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January 9, 2003

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Administrative Review of
Structural Steel Beams From the Republic of Korea for the Period
of Review February 11, 2000, through July 31, 2001

SUMMARY:

We have analyzed the case and rebuttal briefs of interested parties in the 2000-2001 administrative review of the antidumping duty order of structural steel beams from the Republic of Korea. As a result of our analysis, we have made changes from the Structural Steel Beams From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 67 FR 57574 (September 11, 2002) (“Preliminary Results”). The specific calculation changes for INI Steel Company (“INI”) can be found in Analysis for the Final Results of Review of Structural Steel Beams from the Republic of Korea: INI Steel Company (“INI Final Analysis Memorandum”), January 9, 2003.

We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comment and rebuttal briefs by interested parties.

Background

On September 11, 2002, the Department of Commerce (“the Department”) published the preliminary results of the antidumping duty order on structural steel beams (“SSBs”) from the Republic of Korea. See Preliminary Results. The merchandise covered by this order is structural steel beams as described in the “Scope of the Review” section of the Federal Register notice. The period of review (“POR”) is February 11, 2000 through July 31, 2001. We invited interested parties to comment on our Preliminary Results. We received case briefs on October 30, 2002,

from petitioners and INI. We received case rebuttals on November 6, 2002, from petitioners and INI.

- Comment 1: Affiliation between INI and Hyundai U.S.A./Hyundai Corporation
- Comment 2: Reimbursement Provisions when INI is both Exporter and Importer
- Comment 3: Recalculation of U.S. Imputed Credit Expenses (for field CREDIT2U) Using Hyundai U.S.A.'s Interest Rate
- Comment 4: Entered Value for Certain Observations
- Comment 5: INI's Cost of Production
- Comment 6: Interest Revenue on Home Market Sales
- Comment 7: Payment Date Cap For Certain Sales After the Sale Date
- Comment 8: Ministerial Error in the Draft Liquidation Instructions
- Comment 9: Issuance of Automatic Liquidation Instructions for Non-reviewed Companies

I. Changes Since the Preliminary Results of Review

Based on our analysis of comments received, we made changes in the margin calculation for INI. The changes are listed below:

- We revised INI's imputed credit expenses for its U.S. sales upward by the percentage difference between INI's U.S. dollar short-term interest rate and Hyundai U.S.A.'s U.S. dollar short-term interest rate. See Comment 3.
- We revised the adjustment to the imputed credit offset used to determine a portion of indirect selling expenses based on our determination to adjust INI's imputed credit expenses upward by the percentage difference between INI's and Hyundai U.S.A.'s U.S. dollar short-term interest rate. See Comment 3.
- We reversed our decision in the Preliminary Results and now determine that the verification report incorrectly stated that the entered value for a particular transaction was wrong. See INI Steel Company Home Market Sales, United States Sales, and Cost of Production Verification Report: Antidumping Duty Administrative Review on Structural Steel Beams from Korea ("INI verification report") at 25 (September 3, 2002). Therefore, for the final results, we modified our margin program and we did not reduce the entered value for this particular transaction. See Comment 4.
- We revised INI's gross unit price to include interest revenue instead of as an offset to direct expenses. See Comment 6.

II. Discussion of the Issues

Comment 1: Affiliation between INI and Hyundai U.S.A./Hyundai Corporation

INI argues that after August 31, 2000, its sales through Hyundai U.S.A., a U.S.-based wholly-owned subsidiary of Hyundai Corporation, were export price (“EP”) sales and not constructed export price sales (“CEP”) because INI was no longer affiliated with Hyundai U.S.A. INI notes that its sales to Hyundai U.S.A. after August 31, 2000, were classified as CEP sales in the Preliminary Results. INI is not challenging any of the Department’s CEP/EP determinations for its other U.S. sales.

Prior to August 31, 2000, INI claims that the only basis for determining that INI and Hyundai U.S.A. were affiliated is because both were members of the Hyundai Group chaebol. INI notes that INI sold through Hyundai Corporation (and Hyundai U.S.A.) because the Hyundai Corporation was the trading company for the Hyundai Group chaebol. INI stated that for these pre-August 31, 2000 sales, Hyundai U.S.A. was the importer of record and paid all of the duties incurred on these sales. INI contends that after its disassociation from the Hyundai Group chaebol on August 31, 2000, it was no longer affiliated with Hyundai U.S.A. INI stated that after this disassociation, INI did not sell to Hyundai Corporation, and INI, not Hyundai U.S.A., became the importer of record and paid all duties.

