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Investigation
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AD/CVD 5: TES

MEMORANDUM TO: Christian Marsh
Acting Deputy Assistant Secretary
for Import Administration

FROM: Laurie Parkhill
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AD/CVD Enforcement 5

SUBJECT: Issues and Decision Memorandum for the Antidumping Investigation of Polyvinyl Alcohol from Taiwan

Summary

We have analyzed the case and rebuttal briefs of interested parties in the antidumping investigation of polyvinyl alcohol (PVA) from Taiwan. As a result of our analysis, we have made changes, including the results of our findings at verifications, in 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 investigation for which we received comments and rebuttal comments by parties:

1. Targeted Dumping
2. Product Characteristics
3. Date of Sale
4. Cost of Production

Background

On September 13, 2010, we published in the *Federal Register* our preliminary determination in the antidumping duty investigation of PVA from Taiwan. See *Polyvinyl Alcohol From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 55552 (September 13, 2010) (*Preliminary Determination*). The period of investigation (POI) is July 1, 2003, through June 30, 2004. We invited interested parties to comment on the *Preliminary Determination*. We received case and rebuttal briefs from Sekisui Specialty Chemicals America, LLC (the petitioner), and from the respondent, Chang Chun Petrochemical Co., Ltd. (CCPC), on November 2, 2010. The petitioner and CCPC submitted rebuttal comments on November 8, 2010. We held a public hearing on December 1, 2010.

Discussion of the Issues

1. Targeted Dumping

Comment 1: CCPC argues that the Department of Commerce's (the Department's) targeted-dumping methodology in the *Preliminary Determination* is not in accordance with substantial

evidence or with U.S. law and the World Trade Organization (WTO) Antidumping Agreement. CCPC contends that substantial record evidence demonstrates that CCPC did not engage in targeted dumping. CCPC also asserts that the Department's approach in the *Preliminary Determination* contravenes controlling regulations and the WTO Antidumping Agreement's decisions regarding zeroing.

Citing the *Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 5500, 5502 (January 30, 2008) (*PRC Pipe*), CCPC argues that the Department is required to account for other possible reasons for the observed price differences, such as general price fluctuations in the market, product differences, differences in channels of distribution, or quantities purchased. CCPC contends that the record demonstrates that such other reasons adequately account for the observed price differences and thus prove that CCPC did not engage in targeted dumping during the POI.

CCPC argues that there was no targeted dumping with respect to the alleged targeted customer. CCPC contends that the alleged targeted customer is a domestic producer of PVA which it asserts is at a different level of trade than other U.S. customers which are only trading companies. According to CCPC, its sales to the alleged targeted customer are at a less advanced level of trade than the sales to other U.S. customers and the prices reflect this. CCPC also asserts that the alleged targeted customer is a very long-term business partner of CCPC and that PVA constitutes only a portion of the companies' business relationship. As a result, CCPC contends, it had no need to engage in targeted dumping with respect to the alleged targeted customer in order to attract or maintain it as a long-term customer.

CCPC also contends that there is no targeted dumping with respect to May 2004 and June 2004, the alleged targeted time periods. CCPC states that the price differentials asserted by the petitioner can be explained by changes in the cost of raw materials during the POI. According to CCPC, vinyl acetate monomer (VAM) accounts for about 75% of the total cost of PVA and VAM prices appreciated throughout the POI. CCPC asserts that a comparison of its actual VAM purchase prices in various time periods demonstrates differences in excess of one standard deviation. CCPC contends that any analysis of targeted dumping that does not account for such a material price appreciation will be distorted.

In addition, CCPC contends, there is no targeted dumping with respect to the Midwest, the alleged targeted region. CCPC claims that a majority of sales to the Midwest were made in the first half of the POI. In fact, CCPC avers, the percentage of its Midwest sales in the first half of the POI is greater than the alleged percentage of sales contributing to the pattern. CCPC asserts that this demonstrates clearly that the change in VAM prices during the POI is the sole reason for the price differences in the Midwest. CCPC asserts further that its total POI sales to the Midwest were insignificant and, thus, are far too small to be able to "mask" the normal average-to-average methodology employed in an investigation.

CCPC also argues that the Department's methodology contravenes the regulations in effect when the investigation was initiated. CCPC argues that, although the section of the Department's

regulations regarding targeted dumping were withdrawn in 2008, it nonetheless should continue to apply to this proceeding. Citing *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008) (*Withdrawal Notice*), CCPC asserts that the notice withdrawing the targeted-dumping regulations stated clearly that the withdrawal does not apply to cases, such as this investigation, initiated before December 10, 2008. Citing *Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand*, 75 FR 48940 (August 12, 2010) (*Thai Bags*), and accompanying Issues and Decision Memorandum, CCPC contends that the Department has applied the temporal scope of the *Withdrawal Notice* strictly. Thus, as in *Thai Bags*, CCPC avers, the previous regulations are also applicable to this proceeding.

CCPC urges the Department to construe the modifier "normally" in the regulations narrowly and not use it as a means to bootstrap post-2008 Departmental decisions and practices such as to negate the limitation contained in the regulations in effect at the time of initiation of this investigation. CCPC asserts that introducing post-2008 Departmental decisions and practices constitutes an improper retroactive application of law that is inconsistent with both the express temporal limitation of the withdrawal of the regulations and with general principles of administrative law against the retroactive application of regulations. Citing, among others, *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988) (*Bowen*), CCPC asserts that well-settled court precedent prohibits the retroactive application of changes in the law unless such application is expressly provided for by Congress or is contained in the language of the changes themselves. CCPC acknowledges that U.S. dumping law is by its nature retroactive but argues that nothing in the new targeted-dumping practices or the *Withdrawal Notice* indicates that they were intended or permitted to be applied retroactively in this investigation.

CCPC argues that the regulations in effect when the investigation was initiated limits the application of the average-to-transaction methodology only to those sales which constitute targeted dumping. Thus, CCPC contends, even if the Department were to continue to accept the petitioner's targeted-dumping allegations in the final determination, the Department should apply the average-to-transaction methodology only to those sales which have been found to have been targeted.

