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**May 17, 2004**

**MEMORANDUM TO:** James J. Jochum  
Assistant Secretary  
For Import Administration

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

**SUBJECT:** Issues and Decision Memorandum for the Administrative Review of  
Certain Stainless Steel Wire Rods from India for the Period of Review  
Covering December 1, 2001 through November 30, 2002

## **SUMMARY**

We have analyzed the comment and rebuttal briefs of interested parties in the 2001-2002 administrative review of the antidumping duty order covering certain stainless steel wire rods ("SSWR") 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 this memorandum. Below is the complete list of the issues in this administrative review for which we received comment and rebuttal briefs by interested parties.

## **BACKGROUND**

On December 19, 2003, the Department of Commerce ("the Department") published in the Federal Register the preliminary results of its administrative review of the antidumping duty order on stainless steel wire rods from India. See Stainless Steel Wire Rods From India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 70765 (December 19, 2003) ("Preliminary Results"). The merchandise covered by this order is stainless steel wire rods, as described in the "Scope of the Review" section of the Federal Register notice of these final results of review. Id. The period of review ("POR") is December 1, 2001 through November 30, 2002. The petitioner is Carpenter Technology Corporation ("Petitioner"). This review covers Viraj Alloys Limited ("VAL") and VSL Wires, Ltd. ("VSL")(collectively "Viraj"), Isibars Limited ("Isibars"), and Mukand Limited ("Mukand"), manufacturers and exporters of subject merchandise to the United States.

Panchmahal Steel Limited (“Panchmahal”) was originally a respondent in this review, but the Department rescinded the review of Panchmahal based on the timely withdrawal of the only request for review of the company. See Preliminary Results 68 FR at 70767.

We invited parties to comment on our Preliminary Results of review. See Preliminary Results. We received Viraj’s case briefs on January 27, 2004. We received Mukand’s and Isibars’ case briefs on January 28, 2004. We received a brief from the petitioner alleging new factual information contained in Mukand’s, Isibars’ and Viraj’s case briefs on February 2, 2004. We received rebuttal briefs to all three of the respondents’ briefs from petitioner, dated February 6, 2004. Pursuant to 19 CFR 351.309(c)(ii), the Department directed Mukand, Isibars and Viraj to resubmit their briefs and omit certain new factual information that were not raised in a timely manner. See the Department’s letter dated February 24, 2004 rejecting Mukand, Viraj and Isibars’ case briefs. Mukand, Isibars and Viraj resubmitted new case briefs redacting the new information on February 26, 2004. We received a letter from the petitioner on March 5, 2004 requesting the Department to complete and clarify the official record of the review by bringing additional information into the official record. We received Viraj’s submission containing this new additional information on March 30, 2004. We received the complete public version of Viraj’s submission on April 7, 2004. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (“the Act”).

**A. Issues with regard to Isibars**

Comment 1: Use of Facts Available

**B. Issues with regard to Mukand**

Comment 2: Collapsing of Grades

Comment 3: Agency Sales

Comment 4: Use of Partial Facts Available

**C. Issues with regard to Viraj**

Comment 5: New Information

Comment 6: Brokerage and Handling Expenses

Comment 7: Difference in Merchandise Adjustment

Comment 8: U.S. Direct Selling Expenses

Comment 9: Direct Labor

Comment 10: Net Interest Expenses

Comment 11: Home Market Credit Expense

Comment 12: Home Market Interest Rate

Comment 13: U.S. Credit Expense

Comment 14: Duty Drawback

## **I. Changes Since the Preliminary Results**

### **Viraj**

Based on our analysis of comments received, we have made changes in the margin calculations for Viraj. The changes to the margin calculations are listed below:

- The Department has revised the general and administrative and net interest expense ratios based on the 2002-2003 financial statements. See Comment 5.
- The Department has revised Viraj's brokerage and handling expenses as partial adverse facts available due to Viraj's inability to substantiate these expenses. See Comment 6.
- The Department has revised the U.S. direct selling expenses to account for an exchange rate conversion. See Comment 8.
- The Department has revised Viraj's cost of production ("COP") calculation to account for rolling labor charges. See Comment 9.
- The Department has revised the calculation of home market imputed credit expenses to account for sales transactions with multiple pay dates. See Comment 12.
- The Department has revised the U.S. credit rate used to calculate U.S. imputed credit in accordance with Import Administration Policy Bulletin 98-2. See Comment 13.

## **II. DISCUSSION OF THE ISSUES**

### **A. Issues with Respect to Isibars**

#### **Comment 1: Facts Available**

Isibars argues that the application of adverse facts available ("AFA") by the Department was not in accordance with law. Isibars argues that adverse inferences are only permitted where the respondent has not acted to the best of its ability to cooperate with the Department, but that in this review Isibars did cooperate to the best of its ability. Further, Isibars argues that it is a financially weak company that participated in this review with very limited assistance from legal counsel.

Isibars argues that the reasons given by the Department in the Preliminary Results for applying AFA to it lack merit. Isibars states that the Department inappropriately speculated that because Isibars participated in past reviews, Isibars should know how to participate in the current review. Isibars contends that its past experience is not relevant to the current review because in the past Isibars was represented by counsel, whereas in the current review Isibars appeared pro se. Further, Isibars argues

that different individuals participated in past reviews than did in the current review, and therefore no past experience can be attributed to the current Isibars' personnel. Isibars states, as an example, that the current Isibars employees experienced difficulty in meeting the Department's request to account for time in the allocation of labor and variable production overhead, because former employees were never requested to do this in past reviews.

Isibars notes that the Department stated in the Preliminary Results that Isibars failed to explain its failure to comply with the Department's requests, despite many opportunities to do so, and thus did not act to the best of its ability. Isibars argues that it thought that it was complying, and therefore did not know that it should give such explanations. Furthermore, Isibars argues that the Department did not alert Isibars to this issue, because the Department did not ask for more explanations as to Isibars' non-compliance. Instead, Isibars argues that the Department just wanted answers to its questions.

According to Isibars, courts have held that failure to satisfy repeated Department requests does not demonstrate failure of the respondent to act to the best of its ability, but rather, only the respondent's inability to comply. See Steel Authority of India v. United States, 146 F.Supp.2d 900, 907-909 (CIT, 2001); American Silicon Technologies v. United States, 110 F. Supp. 2d 992,1003 (CIT 2000). Isibars argues that its many submissions show that Isibars was trying to comply with the Department's requests. Isibars argues that there is no substantial evidence to support the Department's claim that it did not comply to the best of its ability. Instead, Isibars argues that any repeated failures to comply with Department requests by Isibars indicate only Isibars' inability to comply.

Isibars also argues that Isibars did comply with the Department's requests in this review. Isibars argues that, contrary to the Department's position in the Preliminary Results, Isibars provided the Department with market value and cost of production information for major inputs from affiliates, in Exhibit 7 of Isibars' fourth supplemental questionnaire. Isibars argues that transfer price, market price, and cost for the inputs provided by Isibars are identical because the inputs were transferred to Isibars at the purchase price from the original unaffiliated buyer.

Isibars contends that, contrary to the Department's contention in the Preliminary Results, Isibars provided control number ("CONNUM")-specific costs to the Department in Isibars' first Section D response. Isibars argues that the Department admits this fact is true by stating, in the Preliminary Results, that "Isibars' reported labor and variable overhead costs remain virtually the same for each CONNUM in its reported cost of production ("COP") data, and literally the same for each CONNUM in its reported constructed value ("CV") data." See Preliminary Results at 18. Isibars argues that the "hedged, ambiguous language ('virtually' and 'literally')" in the quotation indicate that Isibars' labor and variable overhead costs varied by CONNUM. Isibars argues that labor and variable overhead costs do not vary much by CONNUM in the production of Indian stainless steel wire rod, and it is for this reason that the reported labor and variable overhead costs of Isibars also do not vary much. Isibars contends that any other conclusion by the Department is speculation, and not supported by substantial evidence.

Isibars further argues that in its last supplemental questionnaire response “Isibars mentions allocation by process or cost center/facility,” and that this type of cost allocation has been accepted in other steel cases. Finally, Isibars argues that the Preliminary Results does not deny that the bulk of production costs for stainless steel wire rod is raw material cost, not labor or overhead costs. Isibars argues that it is undisputed that its reported these raw material costs and yield losses on a CONNUM-specific basis.

Regarding Isibars’ failure to provide a sales reconciliation to the Department prior to verification, Isibars argues that its accounting system made it necessary to reconcile the sales data manually, and that Isibars had done this reconciliation and was prepared to demonstrate at verification how it was done. Isibars argues that this method was acceptable to the Department in prior reviews and verifications.

In addition, Isibars argues that it was not aware that the Department could not access the data it sent “after Isibars’ last submission of October 22, 2003.” Isibars claims that whenever the Department informed Isibars that the data on the floppy diskettes sent by Isibars could not be accessed, Isibars mailed the data again. Isibars notes that it also offered to send the data via e-mail. Isibars also notes that in prior reviews, Isibars sent this data to counsel via the internet, and counsel copied the data to floppy diskette for submission to the Department. Isibars notes that this was not possible in this review, as Isibars was not represented by counsel.

Regarding the Department’s finding that Isibars failed to serve petitioners in this review, Isibars contends that it served copies of submissions to petitioners by first class international airmail, and Isibars believed that petitioners were receiving these submissions. Isibars contends that the petitioner’s law firm has complained, in the past, of not receiving submissions that it had in fact received. Isibars argues that if petitioner was truly concerned about the submissions, petitioner could have examined the public copies of the submissions held by the Department. Isibars notes that in the past, its counsel delivered the submissions to petitioners, and therefore any speculation by the Department that Isibars should be able to deliver these submissions without the aid of counsel is wrong.

Isibars argues that the adverse inference dumping margin imposed on it by the Department was not in accordance with law, due to the fact that it was dated, and has been refuted by Department findings of lower actual dumping margins in subsequent reviews. Isibars argues that because the imposed dumping margin was originally calculated over ten years ago, and because no subsequent review has found that an Indian company dumped at that level, the petition alleged dumping margin is insufficiently contemporaneous with this review to meet the statutory requirement that it be probative of Isibars’ situation in the current review.

Further, Isibars argues that the petition-alleged rate imposed on Isibars was not corroborated. Isibars argues that for U.S. sales, the asserted corroboration compared prices from the original 1993 anti-dumping duty petition to unit values in official U.S. import statistics. Isibars argues that because constructed export price (“CEP”) sales were included in the price of U.S. import statistics, this skewed the unit value prices in those statistics. Furthermore, Isibars argues that the corroboration compared

“averages of a broad range of wire rod prices to individual rods, an impermissible apples-to-oranges comparison.” Isibars also argues that there was no corroboration of home market sales or cost used in the petition allegations. Isibars argues that the Department acknowledges this fact in the Department’s May 8, 2003 Corroboration Memorandum for Panchmajal Steel Limited for the Final Results of the 2000-2001 Administrative Review of Stainless Steel Wire Rods from India (“Corroboration Memo”) at 2-3, where the Department stated:

we were unable to obtain information regarding prices paid in the Indian home market {to corroborate the petition-alleged prices}... We find that the price quote for NV used in the petition was contemporaneous with the U.S. price quotes used in the petition as the basis for EP. Also, the methodology used to derive NV was reasonably available to petitioner at the time the petition was filed. For these reasons, the Department considers the NV to be corroborated.

Isibars argues that the above suggests that the home market prices used in the petition were not corroborated with any independent source.

Petitioner contends that the imposition of AFA to Isibars by the Department was legally justified. Petitioner contends that Isibars did not act to the best of its ability in cooperating with the Department in this review, and that the Department did not hold Isibars to a higher standard based on Isibars’ past experience being reviewed, but rather afforded Isibars much latitude and treated Isibars as it would any first time pro se respondent.

Petitioner states that Isibars missed virtually every deadline for filing submissions set by the Department. Specifically, petitioner cites: Isibars’ September 26 response which was three days late; Isibars’ October 6 response which was seven days late; and Isibars’ October 14 response, which was six days late. Additionally, petitioner contends that Isibars failed to serve petitioner with these responses, and failed to serve extension requests upon petitioner.

Petitioner argues that Isibars’ contention that it was unable, rather than unwilling, to comply with the Department’s requests is without merit. Petitioner argues that even an inexperienced pro se respondent can meet deadlines and deliver documents. In addition, petitioner argues that Isibars never attempted to remedy these deficiencies by serving petitioner, after petitioner reported that it had not received certain documents. Petitioner notes that Isibars admits in its brief that Isibars used “first class” mail, instead of private courier, to deliver documents to petitioner. Petitioner contends that Isibars never offered any arguments that it was unable to deliver these documents, or that it did not understand its responsibilities. Petitioner argues that Isibars’ repeated failures to meet its responsibilities in this review, despite numerous opportunities afforded to it by the Department, demonstrate that Isibars did not act to the best of its ability.