INI does not dispute the Department’s statements in the Preliminary Results that M. K. Jung has the potential to exercise control over INI. See INI’s Case Brief (business proprietary version), October 31, 2002 at 4 and fn 2. Also, INI does not dispute the Department’s statements in the Preliminary Results that M. H. Jung, M. K. Jung’s half brother, exercises or has potential to exercise control over Hyundai Corporation and Hyundai U.S.A. See INI’s Case Brief (business proprietary version), October 31, 2002 at 4 and fn 2. However, INI disagrees with the Department’s statement that because M. H. Jung and M. K. Jung are brothers, INI and Hyundai U.S.A. are under the common control of one entity, the Jung brothers. Additionally, INI disputes the Department’s statement in the Preliminary Results that the Jung brothers are one entity. Instead, INI argues that the Hyundai Group chaebol does not and cannot control INI, nor does the Hyundai Group chaebol have the potential to impact decisions concerning the production, pricing or cost of INI’s subject merchandise.

INI notes that there was a power struggle over control of the Hyundai Group chaebol between half brothers M. K. Jung and M. H. Jung. M. K. Jung, as chairman of the Hyundai Motors Company, determined to split from the Hyundai Group chaebol and form the Hyundai Motors Group chaebol. Respondent states that under the Monopoly Regulation & Fair Trade Act, the following four criteria must be met for a company/group of companies to legally dissociate from their previous chaebol group: 1) the company/group seeking separation holds no more than 3 percent of the total shares of the other group (the 3 percent total includes relatives, affiliated companies and executives); 2) that no persons hold managerial positions in companies in both groups/chaebols; 3) that no guarantees

of obligations are made to companies of the other group; and 4) that funds are not lent or borrowed between the two groups/chaebols. INI asserts that it and all members of the Hyundai Motors Group, satisfied each of these criteria and the Hyundai Motors Group was granted disassociation on August 31, 2000, and that there is no horizontal or vertical affiliation between the Hyundai Group and the Hyundai Motors Group.

Further, INI states that in order for the Department to find affiliation under the statute, a person or persons must be directly or indirectly controlling, controlled by, or under common control with, any person, citing 771(33)(F) and where a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. See Section 771. INI stated that the Department will not find that control exists on the basis of a corporate or family grouping unless the relationship has the potential to impact decisions concerning the production, pricing or cost of the subject merchandise or foreign like product. See 19 C.F.R. 351.102(b) and Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan, 67 FR 35474 (May 20, 2002) (“PET Film from Taiwan”), and accompanying Issues and Decision Memorandum at Comment 4.

INI contends that there is no record evidence that M. H. Jung has the ability or potential to control the Hyundai Motors Group chaebol, or more specifically INI. INI notes that M. H. Jung does not own stock in INI and is not a board member of INI or any other Hyundai Motors Group company. INI also notes that there are no common board members or managers between any Hyundai Motors Group and Hyundai Group member companies. INI argues that to comply with Korean law, the chaebols (*i.e.*, Hyundai Motors Group and Hyundai Group) legally separated themselves and demonstrated that neither group of companies could exercise control over the other. INI notes that the Department will normally take such national laws into account in examining the existence of control. See Final Antidumping and Countervailing Duty Regulations, 62 FR 27296, 27298 (May 19, 1997).

INI states that M. H. Jung and M. K. Jung are estranged from each other and their feud was the impetus for the dissociation of the Hyundai Motors Group chaebol from the Hyundai Group chaebol. Hence, INI contends that these half-brothers do not have a common interest that is required for determining that control over another person exists.

INI states that in AK Steel v. United States, the Court of Appeals for the Federal Circuit found that the critical differences between EP and CEP sales are whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate. See AK Steel v. United States, 236 F.3d 1361, 1370 (Fed. Cir. 2000). Thus, INI argues that Hyundai U.S.A. is not an affiliate of INI as of August 31, 2000, and that INI's channel two sales to Hyundai U.S.A. are sales that take place outside the United States and should be classified as EP sales.

