A-533-843
April 6, 2009 Administrative Review
POR: 4/17/06 – 8/31/07
Public Document
IA/3, OA: CLR, RG

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results in the Antidumping Duty Administrative Review of Certain Lined Paper Products from India

Summary

We have analyzed the case and rebuttal briefs of the petitioner[1] and respondents[2] for the final results in the first administrative review of certain lined paper products (CLPP) from India. We recommend that you approve the positions we have developed in the "Department's Position" sections of this memorandum.

Background

On October 7, 2008, the Department of Commerce (the Department) published in the Federal Register the preliminary results of the antidumping duty administrative review for certain lined paper products (CLPP) from the India.[3] The period of this review (POR) is April 17, 2006, through August 31, 2007. We invited parties to comment on our Preliminary Results. On November 14, 2008, petitioner and Kejriwal, submitted their case briefs. On November 25, 2008, petitioner, Kejriwal, and Navneet submitted their rebuttal briefs.

[1] The petitioner in this administrative review is the Association of American School Paper Suppliers and its individual members (the petitioner).

[2] The respondents in this investigation include two mandatory respondents, Kejriwal Exports and Kejriwal Paper Ltd. (Kejriwal), and Ria ImpEx Pvt. Ltd. (Ria), and 17 manufacturers and exporters (collectively, the respondents) of the subject merchandise: Blue Bird India Ltd.; Creative Divya; Exel India Pvt. Ltd.; FFI International; Global Art India Inc.; M/S Super ImpEx.; Magic International; Marigold ExIm Pvt. Ltd.; Marisa International; Navneet Publications (India) Ltd.; Pioneer Stationery Pvt. Ltd.; Rajvansh International; Riddhi Enterprises; SAB International; TKS Overseas; Unlimited Accessories Worldwide; and V. Joshi Co.[2] (collectively, non-selected respondents).

[3] See Certain Lined Paper Products From India: Preliminary Results of the First Antidumping Duty Administrative Review, 73 FR 58548 (October 7, 2008) (Preliminary Results).

List of Comments

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Comment 1: Appropriate Rate for Non-Selected Respondents

In its case brief, petitioner argues that the Department should reconsider the method by which it calculated the all-others rate. The petitioner notes that section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act), specifies that, where possible, the Department is to avoid using de minimis or AFA margins as a rate for non-selected respondents. Rather, the Department is directed to use "any reasonable method" to assign a rate. Petitioner argues that the use of the rate calculated for Kejriwal in the original investigation is not a reasonable method. Petitioner disputes the Department's decision in the Preliminary Results that Kejriwal's rate from the investigation is reasonably reflective of potential dumping margins for the non-selected companies. To the contrary, petitioner asserts Kejriwal's extremely unique business model renders its information unrepresentative of the majority of the Indian lined paper industry.

Having argued that an all-others rate derived solely from information supplied by Kejriwal is inappropriate, the petitioner suggests that a reasonable method for determining the all-others rate would be to look back to the original investigation and rely on the information presented by other respondents, even where an adverse facts available (AFA) rate was assigned. Petitioner asserts that the failure of the three other mandatory respondents in the investigation and the review (Navneet Publications (India) Ltd., Aero Exports, and Ria) to respond to the best of their ability suggests that "Kejriwal's 3.91 percent margin is unreasonable as the rate for non-selected respondents, as it is likely far lower than the rates that other, more representative Indian paper companies, would have achieved had they cooperated with the Department's proceedings." See petitioner's November 14, 2008, case brief at 4. Citing to recent proceedings,[4] the petitioner suggests that, in the alternative, the Department could reasonably base the all-others rate on a simple average of the de minimis and AFA rate in the ongoing review.

In its rebuttal brief, Navneet argues that the Department's decision to assign a rate of 3.91 percent as the "non-selected rate" was both fair and consistent with the Department's past practice in reviews and, as such, should be affirmed in the final determination. Navneet argues that it has fully cooperated with the Department in this review. Further, there is nothing on the record of the current review to support petitioner's claim that Kejriwal's business model is unusual or to suggest that Kejriwal's 3.91 percent margin is unreasonable as the rate for the non-selected companies. Navneet asserts that petitioner's case cites for its request that the Department use a simple average of the de minimis and facts available rates are inappropriate

[4] For example, Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination (Circular Welded Carbon Steel), 73 FR 2445 (January 15, 2008). Id at 5.

and ignore more recent cases. Specifically, Navneet notes that the cases cited by petitioner as support for its position, are investigations, as opposed to reviews. As such, the cases address the question of an all-others rate as opposed to a non-selected respondent rate. In addition, Navneet refers to Freshwater Crawfish and Ball Bearings to support its claim that it is the Department's longstanding practice to refuse to assign cooperative respondents in an administrative review a non-selected respondent rate which is based, even in part, on adverse fact available.[5]

Department's Position:

The calculation of a rate applicable to non-selected respondents in an administrative review is not specifically addressed in either the statute or regulations. Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or de minimis margins or any margins based entirely on facts available. Accordingly, the Department's practice in this regard, in reviews involving limited selection based on exporters accounting for the largest volumes of trade, has been to average the rates for the selected companies excluding zero and de minimis rates and rates based entirely on facts available. See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Reviews and Notice of Partial Rescission, 72 FR 6201 (February 9, 2007). As a result of changes since the Preliminary Results, the calculated rate for the participating respondent is no longer de minimis. Therefore, consistent with the Department's practice, we are assigning the cooperative non-selected respondents the above de minimis rate calculated in this review.