Finally, CCPC argues that the Department's targeted-dumping methodology in the *Preliminary Determination* contravenes the WTO Antidumping Agreement. CCPC contends that the WTO Appellate Body has rejected the use of zeroing in antidumping calculations. CCPC acknowledges that the Department has argued that zeroing is justified in cases of targeted dumping and that the WTO Appellate Body has not yet addressed this argument explicitly. CCPC claims that it believes that the WTO Appellate Body would view the application of zeroing in this investigation as contravening the WTO Antidumping Agreement because, in its *Preliminary Determination*, the Department did not address CCPC's arguments that pricing patterns can be explained by differences in level of trade and appreciation in raw material costs rather than targeted dumping. CCPC also contends that the application of zeroing to all of its U.S. sales as a remedy is disproportionate to the purported harm caused by targeted dumping. According to CCPC, a majority of U.S. sales are not alleged to be targeted yet the Department

elected to apply zeroing to all U.S. sales. CCPC argues that this would be inconsistent with the WTO Appellate Body's prior decisions on zeroing.

The petitioner argues that the Department concluded properly that CCPC engaged in targeted dumping. The petitioner contends that *PRC Pipe* is easily distinguishable from this investigation. According to the petitioner, the petitioners in *PRC Pipe* were unable to establish that the difference in prices between targeted and overall sales was significant and the test they used did not establish that the price differences were based on purchasers, regions, or time periods rather than other factors. The petitioner asserts that it addressed such deficiencies by using the approach adopted by the Department in *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008), and *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (collectively, *Nails*). According to the petitioner, the Department's methodology in *Nails* avoids the problems identified in *PRC Pipe* by comparing prices of identical products, analyzing price patterns, and isolating significant price differences.

The petitioner argues that a review of CCPC's purported "non-price" factors does not change the fact that CCPC engaged in targeted dumping. According to the petitioner, the differences in VAM prices do not explain the price changes over time; rather, the increasing cost of VAM in light of the price trend for PVA fortifies the Department's conclusion that CCPC engaged in targeted dumping.

The petitioner asserts that CCPC's level-of-trade argument with respect to the targeted customer is inconsistent with the record in this investigation because CCPC has reported only one level of trade in the U.S. market. Moreover, the petitioner claims, CCPC's long-term relationship with the targeted customer does not eliminate or correct the targeted dumping. According to the petitioner, CCPC does not deny the evidence establishing that it provided favorable pricing to the customer. The petitioner contends that favorable pricing to a customer is the essence of targeting. The petitioner argues that the presence of a strong relationship between CCPC and the targeted customer is immaterial to the Department's targeted-dumping analysis and is possibly the fruit of CCPC's targeted dumping.

In addition, the petitioner argues that the Department's analysis of CCPC's targeted dumping was consistent with the Department's practice and regulations. The petitioner contends that the Department exercised its discretion properly in determining that this investigation presented circumstances that were not "normal." According to the petitioner, the Department's earlier attempt at regulation was inconsistent with the intent of the statute and the Department adopted a case-by-case approach in order to develop a better understanding of targeted dumping. Thus, the petitioner avers, in light of the Department's repudiation and rejection of the prior regulation, the Department should apply its experience since December 2008 in applying its targeted-dumping methodology.

The petitioner argues that the Department concluded properly that it had the discretion in this investigation to apply the average-to-transaction methodology to all sales. The petitioner asserts that, even if the now-withdrawn regulation applies, the Department had already recognized that

limiting the average-to-transaction methodology only to targeted sales would be inappropriate in some cases when it promulgated that regulation. The petitioner asserts that limiting the average-to-transaction methodology only to targeted sales in this investigation would give CCPC the freedom to target certain customers in the U.S. market with impunity with the knowledge that its other, non-targeted sales would mask its dumping conduct. The petitioner also contends that CCPC's argument that the Department not use the term "normally" as a means to bootstrap post-withdrawal decisions effectively reads the term "normally" out of the regulation completely and replaces it with "always."

The petitioner asserts that the temporal application of the regulation's withdrawal has been applied where the targeting allegation was untimely. According to the petitioner, CCPC's sole basis for asserting that the Department has applied the temporal scope of the withdrawal narrowly was in *Thai Bags*, a Section 129 redetermination in connection with the final determination in an investigation that was appealed to the WTO. The petitioner avers that any allegation of targeted dumping should have been filed during the original investigation and not during a subsequent Section 129 redetermination. In this case, the petitioner contends, it submitted its targeted-dumping allegation in a timely manner, rendering the Department's decision in *Thai Bags* irrelevant in this case.

Finally, the petitioner argues that there is no controlling WTO authority that conflicts with the Department's response to targeted dumping. According to the petitioner, CCPC has not cited any adjudication by the WTO concerning the application of the targeted-dumping methodology and, even if there had been such an adjudication, it would not, in and of itself, be controlling precedent for purposes of this investigation.

Department's Position: We disagree with CCPC's assertion that substantial record evidence demonstrates that CCPC did not engage in targeted dumping. As a preliminary matter, although CCPC claims that we did not address its arguments in our *Preliminary Determination*, we did address them in the memorandum entitled "Less-Than-Fair-Value Investigation on Polyvinyl Alcohol from Taiwan: Targeted Dumping - Chang Chun Petrochemical Co., Ltd." dated September 7, 2010 (Targeted-Dumping Memo), at page 6. In fact, CCPC neither acknowledges nor presents any rebuttal to our decisions regarding its arguments in the Targeted-Dumping Memo.

With respect to CCPC's allegation that its sales to the alleged targeted customer were made at a different level of trade than its other U.S. sales, we stated in the analysis memorandum for the preliminary determination that "CCPC reported that its {export-price} sales were made to distributors through a single channel of distribution. CCPC reported that the selling activities associated with all sales through this channel of distribution did not differ ... Accordingly, we found that the {export-price}channel of distribution constituted a single level of trade." See the memorandum entitled "Preliminary Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Polyvinyl Alcohol from Taiwan - Analysis Memorandum for Chang Chun Petrochemical Co., Ltd.," dated September 7, 2010, at page 2. CCPC offered no argument or evidence that the selling functions it performed for the alleged targeted customer were different than for other U.S. customers. In fact, CCPC merely repeats the arguments it made prior to the *Preliminary Determination* and does not address the reasoning we gave for our

level-of-trade findings. Thus, because CCPC performed the same selling functions for all U.S. customers, whether targeted or non-targeted, we continue to find that all of CCPC's U.S. sales constitute a single level of trade.