In rebuttal, petitioners note that section 771(33)(A) of the Act states that family members including brothers and sisters (whether by whole or half blood) are affiliated and that the Department has expanded this definition to include more distant familial relationships, such as uncle/nephew relationships. See Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1311 (CIT 1999) and Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the Republic of Korea, 66 FR 33526, 33527-28 (June 22, 2001) (“Steel Concrete Bars from Korea”). Petitioners argue that the Department correctly determined in the Preliminary Results that INI and Hyundai U.S.A. are under the common control of the Jung brothers and that each of the Jung brothers is a person within the meaning of section 771(33) of the Act.

Petitioners argue that the Department does not need to find actual exercise of control by one person over the other in order to find the parties affiliated but the potential to exercise control is sufficient. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Mexico, 64 FR 30790, 30795 (June 8, 1999).

Petitioners contend that INI has failed to meet its burden of demonstrating that the control relationship does not have the potential to affect the production, transportation, and sale of subject merchandise. In contrast, petitioners argue that Hyundai Group, through Hyundai U.S.A., had the opportunity to influence the U.S. price of subject merchandise because Hyundai U.S.A. sold certain percentages (by volume and value) of INI’s subject merchandise. Petitioners cite additional business proprietary information in support of their position. See Petitioners’ Rebuttal Brief (business proprietary version), November 7, 2002 at 4-5.

Petitioners argue that a finding that affiliation exists under section 771(33)(A) does not require a finding of control under section 771(33)(F), as INI contends. Petitioners assert that the list under 771(33) is not hierarchical and that only one item on the list is required in order to determine that persons are affiliated. Petitioners cite the Statement of Administrative Action (“SAA”) which states, “The Administration believes that including control in the definition of ‘affiliated’ will permit a more sophisticated analysis which better reflects the realities of the marketplace.” See SAA at 838. Petitioners rebut INI’s argument by stating that control is another way in which parties may be affiliated. Petitioners state that INI mischaracterized the Department’s determination in PET Film from Taiwan and instead the Department examined whether a particular family member was in a position to control a company and not whether family members were affiliated. Petitioners note that INI concedes that M. K. Jung controls INI, that M. H. Jung controls Hyundai U.S.A. and that M. K. Jung and M. H. Jung are half-brothers; hence, there is no question that these half-brothers are affiliated within the meaning of 771(33)(A). Also, petitioners claim that INI’s statements that M. K. Jung and M. H. Jung are estranged are legally irrelevant.

Petitioners contend that the Department determined that while no family member had control over both Dongkuk Steel Mill Co., Ltd. (“DSM”) and Korea Iron & Steel Co., Ltd. (“KISCO”), affiliation existed because each company was controlled by a brother in the Chang family. See Steel Concrete Bars from Korea and Comment 1 of the accompanying Decision Memorandum.

Petitioners claim that several articles placed on the record by INI indicate that INI is affiliated with the Hyundai Group chaebol via familial control. Petitioners note that one article stated that the late Hyundai Group chaebol founder J. Y. Jung (father of M. K. Jung and M. H. Jung) controlled the Hyundai Group chaebol despite the Jung family and relatives holding less than 20-30 percent of the Hyundai companies. Petitioners argue that the Jung family maintains this control through multi-level circular equity investments, the placement of family members in key positions, and the grooming and placement of managers (similar to kasins) strictly loyal to the Jung family. Petitioners define kasins as family vassals as similar to servants in Korea’s ancient courts who were loyal to their ruling family.

Petitioners cite from several articles in support of their position that the Hyundai companies, regardless of chaebol, are run as a family business. Also, petitioners note that in the Preliminary Results, the Department identified additional Jung family members in management positions at Hyundai Motors Group companies. For this business proprietary information, see Memorandum from Brandon Farlander to The File re: Analysis for the Preliminary Determination in the Antidumping Duty Administrative Review, dated September 3, 2002.

Petitioners argue there is a historical Korean practice of corporate control via kasin. For instance, petitioners contend that the Jung family has placed loyal managers in key positions which allows the Jung family to control companies over the rights of shareholders.