The Department disagrees with the petitioner's claim that the Kejriwal's "extremely unusual business model" renders that company's information unrepresentative of the majority of the Indian lined paper companies.[6] As Navneet points out, there is no evidence on the record with respect to the business model(s) of the non-selected respondents. Further, we do not find that the use of constructed value, the fact that Kejriwal's primary business was the sale of newsprint, nor the fact that the Department made adjustments in Kejriwal's margin calculations, renders Kejriwal's margin unrepresentative of other Indian paper producers.

We find no support for the petitioner's position that we should calculate a new all-others rate using rates from the investigation determined entirely on AFA. While the Department has, in some investigations, determined that a reasonable methodology has been to calculate an all-others rate by averaging zero or de minimis margins with margins based on AFA, the Department has not done so when an above de minimis margin is available. Further, because we have an above de minimis rate in this review, we determine that it is not necessary to average the de minimis and total AFA rates determined in this review.

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[5] See Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China (Freshwater Crawfish), 62 FR 41347 (August 1, 1997) and Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 6 (Ball Bearings).

[6] Petitioner's case brief at 1 – 2.

<u>Comment 2</u>: Whether to Assign a Higher Adverse Facts Available (AFA) Rate to Ria

The petitioner argues that while the application of AFA to Ria is proper, however, the rate chosen by the Department is both unduly low and improperly representative of Ria's likely rate of dumping. The petitioner argues that in selecting an AFA rate, the Department must ensure that the rate: (1) relates to the company to which it is assigned; (2) accurately reflects what a company's rate would have been had it cooperated; and (3) must be sufficiently high as to create a realistic deterrent to future uncooperative behavior.[7] The petitioner argues that the rate assigned to Ria does not account for these considerations as it is neither related to Ria nor reflective of its operation. The petitioner asserts that Ria's lack of cooperation suggests that the appropriate rate is higher than the 23.17 percent rate from the investigation because if Ria could have achieved a lower rate by cooperating, it would have done so. Additionally, petitioner argues that if Ria believed that its actual dumping rate exceeded 23.17 percent, it would have no incentive to cooperate. Therefore, an AFA rate of 23.17 percent will not deter future noncompliance.

Having argued that the Department must seek a higher AFA rate for Ria, the petitioner proposes two alternatives for selecting a rate. First, petitioner suggests that given that the rate is clearly too low to ensure future compliance, the Department may choose to increase it by the 15 – 20 percent found reasonable by the Court of International Trade (CIT) in <u>Shandong Huarong 2007</u>.[8] In the alternative, petitioner suggests that, similar to the underlying investigation, the Department may derive the AFA margin based on the second-highest transaction-specific margin found for Kejriwal in this review.

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

We agree with the petitioner that the application of AFA to Ria is appropriate. However, we do not agree that an AFA rate of 23.17 percent is inappropriate. As discussed in the <u>Preliminary Results</u>, Ria, one of the two mandatory respondents in this review, did not submit a response to the Department's questionnaire. By failing to respond to the Department's questionnaire, Ria withheld requested information and significantly impeded the proceeding. Therefore, pursuant to sections 776(a)(2)(A) and (C) of the Act, the Department finds that the use of total facts available for Ria is appropriate. Further, the Department finds that Ria did not act to the best of its ability in this proceeding, within the meaning of section 776(b) of the Act, because it could have responded to the Department's requests for information, but failed to do so. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to Ria.

When the Department applies AFA because a respondent fails to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes

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[7] For support, petitioner cites <u>Shandong Huarong General Group Corp. v. United States</u>, 29 CIT_Slip Op. 05-129 (September 27, 2005) at 11 and 12 (<u>Shandong v. United States</u>), <u>F. Lli De Cecco de Filippo Fara S. Martino S.p.A. v. United States</u>, 216 F.3d 1027, 1032 (Fed. Cir. 2000), and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994) (SAA) at 870.