With respect to CCPC's argument that price differentials in time periods can be explained by changes in the cost of raw materials during the POI, we stated the following in the memorandum explaining our targeted-dumping decisions:

> "{O}ur targeted-dumping test determines the share of the sales of subject merchandise to the alleged targeted time period that are at prices more than one standard deviation below the weighted-average price to all time periods, targeted and non-targeted. Thus, the 'pattern' part of the targeted-dumping test, as described above, only looks to see whether there are a significant number of sales to the alleged target that are below the weighted-average price to all time periods. The VAM prices during the alleged targeted time periods were close to the average VAM prices during the entire POI. Therefore, the changes in VAM prices do not support CCPC's argument that price differentials can be explained by changes in the cost of raw materials during the POI."
> See Targeted-Dumping Memo at page 6.

Moreover, as CCPC observes, VAM prices increased during the POI; the alleged targeted periods occurred at the end of the POI. Because our targeted-dumping test determines the share of the sales of subject merchandise to the alleged targeted time period that are at prices more than one standard deviation *below* the weighted-average price to all time periods, increasing VAM prices cannot explain the price differentials.

With respect to CCPC's argument that price differentials in regions can also be explained by changes in the cost of raw materials during the POI, after making changes as a result of verification and in response to other comments, discussed below, we did not find targeted dumping by region. Therefore, this aspect of this issue is moot.

Accordingly, we find that CCPC engaged in targeted dumping with respect to a certain customer and time periods.

We do not agree with CCPC's argument that applying the average-to-transaction methodology would contravene the regulations in effect at the time this investigation was initiated. The use of the qualifier "normally" in 19 CFR 351.414(f)(2) (2004) indicates that, under this regulation, we have the discretion to depart from limiting the application of the average-to-transaction methodology to those sales that constitute targeted dumping if we find it appropriate. We determine that such a departure is appropriate in this investigation. We withdrew this regulation in 2008 because we recognized that the regulation "may have established thresholds or other criteria that have prevented the use of this comparison methodology to unmask dumping, contrary to the Congressional intent." See *Withdrawal Notice*, 73 FR at 74931. We said further that "{w}ithdrawal {of the regulation} will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area." *Id*. Since the publication of the *Withdrawal*

Notice, we have gained additional experience with targeted dumping and, as a result of this experience, we have refined our practice in cases involving targeted dumping to better reflect Congressional intent. Specifically, "if the criteria of section 777A(d)(1)(B) of the Act are satisfied, the Department will apply average-to-transaction comparisons for all sales in calculating the weighted-average dumping margin." See *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

Accordingly, because 19 CFR 351.414(f)(2) (2004) gives us the discretion to depart from limiting the application of the average-to-transaction methodology to those sales that constitute targeted dumping and because we have developed a practice which better reflects Congressional intent, it is appropriate to apply the average-to-transaction methodology to all U.S. sales that CCPC reported.

Moreover, we find that our application of our updated targeted-dumping methodology does not constitute an unlawful retroactive application of a new rule. As an initial matter, the U.S. Court of Appeals for the Federal Circuit has held that, where the Department has authority to interpret the statute, the Department may occasionally reassess its policies and apply a new policy to a pending case. See *SKF USA, Inc. v. United States*, 254 F.3d 1022, 1029-30 (CAFC 2001). Because section 777A(d)(1)(B) of the Act does not specify the sales to which the Department may apply an average-to-transaction methodology, the Department has authority to interpret this aspect of the statute, as indicated by the qualifier "normally" in 19 CFR 351.414(f)(2) (2004). Thus, contrary to CCPC's position, the statute does not require that the average-to-transaction methodology be applied only to targeted sales. Finally, application of the Department's updated targeted-dumping methodology cannot be said to impose additional liabilities or sanctions on CCPC because inherent in the retrospective system for antidumping laws created by Congress is the uncertainty at the time of entry as to what, if any, final duties will be owed. See *D&L Supply Co. v. United States*, 841 F. Supp. 1312, 1315 (CIT 1993). Accordingly, the Department's targeted-dumping methodology in this investigation does not constitute an impermissible retroactive application of a new rule.

Finally, as the petitioner observes, there is no controlling WTO authority that conflicts with the Department's targeted-dumping methodology. As CCPC acknowledges, the WTO Appellate Body has not addressed the use of the average-to-transaction methodology with respect to targeted dumping. CCPC's assertions of how the WTO Appellate Body may rule are speculative and without basis. In any event, we have determined that our approach is fully consistent with the WTO Agreement.

2. Product Characteristics

Comment 2: The petitioner argues that the Department should base the margin for CCPC on adverse facts available because CCPC did not provide the required product-characteristic information. The petitioner asserts that the identification and ordering of physical characteristics for matching purposes is fundamental to the dumping calculation. The petitioner contends that the Department asked CCPC to report viscosity, hydrolysis, and degree of modification in terms of specific percentages in its original questionnaire. When CCPC reported these characteristics

in terms of ranges in its response, the petitioner explains, the Department asked CCPC again to report them in terms of specific percentages and not to use ranges.

According to the petitioner, instead of responding to the Department's request for information, CCPC requested that it be allowed to continue to report these characteristics in terms of ranges on the grounds that reporting specific percentages is not feasible and, in any event, the requested data were not needed. The petitioner asserts that the Department gave permission to CCPC to continue to use the ranges but conditioned the acceptance of the ranges by requiring CCPC to substantiate its claims.

The petitioner contends that the claims CCPC made for which the Department demanded proof were that "very often multiple lab tests of the same lot will result in very close readings of chemical properties, but these reasons are never identical" and that there are "instances where CCPC ships a single grade of PVA under a particular invoice, but the product shipped actually came from several lots of production with each lot having its own sample test results." The petitioner alleges that CCPC did not substantiate these claims. According to the petitioner, CCPC did not provide any multiple test results for any materials sold during the POI. With respect to the second claim, the petitioner asserts that, although CCPC did provide such test data, by doing so, CCPC demonstrated that it was, in fact, possible to provide the data the Department requested in the questionnaires, thus undercutting the basis for the Department's conditional acceptance of the ranged product-characteristics data.