Petitioners rebut INI’s portrayal the Hyundai Motors Group chaebol and the Hyundai Group chaebol are separate by noting that there are interactions between the two groups, such as Hyundai U.S.A. selling INI’s and another company’s merchandise; shareholdings; at least one inter-group loan; and other information, some of which is business proprietary. See Petitioners Rebuttal Brief (business proprietary version) November 7, 2002 at 12. Also, petitioners argue that the Hyundai companies have shown ignorance of Korea’s corporate governance laws and that the Jung family has controlled the Hyundai companies without approval of the boards of directors or other due process.

Petitioners state that INI’s argument is unfounded and that the Department must show deference to national laws by recognizing that the Korean Fair Trade Commission has ruled that the Hyundai Group chaebol and the Hyundai Motors Group chaebol are separate and that, as a matter of

Korean law, neither group can exercise control over the other. Petitioners note that the Department's preamble states that, national laws notwithstanding, the Department will also consider whether there is any de facto control. Petitioners cite several articles in which Hyundai companies may have broken Korean law(s) and argue that the Department should give no more deference to INI's arguments regarding Korean laws than do Hyundai Group chaebol and Hyundai Motors Group chaebol themselves.

Department's Position: Consistent with the Preliminary Results, we continue to determine that Hyundai U.S.A. and INI are affiliated for the entire period of review. Under section 771(33)(A) of the Act, half-brothers M. K. Jung and M. H. Jung ("Jung Brothers") are explicitly considered affiliated persons. Consistent with this finding, the Department considers the Jung Brothers as affiliated persons through their familial relationship. Additionally, INI has conceded that M. K. Jung controls INI through the Hyundai Motors Group chaebol and M. H. Jung controls Hyundai U.S.A. through the Hyundai Group chaebol. See INI's Case Brief (business proprietary version), October 31, 2002 at 4. Because both INI and Hyundai U.S.A. are under the control of the Jung Brothers, the Department finds Hyundai U.S.A. and INI affiliated under 771(33)(F) of the Act.

Further, the Department notes several other reasons for finding affiliation between Hyundai U.S.A. and INI. The Jung Brothers, in conjunction with other Jung family members, collectively known as the "Jung Family" controls Hyundai Corporation and its wholly-owned subsidiary Hyundai U.S.A. based on the following factors: 1) direct stock ownership; 2) stock ownership in other Hyundai Group chaebol companies, which own stock in Hyundai Corporation; 3) Jung family member M. H. Jung is chairman of the Hyundai Group chaebol, of which Hyundai Corporation is a member; and 4) Jung family member M. H. Jung is chairman of Hyundai Engineering and Construction Company, Ltd., the lead company in the Hyundai Group chaebol. In addition, we have determined that the Jung Family controls INI based on the following factors: 1) Jung family member M. K. Jung is the chairman of both the lead company in the Hyundai Motors Group chaebol, *i.e.*, the Hyundai Motors Company, and the chairman of the Hyundai Motors Group chaebol, of which INI is a part; and 2) factors which are business proprietary (see the INI Final Analysis Memo). Moreover, we note that the facts of this case and corresponding analysis are similar to Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 63 FR 55578 (October 16, 1998) ("Pipes and Tubes from Thailand"). In Pipes and Tubes from Thailand, the Department concluded the following: 1) common control of several companies by a family group may be based on the family's equity ownership and/or positions on a board of directors and/or a management position of the companies; and 2) a family group may include all members of the family, even when a family may be estranged. The Department is concerned with the potential of a group to act, through the companies it controls not with the evidence that the group did act in concert.

As discussed above, the Department finds M. H. Jung and M. K. Jung to be affiliated persons under Section 771(33)(A) of the Act. In addition, for the above-mentioned reasons, the Department finds that M. K. Jung controls INI and M. H. Jung controls Hyundai U.S.A. As INI and Hyundai U.S.A. are both controlled or potentially controlled by the Jung Family, the Department finds INI and Hyundai U.S.A. affiliated within the meaning of Section 771(33)(F) of the Act. Thus, the Department continues to find that the sale between INI and Hyundai U.S.A. was a sale between affiliates and properly considered a CEP sale.