[8] <u>Shandong Huarong General Group Corp. v. United States</u>, 31 CIT Slip Op. 07-4 (January 9, 2007) at 9 (<u>Shandong Huarong 2007</u>).

the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. See also 19 CFR 351.308(c); SAA at 829-832. The Court of Appeals for the Federal Circuit (CAFC) has upheld the Department's application of the highest available dumping margin. See Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330 (Fed. Cir. 2002), where the dumping margin was corroborated by actual sales data in accordance with section 776(c) of the Act. The CIT has stated that the Department cannot use as AFA "punitive, aberrational or uncorroborated" margins.[9]

In considering the appropriate information to rely on in selecting an AFA rate, we have considered petitioner's suggested alternatives to the Preliminary Results. We do not agree with petitioner that Shandong Huarong 2007 suggests that increasing an existing AFA margin by 15 to 20 percent is reasonable. Rather, in that case the CIT found that the Department's determination to apply the PRC-wide rate as AFA was reasonable, notwithstanding the fact that it was 15 to 20 percent higher than previously calculated, respondent-specific, separate rates. See Shandong Huarong 2007 at 9. Accordingly, this case does not support the petitioner's argument that the Department should raise the AFA rate from 23.17 percent to 43.17 percent.

We also disagree with petitioner's alternative suggestion that the Department select a new AFA margin based on the second-highest transaction-specific margin found for Kejriwal in the current review. Petitioner supports its suggestion on the ground that the Department relied upon the second-highest transaction-specific margin found for Kejriwal in the investigation. In the investigation, the Department selected the second-highest transaction-specific margin for purposes of AFA because it was the highest margin on an individual sale which fell within the mainstream of Kejriwal's transactions (i.e., transactions that reflect sales of products that are representative of the broader range of models used to determine normal value (NV)).

In considering the range of margins available in this review, we continue to follow the CIT's guidance that the Department cannot use as AFA "punitive, aberrational or uncorroborated" margins. In the instant case, we examined the margins advocated by petitioner and all transaction-specific margins above the AFA rate of 23.17 percent that was applied in the Preliminary Results. Based upon our examination, we find those margins to be aberrational because they are either sales of unusual products or of an unusually small quantity. See Memorandum to the File from the Team entitled "Preliminary Determination in the Antidumping Duty Investigation of Certain Lined Paper Products from India: Selection of Total Adverse Facts-Available Rate," dated April 7, 2006 (AFA Corroboration Memo).

Therefore, for purposes of these final results, we have continued to find that the dumping margin of 23.17 percent is probative as it is both relevant and reliable for use as AFA. Specifically, this margin is a calculated transaction-specific rate from the original investigation and is within the range of transaction-specific margins calculated for a mandatory respondent in this review.[10]

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[9] See F. Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027 (Fed. Cir. 2000), see also Shandong Huarong Gen. Group Corp. v. United States, Court No. 01-00858, slip op. 04-117 at 14, 17 (CIT September 2004).

[10] The dumping margin of 23.17 percent is the AFA rate for Navneet in the original investigation, which was based

Moreover, there is no evidence on the record of this review to support petitioner's contention that the AFA rate used in the original investigation is not relevant to Ria. Nor has petitioner offered any evidence that the 23.17 rate is not reliable. We note that in upholding the Department's use of this rate as AFA for Navneet and Aero in the original investigation, the CIT found it to be both reliable and relevant. See Association of American School Paper Suppliers v. United States, 2008 Ct. Intl. Trade, Lexis 128 (November 17, 2008); see also Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India (India Lined Paper Investigation Final), 71 FR 45012 (August 8, 2006). Therefore, as discussed above, because the rate selected as AFA in the Preliminary Results is both reliable and relevant, we believe that it is corroborated to the extent practicable in accordance with section 776(c) of the Act. In addition, consistent with our practice in selecting margins as AFA under section 776(b) of the Act, we continue to determine that the rate of 23.17 percent is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts-available rule. Accordingly, the Department has determined that the selected rate of 23.17 percent, the highest rate from any segment of this proceeding that can be corroborated, is in accordance with the requirement of sections 776(b) and (c) of the Act.

Comment 3: General & Administrative Expense Ratio

Kejriwal argues that the Department must include the cost of newsprint traded in the general and administrative (G&A) expense ratio denominator because it is the only methodology that results in an accurate allocation of G&A expenses over the company's entire business activity. Kejriwal asserts that it deals in newsprint as a trader, and that the price of goods traded in this manner is properly designated as cost of goods sold (COGS) according to generally accepted accounting principles. According to Kejriwal, the nature of the newsprint transactions does not justify disregard of the Department's normal methodology of calculating company-wide G&A by measuring company-wide expenses divided by the total value or cost of the activity that caused those expenses. Kejriwal cites U.S. Steel Group v. United States, Ct. No. 95-09-01144, USCIT Slip Op. 97-95 (July 14, 1997) at Issue 1 (U.S. Steel Group v. United States) and asserts that the Department has affirmed its normal method of allocating G&A expenses by dividing company-wide G&A by company-wide COGS in innumerable determinations.

Kejriwal contends that the Department's G&A expense calculation methodology can satisfy the statute's "accuracy mandate" only if both the numerator and denominator of the G&A ratio are each based on the same operational activities. According to Kejriwal, when a company deals in both subject and non-subject merchandise the G&A expense ratio would be skewed if company-wide G&A expenses were included in the numerator, but only the COGS of one line of business were included in the denominator. Kejriwal argues that the Department's G&A expense calculation in the investigation, which was subsequently applied in the preliminary results of this review, continues to be indefensible as it does not reflect the true company-wide COGS. According to Kejriwal, the cost of newsprint revenue included by the Department in the COGS denominator represents only a fraction of the true cost of Kejriwal's traded goods.

