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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination of Sales at Less Than Fair Value Investigation of
Emulsion Styrene-Butadiene Rubber from Brazil

I. SUMMARY

We analyzed the comments of the interested parties in the less than fair value (LTFV) investigation of emulsion styrene-butadiene rubber (ESB rubber) from Brazil. Based on our analysis and our findings at verification, we made changes to the margin calculation for ARLANXEO Brasil S.A. (ARLANXEO Brasil), the sole mandatory respondent in this investigation. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues for which we received comments from interested parties.

Comment 1: Level of Trade

Comment 2: U.S. Indirect Selling Expenses

Comment 3: Domestic Indirect Selling Expense Clerical Error



II. BACKGROUND

On February 24, 2017, the U.S. Department of Commerce (Department) published the *Preliminary Determination* of sales of ESB rubber from Brazil at LTFV.¹ The period of investigation (POI) is July 1, 2015, through June 30, 2016. As indicated in the *Preliminary Determination*, the Department issued a supplemental questionnaire regarding ARLANXEO Brasil's level of trade (LOT) submissions, to which ARLANXEO Brasil timely responded in March 2017.² In February and March 2017, we conducted verification of the sales and cost of production (COP) data reported by ARLANXEO Brasil, pursuant to section 782(i) of the Tariff Act of 1930, as amended (Act).³ In March 2017, ARLANXEO Brasil submitted monthly shipment data requested by the Department in connection to its critical circumstances analysis.⁴ We invited parties to comment on the *Preliminary Determination*. In May 2017, the petitioners⁵ and ARLANXEO Brasil submitted case briefs and the petitioners submitted a rebuttal brief.⁶ Both the petitioners and ARLANXEO Brasil timely requested a hearing,⁷ and on June 8, 2017, the Department held a public hearing in the Department of Commerce's main building.⁸ Based on our analysis of the comments received and our verification findings, we revised the weighted-average dumping margin for ARLANXEO Brasil from that calculated in the *Preliminary Determination*.

¹ See *Emulsion Styrene-Butadiene Rubber from Brazil: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 11538 (February 24, 2017) (*Preliminary Determination*), and accompanying Memorandum, "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Emulsion Styrene-Butadiene Rubber from Mexico" (Preliminary Decision Memorandum).

² See ARLANXEO Brasil's March 6, 2017 Supplemental Questionnaire Response (ARLANXEO Brasil March 6, 2017 SQR).

³ See Memorandum, "Verification of the Constructed Export Price Sales Questionnaire Responses of ARLANXEO U.S.A. LLC," dated April 13, 2017 (ARLANXEO Brasil/ARLANXEO USA CEP Sales Verification Report); Memorandum, "Verification of the Home Market and Constructed Export Price Sales Questionnaire Responses of ARLANXEO Brasil S.A.," dated April 21, 2017 (ARLANXEO Brasil Sales Verification Report); and Memorandum, "Verification of the Cost Response of ARLANXEO Brasil S.A. in the Antidumping Duty Investigation of Certain Emulsion Styrene Butadiene Rubber from Brazil," dated May 15, 2017 (ARLANXEO Brasil Cost Verification Report).

⁴ See Letter to the Secretary of Commerce from ARLANXEO Brasil, concerning, "Emulsion Styrene-Butadiene Rubber from Brazil: Updated Monthly Shipment Data," dated March 15, 2017 (ARLANXEO Brasil Critical Circumstances Data).

⁵ Lion Elastomers LLC and East West Copolymers (collectively, the petitioners).

⁶ See Petitioners' Case Brief, "Emulsion Styrene Butadiene Rubber from Brazil: Case Brief on Sales Issues," dated May 5, 2017 (Petitioners' Case Brief); ARLANXEO Brasil's Case Brief, "Emulsion Styrene-Butadiene Rubber (ESBR) from Brazil: Case Brief," dated May 5, 2017 (ARLANXEO Brasil Case Brief); and Petitioners' Rebuttal Brief, "Emulsion Styrene Butadiene Rubber from Brazil: Rebuttal Brief on Sales Issues," dated May 10, 2017.

⁷ See Letter to Secretary of Commerce from ARLANXEO Brasil, concerning, "Emulsion Styrene-Butadiene Rubber from Brazil: ARLANXEO's Request for Hearing," dated March 20, 2017, and Letter to The Honorable Wilbur Ross, Secretary of Commerce, concerning, "Emulsion Styrene-Butadiene Rubber from Brazil, South Korea, Mexico, and Poland: Request for a Hearing," dated March 24, 2017.

⁸ The hearing transcript is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building.

III. SCOPE COMMENTS

In the *Preliminary Determination*, we did not modify the scope language as it appeared in the *Initiation Notice*.⁹ No interested parties requested submitted scope comments in case or rebuttal briefs; therefore, the scope of this investigation remains unchanged for this final determination.

IV. SCOPE OF THE INVESTIGATION

For purposes of this investigation, the product covered is cold-polymerized emulsion styrene-butadiene rubber (ESB rubber). The scope of the investigation includes, but is not limited to, ESB rubber in primary forms, bales, granules, crumbs, pellets, powders, plates, sheets, strip, *etc.* ESB rubber consists of non-pigmented rubbers and oil-extended non-pigmented rubbers, both of which contain at least one percent of organic acids from the emulsion polymerization process.

ESB rubber is produced and sold in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The scope of the investigation covers grades of ESB rubber included in the IISRP 1500 and 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as “Clear” or “White Rubber.” The 1700 grades are oil-extended and thus darker in color, and are often called “Brown Rubber.”

Specifically excluded from the scope of this investigation are products which are manufactured by blending ESB rubber with other polymers, high styrene resin master batch, carbon black master batch (*i.e.*, IISRP 1600 series and 1800 series) and latex (an intermediate product).