INI argues that the Hyundai Group chaebol does not and cannot control INI, nor does the Hyundai Group chaebol have the potential to impact decisions concerning the production, pricing or cost of INI's subject merchandise. However, as discussed above, the Department disagrees because the Jung Brothers/Family control both companies.

While we recognize that the Korean government has determined that the Hyundai Motors Group chaebol is a separate chaebol from the Hyundai Group chaebol, we do not find this legal status under Korean law determinative for purposes of affiliation under U.S. antidumping law. Moreover, we disagree with INI's statement that in order to find control, there must be a common interest. We note that when the Department examines control via familial relationships, whether family members are estranged is not relevant to the statutory definition of affiliated parties under Section 771(33)(A). Accordingly, we have determined that the affiliation analysis presently employed is consistent with the Act and Department practice. See the SAA at 838 which expressly discusses affiliation through family groupings; Ferro Union, Inc., et al v. United States, Slip. Op. 99-27 at 36-42 (Ct. Int'l Trade 1999) holding that affiliation under the Act includes companies under the common control of one family and that estrangement between family members does not provide an exception to this familial affiliation provision in the Act (i.e., Section 771(33)(A) of the Act). For all of the aforementioned reasons, the Department continues to find that INI and Hyundai U.S.A. are affiliated and as such all of their sales are properly considered CEP sales under the Act.

Comment 2: Reimbursement Provisions when INI is both Exporter and Importer

Petitioners argue that the Department should reduce the U.S. price by the amount of duties paid by the exporter for certain sales where INI acted as both the exporter and importer. Petitioners contend that the antidumping law is undermined when the exporter itself pays the antidumping duties, citing Color Television Receivers from the Republic of Korea: Final Results of Antidumping Duty Administrative Reviews, 61 FR 4408, 4410 (February 6, 1996) (“Color TV Receivers from Korea”), which states that “{t}he remedial effect of the law is defeated, however, where exporters themselves pay antidumping duties, or reimburse importers for such duties.” Petitioners argue that the imposition of dumping duties should have a price effect in the United States market in that the

dumped merchandise should become more expensive for the first unaffiliated purchaser. See Petitioner's Case Brief (business proprietary version), October 31, 2002 at 8.

Petitioners note that Hyundai U.S.A. was identified as the importer for sales before August 30, 2000 and that, after this date, INI was identified as the importer. Petitioners state that record evidence indicates that for a sale after August 30, 2000, INI paid the antidumping duties as the importer of record and that INI did not pass this duty to either Hyundai U.S.A. or to Hyundai U.S.A.'s customers.

Petitioners request that the Department inform the U.S. Customs Service of an alleged improper action by INI. Because this information is proprietary, see Petitioner's Case Brief (final business proprietary version) October 31, 2002 at 5.

Petitioners disagree with INI's response to a question from the Department that there is no requirement under U.S. law that a producer or importer demonstrate that an estimated antidumping duty deposit be included in the price charged to an unaffiliated U.S. customer. Petitioners cite several cases to support their argument that the payment of duty deposits triggers reimbursement provisions. See Petitioner's Case Brief (business proprietary version) October 31, 2002 at 6, citing Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands; Preliminary Results of Antidumping Duty Administrative Review, 61 FR 51888, 51891 (October 4, 1996); Furfuryl Alcohol From the Republic of South Africa; Preliminary Results of Antidumping Duty Administrative Review, 62 FR 36488, 36490 (July 8, 1997), and Color TV Receivers from Korea.

Petitioners note that INI is both exporter and importer, which was the case for respondent Hylsa in Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Results of Antidumping Administrative Review, 63 FR 33041, 33042 (June 17, 1998) ("Pipe and Tube from Mexico"). Petitioners note that in Pipe and Tube from Mexico, the Department stated that two separate corporate entities must exist to invoke the reimbursement regulation. Petitioners argue that the Department must reverse its position in Pipe and Tube from Mexico and in this proceeding, and invoke the reimbursement regulation.

Petitioners argue that the interpretation of 19 CFR 353.402(f) that reimbursement cannot occur if the exporter and importer are the same entity is not an interpretation that is required by the regulation, nor is it the most appropriate policy.