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on a calculated rate for Kejriwal. See the Memorandum to File through James Terpstra, Program Manager, from Cindy Lai Robinson, Case Analyst, entitled "Analysis Memorandum for Kejriwal Paper, Re: Preliminary Results of Antidumping Duty Administrative Review of Certain Lined Paper Products from India," dated September 29, 2008.

Kejriwal states that because of its rights and obligations under its contracts with its suppliers and customers, as well as its control and security interest in raw materials and finished merchandise, it is a trader or merchant relative to its newsprint activities. In cases where merchandise is purchased for resale and those purchases are related to the general operations of the company as a whole, Kejriwal argues, the total COGS in the G&A expense ratio denominator includes the purchase price for that merchandise. Kejriwal cites Certain Pasta from Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 64 FR 6615, 6627 (February 10, 1999) (Pasta from Italy) and contends that the Department agreed with the respondents that pasta purchased for resale should be included in the denominator of the G&A expense ratio. Kejriwal concludes that in accordance with its practice of including traded goods in the COGS denominator, the Department should have included the cost of traded newsprint in the denominator of its G&A expense ratio calculation in this proceeding.

Kejriwal argues that the Department should apply the same methodology for calculating the G&A expense ratio that it used to calculate the financial expense ratio. Kejriwal states that in the investigation, the Department determined that it could not arrive at a reasonable financial expense ratio without including the cost of newsprint traded in the allocation denominator. See Certain Lined Paper Products from India: Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances, 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 2 ("Lined Paper from India"). In the investigation, Kejriwal asserts, the Department reasoned that due to the unique facts in the case, it was appropriate to include the value of the newsprint traded as part of the denominator of the financial expense ratio in order to allocate financial expenses to all of Kejriwal's business activities. Kejriwal reasons that there exists no reasonable basis for the Department to depart from this same approach in the calculation of the G&A expense ratio. According to Kejriwal, the nature of its newsprint transactions affects all of the company's indirect expenses, not only its financial expenses.

Kejriwal argues that G&A expenses, like financial expenses, are by nature general and cannot be allocated directly to any one line of business. Kejriwal asserts that such indirect expenses are dedicated to the well-being of the company as a whole and cannot be moved around or manipulated as needed. Kejriwal cites Live Swine from Canada: Final Determination of Sales at Less Than Fair Value, 70 FR 12181 (March 11, 2005), and accompanying Issues and Decision Memorandum at Comment 63 (Live Swine from Canada) and contends that for the above reasons, the Department applies the same methodology for allocating both G&A expenses and financial expenses to the merchandise under investigation. Further, Kejriwal argues, the Department verified that the sourcing and supply of newsprint was the company's main line of business, and it is only reasonable that the vast majority of its G&A expenses are attributable to these operations. Accordingly, Kejriwal concludes, the Department should have followed its normal approach and allocated company-wide G&A expenses to company-wide cost of goods sold as it did in the financial expense ratio calculation.

With regards to the newsprint related expenses reclassified by the Department from the numerator of the G&A expense ratio calculation to the COGS denominator, Kejriwal argues that the Department should continue to include these amounts in the denominator for the final results.

Kejriwal contends that in order to fairly allocate general expenses to each line of business, the extent of each business is measured by the direct costs incurred by that line of business, which are added together to create the denominator of the ratio. Accordingly, Kejriwal asserts, company-wide indirect costs are divided by the company-wide direct costs in the denominator, which provides for a fair and reasonable allocation of G&A expenses. Kejriwal argues that the newsprint expenses reclassified by the Department are not common expenses, but rather are direct costs of the newsprint business similar to the direct costs for subject merchandise included in the denominator. Thus, Kejriwal concludes, these costs should continue to be included in the G&A ratio denominator in this proceeding.

The petitioner argues that the Department should exclude all items directly identifiable with the newsprint line of business from both the denominator and the numerator of the G&A expense ratio calculation. The petitioner disagrees with Kejriwal that the value of traded newsprint should be included in the denominator of the calculation. The petitioner asserts that Kejriwal's own auditors certified the accuracy of the cost of goods sold in the company's financial statements without including the value of traded newsprint. According to the petitioner, Kejriwal's audited financial statements do not treat the cost of traded newsprint as part of the company's cost of goods sold because Kejriwal does not actually buy and sell nor take title to the newsprint.

The petitioner argues that the Department's practice of calculating both the numerator and the denominator of the G&A expense ratio on a company-wide basis implies that the company in question is primarily a manufacturing operation, rather than a trading company that simply resells the merchandise under consideration. G&A expenses of a trading company, the petitioner maintains, do not necessarily correlate with the value of the traded goods as the same person equipped with the same computer or telephone can trade in any kind of merchandise. The petitioner adds that a trading company by definition cannot have G&A expenses because all of its expenses are trading (i.e., selling) related.