Petitioner contends that, in addition to the above mentioned procedural failures, Isibars has failed to

provide necessary information requested by the Department, including:

- a complete analysis of major inputs from affiliated suppliers. Specifically, petitioner contends that Isibars did not supply a list of all inputs used in the production of subject merchandise, market prices for major inputs, nor production costs for major inputs;
- a sales reconciliation;
- supporting documentation of Isibars' leased equipment from India Steel Industry;
- documentation requested by the Department relating to "input/output norms," variances, and the allocation of billet costs;
- an accounting for the factor of time in the allocation of labor costs;
- a breakdown of reported "other manufacturing costs";
- audited financial statements for fiscal years 2001-2002 and 2002-2003, and tax returns for Isibars, Isinox, Zenstar, and India Steel Industries;
- cost and sales databases;
- proof of service upon interested parties of all documents filed;
- a listing of sales by Isibars to Zenstar;
- evidence that the date of sale was reported correctly; and
- support documentation of Isibars' reported rupee borrowing rate.

With regard to interest expenses, petitioner states that on page 9 of its November 4, 2003 supplemental questionnaire response, Isibars "implied that interest rates were previously capitalized, but subsequently expensed, raising the important question of whether interest expenses capitalized (deferred) prior to this POR had been included in reported POR interest expenses."

Additionally, petitioner argues that Isibars incorrectly included long-term interest income in its reported interest expenses by using "net interest expense." Petitioner argues that, similarly, Isibars improperly excluded provisions for "doubtful debtors" from general expenses based on the fact that these provisions related to pre-POR transactions. Petitioner argues that all costs recognized during the POR accounting period must be included in the reported data.

Petitioner notes that Isibars states, on page 21 of its November 4, 2003 submission, that it calculated depreciation for fixed overhead costs based on the quantity of merchandise produced. Petitioner contends that this method of calculating depreciation for fixed overhead costs was inappropriate and contrary to accounting principles. Petitioner notes that Isibars reported impossible fixed overhead costs of zero for many products. Additionally, petitioner argues that the record does not show whether reported fixed overhead costs include full depreciation costs, whether appropriate useful lives had been applied, and whether depreciation was included for Isibars' bar and rod mill commissioned in April 2001.

Petitioner argues that, in regards to Isibars' contention that it complied with the Department's requests for information, though Isibars provided some information relating to major inputs from affiliated suppliers, labor costs, and overhead expenses, the small amount of information provided by Isibars fell far short of what would be required to represent compliance with the Department's requests. With regard to Isibars' contention that it intended to present to the Department its sales reconciliation at verification, petitioner argues that sales reconciliations are required before verification. Finally, petitioner argues that Isibars' contention that it was unaware of problems with its submitted electronic information is surprising, because both the Department and petitioner explicitly mentioned this problem several times. See petitioner's November 7, 2003 letter to the Department at 5.

Petitioner argues that the dumping margin assigned to Isibars by the Department is in accordance with law. Petitioner argues that Isibars' contention that a margin is not probative if it is not contemporaneous or above the average of the dumping margins found by the Department in prior reviews is without any legal basis. Petitioner notes that Isibars did not attempt to put forth any legal basis in support of these arguments.

Petitioner notes that Isibars' claims that the margin applied to Isibars was inappropriate because "import statistics underlying the export price may have been prices between affiliates," and "a price quotation underlying normal value was not compared to other home market pricing data." See Isibars Brief at 8-9. Petitioner claims that these arguments are based on the premise that some of the information submitted by Isibars can be considered to be reliable. Petitioner argues that, on the contrary, Isibars' entire response has been found to be unreliable, and therefore cannot be used for purposes of evaluating the data used as facts available.

Petitioner argues that even if Isibars' contention that CEP values were involved in the facts available margin calculation is correct, there is no presumption that these values are unrepresentative of U.S. prices. Petitioner argues that transfer prices between affiliates can be either higher or lower than prices to unaffiliated parties, and furthermore, importers are required to declare entered values that accurately reflect market prices.

Petitioner argues that Isibars' argument that the Department did not corroborate home market prices is incorrect. Petitioner argues that the use of a price quotation should be considered a reasonable basis



for normal value when it is taken from a reliable source, as it was in this instance. Petitioner notes that the Department has stated that further corroboration is not required when the Department is not aware of any other independent sources that would further corroborate the petition's margin. See Stainless Steel Plate in Coils from Belgium: Preliminary Results of Antidumping Review, 66 FR 11559, 11561 (February 26, 2001). Petitioner notes that Isibars did not suggest any alternative information that could be used to corroborate normal value.

**Department's Position:** We disagree with Isibars. For the Preliminary Determination we determined, based on the record, that Isibars did not act to the best of its ability to cooperate in this review. See Preliminary Determination. We continue to find, based on the record evidence, and pursuant to the statutory requirements of the Act, that Isibars did not cooperate to the best of its ability, and that the application of AFA to Isibars is warranted in this review with respect to Isibars.

As stated in our Preliminary Results, section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782 (c) and (e) of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that, if an interested party promptly notifies the Department that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall take into consideration the ability of the party to submit the information in the requested form and manner, and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. Section 782(c)(2) of the Act similarly provides that the Department shall consider the ability of the party submitting the information and shall provide such interested party assistance that is practicable.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If the person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is "deficient" under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so

incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

For these final results, we continue to find that because Isibars failed to supply the Department with the requested substantive information that the Department needed to conduct a meaningful verification, made no attempt to remedy its record deficiencies and provided no explanation why it has failed to do so, despite numerous opportunities afforded by the Department, the Department cannot consider Isibars to have acted to the best of its ability in this review. Therefore, the application of adverse facts available in determining the margin, in accordance with section 776(b) of the Act, was warranted. See Certain Hot-rolled Carbon Steel Flat Products from Taiwan: Final Determination of Antidumping Duty Order, 66 FR 49618, 49620-21 (Sept. 28, 2001).

We find to be unpersuasive Isibars arguments that: (a) the Department held Isibars to a higher standard than appropriate for a pro se respondent based on our observation of Isibars' past experience in reviews, (b) Isibars was not aware that it was not complying with the Department's requests, and (c) Isibars was unable to comply with the Department's requests.

We treated Isibars as we would a first-time pro se respondent. Despite the Department's observation in the Preliminary Results that Isibars had participated in previous reviews, the record shows that we afforded Isibars numerous opportunities to correct its record deficiencies. See Memorandum from Eugene Degnan to Edward Yang: Justification of Cancellation of Verification (November 17, 2003) ("Verification Cancellation Memo") (detailing, inter alia, that the Department notified Isibars three times that it must provide the Department with a sales reconciliation two weeks before verification, three times that it must provide information on major inputs from its affiliates, six times that it must report weighted-average CONNUM specific COP data, three times that petitioners in this review have not been served certain submissions and other documents, and at least one time that submitted electronic data files were corrupt and needed to be resubmitted). In this review, we based our decision to apply AFA to Isibars on the fact that Isibars repeatedly failed to supply the Department with information regarding home market and U.S. market sales reconciliations, major inputs from affiliates, control number ("CONNUM") specific weight-averaged cost data, operable home market and U.S. market sales data, and Isibars' failure to serve petitioner in this review. These deficiencies prevented the Department from conducting a meaningful verification. Despite the numerous requests by the Department in supplemental questionnaires, telephone calls, and e-mails, Isibars failed to rectify the above mentioned factual deficiencies to the record, and to properly serve petitioner in this review. Additionally, the Department offered extra assistance and aid to Isibars in getting the required information on the record. See Memo to the File - email correspondence with Isibars, dated October 8, 2003; Memo to the File - email correspondence with Isibars, dated October 21, 2003; Memo to the File - email correspondence with Isibars, dated October 24, 2003.

Furthermore, Isibars' argument that it was unaware of the record deficiencies is unconvincing.

As discussed above and outlined in the Verification Cancellation Memo, the Department notified Isibars of all of the above mentioned deficiencies, on numerous occasions. See Verification Cancellation Memo; see also Preliminary Determination 68 FR at 70767-70770. Similarly, Isibars' argument that it was unable to comply with the Department's requests is without merit. Specifically, even if it was inexperienced, Isibars should have been able to comply with the Department's request that it serve documents on the petitioner, or mail computer data files that have already been formatted to the Department.

Furthermore, we disagree with Isibars' additional, and seemingly contradictory, argument that Isibars did in fact comply with all of the Department's requests for information. Isibars claims that it provided market value and COP information for major inputs received from affiliates in its November 5, 2003 response. As an initial matter, we note that this response was submitted to the Department two days past the due date and the deadline (extended several times) for the submission of information, and five days before the scheduled verification of Isibars. Additionally, Isibars' submission of major inputs from affiliates did not provide market prices nor COP for affiliates. Further, Isibars' post hoc explanation in its submitted brief that "transfer price, market price and cost are identical" is both untimely and insufficient, because Isibars' submission did not comply with the Department's request for information.

We also disagree with Isibars' contention that it did in fact report CONNUM-specific labor and variable overhead costs. Isibars cites the Department's statement in the Preliminary Results that "Isibars' reported labor and variable overhead costs remain virtually the same for each CONNUM in its reported COP data, and literally the same for each CONNUM in its reported constructed value ("CV") data," and claims that this is "hedged, ambiguous language" that somehow indicates that these CONNUMs did in fact vary. The phrase "literally the same" could not be any more clear or unambiguous in its meaning that the CONNUMs were the same, *i.e.*, did not vary at all. See Verification Cancellation Memo at 9. We maintain that without accurate data for these items, the Department cannot perform an accurate cost test, cannot make appropriate selections for price-to-price comparisons, and cannot determine accurate constructed values for use as normal value. Therefore, Isibars' section D response was unusable for the preliminary results. See Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey, 65 FR 1127, 1131 (January 7, 2000).

Additionally, we disagree with Isibars that its statement, submitted to the Department two days after the deadline for submission of documents, and five days before the scheduled verification, that it has manually gone through its invoices, is sufficient to satisfy the Department's request for a sales reconciliation to be submitted two weeks before verification. As we stated clearly and several times to Isibars, the reconciliation is needed from respondents before verification for the Department to determine if all appropriate sales of the subject merchandise have been reported. See February 11, 2003, Original Questionnaire; supplemental questionnaire sent on October 21, 2003; October 29, 2003, letter from the Department. As we stated in the Preliminary Results, it has long been the Department's practice to require a sales reconciliation before verification. We note that the

Department has canceled verification in several other cases specifically because the respondents failed to provide requested reconciliations. See Gourmet Equipment Corp. v. United States, 24 C.I.T. 572 (CIT 2000), regarding Final Results of Anti-Dumping Duty Administrative Review; Chrome-Plated Lug Nuts from Taiwan, 64 FR 17314 (1999)(The Department refused to conduct verification because the respondent's submissions were not reconcilable to its financial statements, meaning the information submitted was unverifiable; as a result, the Department applied facts otherwise available.); Certain Hot-rolled Carbon Steel Flat Products from Taiwan: Final Determination of Antidumping Duty Order, 66 FR 49618, 49620-21 (September 28, 2001)(The Department canceled both sales and cost verification because respondents failed to provide explanation and documentation for all its expenses and sales, and provided incomplete, deficient, and inconsistent affiliated-party sales information); Notice of Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia, 64 FR 73164, 73165 (December 29, 1999)(the Department canceled verification and applied adverse facts available because the respondent did not adequately address the sales-related and cost-related questions).

We further disagree with Isibars that the margin applied is not corroborated and probative. Isibars' contentions that the petition margin cannot be used because it is insufficiently contemporaneous or above the average of dumping margins found in other reviews has no basis in law and is unsupported by record evidence.

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition rates) as facts available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The Department's regulations state that independent sources used to corroborate may include, but are not limited to, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular review. See 19 CFR 351.308(d); See Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Doc. No. 103-316, (1994) at 870.

For this petition margin, the Department examined the key aspects of the calculations of the export price and normal value upon which the petitioner's based their margins for the petition. See Corroboration Memo at 1-2. The U.S. prices were based on quotes to U.S. customers, and were corroborated by comparing them to publicly available import statistics. See Corroboration Memo at 1-2. The allegation by Isibars that CEP sales may have been involved does not render the import statistics unrepresentative of U.S. prices, as importers are required to declare entered values that reflect market prices, regardless of whether or not the purchases are from affiliates. See Corroboration Memo at 1-2.

The normal values used in the petition are from actual price quotes. See Corroboration Memo at 1-2. Because we find the methodology used to derive NV reasonable and supported by record evidence, because we could find no other independent sources to further corroborate the petition rate, and

because Isibars provides no information on the record to question the corroboration, we continue to find that the petition rate is sufficiently corroborated. See Corroboration Memo at 1-2.

Therefore, in accordance with Section 776(a)(2)(B) of the Act, Isibars has failed to provide such information in a timely manner or in a form or manner requested by the Department, warranting the application of facts available. Further, in accordance with Section 776(b) of the Act, adverse inferences are applicable, because Isibars has failed to cooperate by acting to the best of its ability with a request for information (i.e., sales reconciliation, information regarding major inputs from affiliates, weighted-average CONNUM specific COP data, electronic data) and by properly serving the petitioners in this review. No information has been submitted by Isibars which would justify the Department in departing from its preliminary results determination to apply facts available and use adverse inferences with regard to Isibars.