INI states that the Department's practice is that the duty reimbursement rule, at 19 C.F.R. 351.402(f), is inapplicable when the exporter and importer of record are the same entity, which, in

this case, is INI. See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review, 67 FR 46172 (July 12, 2002)(“Certain Mushrooms From India”). Also, INI notes that no actual duties have been assessed yet or paid by any parties but only dumping duty deposits.

Additionally, INI notes that it served as importer of record on its sales to Hyundai U.S.A. after August 30, 2000, and used a resident agent in the United States for purposes of certain Customs requirements. INI claims that as importer of record, it was responsible for ordinary Customs duties and antidumping duty deposits. Also, INI cites to several verification exhibits which detailed the terms of sale between INI’s and Hyundai U.S.A. and that the terms of sale demonstrates that INI is paying the antidumping duty deposits and that the importer of record is identified on the Customs entry summary.

While INI agrees with petitioners that the question of Customs valuation is outside the Department’s jurisdiction, INI disputes petitioners argument that it incorrectly reported entry values to Customs. INI contends that it correctly reported entered value for the sales identified by petitioners.

INI notes that petitioners do not dispute that the reimbursement rule is inapplicable when the exporter and importer of record are the same legal entity. INI disagrees with petitioners request for the Department to reconsider its position in Pipe and Tube from Mexico and find reimbursement in the instant case. INI contends that in Color TV Receivers from Korea, the Department was consistent with Pipe and Tube from Mexico, where the reimbursement regulation does not apply when the producer, exporter and importer are one and the same entity. INI also cites other cases where the Department did not find reimbursement when the exporter and importer are the same entity. See Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 64 FR 56759, 56769 (October 21, 1999) and Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review, 64 FR 11825, 11833 (March 10, 1999).

INI states petitioners argument that the reimbursement rule applies to dumping duty deposits is false because the deposits are not payments of antidumping duties. See Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review, 65 FR 30068 (May 10, 2000) and accompanying Issue Memorandum at Comment 1B. In contrast, INI contends that petitioners have no basis for a finding of reimbursement of duties.

Department's Position: We agree with INI that the reimbursement rule does not apply to the facts of this case. The Department has stated in several cases that when the importer and exporter are the same entity, the reimbursement rule does not apply. See Certain Mushrooms From India and Pipe and Tube from Mexico. Also, we note that the facts in the instant case are different from the facts in Color TV Receivers from Korea, which did not involve a single entity involved in the production, export and import of subject merchandise. Thus, there is no basis for reducing the U.S. price under the Department's reimbursement regulation.

Comment 3: Recalculation of U.S. Imputed Credit Expenses (for field CREDIT2U) Using Hyundai U.S.A.'s Interest Rate

Petitioners claim that INI incorrectly used its own U.S. short-term interest rate instead of Hyundai U.S.A.'s short-term interest rate to calculate U.S. imputed credit (field CREDIT2U). Petitioners state that if the Department continues to determine that INI's sales to Hyundai U.S.A. after August 30, 2000, are CEP sales, then the Department should recalculate imputed credit expenses for all sales through Hyundai U.S.A. (field CREDIT2U) using Hyundai U.S.A.'s short-term interest rate for the final results.

INI argues that the Department should not determine that its sales to Hyundai U.S.A. after August 30, 2000, are CEP sales but are EP sales. In the final results, if the Department determines that these sales are EP sales, no interest rate change is necessary. However, if the Department continues to classify these sales as CEP sales, INI agrees with petitioners that Hyundai U.S.A.'s short-term interest rate should be used. However, INI contends that the Department would then have to recalculate the interest portion of the indirect selling expense factor to account for the higher imputed credit expenses. For use by the Department in the final results, INI recalculated its total imputed credit expenses, the interest component of the indirect selling expense factor and the interest expense factor portion of the indirect selling expenses.

Department's Position: We agree with petitioners and INI. First, we agree with petitioners and INI that Hyundai U.S.A.'s short-term interest rate should have been used to calculate imputed credit for field (CREDIT2U) instead of INI's short-term interest rate. Because we have determined that INI's channel two sales are CEP sales, we are recalculating Hyundai U.S.A.'s imputed credit expenses and are using Hyundai U.S.A.'s U.S. short-term interest rate. See Comment 1 above. Thus, we have recalculated Hyundai U.S.A.'s credit expenses. See INI Final Analysis Memorandum. Second, we agree with INI that since we are increasing Hyundai U.S.A.'s imputed credit expense figure, we need to make a corresponding adjustment to the imputed credit offset used to determine a portion of indirect selling expenses. Hence, for the final results, we are adjusting Hyundai U.S.A.'s indirect selling expenses to account for the higher imputed credit expenses. See INI Final Analysis Memorandum.