According to the petitioner, the Department placed on CCPC the burden of showing that a deviation from the Department's normal approach to product characteristics was justified and it explained precisely what CCPC needed to show in order to justify this deviation. Because CCPC did not satisfy the Department's demand, the petitioner argues, there is no basis for continuing to allow CCPC to evade the Department's standard requirements. The petitioner contends that the Department determines which product comparisons are appropriate, not CCPC, and that CCPC should have supplied the information as requested by the Department and then argued for its proposed classification based on the data.

The petitioner asserts that CCPC's coding system results in each control number corresponding not to a unique product as determined by the product's actual physical characteristics but to a CCPC grade, even if that grade contains products exhibiting a range of characteristics or even if two or more grades contain products that have identical product characteristics. According to the petitioner, CCPC's ranges lead to inconsistent matches because they include overlapping ranges and CCPC can assign different product-characteristic codes to products with identical characteristics. The petitioner cites as an example two certificates of analysis for grade BF17 which indicate viscosities of 29.1 centipoises and 28.9 centipoises which, under CCPC's coding system, could be assigned a code of 12, 13, or 14; the two certificates of analysis for grade TS30 indicate viscosities of 29.4 centipoises and 29.5 centipoises, which could also be assigned a code of 12, 13, or 14. On the sales file, the petitioner claims, CCPC assigned different viscosity codes to grades BF17 and TS30. Thus, the petitioner alleges, products that were identical with respect to viscosity were coded differently. According to the petitioner, the only reason that these two grades are reported as being different is that, under CCPC's grading system, grade BF17 has a different permissible viscosity range than grade TS30. The petitioner argues that CCPC does not

explain what relevance the specification range for grades defined by CCPC has to the question of whether a particular model within a given grade has an identical product characteristic to another product that happens to have been assigned a different grade. The petitioner also cites other certificates of analysis and claims that the viscosity levels indicated therein demonstrate that all of them could have been classified as viscosity code 2 and that some could have been classified as viscosity code 3, given the ranges that CCPC assigned to those codes.

The petitioner also argues that matches resulting from CCPC's product data are nonsensical. According to the petitioner, CCPC's data highlight the potential for erroneous matches that can result. Citing the certificates of analysis for two grades, the petitioner claims that the matching codes are inconsistent relative to each other, given what would be expected based on the viscosity measurements. As a result, the petitioner asserts, basing the product coding on CCPC's grading system produces the absurd result of presenting products as more or less similar than they actually are, thus making the reported control numbers useless for identifying similar products. The petitioner cites the certificates of analysis for three grades which, the petitioner alleges, demonstrate that one grade will be compared to a second grade based on the viscosity codes but which should be compared to a third grade based on the actual viscosities indicated by the certificates.

In addition, the petitioner argues that CCPC has conflated two of the hydrolysis ranges indicated by its product brochure into a single, wider range which bears no relationship to any specific grade that CCPC sells. The petitioner contends that CCPC's only argument for deviating from basing its product characteristics on its product grades in the case of these two grades is that the two grades are normally sold at the same price with very similar cost structures. According to the petitioner, it is not the role of the respondent to identify which products are sold at the same price with very similar cost structures. The petitioner asserts that CCPC has ensured that, for the most part, only products of the same CCPC grade are compared with each other and, given the commodity nature of PVA, the Department is likely to see little variation in the pricing for any given grade. According to the petitioner, the Department would have no way of identifying even an identical product sold for a very different price so long as CCPC assigned it to a different grade that had slightly different specification ranges.

The petitioner also argues that CCPC's ranged characteristics make it impossible to ensure that only goods within the scope of the investigation are included. The petitioner points out that the scope of the investigation has been defined, in part, to include PVA hydrolyzed in excess of 80 percent but the hydrolysis range for certain of CCPC's grades is 78.5 to 81.3 percent, thus straddling the boundary of merchandise under investigation. According to the petitioner, CCPC did not report sales of these grades without requesting a scope inquiry or otherwise notifying the Department. The petitioner claims that it is impossible to determine whether these grades are within the scope of the investigation using the product code. The petitioner asserts that there can be no confidence in merchandise information when it allows for variations that not only affect product matching but also the scope of the merchandise under investigation.

Furthermore, the petitioner argues, CCPC's matching system does not allow the examination of cost differences attributable to differences in product characteristics. According to the petitioner, CCPC's refusal to report accurate product characteristics necessarily negates the Department's

ability to test CCPC's home-market sales database for sales below cost and to adjust the price of CCPC's home-market sales for differences in merchandise. The petitioner contends that the Department requires that products with identical physical characteristics as specified by the Department be weight-averaged together and that this cannot be done if the characteristics are not reported accurately. Moreover, the petitioner avers, when the Department compares the prices of sales of similar products, it adjusts the home-market price of the similar product by the difference in variable costs, which can only be made if the costs accurately reflect the differences in the physical characteristics of the products. According to the petitioner, CCPC neither reported nor costed the physical characteristics of the products that it sold in Taiwan or the United States; rather, it reported and costed its internal product grades.

The petitioner contends further that CCPC's coding produces control numbers that are inconsistent with the expected cost differences for given physical characteristics. The petitioner cites, as an example, differences in utility consumption caused by differences in viscosity which are not reflected in CCPC's reported costs. The petitioner claims that it produced several examples of this discrepancy prior to the cost verification and, while CCPC explained one example as an exception, it did not address the other examples.

The petitioner also cites, as an example, that the costs CCPC reported do not reflect the correlation between particle size and cost that CCPC had indicated would exist. The petitioner claims that, when the Department asked CCPC to explain this discrepancy, CCPC demonstrated that this discrepancy resulted from its allocation of a significant amount of the conversion costs associated with the derived grades over all PVA grades rather than just to the control numbers that included the derived grades, resulting in an understatement of the costs of derived grades. The petitioner also alleges that the Department found at verification that CCPC had not reported its grinding costs accurately by including them in its factory overhead costs rather than in control number-specific costs.