The petitioner contends that any company that manufactures goods also often does a number of auxiliary activities. What makes Kejriwal different, the petitioner asserts, is that its trading activity represents a major line of business that is in fact more significant than its manufacturing activities. The petitioner maintains that in such situations the Department's preference has been to exclude both the revenues and the costs of that activity in order to minimize the distortive effects it might have on the COP of the merchandise under consideration. The petitioner cites Magnesium Metal from the Russian Federation: Final Determination of Sales at Less Than Fair Value, 70 FR 9041 (February 24, 2005), and accompanying Issues and Decision Memorandum at Comment 10 (Magnesium from Russia) and asserts that the Department determined to include in the G&A ratio only those figures relating to activities that were not so significant as to constitute a separate line of business. Accordingly, the petitioner suggests, even if Kejriwal was really buying and selling newsprint and the cost of that newsprint was included in COGS, that cost would have been excluded from consideration in accordance with the Department's normal practice. If not excluded, the petitioner contends, the huge cost of traded goods that have no relation to the cost of manufacturing would overwhelm the relatively insignificant costs of manufacturing subject merchandise and result in a nonsensical G&A expense ratio of a trading business.

The petitioner claims that the Department's reclassification of Kejriwal's newsprint selling general and administrative (SG&A) expenses from the numerator of the G&A expense ratio calculation to the COGS denominator is indefensible. According to the petitioner, these reclassified expenses, which the Department identified as "cost of newsprint revenue," do not belong in the COGS denominator because by nature they are not cost of goods sold but rather SG&A expenses. The petitioner asserts that the numerator of the G&A ratio does not include any matching G&A expenses for newsprint, and thus, represents G&A expenses solely for stationery operations. In effect, the petitioner reasons, the Department has allocated a portion of the G&A for Kejriwal's stationery operations to newsprint trading activities, which is clearly distortive. The petitioner maintains that the numerator and the denominator of the G&A expense ratio must be based on the same operational activities and that the proper solution is not adding the value of traded newsprint to the denominator but rather excluding all items directly identifiable with the newsprint line of business from both the numerator and the denominator. Therefore, the petitioner concludes, the Department should revise Kejriwal's G&A expense ratio calculation to exclude the "cost of newsprint revenue" from the denominator in the final results. However, the petitioner adds, if the Department continues to use a denominator that encompasses both business lines it should then include all G&A expenses in the numerator.

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

We agree with Kejriwal that it is the Department's consistent practice to calculate company-wide G&A expenses by dividing the company-wide general expenses by the total company-wide cost of sales. <u>See</u>, <u>e.g.</u>, <u>Lined Paper from India</u> and <u>U.S. Steel Group v. United States</u>. The Department's longstanding methodology for allocating general expenses to individual products is to calculate a ratio by dividing the company's general expenses by its total cost of sales, as reported in the respondent's audited financial statements. <u>See</u> <u>Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden</u>, 63 FR 40449, 40459 (July 29, 1998).

However, we disagree with Kejriwal that the Department disregarded its longstanding methodology in this proceeding by excluding the acquisition cost of newsprint traded from the denominator of the G&A expense ratio calculation. Kejriwal did not incur or record an acquisition cost for newsprint in its income statement because it did not purchase or sell newsprint during the fiscal year or POR. As a result, Kejriwal did not record any newsprint cost of sales in its normal books and records. Thus, omitting the imputed acquisition cost of newsprint traded from the G&A expense ratio denominator does not constitute a departure from our consistent practice of dividing company-wide G&A by company-wide cost of sales, as the company did not incur such acquisition costs. Nevertheless, the Department included all actual expenses directly attributable to newsprint trading operations in the denominator of the calculation, thereby including expenses that the Department reasonably considers to be the "cost of sales" of the newsprint trading operations. <u>See</u> Kejriwal's supplemental section D response at exhibit D-3R2, dated May 28, 2008.

We note that the unique business model of Kejriwal, where its two main lines of business include one in manufacturing (<u>e.g.</u>, lined paper) and one in trading operations (<u>e.g.</u>, acting as a broker for a commission in the sales of newsprint), does not fit squarely with our normal approach for allocating financial statement classified G&A expenses over the financial statement classified cost of sales of manufactured products. We recognize that simply using the cost of sales reported by Kejriwal on its financial statement in the denominator of the G&A ratio calculation fails to attribute a reasonable amount of G&A costs to its administrative based business operations (i.e., newsprint trading operations). This is because all of the newsprint operating costs are included as a part of the G&A expenses reported on Kejriwal's financial statement rather than as a part of cost of sales. The financial statement classified cost of sales figure solely consists of expenses associated with manufacturing lined paper.