The products subject to this investigation are currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstract Services (CAS) Registry No. 9003-55-8. This CAS number also refers to other types of styrene butadiene rubber. Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

V. FINAL NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

On January 25, 2017, the petitioners filed a timely critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of ESB rubber from Brazil.¹⁰ Upon analysis of the petitioners’ allegations and shipment data submitted by ARLANXEO Brasil, we found that the record did not support an allegation of massive imports of subject merchandise from ARLANXEO Brasil or the companies subject to the “all others” rate, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).¹¹ Accordingly, we preliminarily found that critical circumstances did not exist for

⁹ See *Preliminary Determination*; see also *Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico and Poland: Initiation of Less Than Fair Value Investigations*, 81 FR 55438 (August 19, 2016) (*Initiation Notice*).

¹⁰ See Letter to the Honorable Penny Pritzker, Secretary of Commerce, from the Petitioners, concerning, “Emulsion Styrene-Butadiene Rubber (ESBR) from Brazil and South Korea: Critical Circumstances Allegation,” dated January 25, 2017.

¹¹ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 11-16.

ARLANXEO Brasil or the non-individually examined companies receiving the “All-Others” rate in this investigation.¹² No party provided further information or comment regarding the Department’s negative preliminary finding of critical circumstances in the *Preliminary Determination*.

On March 15, 2017, ARLANXEO Brasil submitted additional monthly shipment data requested by the Department for use in its final critical circumstance analysis.¹³ Our analysis of these additional data indicate that were not massive imports of subject merchandise from ARLANXEO Brasil, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).¹⁴ Specifically, we found that ARLANXEO Brasil’s reported shipments of subject merchandise during the seven-month August 2016 to February 2017 comparison period¹⁵ did not increase by more than 15 percent over their respective imports for the seven-month January 2016 to July 2016 base period.¹⁶ As explained in the *Preliminary Determination*, for the companies subject to the “all others” rate, the Department’s normal practice to conduct its critical circumstances analysis for these companies based on the experience of investigated companies.¹⁷ Because ARLANXEO Brasil was the only mandatory respondent in this investigation, we apply our finding of no critical circumstances for ARLANXEO Brasil to the companies subject to the “All Others” rate. Accordingly, we continue to find no critical circumstances exist for all companies subject to this investigation.

VI. MARGIN CALCULATIONS

We calculated constructed export price (CEP) and normal value (NV) using the same methodology as stated in the *Preliminary Determination*,¹⁸ with the following exceptions:¹⁹

- We used the most recently submitted home market and U.S. sales databases on the record, which incorporate the minor corrections that we accepted at verification.²⁰

¹² *Id.*

¹³ See ARLANXEO Brasil Critical Circumstances Data.

¹⁴ See Memorandum, “Antidumping Duty Investigation of Emulsion Styrene Butadiene Rubber from Brazil: Final Determination Critical Circumstances Analysis,” (Final Critical Circumstances Memorandum) dated concurrently with this memorandum.

¹⁵ Because ARLANXEO Brasil submitted shipment data through February 2017, we based our final critical circumstance findings on a seven-month comparison period ending February 2017, and a corresponding seven-month base period.

¹⁶ See Final Critical Circumstances Memorandum at Attachment 1.

¹⁷ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 16 (citing *Sodium Metal from France: Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances*, 73 FR 62252, 62254 (October 20, 2008); *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413, 17415-416 (March 26, 2012)).

¹⁸ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum, at 4-9.

¹⁹ See Memorandum “Analysis for the Final Determination of the Less Than Fair Value Investigation of Emulsion Styrene-Butadiene Rubber from Brazil,” dated July 10, 2017 (ARLANXEO Brasil Final Analysis Memorandum), and Memorandum “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – ARLANXEO Brasil S.A.,” dated July 10, 2017 (Final Cost Calculation Memorandum).

²⁰ See Letter to The Honorable Wilbur J. Ross, Jr., Secretary of Commerce, from ARLANXEO Brasil, concerning, “Emulsion Styrene-Butadiene Rubber (ESBR) from Brazil: Submission of Revised Sales Files,” dated April 27, 2017; ARLANXEO Brasil Sales Verification Report; and ARLANXEO Brasil/ARLANXEO USA CEP Sales Verification Report.

- We compared ARLANXEO Brasil's CEP sales to its home market sales to distributors because we find that they were made at the same level of trade (LOT), and have made an LOT adjustment, where appropriate.²¹
- We revised ARLANXEO Brasil's U.S. indirect selling expenses to exclude certain expenses that are not attributable to the sale of subject merchandise.²²
- We corrected a clerical error affecting ARLANXEO Brasil's home market indirect selling expenses.²³

VII. DISCUSSION OF THE ISSUES

Comment 1: Level of Trade

ARLANXEO Brasil's Comments:

- Pursuant to section 773(a)(1)(B)(i) the Act, the Department must compare U.S. CEP sales made by ARLANXEO Brasil's U.S. affiliate, ARLANXEO USA LLC (ARLANXEO USA), to ARLANXEO Brasil's home market sales to distributors because they were made at the same LOT.²⁴
- The record of the final phase of this investigation contains substantial evidence indicating that ARLANXEO Brasil made home market sales to end users and distributors at two different LOTs, and that the CEP sales were made at the same LOT as the home market sales to distributors.²⁵
- ARLANXEO Brasil submitted additional information concerning selling activities in Brazil to end users and distributors after the *Preliminary Determination* and explained its reasons for updating its LOT information during the investigation.²⁶
 - ARLANXEO Brasil states that when it reviewed its selling activities, it could more precisely characterize these activities by customer class (*i.e.*, Brazilian end user, Brazilian distributor, and U.S. affiliated distributor).
- ARLANXEO Brasil's and ARLANXEO USA's characterizations of the level of various selling activities were based on both qualitative and quantitative information, and the cost information verified by the Department supports the reported level of intensity for each selling activity.
- The LOT information reported by ARLANXEO Brasil is consistent with information reported by its predecessor, Petroflex, in a prior investigation in which the Department found that Petroflex's home market sales to end users were made at a different LOT than sales to distributors.²⁷

²¹ See ARLANXEO Brasil Final Analysis Memorandum, and Comment 1, below.

²² *Id.* See also Comment 2, below.

²³ *Id.* See also Comment 3, below.

²⁴ See ARLANXEO Brasil Case Brief at 3 (citing Section 773(a)(1)(B)(i) of the Act).