As a result of the alleged cost discrepancies, the petitioner argues, it is impossible to have any confidence that CCPC's product-matching information properly takes into account cost differences attributable to physical characteristics. For this reason, as well as the other reasons described above, the petitioner concludes that the product-matching criteria as reported by CCPC cannot result in an accurate margin calculation. Accordingly, the petitioner argues, the Department must base CCPC's margin on the facts available. Furthermore, because CCPC did not report the specific percentages as requested by the Department even though it could have done so, the petitioner contends that CCPC did not act to the best of its ability and, therefore, an adverse inference must be used. The petitioner suggests that the Department use, as the adverse facts available, the rate in the petition as the margin for CCPC.

CCPC argues that the Department should continue to use its reported physical-characteristic data. CCPC asserts that the petitioner's arguments were raised before the *Preliminary Determination* and ignore the considerable lengths to which both the Department and CCPC have addressed and resolved this issue.

CCPC contends that it has cooperated fully with the Department's requests for information. CCPC claims that the petitioner's allegations that CCPC did not cooperate in this proceeding are

based on a mischaracterization of the record. CCPC asserts that the record demonstrates that it acted to the best of its ability, given the records kept in its normal course of business.

Citing the petitioner's April 19, 2010, submission, CCPC asserts that the petitioner itself has advocated the use of ranges in this proceeding. CCPC also alleges that the Department's questionnaire did not specify that specific figures should be used for these characteristics.

CCPC argues further that its ranges were accurate and consistent with industry practice, including that of the petitioner. According to CCPC, PVA is a chemical produced and sold in grades which are defined principally in terms of ranges of hydrolysis, viscosity, and polymerization. According to CCPC, each grade of product represents a different combination of these characteristics, which makes a particular grade suitable for a particular application. CCPC claims that the certificates of analysis indicate the viscosity, hydrolysis, and degree of modification but that the actual figures are not as important as the fact that the product falls within the acceptable range of figures that were required for the PVA product ordered.

CCPC contends that the use of actual figures for these product characteristics would not meet the fair-comparison requirements of this proceeding. According to CCPC, because PVA is produced to defined grades and costs are gathered and allocated on the basis of grades, a more detailed calculation of production costs is neither feasible nor possible and would result in many control numbers sharing the same cost.

CCPC claims that the Department's verifiers confirmed that its reporting methodology for these physical characteristics was correct.

CCPC also argues that the petitioner's secondary criticisms of CCPC's reporting methodology are misplaced. CCPC contends that it excluded non-subject merchandise from its sales databases properly and that the Department verified CCPC's methodology for excluding these sales. CCPC also asserts that the purported distortions in costs reported by CCPC are either so small as to have virtually no effect on the Department's calculations or have been explained as resulting from the normal operations of CCPC.

CCPC asserts further that the purported overlapping of ranges does not render the resulting control numbers unusable. CCPC contends that the petitioner's approach would create thousands of potential control numbers with no increased accuracy. In fact, CCPC claims, the Department found in the *Preliminary Determination* that the petitioner's approach would result in less accuracy. CCPC claims further that the Department found in the *Preliminary Determination* that, even if the overlapping ranges were somehow "corrected" by collapsing the ranges, the products would still not be identical because of the other product characteristics.

Department's Position: We continue to find that it is appropriate to accept CCPC's reported physical characteristics for this investigation. As described in more detail below, CCPC produces and sells PVA on the basis of grades and its reported physical characteristics accurately reflect those grades for the purpose of this proceeding.

We do not have a standard model-match methodology that applies to all antidumping

proceedings. Rather, we design the model match for each case to take into account the salient features of the product and industry. While there are similarities in how we design the model match for various cases, the model-matching methodology will normally not be the same for any two different products. Thus, it is meaningless to talk about the Department's "standard requirements" with respect to physical characteristics. Our requirements vis-à-vis physical characteristics will necessarily vary, depending upon the nature of the subject merchandise being examined.

For example, the petitioner complains that CCPC reported certain physical characteristics in terms of ranges rather than specific percentages. In fact, we use ranges of characteristics in our model match in other cases. See, *e.g.*, *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review*, 73 FR 14220 (March 17, 2008), and accompanying Issues and Decision Memorandum at Comment 2, and *Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review*, 71 FR 47485 (August 17, 2006), and accompanying Issues and Decision Memorandum at Comment 6. Thus, where it is appropriate, we use ranges of certain physical characteristics in individual proceedings.

We find that it is appropriate in this investigation to use the ranges CCPC used to report certain physical characteristics. CCPC produces and sells PVA on the basis of grades which are defined principally in terms of ranges of hydrolysis, viscosity, and polymerization. See CCPC's July 7, 2010, submission at page 2. Each grade of PVA represents a different combination of those characteristics, which makes a particular grade suitable for a particular application. *Id*. Thus, when a customer purchases a particular grade of PVA from CCPC for a particular application, the viscosity only has to meet the specifications for the grade the customer orders. For example, grade BF-17 can have a viscosity between 25 and 30 centipoises. See CCPC's May 14, 2010, section A response at Exhibit 16. If a customer orders grade BF-17 it may get a batch of PVA with a viscosity of 26; alternatively, it may get a batch of PVA with a viscosity of 29. Either way, the PVA meets the specifications for the grade ordered by the customer and the transaction is completed.

Thus, sales of a particular grade are treated as identical by both CCPC and its customers. Furthermore, the evidence on the record demonstrates that other PVA producers also sell PVA on the basis of grades that are based on ranges of characteristics. See CCPC's July 7, 2010, submission at Exhibits 1 through 3. Moreover, the petitioner has not cited any evidence indicating that customers purchase PVA based on specific values of viscosity, hydrolysis, or degree of modification. That is, there is no evidence on the record suggesting that a customer would pay a different amount for, as an example, a batch of grade BF-17 with a viscosity of 26 than it would for a batch of grade BF-17 with a viscosity of 29.

Accordingly, we determine that it is appropriate to treat sales of the same grade as identical merchandise even if there are differences in the actual viscosity, hydrolysis, and/or degree of modification. As described above, using ranges of characteristics to define identical merchandise is not an unusual practice.