While we don't normally associate G&A costs directly to a product or line of business, we did so in this case due to the unique business model of Kejriwal's newsprint trading operations (i.e., it is an administrative line of business, not manufacturing). As noted above, we identified, out of the total G&A expenses reported on Kejriwal's income statement, those which are reasonably directly associated with Kejriwal's newsprint trading activities. We did not include these expenses associated directly with newsprint operations (e.g. salaries of the newsprint traders and the related office rent expense) in the G&A numerator, but rather, added them to the cost of sales denominator of the ratio calculation. The cost of sales reported on Kejriwal's financial statement consists solely of expenses associated with manufacturing lined paper. Simply excluding the expenses directly associated with newsprint trading operations from the numerator, without adding them to the lined paper cost of sales reported by Kejriwal on its financial statement in the denominator of the G&A ratio calculation, would fail to attribute a reasonable amount of G&A costs to its primary business activity of newsprint trading operations. As explained above, all of the expenses directly associated with the newsprint trading operations were reported on Kejriwal's financial statement as G&A expenses rather than as a part of cost of sales. By reclassifying the newsprint trading direct costs to the denominator, we have properly allocated Kejriwal's remaining G&A expenses across both the company's lined paper cost of goods sold, as well as, those costs directly related to newsprint operations (i.e., company-wide cost of goods sold) in accordance with Department practice.

We disagree with the petitioner's argument that the reclassification of expenses from the numerator of the G&A expense ratio calculation to the denominator is indefensible. If the Department identifies expenses that are directly related to one process or product, it normally and more appropriately considers those to be manufacturing costs. See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329, 24354 (May 6, 1999) (Hot-Rolled Steel from Japan). By contrast, G&A expenses by their nature are indirect expenses incurred by the company as a whole, and are not directly related to a particular process or product. See Hot-Rolled Steel from Japan, 64 FR at 24354. These general expenses usually include corporate office expenses such as salaries and benefits, rent, travel expenses, electricity, vehicle expenses, insurance, transport expenses, audit expenses, etc. We found unique circumstances in this case because a large part of the company's G&A expenses reported in the company's financial statement resulted directly from the trading of newsprint, rather than from the general operations of the company. Put another way, although these costs were reported as G&A expenses on the income statement, they were nonetheless costs directly related to Kejriwal's newsprint trading operations and were not supporting the general operations of the company as a whole.

With respect to Kejriwal's argument that the Department should apply the same methodology for calculating the G&A expense ratio that it used to calculate the financial expense ratio, we consider it reasonable to use two different approaches for allocating financial expenses and G&A expenses due to the unique facts of this case. The Department considers that, in this case, the G&A expense calculation is not comparable to the financial expense calculation, except that both ratios attempt to properly allocate expenses to their respective, associated costs.

While the Department included an imputed value of the newsprint traded in the denominator of the financial expense ratio, we did not do so for the G&A expense ratio calculation. The Department included the imputed value of newsprint traded in the denominator of the financial expense ratio calculation because of the direct link between financing offered to purchasers of newsprint and the financial expenses incurred to obtain loans which were then offered to purchasers of newsprint. By contrast, G&A expenses are incurred to support the general operations of the company and are not driven by the value of newsprint traded between two third parties for a commission. Because G&A expenses are incurred in support of the general operations of the company as a whole, the denominator contains both the cost of manufacturing the lined paper sold as well as the direct costs associated with Kejriwal's newsprint trading operations. The difference in the denominator of the two ratios is driven by the nature of the financial expenses Kejriwal incurred and the fact that these expenses were attributable to the value of the newsprint traded. In another respect, however, both ratios are consistently calculated in that they reasonably identify and capture the respective expenses (financial, G&A) for the company as a whole in the numerator and allocate them to the business activities of the company as a whole in the denominator (both lined paper manufacturing and newsprint trading).

Lastly, we agree with Kejriwal's argument that when merchandise is purchased for resale and those purchases are related to the general operations of the company as a whole, the total COGS in the G&A expense ratio denominator includes the purchase price for that merchandise. However, we find Kejriwal's reliance on Certain Pasta from Italy to be misplaced. Unlike Kejriwal, the respondent in that case acquired, took title to and paid for the pasta for resale. Further, the respondent included the cost of goods purchased for resale in the cost of sales in its audited financial statements. In this case Kejriwal does not actually acquire, take title to and pay for the newsprint, nor does it include the cost of newsprint in the cost of goods sold in its audited financial statements.

Comment 4: Financial Expense Ratio

The petitioner argues that the expenses the Department reclassified as direct costs of newsprint revenue are SG&A expenses. Thus, the petitioner argues that the Department should not include newsprint SG&A expenses in the denominator of the financial expense ratio calculation. As a result, the petitioner continues to oppose the Department's reclassification of Kejriwal's newsprint SG&A expenses to the denominator of the financial expense ratio. According to the petitioner, it is clear that the Department's intent was to approximate the COGS that would have been generated by Kejriwal's newsprint operations had it been involved in the actual buying and selling of newsprint. However, the petitioner asserts, it is equally clear that such cost of goods sold would not include any G&A or selling expenses, and that the surrogate newsprint COGS is already represented by the value of newsprint traded. The petitioner contends that adding newsprint related SG&A expenses to that value would amount to not using COGS as the denominator, but rather full costs less financial expenses. According to the petitioner, such a result would be inconsistent with the Department's intent and its practice in general. Therefore, the petitioner concludes, the Department should exclude newsprint SG&A expenses from the denominator of the financial expense ratio for the final results.