## **B. Issues with Respect to Mukand**

### **Comment 2: Collapsing of grades 304L and 304LN**

Mukand argues that the Department erred in collapsing its reported grades 304L and 304LN. According to Mukand, the Department violated 19 CFR 351.414(d)(1) and (2), which require the Department compare normal value to export or constructed export price based on “averaging groups,” defined as “subject merchandise that is identical or virtually identical in all physical characteristics.” Mukand argues that the Department violated this regulation because major differences exist between grades 304L and 304LN in their chemical composition, costs, manufacturing process, selling price, and end use. Specifically, Mukand states that grade 304LN contains 2% more nickel than grade 304L, and therefore, grade 304LN has a higher processing cost than grade 304L. According to Mukand, the Department reviewed these differences at its verification of Mukand’s questionnaire responses.

Citing 19 C.F.R. 351.225(k), Mukand argues that the Department must determine if the comparison market product is “sufficiently comparable” to the U.S. product based on the general physical characteristics, use, expectations of the purchaser, and the channels of trade. See Novosteel SA v. United States, 128 F. Supp. 2d 720 (CIT 2001) (“Novosteel”). Further, Mukand argues that the Department is required to base its matching criteria on “commercially meaningful characteristics.” See Stainless Steel Bar from Japan: Final Results of Antidumping Administrative Review, 65 FR 13717 (March 24, 2000). According to Mukand, the differences in costs and prices are commercially meaningful and should be recognized. See Notice of Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30326, 30346 (June 14, 1996). On this basis, Mukand argues that the Department ignored these differences and therefore was in error in collapsing the two grades.

Mukand further argues that the Department collapsed the two grades because they are “sufficiently similar,” but did not define how this standard is met. According to Mukand, courts reject such standards as precluding judicial review of a decision supported by substantial evidence, and as

facilitating arbitrary and capricious decisions. See Nihon Cement Co. v. United States, 17 CIT 400-411-12 (1993); Timken Co. v. United States, 673 F. Supp. 495, 503 (CIT 1987); Shakeproof Assembly Components v. United States, Slip Op. 99-70 at 6-7 (CIT 1999). Mukand argues that the Department effectively dismissed the differences between 304L and 304LN established in the records, and that the courts will not accept this decision as supported by substantial evidence. See Amcor & SKW Metals v. United States, Slip. Op. 99-137 (CIT 1999); Olympia Industrial, Inc. v. United States, 7 F. Supp. 2d 997, 1002 (CIT 1998).

Finally, Mukand argues that by collapsing the two grades together, the Department severely distorts the margin calculation, by causing the average cost of the collapsed grade to exceed the cost of grade 304L, and causing the average cost of the collapsed grade to be below the cost of grade 304LN. Therefore, according to Mukand, the home market profit on grade 304LN is overstated, thus distorting the profit used to calculate constructed value.

Petitioner argues that Mukand's arguments are unsupported by the evidence on the record. First, Petitioner states that contrary to Mukand's argument, the Department did not conduct a verification of Mukand in this administrative review, so the differences claimed by Mukand between 304L and 304LN were never observed, nor verified by the Department. Next, Petitioner argues that Mukand never provided a discussion of the differences between these grades, and that as originally submitted, grade 304LN was not a part of the 27 grades listed by Mukand as produced. Furthermore, Petitioner states argues that Mukand failed to submit evidence of the differences in physical characteristics, end use, expectations of the purchaser, or the channels of trade, as now claimed by Mukand under 19 C.F.R. 351.225(k) and Novosteel. Finally, Petitioner asserts that Mukand's argument that the Department's decision to collapse these two grades "severely distorts the dumping margin calculation" is conjecture and that Mukand cannot point to any evidence to support this statement.

**Department's Position:** We disagree with Mukand. An analysis of the chemistries of each grade and a comparison of these grades to the industry standard chemistries indicate that Mukand's reported grade 304LN more closely resembles the industry standard chemistry of grade 304L than of grade 304LN. Therefore grade 304LN should be considered the same as grade 304L for the purposes of Mukand's dumping margin calculation. See Society of Automotive Engineers, Inc., Metals & Alloys in the Unified Numbering System, 9<sup>th</sup> Edition (2001) ("Metals & Alloys") at pp. 287 and 288 (Metals & Alloys is a joint publication of the Society of Automotive Engineers, Inc., and the American Society for Testing and Materials, which provides the chemical compositions of steel grades as well as the cross referencing specifications of other industry standards, including those of the American Iron and Steel Institute ("AISI")); Mukand's Sections A-C supplemental response dated June 27, 2003 ("A-C supplemental response") at Annex 9.

As an initial matter, the Department did not conduct a verification of Mukand's questionnaire responses in this review. Therefore, Mukand's claim that the purported differences between grades 304L and 304LN were reviewed at verification by the Department is incorrect.

Mukand's reliance on the criteria of 19 C.F.R. 351.225(k)(2) and Novosteel is misplaced. As 19 C.F.R. 351.225 generally outlines the rules regarding scope rulings determining whether a product is within the scope of an order, 19 C.F.R. 351.225(k) specifically states: "With respect to those scope determinations that are not covered under paragraphs (g) through (j) of this section, in considering whether a particular product is included within the scope of an order or a suspended investigation," the Department will consider the relevant criteria. See 19 C.F.R. 351.225(k). In addition, the issues before the U.S. Court of International Trade ("CIT") in Novosteel were whether the Department properly resorted to the criteria in its scope determination of certain cut-to-length carbon steel plate, and whether the substantial evidence supported the Department's analysis. See Novosteel, 128 F. Supp.2d at 725, 732, and 738. Neither the parties nor the Department has raised the issue of whether grades 304L or grades 304LN are included within the scope of review. The issue in this final results is whether grades 304L and 304LN should be collapsed into one CONNUM grade for purposes of calculating the dumping margin. The Department considers both 304L and 304LN to be in the scope of review. Therefore, the Department finds that analysis pursuant to 19 C.F.R. 351.225(k)(2) is not instructive for this issue.

With regard to whether the Department should collapse grades 304L and 304LN, in accordance with sections 771(16)(A) and (B) of the Act, the Department attempts to match the subject merchandise with products that are identical or similar in physical characteristics and that are approximately equal in commercial value. See, e.g., Stainless Steel Bar from Japan: Final Results of Antidumping Administrative Review, 65 FR 13717 (March 14, 2000) and accompanying Issues and Decision Memorandum ("SSB from Japan") (citing Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from the Republic of Korea, 64 FR 14865, 14872 (March 29, 1999) ("mooney viscosity" is an appropriate matching criterion because "it is an essential product characteristic that defines the grade" and "there are cost and price differences between th[e] two grades ..."); Extruded Rubber Thread from Malaysia: Final Results of Antidumping Duty Administrative Review, 62 FR 62547, 62558 (Nov. 24, 1997) (the Department found "color" to be an appropriate model-match criterion because the Department had used that criterion consistently in the investigation and following reviews and because color could "materially affect cost and be important to the customer and the use of the product"); Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30326 (June 14, 1996) (the Department found "wheat quality" to be an appropriate matching criterion because there were differences in physical characteristics and because the cost was materially more for the segregated product)).

In our Preliminary Results, the Department stated that "after analyzing the data presented by Mukand, the Department has determined that there is insufficient record evidence to support Mukand's position that grade 304LN is a distinct grade from 304L." See Preliminary Results, 68 FR at 70772. In its Sections B and C response, Mukand reported 27 grades sold during the POR. See Mukand's Sections B and C response, dated April 7, 2003 ("Sections B and C response") at 7 and 41. This list did not include any description of the grades themselves, other than the name of the grade. See Sections B and C response at pp. 7 and 41. Further, grade 304LN was not even included in this list of

grades. See Sections B and C response at pp. 7 and 41. Therefore, the Department issued a supplemental questionnaire requesting that Mukand provide a chemical breakdown of each of the 27 grades. See Sections A-C supplemental questionnaire, dated May 29, 2003, at 4. Mukand responded by providing a chemical breakdown, indicating “the standard where the chemistry fits or is very near to the AISI standard,” and by stating that one of the grades reported in the Sections B and C response was mislabeled and actually was grade 304LN. See Mukand’s Sections A-C supplemental response, dated June 27, 2003 (“A-C supplemental response”) at 12 and Annex 9.

Comparing Mukand’s reported grade chemistries to that of the AISI standard grades, Mukand’s grade 304LN does not match that of the standard grade 304LN. Rather, 304LN more closely resembles the standard chemistry of grade 304L. The industry standard chemistry for grade 304L is the following: Carbon = 0.03%; Magnesium = a maximum of 2%; Silicon = a maximum of 1%; Phosphate = a maximum of 0.045%; Sulfur = a maximum of 0.03%; Nickel = 8-12%; Chromium = 18-20%. See Metals & Alloys at page 287. The industry standard chemistry for Austenitic Nitrogen Bearing Cr-Ni Stainless Steel (304LN) is the following: Carbon = 0.03%; Magnesium = a maximum of 2%; Silicon = a maximum of 1%; Phosphate = a maximum of 0.045%; Sulfur = a maximum of 0.03%; Nickel = 8-12%; Chromium = 18-20%; Copper = 0%; Molybdenum = 0%; Nitrogen = a minimum of 0.10 to 0.16%. See Metals & Alloys at p 288.

Mukand’s reported grade 304LN differs from that of the AISI standard for 304LN with respect to nitrogen content. Specifically, Mukand’s reported grade 304LN contains the possibility that nitrogen need not be used, despite the fact that the industry standard chemistry requires a minimum of 0.1% to be grade 304LN, while grade 304L does not require any nitrogen to be used. See Metals & Alloys at pages 287 and 288; Sections A-C supplemental response at Annex 9. Further, unlike grade 304L, the industry standard grade 304LN is specifically called Austenitic Nitrogen Bearing Cr-Ni Stainless Steel, implying that nitrogen is required to make grade 304LN unique from grade 304L.

Mukand’s argument that its reported grade 304LN contains approximately 2% more nickel than its reported grade 304L, and is therefore different, ignores the fact that its reported grade 304LN contains nickel levels that are within the ranges allowed for AISI grade 304L, and the fact that Mukand’s grade 304LN contains silicon and nitrogen levels outside the ranges of AISI grade 304LN, but more similar to AISI grade 304L. See A-C supplemental response at Annex 9. Therefore, Mukand’s argument that collapsing these two grades would result in a margin that is “severely distorted” is unfounded.

Further, it is the Department’s practice not to create additional categories unless the physical characteristics are significantly different from an existing known category. See Certain Cold-Rolled Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review, 63 FR 781 (January 7, 1998). Therefore, because Mukand’s reported chemistry for its grade 304LN more closely resembles that of AISI grade 304L than it does AISI grade 304LN, the Department has determined to continue to treat Mukand’s grade 304LN as grade 304L for the purposes of these final results.



### **Comment 3: Agency Sales**

Mukand argues that the Department should base its margin calculation on Mukand's price to Precision Metals Services ("PMS"), a U.S. based company, instead of PMS' resale price to PMS' unaffiliated customer. According to Mukand, PMS is not an agent of Mukand and no relationship exists between the two, other than a buy-sell relationship. Mukand argues that it sells to PMS at arms-length, transfers title to PMS, PMS in turn sells to its own customer, does not earn a commission, and only makes money on the profit from the sale. Further, Mukand argues that it has no control over to whom PMS sells. Finally, Mukand argues that the law on agency supports its contention that Mukand and PMS are not involved in an agency relationship and that the Department does not provide contrary legal authority, thus the Preliminary Results have no basis in law.

Petitioner argues that an agreement signed between Mukand and PMS governing the storage and sale of certain subject merchandise ("the Agreement"), establishes that Mukand had control over PMS' resales of the subject merchandise governed by the Agreement. Petitioner argues that the terms of this agreement clearly establish that PMS does not have "exclusive control" over its resales of Mukand's merchandise. Further, Petitioner argues that under the terms of the Agreement, PMS was not free to set its own prices for resale, and therefore an agent/principal relationship was established by the agreement.

**Department's Position:** We disagree with Mukand. Section 771(33)(G) of the Act defines affiliated parties as any person who controls any other person and such other person. The statute defines control of another person as being in a position, either legally or operationally, to exercise restraint or direction over the other person. The Department has interpreted this provision to include agents as affiliated parties, because a principal is in a position to exercise restraint or direction over its agent. See Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete from Japan 62 FR 24394 (May 5, 1997) ("Turbo-Compressors from Japan") at 24403 (Comment 2). In defining what constitutes an agency relationship, the Department focuses on a range of criteria including: (1) the foreign producer's role in negotiating price and other terms of sale; (2) the extent of the foreign producer's interaction with the U.S. customer; (3) whether the agent/reseller maintains inventory; (4) whether the agent/reseller takes title to the merchandise and bears the risk of loss; and (5) whether the agent/reseller further processes or otherwise adds value to the merchandise. See Turbo-Compressors from Japan (citing Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa, 60 FR 22550, (May 8, 1995); and Stainless Steel Wire Rod From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 51385 (October 9, 2001)).