Given that functionally identical products can have ranges of these characteristics, it becomes necessary to determine how to match similar products. It is true that the ranges of viscosity overlap and, as a result, two different products with the same actual viscosity may get different

viscosity codes.[1] This is because CCPC's ranges for these characteristics correspond to the definitions of the grades it produces and sells in its ordinary course of business.[2] Compare CCPC's June 10, 2010, section B response at pages 8-10 and its June 10, 2010, section C response at pages 39-40 with its product brochure in CCPC's May 14, 2010, section A response at Exhibit 16. There are no instances where two sales that have the same actual viscosity will get different viscosity codes unless they are sales of different grades, in which case, the two sales are already non-identical products because of differences in molecular structure, hydrolysis, and/or other physical characteristics.[3] Thus, the products are not identical.

Because the viscosity can vary within the ranges specified for each grade, we determine that CCPC's coding system based on the grade specifications it uses in its normal course of business reasonably tracks the differences between different grades for the purposes of matching sales of one grade to another. For example, the viscosity of grade BF-17 may range from 25 to 30 centipoises while the viscosity of grade BP-20 may range from 27 to 33 centipoises. See CCPC's May 14, 2010, section A response at Exhibit 16. It is reasonable to assign these two different grades different viscosity codes because, while there may be instances where an individual batch of grade BF-17 may have the same viscosity as an individual batch of grade BP-20, there may also be instances where an individual batch of grade BF-17 may have a viscosity of less than 27 centipoises and is, thus, not within the allowable viscosity range for grade BP-20. Similarly, there may be an individual batch of grade BP-20 which has a viscosity of greater than 30 centipoises and is, thus, not within the allowable viscosity range for grade BF-17. Thus, under these circumstances, assigning a different (and higher) viscosity code for grade BP-20 than for grade BF-17, as CCPC did, is the most reasonable means for distinguishing the viscosities for these different grades.

Furthermore, assigning different viscosity codes to different grade does not mean we will not match these products where appropriate. For example, if we are identifying the best match for a U.S. sale of grade BF-17 and the most similar grade sold in the home market is grade BP-20, we will use the sale of grade BP-20 as the basis for normal value. We would only not use the home-market sale of grade BP-20 if there was a home-market sale of grade BF-17, which would be identical merchandise, or if there was a home-market sale of a grade more similar to grade BF-17 than BP-20. One possibility would be a home-market sale of grade BF-17S, which is identical to

[1] CCPC's ranges for hydrolysis and degree of modification do not overlap. See CCPC's June 10, 2010, section B response at page 10 and its June 10, 2010, section C response at pages 40-41. Thus, it is not possible that two different products with the same actual hydrolysis can get different hydrolysis codes. The same holds true with respect to degree of modification.

[2] There is one exception which we discuss below.

[3] There are some instances where CCPC assigned the same control number to two different grades. For example, grade BP-20 and BP-20A were both assigned the same control number. According to CCPC's product brochure, grade BP-20A has the same specifications as BP-20 except that it has "better defoaming property." See CCPC's May 14, 2010, section A response at Exhibit 16. Although "defoamer" is one of the physical characteristics we use, we only account for whether defoamer is present and do not distinguish between quality of defoamers. No party has suggested we do otherwise. Thus, it is appropriate that grades BP-20 and BP-20A be assigned the same control number.

grade BF-17 except with respect to particle size. See CCPC's May 14, 2010, section A response at Exhibit 16. Because the specifications for grade BF-17S with respect to viscosity, hydrolysis, and degree of modification are identical as the specifications for grade BF-17, we regard BF-17S as more similar to grade BF-17 than grade BP-20, which not only has a different allowable range of viscosity, but also has a different allowable range of hydrolysis than either grade BF-17 or BF-17S. If a home-market sale of BP-20 is the most similar product to a grade sold in the United States, however, we would use it as the basis for normal value. In fact, even if a particular grade sold in the home market has a viscosity range that cannot possibly overlap with the viscosity of the grade sold in the United States,[4] we would still consider that home-market grade as a match if it happens to be the most similar grade sold in the home market.

We disagree with the petitioner with respect to its argument that CCPC's ranged characteristics make it impossible to ensure that only goods within the scope of the investigation are included. We examined this issue at verification. At verification, CCPC claimed that all sales of the grades in question were hydrolyzed below 80 centipoises and, thus, were not subject to the scope of the investigation. See the sales verification report dated October 12, 2010, at pages 5-6. We selected a number of sales of these grades and found no sales with a viscosity of 80 centipoises or greater. *Id*. In other words, we found no evidence that contradicted CCPC's claim. Therefore, we conclude that CCPC excluded such sales properly.

We also disagree with the petitioner with respect to its argument that CCPC's matching system does not allow the examination of cost differences attributable to differences in product characteristics because it reported and costed its internal product grades instead of the physical characteristics. As described above, we consider CCPC's product grades to constitute categories of identical merchandise (*i.e.*, all sales of BF-17 are identical with one another, regardless of differences in viscosity, etc.) because of the nature of the PVA industry. As a result, it was appropriate for CCPC to report and cost its product grades.

In addition, the petitioner argues that CCPC's coding produces control numbers that are inconsistent with the expected cost differences for given physical characteristics. With respect to the petitioner's contention that there are differences in utility consumption caused by differences in viscosity which are not reflected in CCPC's reported costs, we examined this issue at verification and were satisfied with CCPC's explanation. See the cost verification report dated October 26, 2010, at pages 20-21. Moreover, each of the examples cited by the petitioner involves viscosity codes which do *not* overlap. See the attachment to the petitioner's September 24, 2010, submission. Thus, any hypothetical discrepancies in CCPC's costs with respect to differences in utility consumption are not caused by CCPC's reporting ranges of certain physical characteristics.

With respect to the petitioner's contention that the costs CCPC reported do not reflect the correlation between particle size and cost that CCPC had indicated would exist, once again, we examined this issue at verification and were satisfied with CCPC's explanation. See the cost

[4] For example, grade BF-05 has a viscosity range of 5-6 centipoises. See CCPC's May 14, 2010, section A response at Exhibit 16. Thus, no sale of grade BF-05 can possibly have the same viscosity as any sale of grade BF-17 for which the viscosity can range from 25 to 30 percent.

verification report dated October 26, 2010, at pages 16-17. Moreover, CCPC reported this variable based on whether the PVA could pass through particular mesh screens. See, *e.g.*, CCPC's June 10, 2010, section B response at page 11. Thus, any hypothetical discrepancies in CCPC's costs with respect to differences in particle size are not caused by CCPC's reporting ranges of certain physical characteristics.

