the appropriate change has been made to correct the error. See Final Results Analysis for Echjay Forgings Pvt. Ltd., page 1.

Comment 5: Calculation Errors for Direct Labor

Echjay states that the Department's method of adjusting labor sales revenue is incorrect because it double-counted the labor sales from value added processing for PE and unaffiliated third parties. Echjay states that the labor costs related to value added processing for PE and unaffiliated third parties are already included in Echjay's employee cost and labor charges, and that this amount should not be included a second time under labor sales. Thus, it would be double-counting if the Department adds the revenue earned from tolling as a part of labor expense.

Echjay explains that PE is a separate entity with its own financial statement and transactions with PE are not treated as an intra-company transfer, as explained by the Department's verification team in its verification report. Hence, Echjay argues, it did not improperly exclude the cost of producing the flanges sold through PE. Echjay requests that the Department use the originally reported DIRLAB.

Department's Position:

We agree in part that in the *Preliminary Results* we inadvertently double-counted the labor costs for tolling operations. However, we disagree that the costs incurred for the value added processing for PE should not be included because Echjay reported to the Department all exports made through PE in its total export sales. If the Department only included the tonnage amount exported by PE without accounting for the costs in producing that amount, the total costs would be artificially and unfairly reduced. For the final results we are removing the labor costs incurred for tolling for unaffiliated third parties, and we are retaining PE's reported payments for this service, as shown in PE's financial statement. See Final Results Analysis, page 2.

Comment 6: Calculation Errors for General and Administrative Expenses

Echjay argues that since Echjay and PE are two different entities with separate financial records, it is not correct for the Department to add together the General and Administrative expenses ("GNA") of both companies. Echjay further states that if the Department consolidates Echjay's and PE's GNA, then the Department should combine both financials completely, and recalculate per kilogram expenses for total export sales, over the combined sales of both companies.

Echjay points out that the Department's recalculated figure for GNA includes Transport Expenses, but that it already reported the Transport Expenses as part of Indirect Selling Expenses. Thus, Echjay argues, the Department double-counted the transport expense.

Department's Position:

Echjay's claim that it correctly reported GNA expenses, by taking sale-specific GNA costs from Echjay's and PE's financial statements, is not supported by any information on the record.

Echjay did not explain how it calculated these expenses in its responses. Furthermore, the Department's questionnaire instructed Echjay to report GNA on a CONNUM-specific, and not a sale-specific basis in the CV database. Echjay never wrote to the Department asking permission to report GNA using any other method. In revising Echjay's CV data, the Department allocated expenses, including GNA, based on the total weight of production. Echjay's contention that the Department erred in not allocating GNA over the combined sales to both companies is irrelevant, as sales were not used as a basis for allocation. Moreover, pursuant to 19 CFR 351.401(f) the Department is both correct and accurate in collapsing Echjay's and PE's financial statements to derive the correct prices and costs for subject merchandise because the affiliation between Echjay and PE is 100%.

We agree that the Department double-counted Transport Expenses, and have removed them from total GNA for the Final Results. *See* Final Results Analysis Memo, page 2.

Comment 7: Calculation Error for Variable Overhead

Echjay states that the Department's addition of the deferred revenue expense to variable overhead expenses ("VOH") is an error, because the reported VOH already includes the deferred revenue expense. Thus, Echjay argues, the Department has double-counted this expense.

Department's Position:

We agree with Echjay. The second entry for the deferred revenue expense has been removed from the recalculation of Echjay's VOH. *See* Final Results Analysis Memo, page 2.

Snowdrop's Comments

Comment 8: Acting to the Best of One's Ability

Snowdrop states that it has fully cooperated in the investigation; hence the dumping margin for Snowdrop should be based on the prices and costs incurred by Snowdrop, the exporter, not on the prices and costs of the manufacturers Panchmahal Steel Ltd. ("Panchmahal") and Paramount Forge ("Paramount"). Snowdrop notes that the statute allows use of adverse inferences against a party only if that party did not act to the best of its ability.

Department's Position:

The Department initiated this review at Snowdrop's request. Although Snowdrop responded to the Department's questionnaires, we were unable to calculate normal value for Snowdrop's U.S. sale because there were no sales of identical products in any of the comparison markets for which Snowdrop supplied its sales information and there was no cost information on the record of this proceeding that would enable the Department to calculate a difference-in-merchandise adjustment. Accordingly, the Department asked Snowdrop to enlist the cooperation of the two producers that supplied the subject merchandise, Panchmahal and Paramount, to complete the CV portion of the Section D cost questionnaire. The Department sent the questionnaires directly to Panchmahal and Paramount on October 21, 2002, with a response deadline of November 7, 2002. Panchmahal notified the Department via email that it would not complete the questionnaire. Paramount asked for an extension of time. The Department extended the deadline for Paramount until November 22, 2002, but Paramount did not respond. In the absence of the CV information from Panchmahal and Paramount, the Department was unable to conduct a margin analysis.

Pursuant to section 776(a) of the Act, if necessary information is not available on the record, or a producer withholds information that has been requested by the administering authority, the latter shall use the facts otherwise available in reaching its determination. Further, pursuant to section 776(b) of the Act, the administering authority may use an adverse inference in selecting among the facts otherwise available if it finds that a producer has failed to cooperate by not acting to the best of its ability to comply with a request for information. We stated our findings and policy reasons for resorting to an adverse inference in our *Preliminary Results* 68 FR at 11364. The refusal of cooperation by the producers of the subject merchandise has made it impossible for the Department to calculate a dumping margin. Consequently, for these final results, we continue to find that adverse inferences are warranted. *See also Coumarin From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 66 FR 34614 (June 29, 2001); *Freshwater Crawfish Tail Meat From the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 20634 (April 24, 2001); *Freshwater Crawfish Tail Meat From the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002); and *Freshwater Crawfish Tail Meat From the People's Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 63877 (October 16, 2002).

Comment 9: Corroboration of Antidumping Duty Margin

Snowdrop states that the preliminary results used a dumping margin alleged by the petitioner in the original investigation as the adverse inferences dumping margin, and alleges that it was never corroborated using independent data. Hence, Snowdrop argues its reliability is not established. The anti-dumping statute specifically does not allow the use of uncorroborated alleged dumping margins as adverse facts available.

Department's Position:

Contrary to Snowdrop's claim, in our Preliminary Results we corroborated the U.S. prices in the petition, which were used as the basis of the 210 percent rate, by comparing these prices to publicly available import statistics from the U.S. International Trade Commission's Web site for HTS numbers 7307215000 and 7307211000. We also noted our limitations in corroborating normal values, but were satisfied that the original data was based on actual price quotations in India. Thus, we consider the margin to be corroborated. *See Preliminary Results* 68 FR at 11365 for a detailed description of the corroboration methods and findings.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the positions set forth above and adjusting all related margin and reference price comparison calculations accordingly.

If these recommendations are accepted, we will publish the final results in the Federal Register.

AGREE_____ DISAGREE_____

Joseph Spetrini
Acting Assistant Secretary
for Grant Aldonas, Under Secretary

Date