Comment 4: Entered Value for Certain Observations

Petitioners contend that the Department should adjust entered value for all transactions for which INI reported a particular entered value. Petitioners cite the INI verification report, which noted that for a specific sales trace, INI had incorrectly reported its entered value. Petitioners note that for the Preliminary Results, the Department adjusted the entered value for this sale. Therefore, petitioners argue that the Department should make the same correction to the entered values of all other observations with that specific entered value.

INI claims that the Department's INI verification report incorrectly stated that the entered value for a specific sales transaction was not correct. Respondent contends that it correctly reported entered value for this specific sale. INI argues that since the Department was mistaken in reducing entered value for a specific observation, petitioners argument for an adjustment to additional observation is moot. Finally, INI requests that Department acknowledge its error in the INI verification report, reject petitioners' argument for any changes to entered values, and confirm the calculation of the assessment rate contained in the Preliminary Results.

Department's Position: We agree with INI that the INI verification report incorrectly stated that the entered value for a particular transaction was wrong. See INI verification report at 25. We examined the U.S. Customs Entry Summary form for this particular sales trace and saw that the entered value had been reported correctly in INI's database. Thus, we now determine that INI had correctly reported entered value. Therefore, for the final results of review, we will modify our margin program and not reduce the entered value for this particular transaction. Since we are reversing our decision from the Preliminary Results and are now not modifying the entered value for this particular transaction, petitioners argument to modify the entered values for all other observations with that specific entered value is moot.

Comment 5: INI's Cost of Production

Petitioners note that for the Preliminary Results, the Department did not deduct the costs for packing or inland freight from plant to distribution warehouse because INI claimed that these costs are already included in its cost of production. However, petitioners argue that this claim is unsubstantiated and must be rejected because INI has not demonstrated that these costs are included in INI's cost of production.

INI rebuts petitioners argument and claims that its reported cost of manufacture is inclusive of: 1) inland freight costs (from the Pohang plant to INI's yard) and 2) packing costs. INI contends that

the reported values on the sales tapes were recorded as a cost of manufacture in the normal course of business. Also, INI states that the Department verified that: 1) the cost of manufacture was not reduced by either the inland freight or packing costs; 2) these costs were derived from INI's cost of manufacture; and 3) there were no adjustments to the cost of manufacture other than duty drawback.

Department's Position: We agree with INI. At verification, we found that INI's inland freight from plant to distribution warehouse and packing costs were from its cost accounting system. See INI verification report at 27-28 and sales verification exhibit 33. Additionally, at verification, we found that INI made no adjustments to its cost of manufacture other than for duty drawback. See INI verification report at 41-44 and cost verification exhibits 15-18. See INI's December 7, 2001 Section B response at 28 and INI's March 25, 2002 supplemental questionnaire response. Further, INI stated in its responses that it could not isolate total freight or total packing recorded in its cost accounting system. See INI's December 7, 2001 Section B response at 28 and INI's March 15, 2002 supplemental questionnaire response. Therefore, we do not need to adjust INI's cost of production since the cost of production figure already includes inland freight costs and packing costs.

Comment 6: Interest Revenue on Home Market Sales

Petitioners note that the Department treated interest revenue as a selling expense in the Preliminary Results. However, petitioners argue that based on INI's description of this field in the INI verification report, interest revenue is not a selling expense but additional revenue that INI collects for that sale and is no different from a billing adjustment. Therefore, petitioners argue that for the final results, the Department should treat interest revenue as a direct positive adjustment to gross unit price.

INI contends that petitioners have provided no basis to define interest revenue other than as a direct selling expense (or offset to credit), which is consistent with the Department's practice. INI argues that the Department verified that INI reported interest revenue for those customers that extended the terms of the promissory note and were required to pay additional interest. Therefore, INI states that these payments are directly connected to the extension of the payment terms and actual payment.