Additionally, the Department also examines factors such as whether the reseller can fix the price to the customer to which it sells without accounting to the manufacturer for the difference between that price and the price paid to the manufacturer; whether the reseller deals, or has the right to deal in goods of other suppliers; and whether the reseller deals in its own name and does not disclose the supplier. See

Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil: Final Results of Antidumping Duty Administrative Review and Termination of the Suspension Agreement, 67 FR 6226 (February 11, 2002) and accompanying Issues and Decisions Memorandum at Comment 1 (“Hot-Rolled from Brazil”). However, in each case, the Department has decided that whether a relationship constitutes a principal-agent relationship is determined by the facts, on a case-specific basis. There is no bright line rule (e.g., although most agency relationships are established via written contract, the contract is not essential for the relationship to exist). See Hot-Rolled From Brazil. The general principals of an agency relationship require that an analysis focus on whether the agent has agreed to act for the benefit of the principal, rather than itself. See Hot-Rolled from Brazil (citing Restatement on Agency, sections 1 cmt.b. and 25 cmt.a. and Restatement on Agency sections 14J and 14K). Further, the hallmark of an agency relationship is control over the agent by the principal. See Hot-Rolled from Brazil (citing Restatement on Agency section 14). However, the agency analysis centers on whether it is agreed that the agent is to act for the benefit of the principal by inquiring as to the principal’s ability to control, rather than the actuality of control over specific decisions. See section 771(33)(G) of the Act; Hot-Rolled from Brazil. The Department must examine the totality of the circumstances in order to analyze the principal-agent relationship to determine whether control exists. See Hot-Rolled from Brazil. If the Department determines that there is an agency relationship in the United States, a CEP sales analysis applies in accordance with section 772(b) of the Act. See Turbo-Compressors from Japan.

As stated in the Agency Sales Analysis for Mukand, dated December 12, 2003, (“Agency Sales Memorandum”), in the normal course of business, Mukand, through its wholly-owned subsidiary, Mukand International Limited (“MIL”), makes direct sales to its unaffiliated U.S. customer. See Agency Sales Memorandum at 3. However, as the Department also noted in its Agency Sales Memorandum, due to unique circumstances in this administrative review, a portion of Mukand’s sales to the United States were governed by the Agreement signed between MIL and PMS. See Agency Sales Memorandum at 3. For these specific sales, the record evidence indicates that Mukand’s subject merchandise sales were made via an agency relationship with PMS pursuant to the Agreement because Mukand controlled the price and volume terms of the sale by its unaffiliated U.S. customer to the downstream U.S. customer. See Agency Sales Memorandum at 5. Because the Agreement gives Mukand control over certain PMS’ downstream sales, both in theory and practice, PMS acted on behalf of Mukand in these sales, thus meeting the principles of agency law. See Hot Rolled from Brazil (citing Restatement on Agency, sections 1 cmt.b. and 25 cmt.a. and Restatement on Agency sections 14J and 14K). Therefore, the Department classified these sales as agency sales in the Preliminary Results. See Preliminary Results at 70773. Due to the proprietary nature of the specific sales information involved in this discussion, please see Agency Sales Memorandum for a complete analysis of our decision.

#### **Comment 4: Use of Facts Available**

Mukand argues that adverse inferences are not permitted under the statute because it acted to the best

of its ability to compel PMS to answer the Department's requests for information. According to Mukand, it offered PMS any assistance it needed to respond to the questionnaires, including free clerical assistance and legal advice. Mukand states that the burden it undertook should not be taken lightly, because attorney fees are high and the trade volume in this case is low and that the burdens in this case are unusual. According to Mukand, PMS could not provide more information than was already provided because of the "overwhelming burdens" of providing the information and because PMS stated that over half of the information was not available to it. Therefore, Mukand argues that because it had no leverage over PMS because the two parties are not affiliated, because PMS only bought small quantities of subject merchandise from Mukand while buying quantities from other sellers, and because PMS "actually benefits" from high antidumping margins, Mukand had no way of compelling PMS to cooperate. Mukand further argues that the imposition of adverse inferences actually encourages non-cooperation by PMS. Thus, because it acted to the best of its ability, the application of the adverse inferences is not in accordance with the law.

Mukand also argues that the Department's "notice" that Mukand would be required to produce information from PMS in the final decision of the last review "misses the mark." According to Mukand, the "notice" the Department provided came after PMS had already bought and resold Mukand's product, which was already in the United States, and was governed by the Agreement, which was signed before the POR of the current review. Therefore, Mukand argues that the Department falsely assumes that it may impose adverse inferences, because Mukand acted to the best of its ability to cooperate.

Petitioner argues that Mukand did not act to the best of its ability to compel PMS to cooperate, and therefore, the application of adverse inferences is warranted. According to Petitioner, the record evidence in this review does not support Mukand's claim that it "repeatedly urged" PMS to provide the requested data, or that it offered free clerical assistance to PMS. Petitioner instead argues that the record evidence only shows that two short emails from Mukand's counsel to PMS, referencing a single telephone call, and one short reply from PMS were submitted on the record. Further, Petitioner argues that PMS' reply only contains "unsubstantiated and contradictory statement that call into question the motives of its failure to cooperate." Petitioner argues that it is "difficult" to believe that PMS could not provide its financial statements for 2001 and 2002 or a breakdown of costs and expenses. Petitioner alleges, that "a full accounting of PMS' resale data... would result in a much higher margin than that applied to Mukand in the preliminary results." Petitioner note that PMS did not refuse to cooperate outright, but rather submitted partial information before refusing to submit more, and that the information provided did not reconcile with the report sales volumes. Finally, Petitioner notes that PMS failed to provide information concerning its further manufacturing, which would decrease the U.S. sales prices while increasing Mukand's margin.

Petitioner also argues that Mukand has known since the issuance of the final determination in the most recent review that it would be required to produce information on the downstream sales of PMS or face a facts available rate. According to Petitioner, the quantity of sales at issue is large and has an

impact on the margin calculation. Petitioner argues that the “growing importance” of these sales justifies the Department’s decision to apply adverse facts available. Petitioner argues that because Mukand has had a long period of notice of the possible application of facts available, it has been able to determine whether its non-compliance would benefit its interests. Thus, Petitioner argues the Department must maintain its position to apply adverse inferences in the final results. Finally, Petitioner argues that if the Department does not apply adverse inferences in the final results, it would “allow foreign manufacturers to screen out high-priced home market sales from the calculation of normal value simply by telling affiliated resellers not to respond- as there would be no penalty to the respondent.”

**Department’s Position:** We disagree with Mukand. Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782 (c) and (e) of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(I) of the Act, the Department shall, subject to Section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that, if an interested party promptly notifies the Department that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall take into consideration the ability of the party to submit the information in the requested form and manner, and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. Section 782(c)(2) of the Act similarly provides that the Department shall consider the ability of the party submitting the information and shall provide such interested party assistance that is practicable.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If the person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, notwithstanding the Department’s determination that the submitted information is "deficient" under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(a)(2)(B) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent fails to provide requested information in the form or manner requested by the Department, subject to sections (c)(1) and (e) of section 782. In selecting from among the facts otherwise available, section 776(b) of the Act provides that adverse inferences may be used in selecting from the facts available if a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See SAA at 870. Furthermore, “an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.” See Antidumping Duties, Countervailing Duties: Final Rule, 62 FR 27340 (May 17, 1997).

On May 15, 2003, the Department issued its final determination for the 2000-2001 administrative review for this case. See Stainless Steel Wire Rods from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 26288 (May 15, 2003) and accompanying Issues and Decisions Memorandum (“2000-2001 Final Results”). In that final determination, the Department made it clear to Mukand that it would further examine sales made pursuant to the Agreement in subsequent reviews, because only a small amount of the subject merchandise covered by the Agreement had been sold during the 2000-2001 POR. See 2000-2001 Final Results at Comment 3. In that final results, the Department applied facts available, without adverse inferences, in part, because the Department had only made the request for the downstream sales information one month prior to the preliminary determination. See 2000-2001 Final Results at Comment 3. Based on the 2000-2001 Final Results, the Department requested that Mukand provide the downstream sales information for all sales within this POR of subject merchandise covered by the Agreement. See May 29<sup>th</sup> supplemental questionnaire at 8. On July 11, 2003, Mukand provided a response to the May 29<sup>th</sup> supplemental questionnaire. See July 11<sup>th</sup> response. However, as this response was deficient in its answers, the Department issued an 18 page supplemental questionnaire on August 12, 2003 (“August 12<sup>th</sup> supplemental questionnaire”), which was due on August 26, 2003. Mukand requested two extensions to reply to the Department’s questionnaire and sent a letter dated September 4, 2003, outlining that it was having trouble compelling PMS to cooperate. See Mukand’s submission, dated September 4, 2003 (“September 4<sup>th</sup> submission”). Finally, on September 15, 2003, Mukand informed the Department that PMS would not cooperate and respond to the Department’s August 12<sup>th</sup> supplemental questionnaire. See Mukand’s submission, dated September 15, 2003 (“September 15<sup>th</sup> submission”).

Although Mukand made an effort to report the information requested by the Department in its May 29<sup>th</sup> and August 12<sup>th</sup> supplemental questionnaire, the Department disagrees with Mukand that it acted to the best of its ability on this matter for several reasons. First, Mukand has known since December 2002, that the issue concerning sales made pursuant to the Agreement necessary for the Department to calculate Mukand’s dumping margin. This point was made clear in the 2000-2001 preliminary results issued on January 8, 2003, and emphasized in the Department Final Results. See 2000-2001 Final Results, 68 FR at 70773. Thus, Mukand had more than one year to prepare the data it knew the Department would request. Second, when Mukand did respond to the Department’s request for the

downstream sales information the response was severely deficient in areas that should not have been an issue, such as reporting the gross unit price, invoice dates, any discounts, and reconciling the quantity and value of the sales. See July 11<sup>th</sup> response. Had a thorough review of the information provided in the July 11<sup>th</sup> response been conducted prior to submission to the Department, these easily identifiable errors could have been corrected, possibly preventing the need for the Department to issue the August 29<sup>th</sup> supplemental questionnaire. Third, the evidence on the record indicates that Mukand made little effort to try and get PMS to respond to the Department's requests until after an extension was granted. For instance, in the September 4<sup>th</sup> submission, Mukand included an email dated August 22, 2003, sent by Mukand's counsel to PMS forwarding the Department's supplemental questionnaire and informing PMS that the response was due by September 8, 2003. See September 4<sup>th</sup> submission. This email was the first reported communication shared with the Department between Mukand's counsel and PMS. This email was sent ten days following the issuance of the August 12<sup>th</sup> supplemental questionnaire, four days before it was due (*i.e.*, August 26, 2003), and one day after the Department granted Mukand's extension request until September 8, 2003; thus, indicating that little effort was made by Mukand to compel PMS to respond to the Department's request until just prior to the initial deadline for a response. Finally, only on September 9, 2003, 28 days after the Department issued the August 12<sup>th</sup> supplemental questionnaire, and one day after the Department granted yet another Mukand extension request, Mukand sent a letter from Mukand itself, not Mukand's counsel, to PMS requesting that PMS respond to the August 12<sup>th</sup> supplemental questionnaire. See September 15<sup>th</sup> submission. Although Mukand made an effort (*i.e.*, sent emails and letters) to PMS requesting cooperation, due to the length of time Mukand knew it would be required to report this information, the poor quality of what was reported, and the tardiness in which Mukand tried to compel PMS to answer, the Department does not find that Mukand acted to the best of its ability.

Similarly, the fact that Mukand claims to have "no leverage" over PMS to compel it to respond to the Department's request because it is not affiliated with PMS is contradicted by the same record evidence cited above. Mukand was able to compel PMS to respond to one supplemental questionnaire and to agree to act as Mukand's agent, and thus affiliate, pursuant to the terms of the Agreement. Further, the record evidence indicates that Mukand made little effort to compel PMS to answer. Finally, had Mukand conducted a thorough review of PMS' initial answers to the Department's request and made an effort to correct the substantial and obvious errors in the response, the supplemental questionnaire the Department issued was required to issue, may not have been necessary. The degree of leverage Mukand had over PMS is irrelevant because Mukand did not act to the best of its ability to get the supplemental information requested by the Department.

Therefore, in accordance with Section 776(a)(2)(B) of the Act, Mukand has failed to provide such information in a timely manner or in a form or manner requested by the Department, warranting the application of facts available. Further, in accordance with Section 776(b) of the Act, adverse inferences are applicable, because Mukand has failed to cooperate by acting to the best of its ability with a request for information (*i.e.*, the downstream sales information for sales made pursuant to the Agreement). No information has been submitted by Mukand which would require the Department to

depart from its preliminary decision to apply facts available and use adverse inferences with regard to Mukand's sales made pursuant to the Agreement.