²⁵ See ARLANXEO Brasil Case Brief at 6-15 for ARLANXEO Brasil's proprietary discussion of the level of intensity reported for various selling activities such as sales forecasting, order/input processing, and direct sales/marketing support.

²⁶ *Id.* at 5 (citing ARLANXEO Brasil's March 6, 2017 SQR).

²⁷ *Id.* at 16-17 (citing *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil*, 63 FR 59509, 59511 (November 4, 1998)).

The Petitioners' Comments:

- The record of this proceeding does not justify granting ARLANXEO Brasil any LOT adjustments or offsets.
- ARLANXEO Brasil submitted multiple versions of the selling activities chart that contain many discrepancies, inconsistencies and unjustified revisions in an attempt to exaggerate selling activities for home market end users compared to selling activities for home market distributors and its U.S. affiliate.
 - In its Section A Questionnaire Response, ARLANXEO Brasil reported a virtually identical degree of involvement for each selling activity for home market sales to end users and distributors.²⁸
 - Subsequently, in its Sections B and C Questionnaire Response, ARLANXEO Brasil revised its selling activity information, reporting substantially different information contradictory and inconsistent information without explanation.²⁹
 - ARLANXEO Brasil later submitted unsolicited substantially revised selling activity information and provided inconsistent information.³⁰
 - In its final supplemental questionnaire response, ARLANXEO Brasil provided additional selling information to minimize the degree of involvement for sales to home market distributors in comparison to its end user customers.³¹
- ARLANXEO Brasil's recharacterization of the selling activities it provides to home market end users compared to home market distributors and its U.S. affiliate is a blatant attempt to falsely create different LOT categories where none exist and is self-serving and arbitrary.
- Level of intensity information ARLANXEO Brazil reported for each category of selling activity (*e.g.*, sales forecasting, order input processing, *etc.*) does not support a finding that its home market sales to distributors were made at a different LOT than its sales to end users.³²
- The Department rejected arguments similar to those raised by ARLANXEO Brasil when it found that differences in levels of intensity do not constitute "an additional layer of selling activities, amounting in the aggregate to a substantially different selling function," as required by the Department outlined in the *Pasta from Italy Final*.³³
- ARLANXEO Brasil's responses demonstrate that any difference in selling activities between end-users and distributors is based on an irrelevant quantitative analysis

²⁸ See Petitioners' Rebuttal Brief at 2 (citing ARLANXEO Brasil's September 19, 2016 Section A Questionnaire Response (ARLANXEO Brasil September 19, 2016 AQR) at 22-31 and Exhibit A-6).

²⁹ *Id.* at 2-3 (citing ARLANXEO Brasil's October 25, 2016 Section B Questionnaire Response (ARLANXEO Brasil October 25, 2016 BQR) at 24 and Exhibit B-7, and ARLANXEO Brasil's October 25, 2016 Section C Questionnaire Response (ARLANXEO Brasil October 25, 2016 CQR) at 18-19 and Exhibit C-7).

³⁰ *Id.* at 3-4 (citing ARLANXEO Brasil's January 9, 2017 Supplemental Questionnaire Response (ARLANXEO Brasil January 9, 2017 SQR) at 3-4).

³¹ *Id.* at 4 (citing ARLANXEO Brasil's March 6, 2017 Supplemental Questionnaire Response (ARLANXEO Brasil March 6, 2017 SQR) at 4).

³² See Petitioners' Rebuttal Brief at 6-10 for its proprietary discussion of the record evidence regarding ARLANXEO Brasil's selling activities.

³³ *Id.* at 10-11 (citing *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 91120 (December 16, 2016) (*Pasta from Italy Final*), and accompanying Issues and Decision Memorandum (IDM) at Comment 6).

reflecting differences in personnel time and the fact that the majority of the company's customers in Brazil are end-users.

- The Department's LOT analysis, which has been upheld by the courts, is qualitative, rather than quantitative.³⁴
 - The Department does not consider indirect selling expense analysis between LOTs in determining level of trade.³⁵
 - The Department has found that different numbers of sales personnel are not sufficient to distinguish LOTs.³⁶
 - The Department does not take transaction size into account when determining LOT.³⁷
 - The SAA directs the Department to "ensure that a percentage difference in price is not more appropriately attributable to differences in quantities purchased in individual sales."³⁸
- The Department's decision in the 1998 investigation of Petroflex is irrelevant.³⁹
 - There is no record evidence that establishes that ARLANXEO Brasil's selling activities are the same as Petroflex's activities.
 - The Department must base its determination on the facts on the record of this investigation.

Department's Position: The Department agrees with ARLANXEO Brasil, and has compared its home market sales to distributors to its CEP sales for the final determination. As explained below, the record of the instant investigation, including information submitted after the *Preliminary Determination*, which was examined at verification, supports the determination that ARLANXEO Brasil made POI home market sales at two levels of trade that correspond to its home market customer types (*i.e.*, original equipment manufacturers (OEM)/end users and distributors). Additionally, the record indicates that ARLANXEO Brasil made POI home market sales to distributors at the same LOT as sales to its U.S. affiliate, ARLANXEO USA.

Section 351.412(c)(2) of the Department's regulations outlines the Department's policy regarding differences in the LOTs as follows:

The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.

³⁴ *Id.* 11-14 (citing *Hornros Electricos de Venezuela, SA. v. United States*, 27 CIT 1522 (CIT 2003)).

³⁵ See Petitioners' Rebuttal Brief at 11-12 (citing *Pasta from Italy Final*, and accompanying IDM at Comment 6).

³⁶ *Id.* at 12 (citing *Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Final Determination of Sales at Less Than Fair Value*, 82 FR 16363 (April 4, 2017) and IDM at Comment 4 ("We disagree with Dillinger's claim that the fact that these proposed LOTs involve different numbers of sales personnel is sufficient to distinguish these LOTs.")).

³⁷ *Id.* at 14 (citing *Carbon and Certain Alloy Steel Wire Rod from Canada: Notice of Final Results of Antidumping Duty Administrative Review*, 73 FR 77005 (December 18, 2008), accompanying IDM at Comment 1.