We do agree, however, with the petitioner's argument that CCPC has conflated two of the hydrolysis ranges indicated by its product brochure improperly into a single, wider range which bears no relationship to any specific grade that CCPC sells. CCPC reported, as hydrolysis code 6, a range of 97.0 to 99.2 mole percent. CCPC does not appear to use such a range in its normal course of business; rather, it uses ranges such as 97 to 98.5 mole percent and 98.5 to 99.2 mole percent. See CCPC's May 14, 2010, section A response at Exhibit 16. This resulted in CCPC reporting the same hydrolysis code for grades BF-17, BF-17E, BF-24, and BF-24E even though grades BF-17 and BF-24 have a hydrolysis of 98.5 to 99.2 mole percent whereas grades BF-17E and BF-24E have a hydrolysis of 97 to 98.5 mole percent. *Id*. These appear to be the only grades which were conflated improperly into the same control numbers.

In order to correct this, we have segregated these grades into two distinct control numbers so that we have matched grade to grade properly. This means we would only match, for example, grade BF-17 to grade BF-17E if there are no home-market sales of grade BF-17 available for comparison. Where we were not able to match the segregated grade in the United States to the identical segregated grade in the home market, we matched to the grade with which it was conflated by CCPC but we did not make a difference-in-merchandise adjustment. We did this because we are not able to make a difference-in-merchandise adjustment where no sales of the identical grade are available for comparison because CCPC reported its costs on the basis of control numbers, which reflected the conflated hydrolysis codes (*e.g.*, CCPC reported a single cost for grades BF-17 and BF-17E). Because we did not require CCPC to segregate this hydrolysis code, however, an adverse inference with regard to the difference-in-merchandise adjustment is not warranted. Moreover, the sales for which we were not able to find an identical match are a very small proportion of the U.S. database,[5] so the fact that we cannot make a difference-in-merchandise adjustment for these sales is not likely to have a significant impact on the margin.

Finally, making an adverse inference regarding CCPC's reported physical characteristics is not warranted. We gave CCPC permission to continue to report certain physical characteristics in terms of ranges, thus effectively countermanding the instruction in our June 30, 2010, supplemental questionnaire. See our letter to CCPC dated July 8, 2010. CCPC submitted its response on July 21, 2010. If we had determined that CCPC's response was inadequate with respect to its reported physical characteristics, we would have told CCPC to revise its reporting in one of our three subsequent supplemental questionnaires. See our supplemental questionnaires dated August 2, August 10, and August 12, 2010. We did not instruct CCPC to revise its reporting methodology and, as explained above, we find it appropriate to rely on CCPC's reported physical characteristics. Accordingly, the application of an adverse inference

[5] See page 56 of the output of the margin-calculation program attached to the final analysis memorandum dated January 26, 2011.

is not warranted.

3. Date of Sale

Comment 3: CCPC argues that the Department should use the order date as the date of sale for CCPC's home-market and U.S. sales. CCPC contends that the Department's regulations define the date of sale as the date on which the material terms of sale (*i.e.*, price and quantity) are established. According to CCPC, although the invoice date is the presumptive date of sale, the Department has the discretion to determine whether an alternative date better reflects when the material terms of sale are established. Citing *Nucor Corp. v. United States*, 612 F. Supp. 2d 1264, 1304 (CIT 2009) (*Nucor*), CCPC argues that the Court of International Trade (CIT) has held that the presumption of using the invoice date as the date of sale is merely a rebuttable presumption and one that has been rebutted in numerous cases in the past.

According to CCPC, its responses and the Department's sales verification report make it clear that the most important terms of sale, price and quantity, did not change at all from the time of the order to the time of invoice. CCPC asserts further that the record demonstrates that those changes in the sales terms which occurred between the order date and invoice date represent minor corrections of a clerical nature or changes to non-material terms of sale such as delivery. Therefore, CCPC concludes, the Department should find that the order date better reflects when the material terms of sale are established and use the order date as the date of sale.

The petitioner argues that the Department should continue to use the invoice date as the date of sale and not use the date of the customer's order as the date of sale. According to the petitioner, the terms of sale cannot be set at least until CCPC reviews and approves the order. The petitioner avers that there is no meeting of the minds when the order is issued; if there were, then CCPC's approval (or disapproval) would be meaningless. The petitioner contends that, at verification, the Department found further evidence of a difference between the date the order was issued and the point at which CCPC approved the order and thus established the meeting of the minds.

The petitioner also asserts that customers do not feel bound by the terms of the order. The petitioner claims that, according to the sales verification report, CCPC stated that, in some cases, the customer placed an order and then changed the product after realizing that it had ordered the wrong grade. Similarly, the petitioner contends, CCPC also explained that sometimes it entered the grade for the U.S. sale incorrectly and then corrected the error. Thus, the petitioner argues, both the customer and CCPC expected to be able to change the order with respect to the product model. According to the petitioner, the Department also found at verification an instance where the buyer and CCPC were willing to change the order in a material way by changing the order from a shipment to the distributor's customer to an order replenishing the supply of the distributor.

Citing *Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 7244, 7251 (February 18, 2010) (*Ribbons*), the petitioner asserts that the Department has found additional "material terms of sale" besides price and quantity, such as

payment and delivery terms. The petitioner contends that evidence on the record shows that the material terms of sale can and do change following the date of the order and CCPC admits to such changes although it dismisses them as primarily due to order errors or only data-entry errors.

Citing *Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Antidumping Duty Administrative Review*, 75 FR 62366 (October 8, 2010), and accompanying Issues and Decision Memorandum at Comment 1 (*Taiwan Pipe*), the petitioner claims that it is the Department's practice to use invoice date as the date of sale unless a party demonstrates that the material terms of sale were established on another date. Because CCPC has not established a date other than invoice date that represents the meeting of the minds, the petitioner concludes, the Department must continue to use invoice date as the date of sale in this investigation.

Department's Position: Section 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established.