Department's Position: We agree with petitioners. For the final results, we have adjusted gross unit price to include home market interest revenue.

Comment 7: Payment Date Cap For Certain Sales After the Sale Date

Petitioners argue that INI should have reported date of payment (and imputed credit expenses) on a transaction-specific basis as required under section 351.401(g) of the Department's regulations. Petitioners note that although the regulations allow for a less-specific reporting basis for imputed credit, there are strict requirements that the respondent: 1) demonstrate that the expenses are allocated on as specific a basis as possible; and 2) demonstrate that the methodology is non-distortive. Petitioners contend that INI's surrogate methodology is distortive for certain customers and that INI has failed to demonstrate otherwise.

Petitioners cite business proprietary information in support of their argument that INI's reported payment date is distortive for a certain number of transactions with a payment date more than a certain number of days after the sale date. Petitioners contend that the Department's normal methodology in these scenarios is to cap the payment date with some milestone in the proceeding, such as the date of the final results. See Polyethylene Terephthalate Film, Sheet, and Strip from India, 67 FR 44175 (July 1, 2002)("PET Film from India"). Therefore, for the final results, petitioners argue that the Department should cap the payment date for all sales with payment periods greater than a certain number of days and for all sales with payment dates beyond the date of the Preliminary Results.

INI states that the Department verified that INI's home market customers pay on an open account basis and that this method of payment has been accepted by the Department in numerous other cases involving respondents from Korea. See, e.g., Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 12927 (March 16, 1999)("Cold-Rolled from Korea"). INI cites section 351.401(g) of the Department's regulations, where the Department may consider allocated expenses if it is shown by the respondent that the allocation methodology is calculated on as specific a basis as is feasible and it is explained why the allocation methodology used does not cause inaccuracies and distortions. See generally Antidumping Duties: Countervailing Duties, 62 FR 27296, 27346 (May 19, 1997)(preamble to 19 C.F.R. 351.401); Import Administration Antidumping Manual, Chapter 8 at 24-25.

INI states that its use of this methodology caused a small number of high positive credit expenses (or turnover periods) and a slightly greater number of negative credit expenses. INI notes that it explained in its response that it incurs negative credit expenses when a customer pays the sales amount before INI ships the merchandise. Respondent notes that the Department examined at verification numerous documents related to INI's negative and extended credit periods and found no discrepancies in INI's turnover period methodology.

Finally, INI contends that the Department has accepted the use of average accounts receivable turnover periods in numerous other cases, including where petitioners argued that respondents' turnover methodology was flawed and resulted in aberrational credit periods. See Cold-Rolled from Korea (where the Department found that the variation in the credit periods was not significant enough to call into question the general reasonableness of the methodology utilized).

Department's Position: We agree with INI. We note that INI reported both negative and positive credit expenses and that we extensively examined its reported payment date methodology and found no discrepancies. In the INI verification report, we state that we reviewed the calculation of positive and negative credit days, selected two customers with the longest negative credit and one customer with positive credit days, and found no discrepancies. See INI verification report at 33-35. Also, based on INI reporting both positive and negative credit expenses based on its reporting methodology and our thorough examination of this methodology at verification, we find INI's credit period methodology reasonable and non-distortive. Finally, the facts of PET Film from India are different from the facts in the instant case. In the instant case, INI provided payment dates for all transactions based on its reported payment date methodology while in PET Film from India, the respondent did not provide payment dates for some transactions.

Comment 8: Ministerial Error in the Draft Liquidation Instructions

Petitioners claim that the Department made a ministerial error in its draft liquidation instructions by reversing the liquidation rates associated with each company.

INI did not comment on this issue.

Department's Position: We agree with petitioners and have corrected the liquidation instructions for the final results.

Comment 9: Issuance of Automatic Liquidation Instructions for Non-reviewed Companies

Petitioners note that the Department should issue automatic liquidation instructions for non-reviewed companies in this review.

INI did not comment on this issue.

Department's Position: We agree with petitioners and have sent these automatic Customs liquidation instructions.

III. RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of this administrative review and the final weighted-average dumping margins in the Federal Register.

AGREE _____ DISAGREE _____

Faryar Shirzad
Assistant Secretary
for Import Administration

Date