### **C. Issues with Respect to The Viraj Group**

#### **Comment 5: New Information**

Petitioner argues that prior to verification, Viraj provided the Department only with VAL's audited financial statements for the April 2001 through March 2002 fiscal period and failed to provide audited financial statements, a cost accounting trial balance or other unaudited financial results for April 2002 through March 2003, the most proximate fiscal period. According to petitioner, this omission prevented a reconciliation of VAL's sales and cost data for the period April 2002 through November 2002, which constitutes 67% of the POR.

Petitioner rejects Viraj's claim at verification that Indian law prohibited the release of unaudited financial results as the reason for withholding the requested financial results. Petitioner states they are unaware of any Indian law prohibiting release of unaudited financial results. Petitioner argues that Indian companies regularly post their unaudited financial results online, citing the unaudited financial results of Tata Tea as an example.

Petitioner argues that since VAL's 2002-2003 audited financial statements were available on November 18, 2003, ten days after the conclusion of the verification, a reasonable and cooperative respondent would have notified the Department that the results would be available shortly. Petitioner therefore argues that the combination of ready availability of unaudited financial results for other Indian companies, Viraj's failure to identify the law prohibiting the release of unaudited statements, and the importance of the withheld data from these financial statements indicate Viraj did not cooperate to the best of its ability in providing a complete and accurate record in a timely manner to the Department, and consequently warrant application of AFA.

Petitioner argues that Departmental policy and case precedents support use of alternative data for reconciliation of questionnaire responses, such as period data from internal company records and unaudited financial statements, in conjunction with tax records, which can be used to substantiate a respondent's questionnaire responses. Petitioner states that this policy is set forth in Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan, 62 FR 51427 (October 1, 1997) ("Collated Roofing Nails"), where the Department stated that in the absence of audited financial statements the Department may use the respondent's tax records as an independent source to substantiate questionnaire responses, as long as this independent source is useable and reliable. Petitioner also cites Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review, 60 FR 49750 (September 26, 1995) ("Flowers From Mexico") in which the Department stated that a respondent may be permitted to submit tax returns as independent substantiation of submitted questionnaire responses in the absence of audited financial statements as

long as the respondent also provided an explanation reconciling the data in the respondent's tax returns with financial statements that allowed tax returns to be used to substantiate reported sales and cost data. Petitioner also cites Chrome-Plated Lug Nuts from Taiwan; Final Results of Antidumping Duty Administrative Review 64 FR 17314 (April 9, 1999) ("Lug-Nuts from Taiwan") in which the Department states that it does not automatically reject questionnaire responses simply because the respondent does not have audited financial statements; in such situations the Department looks to other financial records that were prepared independently from the antidumping proceeding, such as tax documents that will attest to the veracity of the respondent's accounting system and information submitted to the Department. Petitioner argues that contrary to the actions of respondents in Collated Roofing Nails, Flowers from Mexico and Lug-Nuts from Taiwan, Viraj did not provide any documentation such as tax records or unaudited financial statements covering the 2002-2003 fiscal period.

Petitioner argues that a company should have been able to close out its books and submitted records for audit more than seven months after the close of the fiscal period, and, in fact VSL Wires had its books closed and audited by July 21, 2003. See September 20, 2003 Supplemental Questionnaire Response at 44. Petitioner argues that Viraj used this seven month delay to nominally "discard" financial expenses under the "sick company" provision of Indian law. Petitioner argues that, regardless of the respondent's reasons, Viraj's failure to provide even unaudited financial results, ledgers and trial balances constitutes a failure to cooperate to the best of their ability, and absent these financial results VAL's data and claims with respect to VAL sales and costs for the period April 2003 through November 2003 are devoid of probity.

Petitioner argues that the Department has dealt with failure to provide a complete cost reconciliation by applying total AFA to respondents in the previous segment of this proceeding. See 2000-2001 Final Results at comment 1; See also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico, 68 FR 68350 (December 8, 2003) ("Wire Strand from Mexico"). Petitioner cites the Department's statement in the 2000-2001 Final Results where it stressed the importance of having a cost reconciliation prior to verification because it "serves as a 'starting point' for the Department at verification" and that "(w)ithout a reconciliation of POR costs to the financial statements, the Department cannot determine if the appropriate cost data have been reported." See 2000-2001 Final Results at comment 1. Petitioner notes that the Department determined that the respondent's cost data were unreliable and applied total AFA to the company. See 2000-2001 Final Results, 68 FR at 26289. Petitioner also cites Certain In-Shell Pistachios from the Islamic Republic of Iran: Preliminary Results of Countervailing Duty Administrative Review, 68 FR 16473 (April 4, 2003) ("Pistachios from Iran") as an example where the Department relied on AFA for its findings when the respondent failed to provide financial statements covering a majority of the POR. According to petitioner in Pistachios from Iran the Department could not verify respondent's claims concerning subsidies because of respondent's inability to provide, at a minimum, unaudited financial statements and financial records for



the majority of the POR. Petitioner notes that the Department relied on AFA for the preliminary results of the review, and that this finding was upheld in the final results of the review. See Issues and Decision Memorandum: Final Results of Countervailing Duty Administrative Review: Certain In-Shell (Raw) Pistachios from the Islamic Republic of Iran (July 11, 2003) at 7.

Petitioner further argues that the failure to reconcile reported per-unit cost of material, labor, variable and fixed overhead and GNA for VAL completely negates the values reported for the costs of producing the billets used in production of stainless steel wire rods. Petitioner additionally argues that the failure to provide complete 2002-2003 financial statements for VAL further impedes the calculation of the correct cost of production and constructed value of subject merchandise and foreign like product because it makes the calculation of a consolidated INTEx ratio impossible.

Petitioner argues that financial expenses must always be reported on a consolidated basis, citing the Department's original questionnaire that instructs respondent that if it is a member of a consolidated group of companies that it must calculate its financial expense based upon the consolidated audited fiscal year financial statements of the highest consolidation level available. Petitioner argues that this requirement applies to members of groups that operate on a consolidated de facto basis even if they are not de jure subsidiaries of a parent company. Petitioner argues that since the Department collapsed the Viraj Group for the purpose of his review that Viraj therefore must provide a group-wide, consolidated basis and correctly calculated net financial expense ratio.

Petitioner argues that in the immediately prior segment of the proceeding that the Department adjusted the Viraj Group's financial expenses to include all of the interest expenses reported in the audited financial statements of all Viraj Group companies and that this methodology was upheld in the final results of the proceeding. See Stainless Steel Wire Rods from India; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review 68 FR 1040, 1047 (January 8, 2003); 2000-2001 Final Results at comment 11.

Petitioner argues that Viraj's failure to provide VAL's 2002-2003 financial statements prevented a reconciliation of per unit costs for direct material, direct labor, fixed and variable overhead and general and administrative costs incurred by VAL in stainless steel billet production for eight of the twelve months, or 67 per cent, of the POR. Petitioner therefore argues that these reported values can not be considered probative. Petitioner argues that if the Department does not apply total AFA to these costs that the information contained in the VAL 2002-2003 financial statements provided on March 30, 2004 allows for adjustments to be made as partial facts available. Petitioner proposes the following adjustments as partial AFA:

- (1) For direct material costs, petitioner argues that the Department should increase the reported costs

for direct materials by the total percentage increase of the materials cost from the 2001-2002 fiscal period to the 2002-2003 fiscal period, or 34.7 per cent, times 67 per cent, the portion of the POR represented by the 2002-2003 VAL financial statements for a total increase of 23.2 percent.

(2) For fixed and variable overhead, petitioner argues that the Department should increase the reported costs by the total increase in fixed and variable overhead from the 2001-2002 fiscal period to the 2002-2003 fiscal period of 26.0 per cent, times 67 per cent for a total increase of 17.4 per cent.

(3) For direct labor, petitioner argues that the Department should increase the reported direct labor costs (minus the toll rolling charges) increase from the 2001-2002 fiscal period to the 2002-2003 fiscal period of 7.5 per cent, times 67 per cent for a total increase in direct labor costs of 5.0 per cent. As a decrease in labor costs actually rewards Viraj by reducing VAL COP, petitioner argues that the only appropriate alternative approach would be to set the change for VAL labor costs to zero so as to avoid a beneficial adjustment.

Petitioner further argues that if the Department does not utilize the partial AFA methodology outline above, it could calculate a non-AFA adjustment for direct material costs, fixed and variable overheads, and direct labor by measuring the average per-unit charge for each variable between the 2001-2002 and 2002-2003 fiscal periods. However, petitioner notes that while this alternative methodology would result in an increase in Viraj's direct material and fixed and variable overhead costs, it would also result in a decrease in Viraj's direct labor expense. As a decrease in labor costs actually rewards Viraj by reducing VAL COP, petitioner argues that the only appropriate alternative approach would be to set the change for VAL labor costs to zero to avoid a beneficial adjustment.

Petitioner argues that because of the failure to reconcile VAL's cost of production for the last eight months of the POR that the reported VAL costs for direct materials, variable and fixed overhead and direct labor cannot be considered probative. Petitioner argues that the application of partial AFA available is appropriate in light of Viraj's failure to cooperate by attempting to prevent the Department from conducting a proper analysis in this review.

Petitioner argues that the reporting of GNA expenses using VAL's 2001-2002 financial statements resulted in both omissions and submission of incorrect period information. Petitioner argues that the Department should calculate a revised GNA ratio based on the GNA expense line items identified by respondent and expense amounts from the 2002-2003 financial statements as was done in the stainless steel bar review. See Bar Cost Verification Report in the March 30, 2004 submission at page 24.

Finally, petitioner argues that in both the bar review and this review respondent omitted costs of changing depreciation methods and profit and loss on the sale of a motor vehicle, and these costs must be included in the calculation of the VAL GNA ratio. Petitioner therefore argues that the Department must use the 2002-2003 VAL fiscal period expense amounts/COGS and include the period expenses

for depreciation methodology changes and sale of motor vehicle to yield a corrected GNA ratio.

Petitioner argues that interest payments waived as a result of VAL's being declared a "sick industrial company" should have been reported by Viraj as part of VAL's total financial expenses and should be included in the calculation of the VAL INTEX ratio. Petitioner notes that the issue has come up before in the 2000-2001 administrative review of SSWR for the same respondent and in the 2000-2001 review the Department rejected Viraj's argument that waived interest payments should not have been included in the calculation of the dumping margin. See 2000-2001 Final Results at comment 11. Petitioner argues that exclusion of these waived interest costs runs counter to the principle set forth in 19 U.S.C. 1677b(f)(1)(A) which mandates that the Department calculate costs in a manner that will "reasonably reflect the costs associated with the production and sale of the merchandise." Petitioner argues that eliminating historical costs, in the form of waived interest expenses, does not accurately reflect the true cost of production in the calculation of normal value and should therefore be included. Petitioner cites the Department's practice in non-market economy cases of excluding from consideration companies that audits prove to be sick companies, and to exclude companies whose audited financial statements contain qualifications with regard to divergences from normal cost accounting irregularities similar to those recognized in the auditors report for VAL. Petitioner also cited Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China 64 FR 61837, 61 842-43 dated November 15, 1999 in which the Department excluded two potential Indian surrogate companies' financial statements due to concern over their reporting methodology for certain interest expenses and their status as a sick company as defined by India's Sick Industrial Companies Act.

Respondent argues that the Department had the complete and audited financial statements for VSL, the producer and exporter of subject merchandise, for both the 2001-2002 and 2002-2003 fiscal periods. Respondent states they provided the Department with VAL's 2001-2002 audited financial statements but did not provide audited 2002-2003 results because they were not audited at the time of the verification. Respondent argues that the Department therefore considered the most recently audited financial statements for VSL and VAL.

Respondent argues that the costs for the period April 2002 to November 2002 reported in the questionnaire response are the same as reported in VAL's 2002-2003 financial statement and therefore the reported Section D costs remain the same and would not have changed had the 2002-2003 audited VAL financial statements been available at verification. Respondent argues that petitioner's observation that 67 per cent of the POR falls within the fiscal period covered by VAL's 2002-2003 fiscal period financial statement is meaningless, as Viraj reported actual manufacturing costs. Respondent argues that the Department conducted its verification using the most recent audited financial results and subsequent records leading into the next financial statement. Respondent argues that this is all standard Department verification procedure and the Department repeatedly stated that

they found no discrepancies.

Specifically, respondent argues that Viraj's internal ledgers and November 2002 trial balance used to prepare questionnaire responses did not change after release of the VAL 2002-2003 audited financial statement and therefore had no consequences as to reported costs. On the contrary, the audited financial statements reaffirmed the previously reported costs and ledgers. Respondent argues that the internal ledgers and November 2002 trial balance used in the verification were unaudited financial information, making, therefore, petitioner's argument that Viraj did not offer this information to the Department during verification misleading. Respondent argues that at verification they provided all documentary proof, bank statements, payments relating to costs and as requested by the Department from the period April 2002 to November 2002. Respondent argues that the verification report repeatedly states that no discrepancies were noted and therefore petitioner's doubts and suspicions are unwarranted.