³⁸ *Id.* at 15 (citing *Statement of Administrative Action Accompanying the Uruguay Round Agreements Act*, H.R. Doc. 103-316, vol. 1 (1994) (SAA)).

³⁹ *Id.* at 15-16 (citing *Pakfood Public Co. v. United States*, 724 F. Supp. 2d 1327, 1342 (CIT 2010), and *Alloy Piping Prods. Inc. v. United States*, 33 CIT 349, 358 (CIT 2009)).

In order to determine whether the comparison sales were made at different stages in the marketing process than the U.S. sales, the Department reviews the distribution system in each market (*i.e.*, the chain of distribution), including 1) selling functions; 2) the class of customer (*i.e.*, customer category); and 3) the level (intensity) of selling expenses for each sale.⁴⁰ Different levels of trade are typically characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively different selling activities. Different levels of trade necessarily involve differences in selling activities, although differences in selling activities alone are not sufficient to establish differences in levels of trade. Similarly, customer categories such as “distributor,” “wholesaler,” “retailer,” and “end-user” are often useful in identifying levels of trade, although they, too, are insufficient in themselves to establish differences in levels of trade. Rather, the Department evaluates differences in levels of trade based on a seller’s entire marketing process.

In the *Preliminary Determination*, the Department found that ARLANXEO Brasil’s claim that it made home market sales at two LOTs was not supported by the record developed at the preliminary phase of the instant investigation.⁴¹ The Department explained its preliminary LOT decision as follows:

{W}e preliminarily find that the record contains significant, unexplained discrepancies with respect to ARLANXEO Brasil’s LOT information, and without further information we cannot conclude that the record supports ARLANXEO Brasil’s most recent claim that it made home market sales at two LOT. Further, the Department preliminarily finds because of the record discrepancies regarding ARLANXEO Brasil’s home market LOT and the need for additional information and examination, that we are currently unable to determine the relationship of the CEP LOT with the information submitted regarding the home market LOT(s), and thus whether a CEP offset is appropriate.

In light of the foregoing, for the preliminary determination, the Department has compared ARLANXEO Brasil’s U.S. sales to its home market sales without regard to level of trade, and the Department has not made either a LOT adjustment or a CEP offset.⁴²

In the *Preliminary Determination*, the Department stated its intention to request supplemental information regarding ARLANXEO Brasil’s LOT information, and to further examine this information during its verification of ARLANXEO Brasil’s response.⁴³ Accordingly, after the *Preliminary Determination*, the Department issued a supplemental questionnaire requesting additional information concerning ARLANXEO Brasil’s reported LOT information.⁴⁴

⁴⁰ See *Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 91120 (December 16, 2016) (*Pasta from Italy 2014-2015*) and accompanying IDM at Comment 6.

⁴¹ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 8-9.

⁴² *Id.* at 9.

⁴³ *Id.*

⁴⁴ See Letter to ARLANXEO Brasil from the Department, concerning, “Sections A, B and C Supplemental Questionnaire in the Antidumping Duty Investigation of Emulsion Styrene-Butadiene Rubber from Brazil,” dated February 21, 2017.

ARLANXEO Brasil timely responded to this request for information.⁴⁵ The Department examined ARLANXEO Brasil's LOT information, including the information submitted in this supplemental questionnaire response, during verification.⁴⁶

The Department finds that ARLANXEO Brasil provided a reasonable explanation in its supplemental questionnaire response for the discrepancies in its LOT information that the Department identified in the *Preliminary Determination*. Specifically, ARLANXEO explained why it revised its LOT information during the preliminary phase of the proceeding, stating:

The basic reason for the changes in the characterization of selling activity levels was the accumulation of information as the investigation progressed as well as a reconsideration of the perspective used in the characterization.⁴⁷

ARLANXEO Brasil further explained that it revised its selling activity information because it re-examined these activities when it revised its reported indirect selling expenses in response to a request from the Department.⁴⁸ ARLANXEO Brasil stated that its examination of its reported indirect selling expenses:

revealed the limited focus of certain selling activities to the Latin American (LATAM) market as well as the amounts of personnel time for various selling activities based on the category of customer. In performing the quantitative analysis for the January 9 supplemental questionnaire response, ARLANXEO Brasil questioned numerous individuals to learn specific information to allow it to allocate its indirect selling expenses. When this was done, the characterization of the specific level of activity in the chart was reviewed and revised based on the costs of the actual selling activities and functions.⁴⁹

The Department finds that ARLANXEO Brasil's explanation adequately addresses the discrepancies in its LOT information identified by the Department in the *Preliminary Determination* and raised by the petitioners in their case brief. Further, there is no information on the record that calls into question the accuracy of ARLANXEO Brasil's explanation, or supports the petitioners' allegation that ARLANXEO Brasil has attempted to falsify its LOT information. Moreover, the Department requested that ARLANXEO Brasil clarify its LOT information during this proceeding, and, accordingly, we disagree with the petitioners' assertion that ARLANXEO Brasil's information was unsolicited.⁵⁰

Additionally, in response to a request by the Department, ARLANXEO Brasil provided quantitative support for its claimed levels of selling activities for sales to its home market

⁴⁵ See ARLANXEO Brasil March 6, 2017 SQR.

⁴⁶ See ARLANXEO Brasil/ARLANXEO USA CEP Sales Verification Report, and ARLANXEO Brasil Sales Verification Report.

⁴⁷ See ARLANXEO Brasil March 6, 2017 SQR at 3.

⁴⁸ *Id.*

⁴⁹ *Id.* (citing ARLANXEO Brasil's January 9, 2017 SQR).