We find that CCPC has not established that the date of the customer's order better reflects the date on which the material terms of sale are established. The Department has interpreted "material terms of sale" to include, but is not limited to, price and quantity. For example, we have found that product mix constitutes a material term of sale. See, *e.g.*, *Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia*, 71 FR 7016 (February 10, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

At verification, CCPC explained that, "in some cases, the customer placed an order for a particular grade but, prior to shipment, realized that it had inadvertently ordered the incorrect (albeit a similar) grade. In such cases, the customer could correct its order prior to shipment. During the POI, the price did not change even though the grade ordered by the customer changed. CCPC explained that this is because the originally ordered grade and the correct grade were similar." See the sales verification report dated October 12, 2010, at pages 3-4.

Thus, because the product ordered can change after the date of the customer's order, we determine that the material terms of sale are not established on the date of the customer's order. Accordingly, because CCPC has not demonstrated that a date other than the invoice date better reflects the date on which the material terms of sale are established, we have used the invoice date as the date of sale.

4. Cost of Production

Comment 4: CCPC argues that the Department should not have included costs for idle production assets associated with the manufacturing of copper foils in CCPC's general and administrative (G&A) costs for PVA. CCPC contends that only material, labor, and overhead costs which are directly involved in the production of subject merchandise or G&A costs which

are commonly shared by subject merchandise and non-subject merchandise should be included in the Department's calculation of the cost of production (COP) of PVA. CCPC asserts that the costs for idle production assets associated with the manufacturing of copper foils are related solely to non-subject merchandise.

According to CCPC, the Department faced a similar situation in *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile*, 63 FR 31411 (June 9, 1998) (*Salmon*). CCPC contends that a respondent had excluded from its G&A costs those costs associated with idled assets used in the production of non-subject smoked salmon and that the Department agreed that such costs should be excluded. CCPC quotes the Department's decision in Salmon, 63 FR at 31436: "While it is the Department's general practice to include the cost of shutdowns and idle assets in the COP and CV, in this case we determined that the salmon smoking facilities were idle for only a short time and that the smoking facilities later resumed production during the POI. Therefore, the costs associated with this temporary shutdown of the smoking plant are more appropriately absorbed by the smoked salmon products sold during the POI, rather than absorbed by all products."

CCPC asserts that, in this case, the Department found at verification that copper foil does not relate to the production of PVA, that the costs in question were related to the idling of only one of the copper-foil production lines, that the idling was for less than one year, that the idled asset resumed production during the POI, and that the costs of the idled copper foil production line were those typically associated with the cost of manufacture (*e.g.*, depreciation and refurbishing) rather than costs shared among all products. CCPC concludes that, for these reasons, the costs for idle production assets associated with the manufacturing of copper foils should not be included in the COP for PVA.

The petitioner argues that the Department should continue to include all costs associated with the idled production line in its calculation of CCPC's G&A expenses. Citing *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 68 FR 41303 (July 11, 2003), and accompanying Issues and Decision Memorandum at Comment 10 (*Mushrooms*), the petitioner contends that, under Department practice, expenses related to manufacturing plant closures and temporary shutdowns are general expenses rather than expenses tied to a specific product. Citing *Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 49902, 49905 (August 16, 2010) (*Pet Film*), and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From the United Kingdom*, 67 FR 3146 (January 23, 2002), and accompanying Issues and Decision Memorandum at Comment 3 (*Stainless Bar*), the petitioner asserts that the Department includes the shutdown costs regardless of whether the idled asset was connected to subject merchandise.

Citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Brazil*, 67 FR 62134 (October 3, 2002), and accompanying Issues and Decision Memorandum at Comment 3 (*Flat Products*), the petitioner claims that the Department includes the costs of idled assets if the assets were idled for reasons other than repairs. According to the petitioner, the Department found at verification that CCPC idled the asset in question because of a reduction in demand. Accordingly, the petitioner concludes, the

Department should continue to include the costs associated with the idled asset in its G&A calculation.

Department's Position: We agree with the petitioner. Section 773(f)(1)(A) of the Act requires the Department to base costs on the respondent's books and records kept in accordance with the home country's generally accepted accounting principles (GAAP) unless such costs are unreasonable. The record indicates that the shutdown losses were excluded from the cost of goods sold on CCPC's audited financial statements prepared according to Taiwanese GAAP and were classified as non-operating expenses, *i.e.*, expenses that relate to the general operations of the company. Nothing on the record suggests that CCPC's treatment of the shutdown costs as non-operating expenses on its financial statements is unreasonable and, as such, it is appropriate to consider these period costs related to the general operations of the company and include them in the G&A expenses to be absorbed by all products produced by CCPC. Moreover, we normally include expenses associated with idle assets as part of the G&A expenses because we consider such expenses to be general in nature and thus more closely related to the accounting period and operations of the company as a whole rather than the current manufacturing costs for specific products. See, *e.g.*, *Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 67 FR 15531 (April 2, 2002) and accompanying Issues and Decision Memorandum at Comment 13 (*Silicomanganese*), which states that "{e}ven though an asset may be idle, the expenses associated with that asset are part of the general expense burden of the company which is attributable to all sales of the company. There is no basis on which to assign the expenses of idle assets to merchandise they were employed in producing before being idled."

With respect to CCPC's citation to *Salmon*, while the facts in that case appear to be similar to the issue at hand, the record in *Salmon* is not detailed enough to indicate all the factors the Department considered in making its decision. For example, it is unclear how the shutdown costs were recorded on the respondent's financial statements, *i.e.*, whether these costs were treated as cost of manufacturing or the G&A expenses, which is the starting point of the Department's analysis. Likewise, in *Salmon* we state that "{i}t is the Department's general practice to include the cost of shutdowns and idle assets in the COP and CV." We only deviated from our general practice based on the facts specific to that case, which are unclear from the record. Thus, the lack of information on the record of the *Salmon* decision makes CCPC's reference to that case unpersuasive. Therefore, for the final determination and in accordance with our general practice,[6] we have continued to include the shutdown losses in the calculation of CCPC's G&A expenses.

[6] See, *e.g.*, *Mushrooms*, *Stainless Bar*, and *Silicomanganese*.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final determination and the final dumping margins for this investigation in the *Federal Register*.

Agree _____ Disagree _____

_____
Christian Marsh
Acting Deputy Assistant Secretary
for Import Administration

_____
(Date)