Respondent argues that petitioner's argument as to availability of 2002-2003 VAL audited financial statements based upon the stainless steel bar case is incorrect, as the verification period for this review, January 27, 2004 to February 6, 2004, was well after the completion of the audit of VAL's 2002-2003 financial results.

Respondent rejects petitioner's argument pertaining to availability of periodical unaudited financial statements by some Indian companies. Respondent argues that Tata Tea, the company held up by petitioner as an example of an Indian company posting its unaudited results online, has subsidiaries in both the United States and the United Kingdom. Respondent notes that Tata Tea's securities are listed on the London Stock Exchange and Luxembourg Stock Exchange, and pursuant to the listing agreement Tata Tea is obligated to publish their periodical financial statements. Respondent notes that unlike Tata Tea VAL is neither listed in any foreign stock exchange nor does it have any foreign subsidiaries.

Respondent argues that since they have provided all necessary information to the Department as per Department regulations petitioner's argument for application of partial adverse facts available is unsupported and erroneous. Respondent argues it has reported all POR cost data as reflected by its financial records at the time of submission and even updated reported costs based on auditor's findings as noted in exhibit SD-5-1 of the 5<sup>th</sup> supplementary questionnaire response dated October 23, 2003.

Respondent argues that petitioner analysis of the various COP inputs is incorrect for the following reasons. First, the increase in total material cost from 2001-2002 to 2002-2003 was compared with the increase in total cast/roll product when it should have been compared with the increase in sales and other job work income. Second, petitioner did not highlight that while the increase in sales and job

work income is almost the same as the increase on total material cost over the two fiscal periods, the increase in aggregate manufacturing and employee costs is significantly less. Third, roll products are made out of and after cast production, thus the aggregation of cast production and roll production is only raised to confuse the Department.

Respondent rejects petitioner's argument for inclusion of 2001-2002 fiscal period amortization expenses in the calculation of VAL GNA expenses. Respondent argues that the depreciation expense used in its Section D figures are for fiscal period 2001-2002 and thus pertinent to the POR. Respondent argues that in the VAL 2001-2002 audited financial statements the auditors certified the reported amount and only that amount should be used to calculate profit for the fiscal period as it is applicable to the POR. Respondent points out that the amortized amount of depreciation expense represents additional depreciation for fiscal periods prior to 2001 attributable to the differences between the written down value and straight line methods of depreciation. Respondent argues that since this amortized depreciation expense was unrelated and thus not included in the VAL 2002-2003 audited financial statements, it should not be incorporated into the calculation of the VAL GNA ratio.

With regard to the waived interest costs recorded in the 2002-2003 fiscal period, respondent argues that unpaid interest that is waived by lenders should not be treated as a cost and inclusion in COP calculations will result in erroneous data because the cost was never actually incurred. Respondent argues that unpaid and waived interest was accounted for in VAL's 2002-2003 audited financial statements under "Exceptional item" and was written back to expenses.

Respondent argues that petitioner's claims for the application of total AFA lack merit and should be rejected. Respondent argues that it reported all facts to the Registrar of Companies, Mumbai, and secured its permission to extend the time for issuance of VAL's 2002-2003 financial statements. Respondent argues that there is no evidence that VAL did not do so, nor does evidence exist that Viraj did not act in accordance with what is permissible by Indian regulations and practice pertaining to the finalization of VAL's financial statements. Respondent argues that petitioner's arguments are unsupported by substantial evidence and are thus not in accordance with law. Respondent argues that the submitted 2002-2003 VAL financial statement is on its face consistent with these facts. Respondent argues that the costs reported by Viraj in its questionnaire response are exactly the same as reported in the 2002-2003 financial statements with no change.

Petitioner responds to Viraj's arguments by stating that the timing of the issuance of the 2002-2003 VAL financial statement is irrelevant. Petitioner states that it does not question whether Viraj acted in accordance with Indian regulations and practice as to the date of finalization of VAL's audited financial statements. Petitioner argues that their objection is regarding Viraj's refusal to provide to the Department VAL's 2002-2003 fiscal period unaudited financial statements, trial balance, journals, or

ledgers, claiming their release was prohibited by Indian law.

Petitioner argues that the respondent makes unsubstantiated and contradictory statements regarding its VAL sales and costs data. With regard to Viraj's statements that its reported costs for March 2002 through November 2002 are the same "without change" as those in the 2002-2003 financial statements, and that the Section D costs do change if the 2002-2003 financial statements are used, petitioner argues these statements are contradictory. Specifically, petitioner also argues that the first statement is unsubstantiated as the respondent did not provide the Department with materials necessary to ascertain the accuracy and completeness of VAL's sales and cost for the period of the POR covered by the 2002-2003 fiscal period.

Petitioner rejects respondent's argument that the fact that 67 percent of the POR falls in VAL's 2002-2003 fiscal year is meaningless. Petitioner argues that the respondent's claim that the Department conducted the verification of VAL sales and cost data using the most recent available audited financial statement and financial records that led into the next financial statement is not supported by the record of the review. Petitioner argues that the verification report states the VAL cost reconciliation was conducted using the 2001-2002 financial statement. Petitioner argues that all other supporting financial documents referenced in the Verification Report were for March 2002. Petitioner additionally argues that no mention was made of substantiation of VAL's interest or GNA expenses.

Petitioner argues that respondent's claim that the Department had at its disposal the audited financial statement of other Viraj Group companies and could use them to verify the accuracy of Viraj's questionnaire responses is without merit. Petitioner argues that the financial statements for other Viraj Group companies can only be used to check for completeness and accuracy of sales and cost data on the books of the specific company and not for VAL.

Petitioner argues that respondent's assertion that the internal ledgers and trial balance used by Viraj to prepare its questionnaire response remained unchanged after issuance of the VAL 2002-2003 audited financial statements cannot be proven. Petitioner argues that the absence of the November 2002 VAL trial balance from the record of the review makes it impossible to prove respondent's claim that the 2002-2003 VAL financial statement did not change the contents of the November 2002 VAL trial balance. Petitioner argues that the sales and expense traces for VAL are based on March 2002 documents closing the 2001-2002 fiscal period.

Petitioner rejects respondent's contention that issuance of the VAL 2002-2003 audited financial statement reaffirmed previously reported costs and ledgers and had no effect on or change to the reported costs, and that absent a cost reconciliation that ties the November 2002 VAL trial balance to the 2002-2003 VAL financial statement it is not possible to substantiate this claim. Petitioner additionally argues that the November 2002 trial balance referred to by Viraj in its comments is not

referenced in the verification report or exhibits; instead, all sales and expense traces are based upon March 2002 documents.

Petitioner argues that Viraj's claim that it provided supporting documentation to costs incurred by VAL during the period April 2002 to November 2002 is not supported by the official record of the review. Petitioner argues that the Department stated in its verification report that it limited its reconciliation of VAL costs to the 2001-2002 fiscal period. As a result, petitioner argues, neither sales nor costs for VAL were tied through 2002-2003 fiscal period ledgers, journals to the VAL 2002-2003 financial statement.

Petitioner argues that respondent's position on the exclusion of waived interest costs is unsupported by statutory provisions, regulatory provisions, case precedents or court rulings. Petitioner argues that the unpaid interest, which was later waived by lenders, is in fact part of the historical costs that respondent caused its foreign like product to be sold below the cost of production and caused subject merchandise to be dumped in the United States. Petitioner argues that ignoring these historical interest costs is contrary to both case precedent and the statutory requirement that the costs must "reasonably reflect the costs associated with the production and sale of the merchandise" as stipulated in 19 U.S.C. 1677b(f)(1)(A).

**Department's Position:** We agree with petitioner regarding the importance of VAL's 2002-2003 audited financial statements. The Department notes that the 2002-2003 VAL fiscal period, April 2002 through March 2003, is most fiscally proximate to the POR in that it covers eight months of the POR. Thus, in its letter to Viraj on March 26, 2004, the Department requested Viraj provide both the 2002-2003 VAL audited financial statements and the sales and cost verification reports from the stainless steel bar review for entry into the record of the SSWR review. The Department finds it important to note that it is the responsibility of the respondent to provide complete financial statements relevant to the review as they become available, and would further expect respondent to provide such important information in any future segments of this proceeding. See Reiner Brach GmbH & Co. KG v. United States, 206 F.Supp. 1323, 1333 (CIT 2002) ("It is the interested party's obligation to create an accurate record and provide Commerce with the information requested to ensure an accurate dumping margin.") In response to the Department's request, however, the respondent did submit the 2002-2003 VAL audited financial statements and the verification reports from the stainless steel bar review. Recognizing the importance of this information to this review, the Department extended the final results to provide parties time to and opportunity to comment on the new information. See Stainless Steel Wire Rods From India: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review, 69 FR 18053 (April 6, 2004).

The Department disagrees with petitioner regarding the application of total AFA or facts available to

VAL's cost and sales data. The Department finds that Viraj's actions did not impede the review process and thus the application of total AFA or even facts available is unwarranted.

The Department finds that Viraj did not withhold information requested when it did not provide the 2002-2003 VAL audited financial statements at verification. The Department notes that the date of the officially audited results was 10 days after the last day of the Department's cost and sales verification. See respondent's submission entitled Stainless Steel Wire Rod from India ("New Information Submission") dated April 7, 2004, Exhibit AI-1 at 4. During verification, except when stated otherwise, Viraj provided all necessary documentation to reconcile sales and cost data for the portion of the POR corresponding to the 2001-2002 VAL audited financial statements.

The Department also finds that Viraj did not impede the review and fully responded to numerous Department requests throughout the review. For example, Viraj provided VAL cost reconciliations in its July 5, 2003 questionnaire response and again on October 30, 2003. See July 5, 2003 supplemental questionnaire response exhibit SD1-5 at 57 and October 30, 2003 supplemental questionnaire response at SD6-3 - SD6-8. These reconciliations allowed the Department to tie sales and cost data for the portion of the POR corresponding to the 2001-2002 VAL audited financial statements. At verification, the Department asked for the 2002-2003 VAL audited financial statements; Viraj responded that the audited financial results were not yet available, and, in accordance with Indian law, they were prohibited from releasing unaudited results. See Viraj Verification Report at 17. The Department finds petitioner's arguments regarding Indian law by citing Tata Tea's public release of its unaudited financial results instructive generally, but unpersuasive regarding Viraj specifically in this review. Tata Tea is a multinational corporation, with subsidiaries in the United States and the United Kingdom, and Tata Tea's securities are listed on both the London and Luxembourg stock exchanges. Under the listing agreement covering companies listed in these exchanges, Tata Tea has an obligation to publish periodic financial results. In contrast, VAL is neither listed in any foreign stock exchanges, nor does it have any foreign subsidiaries. As a result, the Department finds VAL has no obligation to release publicly unaudited financial results and that Viraj did not impede the review by failing to provide audited financial statements that were not available until after the conclusion of verification.

Finally, the Department notes that petitioner, in its March 5, 2004 letter to the Department, requested that Viraj provide the 2002-2003 VAL audited financial statements and that these statements be placed onto the record of this review. The Department further notes that in response to its March 26, 2004 letter to Viraj, Viraj cooperated fully by providing both the 2002-2003 VAL audited financial statements and the cost and sales verification reports for the stainless steel bar review. These documents were entered onto the record of this proceeding, and the Department provided time and opportunity for parties to comment on the new information entered onto the official record of the review.



For these reasons, we find that Viraj neither withheld information nor impeded the review process, and therefore, for the final results, the Department finds that the application of total AFA for VAL sales and cost data in this proceeding is not warranted.

Although the respondent submitted and the Department used the 2001-2002 VAL audited financial results for the preliminary results of the review because they provided the most recent audited financial results available at the time of verification, for the final results, the Department has determined to use the more fiscally proximate 2002-2003 VAL audited financial statements that are now on the record of this review to recalculate VAL's INTEX and GNA ratios using 2002-2003 interest expense and GNA data.

We disagree with petitioner that respondent should calculate an INTEX ratio using financial expenses from all Viraj Group companies. As Viraj explained in its questionnaire responses, the Viraj Group of companies does not prepare consolidated audited financial statements in the normal course of business. Departmental practice, as described in the Department's original Section D questionnaire on page D-23, is to calculate financial expense based on the consolidated audited fiscal year financial statements for the highest consolidation level available. See also Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324 (April 9, 1999). The Department applied this practice for Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review 68 FR 47543 (August 11, 2003) and accompanying Issues and Decision Memorandum ("2001-2002 Bar Final Results"). In the 2001-2002 Bar Final Results, the Department rejected a combined INTEX ratio using all Viraj Group companies. Instead, the Department calculated VAL's INTEX ratio based solely on VAL's financial statements. See 2001-2002 Bar Final Results at comment 13.