⁵⁰ See, e.g., ARLANXEO Brasil's January 9, 2017 SQR at question 31, and ARLANXEO Brasil's March 6, 2017 SQR at questions 1(a) and 1(b).

customers and its U.S. affiliate, ARLANXEO USA.⁵¹ Specifically, it provided an allocation of employee time spent supporting OEM/end users and distributors that were recorded in the cost centers included in ARLANXEO Brasil's home market and U.S. market indirect selling expenses.⁵² This information, which may not be publicly disclosed, supports ARLANXEO Brasil's claims regarding the difference in selling activities.⁵³ Moreover, the Department examined this selling expense information at verification and found no information that called into question its accuracy.⁵⁴

The Department disagrees with the petitioners' claim that quantitative information is irrelevant to the Department's LOT analysis. Although the Department's LOT analysis is primarily qualitative in nature, the Department has considered, usually as corroboration, quantitative indirect selling information in determining LOTs and CEP offsets. For example, in *Shrimp from Thailand Final*, the Department explained that while it does not rely heavily on indirect selling expense information in its LOT analysis, it considers indirect selling ratios in combination with the analysis of selling functions, to determine if the ratios substantiated the narrative explanation of selling functions, in accordance with our practice.⁵⁵ In the instant case, ARLANXEO Brasil provided an allocation of indirect selling expenses by customer category. This allocation takes into consideration the activities performed by personnel whose salaries are recorded in the cost center that is relevant to each selling activity. While this quantitative information alone is not dispositive, it is responsive to the Department's request for quantitative information, and corroborates ARLANXEO Brasil's narrative explanation regarding its claimed LOTs. While the Department agrees with the petitioners' assertion that differences in numbers of personnel alone do not establish different levels of trade, we find that the information provided by ARLANXEO Brasil is relevant to our LOT analysis. Even though the qualitative information provided by ARLANXEO Brasil substantiates its claim that its home market sales were made at different LOTs, the qualitative data also concerns the company's narrative explanation of its selling functions, and therefore, has probative value.

Despite the petitioners' assertions to the contrary, the Department considers the level of intensity of selling activities in its LOT analysis.⁵⁶ As an initial matter, the Department's antidumping duty questionnaire requests information on level of intensity because this is one indication of whether there is more than one LOT.⁵⁷ Specifically, the antidumping duty questionnaire

⁵¹ See ARLANXEO Brasil's March 6, 2017 SQR at 3-14, and Exhibit B.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See ARLANXEO Brasil Sales Verification Report at 8-10, 23-24 and Exhibits BZ-1, BZ-18, and BZ-25.

⁵⁵ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918, 76920 (December 23, 2004) (*Shrimp from Thailand Final*), and accompanying IDM at Comment 5. Although the issue in *Shrimp from Thailand Final* was whether to grant a CEP offset, the Department analyzed whether the respondent's indirect selling expense information supported the LOT determination ("Further, we note that the Rubicon Group has reported a higher level of indirect selling expenses for sales made to Rubicon Resources. Therefore, we do not find that the U.S. LOT for CEP sales is less advanced than the LOT for Canadian sales."). See e.g., *Pasta from Italy 2014-2015*, and accompanying IDM at Comment 6.

⁵⁶ See e.g., *Pasta from Italy 2014-2015*, and accompanying IDM at Comment 6.

⁵⁷ See Initial AD Questionnaire at A-5-A-9, and A-16.

instructs respondents to report “the degree of involvement for each selling activity/function; *i.e.*, indicate each selling activity/function with ‘None,’ ‘Low,’ ‘Medium,’ or ‘High’ on the {requested selling activity/function} chart.”⁵⁸ Furthermore, as the Department explained in *HWR from Mexico Final*, its LOT analysis takes into account qualitative factors, such as the significance of the activities themselves and the extent to which the activities are performed.⁵⁹ Accordingly, in the instant investigation, the Department considered the level of intensity at which selling activities are performed in determining whether sales have substantial differences in selling activities within the meaning of 19 CFR 351.412(c)(2).

After examining all the record information, including LOT discrepancy explanations requested in a supplemental questionnaire after the *Preliminary Determination*, and verifying all the record information, we agree with ARLANXEO Brasil that it undertakes significant selling activities when selling ESB rubber to home market OEM/end users that it does not perform when selling to home market distributors or its U.S. affiliate, ARLANXEO USA.⁶⁰ The record supports a finding that ARLANXEO Brasil’s home market sales to OEM/end users were made at a different marketing stage than its home market distributors and ARLANXEO USA.⁶¹ Accordingly, the Department finds that ARLANXEO Brasil made POI home market sales at two levels of trade within the meaning of 19 CFR 351.412(c)(2) that correspond to its two categories of customers, OEM/end users and distributors, and that it made sales to its U.S. affiliate at the same level of trade as its home market sales to distributors.

However, the Department agrees with the petitioners’ assertion that the 1998 investigation is not relevant to the LOT analysis at issue. The LOT information considered by the Department in the prior investigation is not on the record of this investigation, and, thus, the Department is not able to consider this information in its analysis.

For the foregoing reasons, the Department determines that ARLANXEO Brasil made POI home market sales at two levels of trade that correspond to its home market customer types (*i.e.*, OEM/end users, and distributors). Additionally, the Department finds that ARLANXEO Brasil made POI home market sales to distributors at the same LOT as sales to its U.S. affiliate, ARLANXEO USA. Accordingly, the Department has compared ARLANXEO Brasil’s reported CEP sales to its home market sales to distributors for the final determination.⁶² Further, where we were unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the CEP, we have made an LOT adjustment under section 773(a)(7)(A) of the Act.

⁵⁸ *Id.* at A-8.

⁵⁹ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Determination of Sales at Less Than Fair Value*, 81 FR 47352 (July 21, 2016) (*HWR from Mexico Final*) and accompanying IDM at Comment 8 (citing *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012), and accompanying IDM, at Comment 3; *Chlorinated Isocyanurates From Spain: Final Results of Antidumping Duty Administrative Review*, 72 FR 64194 (November 15, 2007), and accompanying IDM, at Comment 1).

⁶⁰ See ARLANXEO Brasil Final Analysis Memorandum for a proprietary discussion of the information relied on in reaching this determination.

⁶¹ *Id.*

⁶² See ARLANXEO Brasil Final Analysis Memorandum.

Because the Department has made an LOT adjustment it has not granted a CEP offset, as provided in section 773(a)(7)(B) of the Act.