Kejriwal argues that the petitioner mischaracterizes the nature of the costs incurred in the operation of its newsprint business. According to Kejriwal, the petitioner's argument is meaningless, as the Department did not include any actual G&A or selling expenses in the denominator of the company's financial expense ratio. Kejriwal asserts that in the investigation, the Department analyzed the line items in its financial statement G&A account and found that it was appropriate to reclassify some of these costs related to both newsprint and stationery. Thus, Kejriwal concludes, the Department properly exercised its discretion to adjust certain direct costs to the company-wide denominator to fulfill its mandate of calculating Kejriwal's margin as accurately as possible.

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

We disagree with the petitioner that the Department should not include the expenses reclassified from Kejriwal's total SG&A in the denominator of the financial expense ratio. Contrary to the petitioner's assertions, the reclassified expenses are not SG&A related. As discussed at Comment 3 above, we have determined that these costs are more appropriately categorized as direct costs associated with newsprint revenues, and accordingly we have included such costs in the denominator of both the G&A and financial expense ratio calculations. With regard to the petitioner's assertion that the surrogate newsprint COGS is already represented by the cost of newsprint traded and adding newsprint related direct expenses to that value would amount to not using COGS as the denominator, we find that the inclusion of the value of the traded newsprint in the denominator does not justify the exclusion of the direct costs of the newsprint business. As noted in comment 3 above, if the Department identifies expenses that are directly related to one process or product, it normally and more appropriately considers those to be manufacturing costs and not G&A supporting the general operations of the company as a whole. Thus, by including both the cost of newsprint traded and the reclassified direct costs in the cost of sales denominator, we have properly allocated Kejriwal's financial expenses to the total company-wide activities to which they are related.

<u>Comment 5</u>: Capitalized Expenses

The petitioner argues that certain business proprietary expense items captured in Kejriwal's balance sheet should be included in the calculation of the G&A expense ratio. The petitioner cites section 773(f)(1)(A) of the Act and asserts that while Kejriwal's costs are based on its normal books and records and those records are in accordance with Indian GAAP, certain aspects of those records do not properly reflect the G&A expenses associated with producing the subject merchandise. The petitioner contends that Kejriwal includes in its balance sheet certain items that pursuant to the Department's practice and most national accounting standards should be reported as expenses in the income statement. Specifically, the petitioner maintains, all of the items in question appear to represent normal expense items that should not be recorded on the balance sheet. As an example, the petitioner notes that the expense items in question include legal/consulting fees incurred in relation to antidumping proceedings. The petitioner asserts that while these expenses cannot be included in the antidumping cost calculations, they clearly represent a normal expense item for a company involved in an antidumping proceeding.

The petitioner argues that because the expense items in question recorded in the balance sheet are not identified as related to newsprint operations, they should be included in the calculation of the reported G&A expenses. According to the petitioner, even if the Department does not believe that all of these expenses are related to lined paper production, at least some portion of them should be allocated to the G&A expense incurred with respect to the production and sales of the merchandise under review. The petitioner contends that in making such an allocation, the costs could be split in proportion to the respective G&A expenses the company calculated for each of the two lines of business.

Kejriwal argues that the Department should reject the petitioner's assertion that certain items captured in the company's balance sheet should be included in the G&A expense ratio calculation. Kejriwal contends that the petitioner has made no attempt to reference its explanation of these items in its submissions to the Department, nor has the petitioner cited any legal authority that might support their contentions. Kejriwal reasons that because it explained the allocations for each of these items in its submissions, the petitioner's assertion that these items are not identified to a specific line of business, and should thus be included in the reported G&A expenses is disingenuous. Kejriwal goes on to address each of the following questioned items captured in its balance sheet in turn: legal and consulting fees incurred in relation to antidumping proceedings, costs relating to the split-off of the newsprint business, and costs related to the lined paper business.

Kejriwal asserts that in light of the settled law regarding legal fees paid in relation to antidumping proceedings, petitioner's suggestion that these expenses should be included in the reported G&A expenses is without support. Kejriwal argues that it is settled law that such legal fees or expenses should not be included in the Department's calculations as indirect selling expenses or as G&A expenses. To support their argument, Kejriwal cites Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review, 70 FR 73437 (December 12, 2005), and accompanying Issues and Decision Memorandum at Comment 11 (Softwood Lumber from Canada) and notes that in that case the Department excluded legal fees associated with antidumping duty proceedings, which the respondents had mistakenly included, from total G&A expenses.

Kejriwal maintains that most of the other questioned items captured in the company's balance sheet relate to the split-off of its newsprint business from its lined paper business. According to Kejriwal, these are expenses arising directly from its trading in newsprint and are a direct result of its risk as the principal contract partner to both its newsprint suppliers and its newsprint customers. Kejriwal reasons that in light of the recent opinion issued by the Court of International Trade, the Department may not reasonably and fairly include such newsprint expenses as G&A expenses without at the same time adjusting Kejriwal's G&A expense ratio to include the cost of newsprint traded in the ratio denominator. See Association of American

School Paper Suppliers v. United States, USCIT Slip Op. 08-122 (November 17, 2008).