The Department rejects petitioner's argument that in Stainless Steel Wire Rods from India; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 1040 ("2000-2001 SSWR Preliminary Results") (January 8, 2003) the Department used the financial expenses of all Viraj Group companies in the calculation of the INTEX ratio. Page 2 of Analysis for the Preliminary Results of Review for Stainless Steel Wire Rod from India for 2000-2001: The Viraj Group, Limited ("2000-2001 SSWR Analysis Memorandum") states with regard to the INTEX ratio calculation only that the Department recalculated the Viraj Group's interest expense ratio to include total interest expenses obtained from VAL's financial statements. See 2000-2001 SSWR Analysis Memorandum at 2. Comment 11 of the 2000-2001 Final Results describes only the Department's position regarding inclusion of imputed credit expenses and treatment of certain waived VAL interest expenses and does not mention of inclusion of interest expenses for all Viraj Group companies. Therefore, for the final results, the Department recalculated VAL's INTEX ratio based solely on financial expenses as reported in the 2002-2003 VAL audited financial statements. See Final Analysis Memorandum at 1-2.

We also disagree with petitioner as to the treatment of the income entry accounting for waived interest costs as reported in the VAL audited 2002-2003 financial statements. According to footnote 11 of Schedule P of the financial statement, and pursuant to a one time settlement agreement reached with several of the respondent's creditors, the amount of interest "accrued up to March 31, 2002, is no longer payable, hence the same has been written back & reflected as exceptional item in the Profit & Loss Account." See New Information Submission at page 15. According to the footnote, the accrued and now waived interest had been recorded as interest expenses in previous fiscal period VAL financial statements. The referenced exceptional item, identified under the line "Exceptional Items - Unpaid Interest/other dues waived/written off by Financial Institution/Banks under OTS (Refer Note No. 11 of Sch. P)" is accounted for as an income amount rather than an interest expense as argued by petitioner. See New Information Submission at page 5. Finally, although the underlying accrued and now waived interest expenses were recognized in previous fiscal period VAL financial results, the corresponding income amount was accounted for in VAL's 2002-2003 financial statements because the agreement between respondent and creditors was finalized during the 2002-2003 fiscal period. Based on these facts, the Department finds that it is not appropriate to treat the exceptional item income amount as an expense for the purpose of calculating the VAL INTEX ratio.

The Department disagrees that the decision to include waived interest expenses in the 2000-2001 segment of the SSWR proceeding is applicable in the current review. In the previous review, petitioner's and respondent's arguments pertaining to inclusion of waived VAL interest expenses in the calculation of an INTEX ratio were based on VAL's claimed status as a "sick industrial company." See 2000-2001 Final Results at comment 11. The Department finds that the issue in the current review is whether the extraordinary item income entry in the 2002-2003 VAL audited financial statements should be considered a 2002-2003 fiscal period entry for the purpose of calculating VAL's INTEX ratio and not its exclusion under the "sick financial company" provision. As stated above, the Department noted that the accrued interest expenses that were written as interest income were accounted for in previous fiscal periods and therefore do not relate to the 2002-2003 fiscal period. For the final results, the Department did not include the interest income amount from the 2002-2003 VAL audited financial statements in the calculation of the VAL INTEX ratio.

Regarding the treatment of costs attributable to changing depreciation methodology in the calculation of GNA expense, we agree with petitioner. In the 2001-2002 Bar Final Results the Department discussed possible methods to allocate the cost associated with VAL's change from a Straight Line Method ("SLM") to a Written Down Value ("WDV") depreciation methodology. See 2001-2002 Bar Final Results at comment 11. In that memorandum, the Department proposed either requiring VAL to continue to report costs using the SLM, or allocating the cost associated with the depreciation methodology change over the estimated useful lives of VAL's assets. The Department selected the second method, as there was no record of the current period's depreciation expense under SLM, nor could that amount be calculated. The Department estimated the average remaining life of VAL's assets based on information gained from VAL's prior year financial statements and then divided the

depreciation methodology change amount by the fixed asset estimated useful life to arrive at an annual amortized depreciation amount. Consistent with Departmental practice as established in stainless steel bar review, we calculated an annual amortized depreciation amount and included this amount in the VAL GNA expense rate calculation. See 2001-2002 Bar Final Results at comment 11. Therefore, for the final results, the Department incorporated the loss on the sale of motor vehicle and the annual amortized depreciation amount with GNA expense items from the 2002-2003 VAL audited financial results to calculate a revised GNA ratio. See Final Analysis Memorandum at 1-2 for details.

#### **Comment 6: Brokerage and Handling Expenses**

Petitioner argues that the Department should use the highest value reported by Viraj for brokerage and handling expenses (“DBROKU”) as partial facts available due to respondent’s inability to adequately corroborate these expenses. Petitioner states that, according to the Department’s Analysis Memorandum, at verification Viraj failed to corroborate the expenses reported in the field DBROKU and consequently the Department revised the U.S. sales program to reduce the reported brokerage and handling expenses. See Analysis Memorandum for the Viraj Group for the Preliminary Results of the Administrative Review of Stainless Steel Wire Rods from India for the period December 1, 2001 through November 30, 2002 (“Preliminary Analysis Memorandum”), dated December 12, 2003, at 2.

Petitioner argues that the Department’s reduction of brokerage and handling expenses actually increases the U.S. net price, thus decreasing the dumping margin. Petitioner argues that this reduction would actually reward Viraj for its failure to provide an accurate and complete response. Petitioner argues that if the Department does not apply total adverse facts available to the sales and costs of VAL for purposes of the final results of the review, the Department should at a minimum use the highest value reported by Viraj for DBROKU as partial facts available as an incentive to the respondent to provide complete, accurate and timely data in the future.

Viraj argues that its brokerage and handling expenses were verified. Respondent contends that, as stated in the Verification Report, Viraj sometimes used petty cash to pay for minor expenses of the type reported in DBROKU. Viraj argues that it issued internal invoices for these petty cash outlays such as these expenses and reported this expense via an internal invoice due to the minor nature of the expense. See Verification of Sales and Cost for Viraj Alloys, Limited and VSL Wires, Limited in the Antidumping Administrative Review of Stainless Steel Wire Rod (“SSWR”) from India (“Viraj Verification Report”) at 13. Respondent argues that this internal invoice is a “normal course of business document” and that the Verification Report states no discrepancies were noted for brokerage and handling.

**Department’s Position:** We agree with petitioner. The Department reaffirms its preliminary

determination that the respondent failed to adequately substantiate its brokerage and handling expenses. In the Viraj Verification Report, the Department noted that the sample internal invoice presented by Viraj was, in fact, a receipt for cash payments made by a company official to customs officials to insure effective and timely handling of shipments out of India into the United States. The Viraj Verification Report also noted that the purpose of the internal invoice is to provide reimbursement in cash for the employee's petty cash outlay. The Department noted in the Viraj Verification Report that the employee who makes the payment fills out the internal invoice and then presents it to Viraj for reimbursement in cash for his own cash outlay. However, as the Department also noted, Viraj confirmed there is no actual receipt from customs officials to the company employee documenting this expense, and Viraj stated that the only record for this expense is the internal invoice. See Viraj Verification Report at 13.

Therefore, because Viraj could not provide source documents justifying its reported expenses, the Department determines that Viraj has failed to adequately substantiate the expenses reported in DBROKU. Therefore, for the final results adverse facts available, the Department revalued the field DBROKU for all sales using the highest single value reported under DBROKU. For further analysis, see Preliminary Determination, 68 FR at 70774; Final Analysis Memorandum at 2.

#### **Comment 7: Difference in Merchandise Adjustment**

Respondent argues that a difference in merchandise ("DIFMER") adjustment should not be made, as cost differences between U.S. and home market products are already reflected in COP and constructed value ("CV") data. Respondent argues that the Department increased the calculated COP to give effect to the difference in merchandise sold in the home and U.S. markets. See Preliminary Results, 68 FR at 70775. Respondent argues that Viraj sold stainless steel wire rod in the home market and stainless steel annealed, pickled and packed wire rod in the U.S. market, and the cost data reported for merchandise sold to the United States in CV already includes the additional cost differences in the form of direct labor, variable overhead, fixed overhead, general and administrative expenses ("GNA") and net interest expenses incurred by VSL. See 3<sup>rd</sup> supplemental questionnaire response ("SQR") at 33 and 35.

Also, Viraj argues that since the cost differences in home market and U.S. market product are already incorporated in reported COP/CV data, application of a DIFMER adjustment would constitute double counting and therefore should not be made.

Petitioner argues that Viraj's claim that the Department is double counting cost differences due to application of a DIFMER adjustment is incorrect. Petitioner argues that respondent's claim that the Department incorrectly "increased the COP to give effect to the Difference in Merchandise sold in the

home market and U.S. market,” citing to the Preliminary Results is incorrect. See Viraj Case Brief dated February 26, 2004, at 2-3. Petitioner argues that the Preliminary Results describes no such adjustment, and the Department’s Preliminary Analysis Memorandum states that DIFMER adjustments “were based on the differences in the variable cost of manufacturing (“VCOM”) between each U.S. model and its most similar home market model.” See Preliminary Analysis Memorandum at 19.

Petitioner further argues that the respondent’s statement in its brief that “(w)hile considering the different models sold in the home market and U.S., and thus the different Section D reports, a difference in merchandise (sic) should not be also be made, as the cost differences are already reflected in the reported COP/CV data” implies that the Department used DIFMER programming for CV-based normal value. See Viraj Case Brief at 3. Petitioner argues this implication is not supported by the record as there is no inclusion of a DIFMER adjustment in the U.S. margin program’s foreign unit price in dollars (“FUPDOL”) calculation, while there is a DIFMER adjustment for price - to - price comparisons of CEP sales.

**Department’s Position:** We agree with petitioner that the application of a DIFMER adjustment does not constitute double counting. Section 773(a)(6)(C)(ii) of the Act provides for an adjustment to normal value for differences in the physical characteristics of the products being compared. In cases where identical products are not sold in the U.S. and the home market, the Department’s practice is to compare the product sold in the United States to the product sold in the home market that is most similar in physical characteristics. See, e.g., Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Softwood Lumber Products from Canada dated March 21, 2002, at comment 8 as incorporated in Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (April 2, 2002). Where similar products are compared, a “difference in merchandise adjustment” or DIFMER is made to normal value to account for the differences in the physical characteristics of the merchandise sold in the United States and the home market. The Department adjusts the home market price by the net difference in the variable manufacturing costs incurred in producing the differences in physical characteristics. The adjustment is based on actual physical differences in the products, and is calculated on the basis of direct manufacturing costs.

In the instant review, the Department adjusted the home market price of SSWR by the net difference in variable manufacturing costs, or VCOM, incurred in producing home market, non-pickled and annealed SSWR and U.S. market pickled and annealed SSWR. This adjustment was then used in price - to - price comparisons of U.S. models and their most similar home market match. Therefore, DIFMER is not double counting but rather adjusting the dumping margin calculation to accommodate differences in the products, thus creating an “apples - to - apples” comparison. Therefore, for the final results, the Department did not make any changes to the DIFMER adjustment in the price-to-price

comparison of CEP sales in the U.S. sales program.

**Comment 8: U.S. Direct Selling Expenses**

Viraj argues that the Department improperly summed direct selling expenses reported in both Indian rupees (“INR”) and U.S. dollars (“USD”) without applying an exchange rate conversion to the expenses reported in INR. Respondent states that the constituents of direct selling expenses are reported in USD, with the exception of Direct Selling Expenses Incurred in the Country of Manufacture (“DIRSEL1U”), which is reported in INR. See 3<sup>rd</sup> Supplemental Questionnaire Response, (“3<sup>rd</sup> SQR”) dated October 13, 2003, at 29. Viraj argues that the appropriate exchange rate should be applied to DIRSEL1U, thus converting the expense to USD, prior to summing with the aggregate variables that comprise U.S. Direct Expenses (“DIREXPU”).

Petitioner did not rebut this comment.

**Department’s Position:** We agree with respondent. The constituents of DIREXPU relate to direct expenses for U.S. sales and are generally reported in USD. Therefore, an exchange rate conversion is usually not necessary for any of the aggregate variables. However, because the expenses reported in field DIRSEL1U were incurred in the country of manufacture, they were incurred and reported in INR. Therefore, an exchange rate conversion is necessary to properly sum DIRSEL1U with the other USD denominated variables. For the final results, the Department applied an exchange rate conversion to DIRSEL1U to convert the value to USD. See Final Analysis Memorandum for details of the adjustment.

**Comment 9: Direct Labor**

Viraj argues that the cost of production (“COP”) calculation should account for rolling labor charges which were reported separately in the direct labor (“DIRLAB2”) field in the Section D data file. Respondent claims that the total cost of manufacturing (“TOTCOM”) for home market sales does not include labor charges paid by VAL to a subcontractor for wire rod rolling and, as a result, TOTCOM is less than the variable cost of manufacturing (“VCOM”). Respondent argues that although DIRLAB2 was reported separately, the Department should include this charge in its COP calculation.

Petitioner did not rebut this comment.

**Department's Position:** We agree with Viraj. The Department agrees that the rolling labor charges Viraj reported separately should be accounted for in the COP calculation. Rolling labor, although performed by a subcontractor, is a required step in the production process of SSWR. The Department notes that in accordance with the Department's Section D questionnaire, the amount reported by Viraj in the field TOTCOM in the Section D data file equals the sum of direct material costs ("DIRMAT"), direct labor costs ("DIRLAB"), variable overhead costs ("VOH") and fixed overhead costs ("FOH"). However, because Viraj reported DIRLAB2 separately, it was not included in TOTCOM. Therefore, to capture all applicable costs, for the final results the Department revised the COP calculation to account for rolling labor charges that were not included in the value reported for TOTCOM. See Final Analysis Memorandum at 3 for details of the revised calculation.

**Comment 10: Net Interest Expenses ("INTEX")**

Viraj argues that the Department's revision of VSL's INTEX ratio to include interest charges for post-shipment credit and bank charges resulted in double counting of these charges. Respondent argues that these interest charges are already reported in the Section C U.S. sales data file under three different fields (e.g., CREDIT1U, CREDIT2U, and DIRSEL1U). Respondent argues that double counting results if the same interest charges are both (1) reduced from U.S. gross unit price as a direct selling expense ("DIRSEL1U") and credit expenses ("CREDIT1U" and "CREDIT2U") and (2) included in Section D as a component of interest (i.e., INTEX). Viraj asserts that the Department agreed with this argument in the administrative review of stainless steel flanges and revised the cost calculation to make CREDITU zero, thus avoiding doubling counting costs. Therefore, Viraj argues that the Department should apply the same adjustment for the final results of this review and set CREDITU to zero.

Petitioner argues that with regard to the bank charges contained in Viraj's income statement financial expenses, respondent did report these bank charges under DIRSEL1U. Petitioner argues, however, that respondent provided only a sample document rather than a reconciliation of the transaction-specific charge and line item in its financial records.

Petitioner argues that the amount claimed by Viraj as "USANCE" expenses that was added back into the Department's INTEX calculation is an actual period expense and not an imputed credit expense as claimed by respondent and reported in fields CREDITH and CREDITU in the sections B and C sales data files. Finally, petitioner argues that since the amount reported as "USANCE" expense is recorded in the respondent's financial statements, it can not be the same expense credited for CREDITU as imputed credit and therefore does not constitute double counting.

**Department's Position:** We disagree with respondent that inclusion of USANCE expenses and

bank charges in the calculation of VSL's INTEX ratio constitutes double counting. Additionally, we find that respondent failed to identify whether USANCE expenses and bank charges qualify as offsets or reductions to INTEX in accordance with the Department's Section D questionnaire. Page D-23 of the Department's February 11, 2003 Section D questionnaire directs parties to reduce the amount of interest expense incurred by any interest income earned on short-term investments of working capital. On SD7-2 and SD7-3 of the respondent's October 31, 2003 supplemental questionnaire response, the Department asked Viraj to describe the nature of certain interest offsets and to identify whether any interest income derived was from short-term or long-term assets. In its response, the respondent stated that the bank charges were "not in the nature of interest offset" and that they represented "transaction specific direct selling expenses incurred by us." Additionally, respondent did not identify whether interest income, if any, was derived from short-term or long-term assets. Because Viraj failed to properly identify USANCE expenses and bank charges as income earned on short-term assets as required by the Department's Section D questionnaire, we are denying their inclusion as offsets to INTEX.

Further, the Department notes that the offset claimed by respondent as "USANCE" is reported as "Interest on post-shipment credit facility" in Schedule 20, "Finance Expenses," of the VSL 2002-2003 audited financial statement. See 2<sup>nd</sup> supplemental questionnaire response ("2<sup>nd</sup> SQR") dated September 20, 2003, at 55. The amount reported under CREDITU represents an imputed cost of credit that is not recognized under generally accepted accounting principles and is not reflected in a company's financial statements. Since USANCE expense is reported in VSL's 2002-2003 audited financial statement, it cannot be the same item. Therefore, inclusion of USANCE expenses in the calculation of the VSL INTEX financial expense ratio can not constitute double counting. For the final results, the Department has not revised CREDITU to zero.

#### **Comment 11: Home Market Credit Expenses**

Viraj argues that the Department's revisions in the calculation of home market imputed credit ("CREDITH") are incorrect. Viraj asserts that use of the calculation string SHIPDATH - PAYDATH ("date of shipment - date of payment") instead of PAYDATH - SHIPDATH in the calculation of home market imputed credit expenses ("CREDITH") yielded a negative credit expense. Respondent argues that when this negative expense was subtracted from the home market gross unit price, the effect was a mathematical addition of the expense, which is counter to Departmental practice.

Viraj additionally argues that the Department's revision in the calculation of home market imputed credit expenses does not take into account multiple partial payments on home market sales transactions. Respondent asserts that customers paid Viraj for specific product in installments, and the credit expense calculation should consider all partial payments and the dates of payments. Finally,



Viraj argues that the Department should therefore use the original expense calculation formula as submitted by respondent.

Petitioner did not rebut this comment.

**Department's Position:** We agree with Viraj in part. The Department agrees that a part of the home market credit expense calculation string was inadvertently changed in the Preliminary Results. For the final results, the Department has recalculated the home market credit expense calculation string to "PAYDATH - SHIPDATH". See Final Analysis Memorandum at 3.

However, we disagree with Viraj that we should use its original home market credit formula for calculating its home market credit expense. In the Preliminary Results, the Department calculated the credit period based on the first reported pay date for each individual sales transaction. See Preliminary Analysis Memorandum at 2-3. For the final results, the Department was unable to utilize the respondent's original home market imputed credit formula, as the respondent did not report to the Department the partial realization amounts for all home market sales transactions, a required element in the formula. Therefore, for the final results, to account for those home market sales transactions with multiple pay dates, the Department utilized an arithmetic average of the transaction's payment dates and subtracted that average date from the shipment date to arrive at an average credit period. See Final Analysis Memorandum at 3 for the revised formula.

#### **Comment 12: Home Market Interest Rate**

Viraj argues that the Department substituted an erroneous interest rate into its calculation of home market imputed credit expenses. Respondent argues that additional evidence to support respondent's original interest rate was arranged but was not reviewed by the Department. Respondent argues that the Department should therefore use Viraj's originally submitted interest rate.

Petitioner argues that the respondent's home market interest rate was selected arbitrarily and without explanation from a range of rates published by the Reserve Bank of India. Petitioner argues that the Department rejected this rate in the preliminary results. Petitioner further argues that the respondent attempted to justify its selected rate through the introduction of new factual information untimely submitted, pursuant to Section 351.301(b)(2) of the Department's regulations, which was stricken from the record in accordance with Section 351.302(d)(2) of the Department's regulations.

**Department's Position:** We disagree with respondent. Page B-18 of the February 11, 2003 Section B questionnaire, directs parties to report the unit cost of credit at the actual cost of short-term debt borrowed in the foreign market. At verification, respondent stated that they had no home market short-term loans or borrowing during the POR. See Viraj Verification Report at 11. However, as the Department noted in the Preliminary Analysis Memorandum, we calculated home market imputed credit using a credit rate from letters of credit issued in Indian rupees ("INR") against some U.S. sales. See Preliminary Analysis Memorandum at 11. In the preliminary results, the Department determined that these letters of credit constitute short-term borrowing in the foreign market as set forth in the Section B questionnaire and were therefore the appropriate rate for use in the calculation of home market imputed credit. The Department notes that none of the additional documentation presented by Viraj at verification and reviewed by the Department supported its originally reported home market interest rate. Accordingly, for the final results, we have determined not to revise the calculation of home market imputed credit because the interest rate found in the letters of credit are creditable short-term borrowing rates.

### **Comment 13: U.S. Credit Expenses**

Viraj argues that the Department erroneously used a long-term borrowing rate and a rate for only one week of the POR, rather than a POR average short-term borrowing rate, per the Department's practice. Viraj states that it did not have short-term borrowings in U.S. dollars ("USD") during the POR, and in cases where a respondent does not have any short-term USD borrowings during the POR, Departmental policy is to use the POR average Federal Reserve prime rate on short-term borrowings to calculate imputed credit. Respondent argues that the Department should have calculated the USD short term credit rate using an average of the Federal Reserve Statistical Release credit rates for the four quarterly periods most proximate to the POR.

Petitioner did not rebut this comment.

**Department's Position:** We agree with Viraj. Imputed Credit Expenses and Interest Rates, Policy Bulletin 98-2 (February 23, 1998) ("Imputed Credit Expenses Policy Bulletin"), available at <http://ia.ita.doc.gov/policy/bull98-2.htm> states that for cases where a respondent has no short-term borrowings in the currency of transaction that the Department will use publicly available information to establish a short-term interest rate applicable to the currency of the transaction. The Imputed Credit Expenses Policy Bulletin states with regard to dollar transactions that the Department will generally use the average short-term lending rates calculated by the Federal Reserve to calculate imputed credit expenses. See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review, 64 FR 49150, 49155 (September 10, 1999).

Consistent with this agency practice, for the final results, the Department has recalculated the credit rate used to derive U.S. imputed credit expenses using the Federal Reserve Statistical Release Table 1 “Commercial and Industrial Loans made by all commercial banks” and line 21, which correlates to loan periods of 31 to 365 days. See Final Analysis Memorandum for a detailed calculation of the average short-term interest rate in accordance with Imputed Credit Expenses Policy Bulletin.

#### **Comment 14: Duty Drawback**

Respondent argues that the Department’s failure to adjust for credits received under the Duty Entitlement Passbook Scheme (“DEPB”) for imported raw material incorporated into merchandise intended for export is incorrect and should be accounted for as either a cost reduction or duty drawback adjustment on the U.S. sales data file.

Respondent contends that it takes the calculated duty amount, which would have been paid as customs duty in the absence of DEPB as cost in its records and records DEPB as income received from the Government of India in its profit and loss account. Viraj claims that the duty drawback adjustment entered into Viraj financial records as cost of imports neutralizes DEPB income. Thus, Viraj argues that it is not paying customs duty on imported raw material which is used in the production of subject merchandise and the amount of duty saved by DEPB should either be deducted from reported cost or added to sales as duty drawback to reflect actual Viraj costs.

Petitioner argues that the Department acted properly in determining that DEPB credits do not constitute a valid duty drawback/exemption and disallowing the DEPB amount as either an addition to cost or as an offset to COP. Also, petitioner asserts that the Department has rejected claims regarding import duties and DEPB benefits in numerous administrative reviews of various stainless steel products involving Viraj and other respondents. Finally, petitioner argues that respondent knew prior to the initiation of the current review that DEPB credits would not qualify for a duty drawback adjustment and therefore avoided linking the claimed offsets to the DEPB program until making the connection in its case brief.

**Department’s Position:** We disagree with the respondent that the Department should have made an adjustment for the amount received under DEPB. In the previous two administrative reviews, the Department denied respondent’s request for an upward adjustment to the U.S. starting price based on duty drawback pursuant to section 772(c)(1)(B) of the Act. See Stainless Steel Wire Rods from India: Final Results of Antidumping Duty Administrative Review, 67 FR 37391 (May 29, 2002); 2000-2001 Final Results. The Department’s practice is to deny the duty drawback adjustment because the reported duty drawback was not directly linked to the amount of duty paid on imports used in the production of merchandise for export as required by the Department’s two-part test, which

states there must be: (1) a sufficient link between the import duty and the rebate; and (2) a sufficient amount of raw materials imported and used in the production of the final exported product. See Rajinder Pipes Ltd. v. United States, 70 F. Supp. 2d 1350, 1358 (CIT 1999). The Court of International Trade has upheld the Department's past decisions to deny respondent an adjustment for duty drawback because there was not substantial evidence on the record to establish that part one of the Department's test had been met. See Viraj Group, Ltd. v. United States, 162 F.Supp. 2d 656 (CIT 2001).

Similarly, in the current review, the Department finds that Viraj has not provided substantial evidence on the record to establish the necessary link between the import duty and the reported rebate for duty drawback. Viraj has reported that it received duty drawback in the form of duty entitlement certificates which are issued by the Government of India to neutralize the incidence of basic custom duty on the import of raw materials used in the production of subject merchandise, but has failed to establish the necessary link between the import duty paid and the rebate given by the Government of India. See Viraj's April 4, 2003 response at C-19. As in the previous review, Viraj was not able to demonstrate in this review that the import duty paid and the duty drawback rebate were directly linked. Therefore, for the final results of this review, the Department denied a duty drawback credit for respondent.

## **RECOMMENDATION**

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

AGREE\_\_\_\_\_

DISAGREE\_\_\_\_\_

DISCUSS\_\_\_\_\_

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James J. Jochum  
Assistant Secretary  
for Import Administration

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Date