Comment 2: U.S. Indirect Selling Expenses

ARLANXEO Brasil's Comments:

- The Department inappropriately increased ARLANXEO USA's U.S. indirect selling expenses by amounts for certain expenses, including general and administrative (G&A) expenses and research and development (R&D) costs.⁶³
- ARLANXEO USA is not simply a reseller, rather it has extensive activities that are unrelated to sales of subject merchandise, and, therefore, it incurs G&A and R&D expenses that are distinct from expenses for subject merchandise for sales and marketing purposes.
- The Department should exclude a one-time payment, the details of which may not be publicly disclosed, because excluding this expense is in accordance with Department practice of excluding extraordinary expenses.⁶⁴
 - Alternatively, the Department should revise the amount of this one-time payment, which was submitted as a minor correction during the Department's CEP verification of ARLANXEO USA.⁶⁵
- The Department inappropriately treated G&A expenses as selling expenses.
 - The Department makes a distinction between G&A and selling expenses.⁶⁶ The Department itself separates G&A expenses and selling expenses and the CEP adjustment required by section 772(d)(1)(D) of the Act is for only selling expenses.⁶⁷
 - Record evidence indicates that ARLANXEO USA's G&A expenses are not selling expenses, and are unrelated to sales of subject merchandise. The Department verified that ARLANXEO USA reported the expenses categorized as

⁶³ A portion of the information used to derive U.S. indirect selling expenses is proprietary and may not be publicly disclosed. See ARLANXEO Brasil Case Brief at 18 for its discussion of the proprietary information related to U.S. indirect selling expenses.

⁶⁴ See ARLANXEO Brasil Case Brief at 20 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan*, 64 FR 30574, 30591 (June 8, 1999) ("An event is 'unusual in nature' if it is highly abnormal, and unrelated or incidentally related to the ordinary and typical activities of the company, in light of the company's operation environment.") and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber from Canada*, 67 FR 15539 (April 2, 2002) and accompanying IDM at Comment 33 ("An event is 'infrequent in occurrence' if it is not reasonably expected to recur in the foreseeable future"))).

⁶⁵ *Id.* at 20 citing (ARLANXEO Brasil/ARLANXEO USA CEP Sales Verification Report at Exhibit 1).

⁶⁶ *Id.* at 21-22 (citing Department Letter re: Antidumping Duty Questionnaire Section D Questionnaire, dated August 25, 2017 (Initial AD Questionnaire), at D-19, Field 9.0. ("G&A expenses are those period expenses which relate indirectly to the general operations of the company rather than directly to the production process. G&A expenses include amounts incurred for general R&D activities, executive salaries and bonuses, and operations relating to your company's corporate headquarters) and B-24, Field 39 ("Report the unit cost of indirect selling expenses (e.g., sales office rent and salesmen's salaries) incurred to sell the product in the foreign market.")).

⁶⁷ *Id.* at 22 (citing *Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review: 2012-2013*, 79 FR 37286 (July 1, 2014), and accompanying IDM at Comment 3.).

marketing costs (*i.e.*, selling expenses), and did not include other expenses such as G&A expenses.⁶⁸

- If the Department continues to treat ARLANXEO USA's G&A expenses as U.S. indirect selling expenses, it must also treat ARLANXEO Brasil's G&A expenses as selling expenses in the home market indirect selling expense calculation if it grants a CEP offset to ensure that both types of indirect selling expenses are on the same basis.
- The Department inappropriately treated R&D expenses as selling expenses. At verification, the Department found no evidence that these expenses were related to subject merchandise.⁶⁹

The Petitioners' Comments:

- The Department should reject ARLANXEO Brasil's request to revise ARLANXEO USA's U.S. indirect selling expenses in the final determination.
- ARLANXEO Brasil's claim that the one-time payment is unrelated to subject merchandise is contradicted by record evidence.⁷⁰
- The Department instructs respondents to include G&A expenses incurred by affiliated U.S. resellers, such as ARLANXEO USA, in reported U.S. indirect selling expenses.⁷¹
- The Department's normal practice, as articulated in *Citric Acid from Canada Final* and *Circular Welded Carbon-Quality Steel Pipe from Vietnam Final*, is to include G&A expenses in U.S. indirect selling expenses.⁷²

Department's Position: The Department continues to treat most G&A costs recorded in the financial statements of ARLANXEO USA as indirect selling expenses because they are attributable to sales of subject merchandise. However, as explained below, the Department has revised its calculation of a few indirect selling expenses to exclude a portion of G&A costs and all R&D costs that were treated as U.S. indirect selling expenses in the *Preliminary Determination* because record evidence indicates that these expenses are not attributable to sales of subject merchandise.⁷³

⁶⁸ *Id.* (citing ARLANXEO Brasil/ARLANXEO USA CEP Sales Verification Report at 24.).

⁶⁹ *Id.* (citing ARLANXEO Brasil/ARLANXEO USA CEP Sales Verification Report at 26.).

⁷⁰ See Petitioners' Rebuttal Brief at 18 (citing ARLANXEO Brasil/ARLANXEO USA CEP Sales Verification Report at Exhibit 1).

⁷¹ *Id.* at 18-19 (citing Initial AD Questionnaire, at 22 Field 59.2, Indirect Selling Expenses Incurred in the United States ("Report the unit cost of indirect selling and administrative expenses (*e.g.*, sales office rent and salesmen's salaries) incurred in the United States.")).

⁷² *Id.* (citing *Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37286 (July 1, 2014) (*Citric Acid from Canada Final*), and accompanying IDM at Comment 3, and *Circular Welded Carbon-Quality Steel Pipe from the Social Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 81 FR 75042 (October 28, 2016) (*Circular Welded Carbon-Quality Steel Pipe from Vietnam Final*), and accompanying IDM at Comment 13.))

⁷³ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 7. See also Memorandum, "Analysis for the Preliminary Determination of the Less Than Fair Value Investigation of Emulsion Styrene-Butadiene Rubber from Brazil" dated February 16, 2017 (ARLANXEO Brasil Preliminary Analysis Memorandum) at 7.