Kejriwal states that the remaining questioned items are specific to its lined paper business. Kejriwal asserts that it has explained that these expenses were incurred prior to the commencement of the production of the subject merchandise in its new factory, and that as plant re-arrangement and start-up costs, they constitute an appropriate allocation of costs to future operations to be amortized over five years. If the Department should find that these expenses are properly included as G&A expenses, Kejriwal reasons, then the Department should apply only 20% of the statement amount as consistent with its normal practice and Kejriwal's practice of amortizing such expenses over a period of five years. Kejriwal cites Certain Fresh Cut Flowers from Colombia: Final Results of Antidumping Duty Administrative Review, 61 FR 42833, 42847 (August 19, 1996) and contends that the Department has consistently recognized that such expenses can be fairly and reasonably amortized over a period of time because such depreciation is a systematic method of allocating the historic cost of an asset to the future periods that benefit from its use.

Department's Position:

We agree with the petitioner that certain expense items capitalized in Kejriwal's balance sheet should be included in the calculation of the G&A expense ratio. Due to the proprietary nature of these items, they cannot be described in this memorandum. For a detailed discussion of these items, see Memorandum to Neal M. Halper from Robert B. Greger, Re: Constructed Value Calculation Adjustments for the Final Results (dated April 6, 2009). Under section 773(f)(1)(A) of the Act, the Department is directed to follow the normal records of the exporter or producer if such records are kept in accordance with home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise under consideration. Therefore, because Kejriwal capitalized these expenses and subsequently wrote them off against equity in its financial statements, we must follow this treatment if it reasonably reflects the costs associated with the production and sale of lined paper.

It is not unusual or unreasonable for a company to capitalize certain costs with the intent to amortize and expense such costs over time. However, in this case, we find Kejriwal's capitalization of certain expenses and subsequent write-off against equity without ever recognizing such costs on its income statement to not reasonably reflect the costs of producing and selling the merchandise under consideration, and find that the total amount of these expenses is properly included in the reported costs. Charging such expenses directly against equity without ever recognizing these expenses as either manufacturing costs or SG&A expenses would not reasonably account for the costs associated with the production and sale of the merchandise under consideration. Further, based on the descriptions of each of the capitalized expenses provided by Kejriwal in its questionnaire responses (see the May 28, 2008 supplemental section D response at page 3, page 5 and exhibit 13), we find that each of the expenses in question is related to the general operations of the company as whole, rather than directly related to one process or product. For further discussion see Memorandum to Neal M. Halper from Robert B. Greger, Re: Constructed Value Calculation Adjustments for the Final Results (dated April 6, 2009). Thus, in accordance with our established practice, these expenses are appropriately included in the numerator of the G&A ratio calculation. See, e.g., Magnesium from Russia at

Comment 10, Silicomanganese from Brazil; Final Results of Antidumping Administrative Review, 69 FR 13813 (March 24, 2004), and accompanying Issues and Decision Memorandum at Comment 10; Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon-Steel Flat Products from Taiwan, 67 FR 62104 (October 3, 2002), and accompanying Issues and Decision Memorandum at Comment 6. Therefore, we have included these expenses in Kejriwal's total G&A expense for the final results. See the May 28, 2008 supplemental section D response at pages 3 and 5, and exhibit 13.

Contrary to Kejriwal's assertion, we find that there is no record evidence to support the conclusion that some of these expenses are direct costs of the newsprint business. Rather, we find that each of these expenses is clearly related to general operations. For further discussion see Memorandum to Neal M. Halper from Robert B. Greger, Re: Constructed Value Calculation Adjustments for the Final Results (dated April 6, 2009). With regard to Kejriwal's argument that some of the expenses related to its lined paper business should be amortized in accordance with the company's practice of amortizing such costs over a period of five years rather than including the total amount of such expenses in G&A, we note that Kejriwal itself elected to charge these expenses off in full in the current year rather than amortize them. Normally under GAAP a company will capitalize an expense and amortize it over a number of years because it benefits future periods. In the instant case, Kejriwal made a determination that the capitalized costs do not benefit future periods by writing them off their balance sheet in full in the current year. Therefore, we have included the total expenses in Kejriwal's G&A expenses for the final results.

Finally, with respect to the antidumping legal fees included in the capitalized expenses, we agree with both Kejriwal and the petitioner that this amount should be excluded from Kejriwal's reported total G&A expense. It is our established practice to exclude all legal and consulting fees incurred as a direct result of antidumping proceedings from the G&A expense ratio calculation. See, e.g., Softwood Lumber from Canada at Comment 11. Thus, we have excluded the antidumping legal fees from Kejriwal's total G&A expense in this proceeding.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the Federal Register.

AGREE _____ DISAGREE _____

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Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

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Date