The Department deducts U.S. indirect selling expenses from gross unit price in accordance with section 772(d)(1)(D) of the Act. The Act does not define selling expenses, and the Department has reasonably interpreted selling expenses to include G&A expenses that are related to sales of subject merchandise. For example, in *Circular Welded Carbon-Quality Steel Pipe from Vietnam Final*, the Department explained its general practice to consider general and administrative expenses related to the selling operations of the seller affiliated with the producer or exporter in the calculation of indirect selling expenses, and to deduct these expenses from U.S. price.⁷⁴ This practice of treating administrative costs related to sales of subject merchandise as indirect selling expenses has been upheld by the Court of International Trade (CIT) in *Aramide*.⁷⁵ To implement this practice, the Department's questionnaire specifically directs respondents to include administrative costs in reported U.S. indirect selling expenses by including the following request: "Report the unit cost of indirect selling and administrative expenses (e.g., sales office rent and salesmen's salaries) incurred in the United States."⁷⁶

Despite these unambiguous instructions, ARLANXEO Brasil limited its reported U.S. indirect selling expenses to POI marketing expenses recorded in ARLANXEO USA's income statement.⁷⁷ ARLANXEO Brasil further reduced ARLANXEO USA's marketing expenses by a certain expense, which may not be publicly disclosed, that ARLANXEO Brasil refers to as an "one-time payment" in its case brief.⁷⁸ In the *Preliminary Determination*, the Department revised ARLANXEO Brasil's reported U.S. indirect selling expenses to include the following costs recorded in its profit and loss statement: (1) the "one-time payment,"⁷⁹ (2) certain administrative expenses, and (3) research and development expenses.⁸⁰ The Department deducted these revised indirect selling expenses from U.S. price in its preliminary margin calculations.⁸¹ Subsequent to the *Preliminary Determination*, the Department examined at verification, in accordance with section 782(i) of the Act, ARLANXEO USA's indirect selling expense information.⁸² For the one-time payment and certain administrative expenses, the Department finds that they were attributable to the sale of subject merchandise and therefore we have treated these expenses as indirect selling expenses.

As an initial matter, the Department disagrees with ARLANXEO Brasil's claim that section 772(d)(1)(D) of the Act prohibits the Department from deducting general and administrative

⁷⁴ See *Circular Welded Carbon-Quality Steel Pipe from Vietnam Final* and accompanying IDM at Comment 13 ("Thus, we then deducted the portion of MAT's administrative expenses (i.e., the shared services provided by MAT Holdings) related to subject merchandise, from U.S. price in our final determination.")

⁷⁵ See *Aramide Maatschappij V.o.F. v. United States*, 19 C.I.T. 1094, 1101 (August 18, 1995) (citing *Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from the Federal Republic of Germany*, 52 FR 822 (January 9, 1987) ("For purposes of calculating indirect selling expenses, {the Department} generally will include G&A expenses incurred by the United States selling arm of a foreign producer.")).

⁷⁶ See ARLANXEO Brasil Section C Questionnaire Response at C-36.

⁷⁷ See ARLANXEO Brasil Preliminary Analysis Memorandum at 7 (citing ARLANXEO Brasil's January 9, 2017 supplemental questionnaire response at 10-11, and Exhibit SC-6).

⁷⁸ See ARLANXEO Brasil Case Brief at 20-21 for its proprietary discussion of this expense. See also ARLANXEO Brasil Preliminary Analysis Memorandum at 7.

⁷⁹ The details of this expense may not be publicly disclosed. See ARLANXEO Brasil Case Brief at 20-21 for its proprietary discussion of this expense.

⁸⁰ See ARLANXEO Brasil Preliminary Analysis Memorandum at 7.

⁸¹ *Id.* at 7-8 and Attachment II.

⁸² See ARLANXEO Brasil/ARLANXEO USA CEP Sales Verification Report.

expenses attributable to sales of subject merchandise from CEP.⁸³ ARLANXEO Brasil argues that section 772(d)(1)(D) of the Act specifically refers to the deduction of selling expenses, and that the additional expenses that the Department treated as indirect selling expenses in the *Preliminary Determination* go beyond selling expenses within the meaning of the Act.⁸⁴ However, ARLANXEO Brasil urges the Department to narrow its interpretation of the statutory term “selling expense” to exclude G&A costs that are reasonably attributable to the sale of subject merchandise. As explained above, the Department interprets selling expenses to include G&A expenses that are reasonably attributable to sales of subject merchandise, and the Department’s practice, as exemplified by *Circular Welded Carbon-Quality Steel Pipe from Vietnam Final* and upheld by the CIT in *Aramide*, is consistent with this interpretation of selling expenses.⁸⁵ Accordingly, the Department’s treatment of ARLANXEO USA’s G&A costs that are attributable to sales of subject merchandise is in accordance with law.

As noted above, in the *Preliminary Determination*, the Department increased the U.S. indirect selling expenses incurred by ARLANXEO Brasil’s U.S. affiliate, ARLANXEO USA, to include three types of expenses, each of which is discussed, in turn, below. First, record evidence indicates that the expense described as a “one-time payment” by ARLANXEO Brasil is appropriately treated as an indirect selling expense. At verification, ARLANXEO Brasil/ARLANXEO USA revised the allocation of this expense to reflect the portion of this cost that fell within the POI, and the Department examined the nature and frequency of this expense, the details of which may not be publicly disclosed.⁸⁶ Based on its examination of record evidence and at verification, the Department finds that this expense is attributable to the sale of subject merchandise.⁸⁷

Regarding ARLANXEO Brasil’s contention that this expense should be excluded from U.S. indirect selling expense because it is unusual in nature, the Department find that this contention is not supported by record evidence.⁸⁸ In *Lumber from Canada Final*, the Department explained that in order for an event to be extraordinary, it must be unusual in nature and infrequent in occurrence.⁸⁹ The Department explained that an event is “unusual in nature” if it is highly abnormal, and unrelated or incidentally related to the ordinary and typical activities of the entity, in light of the entity’s environment.⁹⁰ Additionally, the Department explained that an event is “infrequent in occurrence” if it is not reasonably expected to recur in the foreseeable future.⁹¹ The Department finds that the record of the instant investigation does not support the conclusion

⁸³ See ARLANXEO Brasil Case Brief at 19-20.

⁸⁴ *Id.*

⁸⁵ See *Circular Welded Carbon-Quality Steel Pipe from Vietnam Final* and accompanying IDM at Comment 13. See also *Aramide*, 19 C.I.T. 1094, 1101.

⁸⁶ For a discussion of the proprietary information relied on reaching this determination, see ARLANXEO Brasil Final Analysis Memorandum (citing ARLANXEO Brasil/ARLANXEO USA CEP Sales Verification Report at 2-3, 24-26, and Exhibit 9).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) (*Lumber from Canada Final*) (citing *Floral Trade Council of Davis, CA v. United States*, 16 CIT 1014, 1016 (Dec. 1, 1992)).

⁹⁰ *Id.*

⁹¹ *Id.*

that the “one-time payment” at issue is unusual in nature or infrequent in occurrence.⁹² Accordingly, ARLANXEO USA’s “one-time payment” does not meet the criteria for an extraordinary expense as defined in the *Lumber from Canada Final*, and, therefore, the Department determines that this expense is properly classified as an indirect selling expense.

Second, the Department continues to find that the majority of the G&A expenses that the Department treated as indirect selling expenses in the *Preliminary Determination* are appropriately classified as indirect selling expenses because they are attributable to sales of subject merchandise. However, at verification, we found that a few of these expenses, which may not be publicly disclosed, are unrelated to sales of subject merchandise.⁹³ Accordingly, consistent with the practice of excluding expenses that are unrelated to sales of subject merchandise, the Department finds that the exclusion from indirect selling expenses of certain G&A expenses that were found at verification to be wholly unrelated to sales of subject merchandise is warranted.⁹⁴

Third, based on its examination of the record of this investigation, the Department finds that the exclusion of all ARLANXEO USA’s R&D costs from U.S. indirect selling expenses is warranted. At verification, the Department found that ARLANXEO USA’s research and development costs were unrelated to sales of subject merchandise.⁹⁵ As the converse of the Department’s practice, the Department excludes from indirect selling expenses those costs that are wholly unrelated to sales of subject merchandise.⁹⁶ Accordingly, the Department finds that the exclusion of these research and development expenses from indirect selling expenses is warranted.

⁹² See ARLANXEO Brasil Final Analysis Memorandum.

⁹³ *Id.*

⁹⁴ See *Antifriction Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part*, 69 FR 55574, 55576 (September 15, 2004) (*Antifriction Bearings Final*) (“The management fees cited by Timken are not related to selling - rather, the fees are allocations to the various SKF Group business units (including SKF Bearings USA and Chicago Rawhide USA) of expenses incurred by the corporate head office in Gotenberg, Sweden for corporate administrative functions.’ Because there is no other information on the record to refute SKF France’s explanation that these management fees are not expenses attributable to sales of subject merchandise, we conclude further that SKF France has excluded these expenses from U.S. indirect selling expenses properly.”). See also ARLANXEO Brasil Final Analysis Memorandum; *United States Steel Corp. v. United States*, 712 F. Supp. 2d 1330, 1344 (CIT 2010) (*U.S. Steel*) (“As the Government points out, when ‘an expense is demonstrated to be unrelated to the sale of subject merchandise . . . , that expense may be removed from the indirect selling expense calculation.’”).

⁹⁵ For a discussion of the proprietary information relied on reaching this determination, see ARLANXEO Brasil Final Analysis Memorandum (citing ARLANXEO Brasil/ARLANXEO USA CEP Sales Verification Report at 26 and Exhibit 9)).

⁹⁶ See *Antifriction Bearings*, 69 FR at 55576 (“The management fees cited by Timken are not related to selling - rather, the fees are allocations to the various SKF Group business units (including SKF Bearings USA and Chicago Rawhide USA) of expenses incurred by the corporate head office in Gotenberg, Sweden for corporate administrative functions.’ Because there is no other information on the record to refute SKF France’s explanation that these management fees are not expenses attributable to sales of subject merchandise, we conclude further that SKF France has excluded these expenses from U.S. indirect selling expenses properly.”); see also *U.S. Steel*, 712 F. Supp. 2d at 1344 (“As the Government points out, when ‘an expense is demonstrated to be unrelated to the sale of subject merchandise . . . , that expense may be removed from the indirect selling expense calculation.’”).

ARLANXEO Brasil argues that in the event that the Department grants ARLANXEO Brasil a CEP offset, it must make certain revisions to home market indirect selling expenses if it continues to include G&A expenses in U.S. indirect selling expenses. As noted above, the Department has not granted ARLANXEO Brasil a CEP offset. Accordingly, the Department has not addressed ARLANXEO Brasil's arguments regarding home market indirect selling expenses revisions.

For the foregoing reasons, the Department has continued to include ARLANXEO USA's "one-time" payment expense and other G&A expenses attributable to sales of subject merchandise as U.S. indirect selling expenses for the final determination.⁹⁷ However, the Department has excluded certain G&A expenses and all R&D costs wholly unrelated to the sales of subject merchandise from U.S. indirect selling expenses for the final determination.⁹⁸

Comment 3: Domestic Indirect Selling Expense Clerical Error

The Petitioners' Comments:

- The Department's preliminary margin calculation fails to capture reported domestic indirect selling expenses.
- The Department should correct this error, which impacts the calculation of CEP profit.
- No other interested party commented on this issue.

Department's Position: The Department agrees with the petitioners. In the *Preliminary Determination*, the Department made a clerical error in selecting the variable used to represent indirect selling expenses in its margin calculation.⁹⁹ Therefore, the Department has corrected this error for the final determination.¹⁰⁰

⁹⁷ See ARLANXEO Brasil Final Analysis Memorandum.

⁹⁸ *Id.*

⁹⁹ See ARLANXEO Brasil Preliminary Analysis Memorandum at Attachment 1.

¹⁰⁰ See ARLANXEO Brasil Final Analysis Memorandum.

RECOMMENDATION

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



Agree _____

Disagree _____

7/10/2017

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance