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2nd Administrative Review
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October 6, 2003

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey May
Deputy Assistant Secretary
Import Administration, Group I

SUBJECT: Issues and Decision Memorandum for the 2001-2002 Administrative Review of Polyester Staple Fiber from Korea; Final Results

SUMMARY

We have analyzed the case briefs and rebuttal briefs of interested parties in the second administrative review of polyester staple fiber from Korea. As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is a complete list of the issues in this review for which we received comments and rebuttals by parties:

- Comment 1: Exclusion of Certain Home Market Sales Made By Huvis
- Comment 2: Huvis' Fiber Composition Characteristic
- Comment 3: Huvis' Duty Drawback
- Comment 4: Huvis' Brokerage Expenses
- Comment 5: Huvis' Major Inputs
- Comment 6: Huvis' Affiliated Supplier's SG&A
- Comment 7: Huvis' Parent Company G&A
- Comment 8: Huvis' Per-Unit G&A Calculation
- Comment 9: East Young's Comparison Market
- Comment 10: East Young's G&A Ratio

BACKGROUND

On June 2, 2003, the Department of Commerce (“the Department”) issued the preliminary results of the second administrative review of the antidumping duty order on polyester staple fiber (“PSF”) from Korea. See Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 34378 (June 9, 2003) (“Preliminary Results”). The period of review (“POR”) is May 1, 2001, through April 30, 2002.

The Department reported its findings from Huvis Corporation’s (“Huvis”) cost verification on July 2, 2003. See Memorandum from Robert Greger and Mark Todd to Neal Halper, Director, Office of Accounting, “Verification Report on the Cost of Production and Constructed Value Data Submitted by Huvis Corporation,” dated July 2, 2003 (“Huvis Cost Verification Report”), which is on file in the Department’s Central Records Unit (“CRU”) in room B-099 of the main Department building. We invited parties to comment on the preliminary results of the review. On July 22, 2003, E.I. DuPont de Nemours, Inc., Arteva Specialties S.a.r.l., d/b/a KoSa, Wellman, Inc., and Intercontinental Polymers, Inc. (collectively “the petitioners”), and the respondents, East Young Co., Ltd. (“East Young”)/Stein Fibers, Ltd. (“Stein Fibers”) and Huvis, filed case briefs. On July 28, 2003, the above-mentioned parties, with the exception of East Young/Stein Fibers, filed rebuttal briefs.

DISCUSSION OF ISSUES

Comment 1: Exclusion of Certain Home Market Sales Made By Huvis

Petitioners’ Argument: The petitioners argue that the Department should exclude from its margin analysis Huvis’ home market sales that were made “outside of the ordinary course of trade.” The petitioners state that the statute defines sales made “outside of the ordinary course of trade” as meaning:

... the conditions and practices which, for a reasonable period of time prior to the exportation of the merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind (see section 771(15) of the Act).

See also 19 CFR 351.102. In instances where sales are made “outside of the ordinary course of trade,” the petitioners contend that the Department has the discretion to disregard these sales and may rely on constructed value (“CV”) (see 19 CFR 351.405(a)).

The petitioners highlight two reasons for the sales at issue to be considered “outside of the ordinary course of trade.” First, according to the petitioners, these sales were made at aberrational, low prices in comparison to identical home market sales. Second, the petitioners argue that the same home market sales at issue were sold pursuant to unusual terms of sale (*i.e.*, extremely small volumes). Further, the petitioners note that, under normal market conditions, it is expected that prices for identical sales with larger volumes would be somewhat lower than prices for smaller volume sales. According to

the petitioners, the sales at issue are unusual because of their abnormal pricing pattern when compared to sales volume. The petitioners assert that these sales were improperly relied upon by the Department to calculate normal value (“NV”) for certain months in the preliminary results. The petitioners conclude that the Department should exclude the sales at issue from the calculation of NV.

Respondent’s Argument: Huvis contends that the Department should reject the petitioners’ allegation that certain sales were made outside of the ordinary course of trade. According to Huvis, there is no evidence that there was anything unusual about the terms of these sales, the merchandise concerned, or the customers. Huvis argues that the petitioners’ only objection is that the sales at issue have lower prices than other sales. Huvis asserts that this variance in price is not grounds for the Department to find these sales as outside of the ordinary course of trade. Huvis notes that the sales at issue passed the Department’s below-cost test and, through verification, the Department did not find any grounds to exclude any of Huvis’ sales as outside of the ordinary course of trade. See Memorandum from Andrew McAllister and Jarrod Goldfeder to the File, “Verification of the Sales Response of Huvis Corporation in the 2001/2002 Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from Korea,” dated May 12, 2003 (“Huvis SVR”), at 6-7, 10-12, 15-16.

Contrary to the petitioners’ allegation, Huvis argues that there are many sales in the home market of small quantities at both low and high prices, and that the sales at issue are no more aberrational than these other sales. Huvis counters the petitioners’ argument that the sales volumes for these CONNUMs are aberrational for these customers, contending that there are sales of the two CONNUMs at issue to the same customers with small quantities and prices closer to the average. Huvis explains that the customers specified by the petitioners are distributors who order varying quantities depending on specific needs, such that there is a large range of sales volumes for the CONNUMs sold to these customers. Huvis asserts that there is nothing unusual about the circumstances of these sales and that the Department should continue to include these sales in its NV calculation.

Department’s Position: We disagree with the petitioners that the sales cited were sales outside of the ordinary course of trade. Our findings at verification and analysis of the home market sales database support Huvis’ claim that the sales at issue were not aberrational. The customers of these sales were among the largest purchasers of subject merchandise in the home market. The prices paid by these customers, with respect to the sales at issue, are not significantly lower than the average prices of all sales to these same customers.

Further, the average gross unit price of all sales to these same customers is much below the average price of sales to Huvis’ other customers. Therefore, we find it reasonable that these particular customers purchased the two CONNUMs at issue at lower prices. We find that any distinctions in pricing for these two CONNUMs are in accord with Huvis’ standard commercial practice.

With regard to the petitioners’ second argument concerning sales volume, we are able to identify other

sales of the two CONNUMs at issue in which there are small volume transactions, but prices closer to the average. Also, when we compare the quantity of the sales at issue to the average quantities of other CONNUMs sold to the same customers, we note no abnormalities. That is, the average quantities of other CONNUMs sold to the same customers are comparable to the quantity of the sales at issue. Additionally, the threshold of “small quantity” sales, created by the petitioners, comprises an appreciable percentage of all home market sales. As a result, we find that it is not appropriate to classify the sales referenced by the petitioners as aberrational and outside of the ordinary course of trade. We have continued to include all of Huvis’ reported sales in its NV calculation.

Comment 2: Huvis’ Fiber Composition Characteristic

Petitioners’ Argument: The petitioners assert that the Department should not allow Huvis to assign a “speciality product” code “4” to merchandise Huvis asserts possesses “different” physical characteristics. According to the petitioners, Huvis’ use of code “4” to distinguish products with discerning minor physical characteristics unrelated to “fiber composition” is in contravention of the law because it distorts differences in the Department’s matching hierarchy. The petitioners stress that all products with a “speciality product” code “4” are either conjugate or non-conjugate fibers. The petitioners assert that by coding the “fiber composition” as “other,” Huvis has eliminated the most important physical characteristic, while introducing minor physical characteristics for “speciality” products as the top matching consideration.

According to the petitioners, Huvis has improperly segregated these products resulting in the elimination of high-priced home market sales from comparison. The petitioners note that Huvis told the Department that it coded certain PSF as “speciality” because these products undergo an “addition of chemicals and minerals not used with regular or conjugate products during polymerization.” The petitioners contend that the Department regularly rejects the use of minor physical characteristics for matching purposes. See Hussey Copper Ltd. v. United States, 834 F. Supp. 413, 438 (CIT 1993); LTFV Decision Memo, at Comment 10. The petitioners argue that the “chemicals and minerals” used by Huvis to distinguish “speciality” products are trace elements that do not identify commercially significant physical characteristics that should drive product comparisons. For example, the petitioners point out that some additional agents identified by Huvis during verification are not even listed in the detailed component table compiled in Huvis’ normal course of business.

As stated by the petitioners, the Department’s practice of developing and making product matching characteristics and the matching hierarchy based on the “commercially significant” physical characteristics of the merchandise has been upheld by the Courts. See Rauturuukki Oy v. United States, Slip Op. 98-112 (CIT Aug. 8, 1998); see also Pesquera Mares Australes Ltda. v. United States, 266 F.3d 1372, 1384 (Fed. Cir. 2001) (“Pesquera Mares”). The petitioners note that the Department relies on the physical characteristics, not the relative “cost” of the characteristics for purposes of making product comparisons. The petitioners contend that Huvis has improperly altered the Department’s product matching hierarchy.

In support of their contention, the petitioners argue that, in the original investigation, Samyang re-coded products such as “sea island fiber” and “polyethylene/polyester fiber” as “low melt” in order to ensure that these products would be excluded. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Korea, 65 FR 16880 (March 30, 2000), and accompanying Issues and Decision Memorandum (“LTFV Decision Memo”), at Comment 10. The petitioners argue that the Department ruled it was improper to code these two fibers as “low melt” fibers, but that there was no harm since these products were not used for comparison purposes. See LTFV Decision Memo. Similarly, according to the petitioners, in the same segment, the Department determined that Samyang did not uphold the burden of demonstrating that the “shape” (under the “Cross Section” matching criterion) of the fibers should be a matching criterion. The petitioners contend that the Department’s decision was determined by the fact that Samyang should have classified certain fibers as “solid,” not “other.”

The petitioners further contend that, in the investigation of this case, the Department asked for comments from all parties, and selected a definition of the foreign like product under section 771(16) of the Act for the entire proceeding. According to the petitioners, the Department should reject Huvis’ revisions for “speciality products” because the definition of “foreign like product” is case-specific, not company-specific. See SKF USA Inc. v. United States, 263 F.3d 1369 (Fed. Cir. 2001) (“SKF USA”); see also RHP Bearings, Ltd. v. United States, Slip Op. 2003-10 (CIT 2003) (“RHP Bearings”). The petitioners note that, while ultimately in SKF USA, the lower court sanctioned the Department’s use of a different definition of “foreign like product” for price-based and CV-to-price comparisons, the court did so because the Department provided sufficient explanation. See RHP Bearings, at 12. Additionally, in the above cited case, the petitioners contend that the Department presumably used the same product definition for CV for all companies, and the same price-based definition under section 771(16) of the Act.

In the instant proceeding, the petitioners argue that the Department has acted in contravention of SKF USA by applying two different definitions of “foreign like product” for Huvis and East Young. The petitioners assert that the Department collected the information necessary in the investigation and made an appropriate determination as to what features are commercially significant. As stated by the petitioners, this gathering of information guards against the chance that another respondent may produce and sell one or more of these “speciality” products, yet not account for these products in its matching hierarchy. The petitioners conclude that the Department must reject Huvis’ reporting of “speciality products” as “other” in the fiber composition criterion.

Respondent’s Argument: Huvis contends that the Department verified the accuracy of the fiber composition code of Huvis’ speciality products during the sales verification. Huvis contends that the petitioners sole reason for objecting to Huvis’ proper classification of these products is that they “are priced significantly higher.” Huvis argues that the reason these products are priced higher, however, is that the processes and additives that alter their composition impart physical benefits. Contrary to the petitioners’ claims, Huvis stresses that its speciality products are marketed in the normal course of

business as products that capture a premium price because of their tangible benefits. Huvis contends that the record establishes that Huvis' speciality products cost significantly more to produce than Huvis' ordinary products. Huvis argues that it is entirely appropriate for the Department to ensure that sales are appropriately coded so that sales of ordinary products are not matched to sales of the physically different, more costly, and commercially more valuable speciality products.

Huvis rebuts the petitioners' assertion that the Department's classification of the composition of Huvis' specialty products has violated the "foreign like product" definition in SKF USA. Huvis highlights that the Department has not added a product characteristic or a code within a product characteristic, but rather simply accepted a classification within the structure set forth by the Department. Huvis notes that the questionnaire in this proceeding allows for respondents to code their composition as "4" for "other."

Department's Position: We agree with Huvis that its speciality products should continue to be classified as "other" for fiber composition in the product matching hierarchy. As noted by Huvis, we verified the accuracy of the fiber composition code of Huvis' speciality products and confirmed that unique chemicals and minerals were added to these products during the polymerization that were not added to regular or conjugate PSF, making them physically different products. See Huvis SVR, at 12-13. Our findings at verification support the information provided in Huvis' responses explaining the physical differences of speciality products, as compared to conjugate and non-conjugate PSF.

Concerning the petitioners' discussion of the Department's treatment of "speciality products" in the LTFV Decision Memo, that was an issue of whether a respondent could classify certain products as "low melt," an issue unique to the LTFV investigation. In our LTFV Decision Memo, at Comment 10, we stated that, "we do not need to reach the issue of whether these products should be coded as "other" composition or "blended" ... because these products were not sold to the United States." In the instant review, Huvis has satisfied the burden established in Pesquera Mares Australes in supporting its claim that "other" as a characteristic of fiber composition is a commercially significant distinction. Additionally, Huvis has not violated SKF USA in its reporting of speciality products as the Department's questionnaire in the instant proceeding clearly lists "other" as a category of fiber composition. Accordingly, for the final results, we have continued to treat Huvis' speciality products as "other."

Comment 3: Huvis' Duty Drawback

Petitioners' Argument: The petitioners note that, during verification, Huvis informed the Department that it did not receive duty drawback on domestic or domestic/local sales. Instead, according to petitioners, Huvis completed a "certificate of duties paid" form that is sent to its home market customer transferring the ability to receive the duty drawback to Huvis' customer. The petitioners state that Huvis claims that the sales price for domestic and domestic/local sales is inclusive of duties paid by Huvis. The petitioners argue that evidence at verification indicates that Huvis did not include the entire amount of import duties in the home market prices. According to the petitioners, it is not appropriate to

compare import duty-inclusive prices to NV that does not also include the entire amount of import duties. In the final margin analysis, the petitioners contend that the Department should reduce the amount of duty drawback claimed by Huvis on U.S. sales through the application of a formula based on findings at verification.

Respondent's Argument: Huvis contends that the petitioners have used flawed statistical information in making their arguments. Huvis stresses that the petitioners have selected the import duties in the selling price for one specific home market sale for which there happens to be a delivery order sheet. Huvis points to a domestic/local sale selected by the Department for examination at verification which has an amount for import duties in the selling price that is greater than the average duty drawback amount on U.S. sales. According to Huvis, while the record does not contain data that would permit calculation of the average import duties collected by Huvis on domestic/local sales, the record clearly shows that the import duty amount varies by transaction. Further, Huvis contends that this amount may be higher or lower than the average duty drawback amount on U.S. sales. Huvis concludes that there is no basis for the adjustment requested by the petitioners.

Department's Position: We agree with Huvis that the record evidence gathered at verification demonstrates that the duty drawback on domestic or domestic/local sales can be greater or less than the average duty drawback on U.S. sales. We recognize the petitioners' citation to one domestic/local sale where the potential duty drawback that could be sought by Huvis' customer is less than the average duty drawback amount on U.S. sales. However, the petitioners' argument is not dispositive, as we are not able to use this one domestic/local sale to characterize Huvis' entire home market database. In fact, Huvis cites a domestic/local sale where the potential duty drawback in the selling price is greater than the average duty drawback amount on U.S. sales. Additionally, there is no evidence on the record to support the petitioners' argument that Huvis did not include the entire amount of the import duties in its domestic or domestic/local sales price. The example cited by the petitioners is for a single sale only and does not indicate that Huvis failed to include the import duties in its home market prices generally. Accordingly, we find that no adjustment to U.S. price is necessary.

Comment 4: Huvis' Brokerage Expenses

Petitioners' Argument: The petitioners state that Huvis' brokerage expenses incurred after September 1, 2001, were captured as "labor costs" at the Chonju factory in Huvis' normal accounting and included in the cost of manufacturing. As a result, the petitioners note that Huvis reported "zero" for U.S. brokerage expenses for U.S. sales made after September 1, 2001. According to the petitioners, Huvis improperly treated U.S. movement expenses as direct costs for all PSF, and subsequently, shifted brokerage expenses incurred on Huvis' U.S. sales to domestic sales that did not incur U.S. brokerage services. The petitioners cite the statute, which states that EP and CEP "shall" be reduced by:

... the amount, if any, included in such price, attributable to any additional costs, charges or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States ...

See section 772(c)(2)(A) of the Act. The petitioners argue that the statute requires the Department to deduct movement expenses from U.S. price.

The petitioners contend that, for the final margin analysis, the Department should resort to partial “facts available” to account for Huvis’ unreported brokerage expenses incurred on U.S. sales. According to the petitioners, partial facts available is warranted because Huvis did not provide information requested by the Department in a timely manner and, therefore, failed to cooperate with the Department to the best of its ability. In applying partial facts available, the petitioners argue that the Department should use the highest amount for brokerage expenses that Huvis reported for its pre-September 1, 2001 sales as partial facts available.

Respondent’s Argument: Huvis contends that there is no legal authority for the Department to deduct “imputed movement expenses” from U.S. price. Huvis stresses that only one employee handled customs clearance for merchandise shipped from the Chonju factory after September 1, 2001, and this employee’s principal job was to handle customs clearance for raw materials and sub-materials imported into Korea. Accordingly, Huvis contends that it did not incur any transaction-specific brokerage expenses for these export sales. Huvis concedes that a small portion of this employee’s labor cost could theoretically be removed from manufacturing labor cost and allocated to individual sales, but Huvis argues that the per-unit expense would be infinitesimal.

With respect to the petitioners’ claim that Huvis failed to provide information requested by the Department in the format requested by the Department in a timely manner, Huvis contends that it cannot be blamed for not providing movement expenses that do not exist. Huvis argues that the petitioners’ proposal of using the highest amount, rather than the average amount, for brokerage expenses that Huvis reported for its pre-September 1, 2001 sales is not an application of partial facts available, but rather constitutes adverse facts available. Huvis asserts that in the U.S. sales database the average brokerage incurred during the POR is more than 100 times less than the amount suggested by the petitioners. Huvis argues that it properly reported brokerage expenses and the Department should not make any revision to Huvis’ reported brokerage expenses in the final results.

Department’s Position: We disagree with the petitioners that an adjustment should be made for alleged unreported brokerage expenses on certain sales from the Chonju factory for the final results. Huvis did not incur actual transaction-specific brokerage expenses in these sales, and we agree with Huvis that any portion of the one employee’s salary allocated to brokerage expenses would be an insignificant amount.

Comment 5: Huvis' Major Inputs

Respondent's Argument: Huvis argues that the Department should not adjust the actual prices it paid for purchases of terephthalic acid ("TPA") during the POR because these purchases were made at arm's length prices. Huvis asserts that the Department erred in its preliminary results by applying its arm's length test to a weighted average of the purchase prices of all grades of TPA. Huvis contends that the Department specifically examined the technical specifications for the different grades of TPA at verification and confirmed that each grade of TPA has a different purity level that warrants separate treatment. Furthermore, Huvis argues, it typically does not even use these separate grades at the same factories or mix them together in its raw materials inventory system and it is, therefore, not reasonable for the Department to mix them together in its analysis. Accordingly, Huvis contends, the Department should consider each grade of TPA as a separate raw material. Huvis asserts that when the revised selling, general and administrative expense ("SG&A") rate submitted at verification is applied, the average transfer price paid for one specific grade of TPA is higher than the affiliated supplier's COP. More broadly, Huvis asserts, the record shows that all three grades of TPA purchased from affiliated suppliers were purchased at arm's length prices, both in comparison to the affiliated supplier's COP and in comparison to Huvis' purchase price from unaffiliated suppliers. Therefore, Huvis contends, the Department should use the purchase prices for all three grades as the basis for COM in its final results.

Huvis also argues that the Department should accept the actual arm's length prices it paid for purchases of ethylene glycol ("EG") during the POR. According to Huvis, the record shows that the average price paid to its affiliated supplier for EG during the POR was higher than the price paid to unaffiliated suppliers. Therefore, Huvis contends, there is no basis for the Department to adjust its actual purchase prices paid for EG. Huvis asserts that EG does not constitute a major input under the statute due to the small percentage that it represents of COM and that its purchases should not be compared to COP. Moreover, Huvis argues, even if it were considered a major input and its purchase prices for EG were compared to COP, it would not be reasonable to apply an SG&A expense amount to its affiliated supplier's COM. Huvis states that its affiliated supplier does not produce EG, but rather purchases it and sells excess amounts to Huvis. Huvis maintains that the entire COP consists of its purchase price, as there is minimal cost involved in transferring the excess amounts.

Petitioners' Argument: The petitioners argue that the Department should consider TPA as a single raw material for purposes of the major input comparison. According to the petitioners, there is no material difference in different grades of TPA. The petitioners assert that Huvis was unable to provide contemporaneous, meaningful comparisons of the technical specifications of the grades of TPA and that the limited information on the record pertaining to technical specifications does not justify the segregation of TPA. The petitioners contend that no distinction in grade is made when Huvis purchases TPA in the normal course of business. Furthermore, the petitioners argue, the explanation by Huvis that the differentiation of TPA is standard practice in Korea is patently untrue. The petitioners maintain that Huvis provided no industry standards from any source or country.

The petitioners argue that the purchase of TPA from different sources also does not justify the separation of TPA into different grades. The petitioners cite Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, 62 FR 16759, 16762 (April 8, 1997) and assert that the Department does not normally calculate costs separately simply because inputs are purchased from different sources. Additionally, the petitioners contend, it is apparent that the reason for the price difference in the TPA purchased by Huvis lies not in its purity, but the source from which it was purchased. The petitioners maintain that the Department should continue to reject Huvis' unsupported separation of TPA into grades based on the existence of trace impurities.

The petitioners assert that EG is a major input in the production of subject merchandise. The petitioners maintain that the Department appropriately considered EG a major input in its preliminary results and should continue to do so in its final results. Thus, the petitioners contend that the Department should apply the major input rule to use the highest of the transfer price, market price or the affiliate's cost of production. Additionally, the petitioners argue, the Department should continue to allocate SG&A and interest expenses to the COP of EG purchased from Huvis' affiliated supplier. The petitioners assert that the Department's reference to the affiliated supplier's sales of EG as miscellaneous and non-primary in its cost verification report is questionable. According to the petitioners, a review of the sales in question indicates that they are part of a much larger body of sales that are not miscellaneous.

The petitioners contend that based upon the Department's remarks, primary products are finished goods and "non-primary" products are everything else. The petitioners argue that such "non-primary" products make up a significant percentage of the affiliated supplier's total sales. Moreover, the petitioners maintain, sales of such "non-primary" or "miscellaneous" products were considered important enough by the supplier's auditors to require a separate schedule in the financial statements. Thus, the petitioners contend, the Department should consider these sales as material in nature instead of "miscellaneous" and allocate SG&A and interest to them accordingly.

Department's Position: We disagree with the petitioners' assertions that there are no material differences between the grades of TPA and that Huvis failed to provide meaningful comparisons. The Department's cost verification team reviewed the technical specifications for each grade of TPA and found that they differed significantly based on purity, particle size, color and alkaline transmittance. See Memorandum from Robert Greger and Mark Todd to Neal Halper, Director, Office of Accounting, "Verification Report on the Cost of Production and Constructed Value Data Submitted by Huvis Corporation," dated July 2, 2003 ("Huvis Cost VR"), at 15. The verifiers determined that these differences were sufficient enough to warrant separate classification and that each grade bears a distinct cost. See Huvis Cost VR, at 15. Contrary to the petitioners' claim, the grades of TPA did not vary solely based on source. Moreover, Huvis separately tracks each grade of TPA in its inventory control and cost accounting systems, and its suppliers use the same classifications in their sales documentation. We therefore agree with Huvis that the Department should consider each grade of TPA as a separate raw material in its major input analysis and we have conducted our analysis accordingly.

Under section 773(f)(2) of the Act, transactions between affiliated parties may be disregarded if the transfer price does not fairly reflect the amount usually reflected in the market under consideration. In applying the statute, the Department normally compares the transfer price paid by the respondent to affiliated parties for production inputs to the price paid to unaffiliated suppliers, or, if this is unavailable, to the price at which the affiliated parties sold the input to unaffiliated purchasers in the market under consideration. If the input in question constitutes a major input under section 773(f)(3) of the Act, the Department compares the transfer price and the market price to the affiliated supplier's COP and adjusts the reported costs to reflect the highest of the three amounts. See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18448, 18456 (April 15, 1997) and Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico, 67 FR 55800 (August 30, 2002), and accompanying Issues and Decision Memorandum, at Comment 13.

In accordance with section 773(f)(3) of the Act, for each of the three grades of TPA purchased during the POR we compared the average purchase price paid to affiliated parties during the POR to the average purchase price paid to unaffiliated parties, when available, and to the affiliated suppliers' cost of production. For one affiliated supplier, we applied an adjusted SG&A ratio to the supplier's COM in calculating COP (see Comment 6 below). As a result of our comparisons, we determined that sales of two grades of TPA were made at arm's length prices. For a third grade of TPA, we determined that sales were made at prices below the affiliated supplier's COP. We therefore adjusted Huvis' COM to reflect the higher COP for that grade of TPA.

We agree with Huvis that its purchases of EG from its affiliated supplier do not constitute a major input in the production of PSF. These purchases do not represent a significant percentage of the total COM. Further, Huvis' affiliated supplier did not produce EG, but rather resold EG to Huvis that it had purchased for its own needs. Therefore, in accordance with section 773(f)(2) of the Act, we have compared the average purchase price paid for EG to Huvis' affiliated supplier during the POR to the average purchase price paid to unaffiliated parties. In doing so, we have determined that Huvis' purchases of EG from its affiliated supplier were at arm's length prices. Thus, we have not adjusted these prices in our final results.

Comment 6: Huvis' Affiliated Supplier's SG&A

Petitioners' Argument: The petitioners disagree with the revised SG&A ratio for Huvis' affiliated supplier presented on the first day of verification. Although the petitioners agree with the exclusion of some costs from the revised ratio, they contend that the research expenses and foreign branch operating expenses that were excluded are related to the general operations of the company as a whole. The petitioners cite Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan, 64 FR 30574, 30589 (June 8, 1999) ("SSSSC from Japan") and assert that the Department has consistently held that SG&A expenses should be calculated

based on the general operations of the company. Thus, the petitioners argue, in keeping with past precedent the Department must add back these expenses. Additionally, the petitioners assert, while Huvis has removed expenses from the affiliated supplier's SG&A, no record evidence exists that a corresponding adjustment was made to the denominator of the SG&A ratio calculation.

The petitioners argue that the Department should use the cost of manufacturing and not the cost of production as the denominator in the calculation of the affiliated supplier's SG&A ratio. The petitioners assert that using the cost of goods sold ("COGS") as the denominator is appropriate when no other denominator is available, but that in this case the fiscal year cost of manufacturing is on the record in the affiliated supplier's financial statements. The petitioners assert that the COM in the affiliated supplier's financial statements is only one component of the COGS and that it is also synonymous with the Department's COM. The petitioners cite Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Final Results Antidumping Duty Administrative Review, 66 FR 11555 (February 26, 2001), and accompanying Issues and Decision Memorandum, at Comment 4 and contend that using COM as the denominator is in keeping with the Department's practice of calculating profit and expense ratios using a denominator that includes the same cost components as the constructed value to which they apply. Moreover, the petitioners argue, it is also in keeping with the Department's antidumping manual, which dictates that the fiscal year COGS used as the denominator of the general and administrative ("G&A") ratio should be adjusted for categories of expense not included in COM. Thus, the petitioners assert, because the COGS in the affiliated supplier's financial statements includes many items that are not part of COM, the Department should determine that COM is the appropriate denominator.

Respondent's Argument: Huvis argues that the Department should not apply any G&A ratio to purchases of EG from its affiliated supplier. Further, Huvis contends, the Department should use the revised G&A ratio submitted at verification for purchases of TPA from its affiliated supplier.

Department's Position: We agree with the petitioners that research expenses and foreign branch operating expenses that were excluded from the SG&A ratio calculation for Huvis' affiliated supplier should be included because they relate to the general operations of the company as a whole. See, e.g., SSSSC from Japan and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet Round Wire from Taiwan, 64 FR 17336, 17338 (April 9, 1999). Thus, for the final results, we have adjusted the submitted SG&A ratio for Huvis' affiliated supplier to include these expenses and have used the adjusted ratio to calculate COP for our major input analysis (see Comment 5 above).

We disagree with the petitioners that the Department should use the cost of manufacturing and not the cost of goods sold as the denominator in the calculation of the affiliated supplier's SG&A ratio. Huvis' use of COGS as the denominator is consistent with the Department's practice of calculating G&A expenses by dividing fiscal-year G&A expenses by fiscal-year COGS (adjusted for categories of expense not included in COM, such as packing) and then applying the percentage to the COM of the product. See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan and the United

Kingdom: Final Results of Antidumping Duty Administrative Reviews, 67 FR 55780 (August 30, 2002), and accompanying Issues and Decision Memorandum, at Comment 35. G&A expenses are incurred for those products that are sold during a period that were manufactured in the current as well as prior periods. Because we consider G&A expenses as period expenses and extract them directly from the financial statements for the period that corresponds most closely to the POR, the G&A ratio should be calculated based on expenses (*i.e.*, COGS) that are also reflected in the financial statements for the same period. Accordingly, we have continued to use COGS as the denominator in the calculation of the affiliated supplier's G&A ratio.

Comment 7: Huvis' Parent Company G&A

Petitioners' Argument: The petitioners argue that the Department should include a portion of Huvis' parent companies' G&A expenses in the cost of production. According to the petitioners, record evidence clearly shows that Huvis' two parent companies were significantly involved in Huvis' operations and provided assistance in the form of loan guarantees, insurance payments and royalty expenses. The petitioners cite the SAA at 834-5 and contend that whether or not Huvis chooses to quantify these expenses incurred on its behalf, the Department has an obligation to do so. The petitioners maintain that it is the Department's practice to allocate a portion of the parent company's G&A expenses to the subsidiary if the parent company provided any services to it or incurred any expenses on its behalf. See Brass Sheet and Strip From Canada: Final Results of Antidumping Duty Administrative Review, 65 FR 37520 (June 15, 2000), and accompanying Issues and Decision Memorandum, at Comment 2.

The petitioners argue that expenses related to loan guarantees incurred by SK Chemicals and Samyang on Huvis' behalf should be allocated back to Huvis. The petitioners acknowledge that the Department included the actual guarantee fees in its imputed credit expense calculation, but assert that other costs incurred in setting up and administering loan guarantees were not included in Huvis' COP. The petitioners contend that such expenses should include general and administrative costs and increased interest expenses due to the increased debt level experienced as a result of the contingent liability for Huvis' debt. The petitioners maintain that SK Chemicals is contingently liable for an amount equal to two thirds of its own debt and that Samyang is contingently liable for an amount equal to one and one half times its own debt. The petitioners argue that both companies must have experienced higher interest rates as a result. Therefore, the petitioners suggest, the Department should include an estimated amount for the additional interest expenses that must have been incurred.

The petitioners argue that insurance expense incurred by SK Chemicals on Huvis' behalf should be allocated back to Huvis. The petitioners assert that based on an analysis of SK Chemicals' financial statements, certain assets (*e.g.*, the Suwon and Ulsan factories) that were transferred to Huvis were still insured by SK Chemicals. The petitioners suggest that the appropriate insurance cost to include in Huvis' COP can be estimated by calculating the ratio of Huvis' assets on SK Chemical's books to the value of all assets and multiplying the result by the amount of insurance premiums paid during the fiscal

year.

The petitioners contend that certain royalty expenses were not accounted for in Huvis' COP. The petitioners note that the Department's Antidumping Manual at chapter 8, page 34 states that "manufacturers and sellers incur royalty expenses when selling merchandise which is produced under license from another company." According to the petitioners, the fact that Huvis has indicated it does not pay a royalty expense should not be a factor in deciding whether or not such an expense should be accounted for in this review. The petitioners contend that because royalty payments are related to differences between products and such differences likely result from research and development efforts, a reasonable estimate of the royalty expense would be the research and development costs of Huvis' affiliate.

Respondent's Argument: Huvis argues that the Department should not recalculate its reported G&A to reflect expenses incurred by Samyang or SK Chemicals. Huvis contends that there is no evidence that these companies incurred any actual G&A or interest expenses on Huvis' behalf and there is no legal or factual basis for the Department to add fictitious expenses to Huvis' costs. Furthermore, Huvis asserts, there is no basis for the Department to artificially inflate Huvis' current costs on the off chance that such an expense might occur in the future if certain unlikely contingencies occur.

Huvis argues that even if an adjustment were required for loan guarantees, it would have to account for the fact that loan guarantees for Huvis represent only a portion of the two parent companies' total contingent liability for affiliated companies. Regarding insurance, Huvis asserts that the petitioners have simply misread SK Chemicals' financial statements. Huvis states that as the Department saw at verification, SK Chemicals also has factories located at Suwon and Ulsan. Huvis maintains that contrary to the petitioners' assertions, the insured assets on SK Chemicals' balance sheets belong to SK Chemicals and not to Huvis. Huvis argues that all of its buildings, machinery and other assets were insured by Huvis alone.

In regards to royalty expenses, Huvis argues that the petitioners provide no support for the proposition that the Department may impute royalty expenses when none are actually paid. Moreover, Huvis asserts, the petitioners do not provide any evidence that Samyang incurs any actual expense in maintaining a brand name for PSF. According to Huvis, all of its customers are certainly aware that the company that sells the PSF to them is Huvis and there would be no reason for Samyang to market its name in the PSF industry.

Department's Position: We disagree with the petitioners that the Department should include additional parent company G&A expenses in Huvis' G&A ratio. For the proposed loan guarantee and royalty expenses, no record evidence exists that shows that such expenses were ever actually incurred by either SK Chemicals or Samyang on Huvis' behalf. Under section 773(b)(3)(A) of the Act, selling, general and administrative expenses should be based on actual data pertaining to the production and sales of the foreign like product. In keeping with the statute, it is the Department's practice not to

include imputed expenses in the calculation of COP or CV.

Additionally, the petitioners' assertion that SK Chemicals' financial statements show that SK Chemicals paid insurance on assets owned by Huvis appears to rest on a misinterpretation of those financial statements. As the Department noted at verification, the particular assets referred to by the petitioners were actually facilities belonging to SK Chemicals located at the same sites as Huvis' plants. See Huvis Cost VR, at 3-4, 17. All assets related to PSF production were transferred from SK Chemicals to Huvis' financial statements when Huvis was established. Thus, the evidence indicates that the insurance expense incurred by SK Chemicals was unrelated to Huvis. For purposes of the final results, we have not adjusted Huvis' submitted G&A ratio calculation for additional parent company G&A expenses as suggested by the petitioners.

Comment 8: Huvis' Per-Unit G&A Calculation

Petitioners' Argument: The petitioners assert that the Department erred in its Preliminary Results by applying the adjusted G&A expense and interest expense ratios to Huvis' reported COM. According to the petitioners, the Department should have applied the ratios to the revised COM, which reflected adjustments for purchases of raw materials from affiliated parties at non-arm's length prices. Thus, the petitioners argue, the Department's calculated per-unit G&A and interest expenses are incorrect.

Respondent's Argument: Huvis argues that the Department correctly applied the revised G&A and financial expense ratios in its margin calculation program. Huvis maintains that the ratios were correctly applied to its reported COM because these ratios are calculated based on the cost of sales in Huvis' financial statements, which do not reflect the Department's adjustments to COM.

Department's Position: We disagree with the petitioners that the Department incorrectly applied the G&A and interest expense ratios to Huvis' reported COM in its Preliminary Results. As noted by Huvis, these ratios were correctly applied because the COGS used as the denominator was on the same basis (i.e., they contained the same cost elements, in this case the transfer price of raw materials) as the reported COM to which it was applied. Thus, for purposes of the final results, we continue to apply the ratios to the reported COM.

Comment 9: East Young's Comparison Market

Respondent and Interested Party's Argument: East Young and Stein Fibers (hereafter, "East Young") contend that the Department should use East Young's U.K. sales as its comparison market for the final results. As asserted in its November 4, 2002, submission, East Young contends that the petitioners' September 30, 2002, market viability allegation was untimely and that the precise deadlines for market viability allegations are very specific. East Young argues that the Department recognizes it "must inform exporters at an early stage of a proceeding as to which sales they must report." See Antidumping Duties; Countervailing Duties (Preamble), 62 FR 27296, 27357 (May 19, 1997); citing

Statement of Administrative Action. East Young asserts that the Department abused any discretion it might have to extend the deadline for the market viability allegation. In addition, East Young contends that the Department has demonstrated an institutional bias in accepting two untimely allegations (market viability and sales below cost) filed by the petitioners. See Memorandum from Team to Susan Kuhbach, “Selection of Comparison Market for East Young,” dated November 20, 2002 (“East Young Selection Memo”); see also Memorandum from Team to Susan Kuhbach, “Petitioners’ Allegation of Sales Below the Cost of Production,” dated October 21, 2002. For the above reasons alone, East Young contends that the Department should use the United Kingdom sales database timely submitted by East Young and verified by the Department for the final results.

East Young asserts that the Department adopted a major change with respect to which comparison market should be reported by respondents, without prior notice and comment. According to East Young, the Department is required to issue public notice and offer an opportunity for public comment before implementing sweeping changes to its regulatory practice. See Lamoile Valley R.Co. I.C.C., 711 F.2d 295, 328 (D.C. Cir. 1983). East Young contends that the Department’s decision to require East Young to prepare an additional database was fundamentally unfair, as it imposed a financial and administrative burden on East Young and unfairly inflated its antidumping duty margin. East Young asserts that the record shows that the Department’s request for the Morocco database was unreasonable, if not also unlawful.

In this case, East Young contends that the petitioners have the burden of establishing that the U.K. sales that otherwise meet the five percent volume threshold are “unrepresentative” for purposes of NV. See Alloy Piping Products, Inc. v. United States, 201 F. Supp. 2d 1267, 1277 (CIT 2002) (“Alloy Piping”); see also section 773(a)(1)(B)(ii) of the Act. East Young argues that the Department’s Preliminary Results confirm that the petitioners failed to meet their burden. East Young asserts that it was not selling in the United Kingdom below the cost of production and the sales data collected by the Department shows a uniformity in East Young’s pricing in the various world markets. East Young argues that an European Union (“E.U.”) antidumping duty (“AD”) order based on a review of other Korean producers is not probative in light of the solid facts developed concerning East Young’s pricing in this record.

East Young argues that the Department only purports to apply the following regulatory criteria for purposes of concluding that the Morocco sales database was more representative than the U.K. sales database:

- 1) the foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries;
- 2) the volume of sales to a particular third country is larger than the volume of sales to other third countries; and
- 3) such other factors as the Department considers appropriate.

See 19 CFR 351.404(e). East Young asserts that the Department did not perform a complete analysis based on the criteria set forth above. According to East Young, with respect to the first criterion, the U.K. sales database is overwhelmingly more representative than the Morocco sales database. East Young points out that the finish of products sold to the United States and United Kingdom was either dry or siliconized, while all sales to Morocco were siliconized. East Young also argues that the U.K. sales database is more representative in terms of grade.

Second, with respect to the volume criterion, East Young contends that sales to Morocco barely meet the Department's formal criteria for viability, while sales to the United Kingdom were a substantial percent of its U.S. sales. East Young asserts that the number of sales made to the United Kingdom is much more representative and comparable to the number of U.S. sales than the small number of sales to Morocco. East Young contends that the volume and number of sales of similar grade merchandise ensures that there would be many more comparison sales when the U.K. market is the comparison market, thus promoting the "accuracy" allegedly being sought by the Department. See Rhone Poulenc v. U.S., 899 F.2d 1185, 1195 (Fed. Cir. 1990).

East Young argues that the Department based its decision to use the Morocco sales on the third criterion, and that the Department's preliminary finding is inconsistent with record evidence and its own memorandum. East Young contends that the memorandum concerning the choice of comparison market concluded that:

There are not sufficient facts on the record of this review to make determinations as to the representativeness of East Young's prices in the United Kingdom, or whether a particular market situation exists in the United Kingdom that would render sales in such market inappropriate for purposes of calculating normal value.

See East Young Selection Memo, at 3. East Young argues that the Department was aware, at the time the memorandum was prepared, of the allegation that the U.K. market could not be used due to the E.U. AD order in place on Korean PSF, but declined in the memorandum to make such a per se rule. East Young contends that the Department explicitly indicated that it would gather record evidence and weigh it. According to East Young, the Department only performed the first of its two statutory obligations, as the data gathered with respect to product similarity and volume overwhelmingly favor the U.K. market. East Young argues that the Department did not gather any further evidence to confirm the allegation that East Young's U.K. prices were not as representative merely due to the existence of the AD order. East Young asserts that the Department treated the AD order as dispositive in the face of overwhelming contrary evidence concerning the other factors.

East Young further contends that the Department has ignored the record in this case and instituted a new policy of disqualifying a respondent's comparison market merely due to the existence of an AD order. East Young asserts that the Department's decision to impose sweeping changes in practice after

the sales databases were submitted constitutes an unlawful penalty. East Young reasons that assuming the Department is entitled to consider the relevance of the E.U. AD order in the circumstances of this review, its relevance is greatly diminished in view of the Department's finding of no likelihood of sales made by East Young below the cost of production.

Petitioners' Argument: In rebuttal, the petitioners cite the Court of International Trade's statement that "the goal of accuracy cannot be achieved if Commerce relies on dumped third country prices to calculate NV ..." See Alloy Piping, at 1267, 1277. The petitioners rebut East Young's claim that the "market viability" allegation was filed over two months late. The petitioners acknowledge that allegations concerning market viability are due within 40 days after the transmittal of the initial questionnaire. The petitioners argue, however, that the submission was "late" due to the fact that East Young's questionnaire response, which for the first time identified the United Kingdom as its comparison market, was filed some three weeks after the inviolate "deadline" that East Young alleges was missed. According to the petitioners, East Young's claim that they were even required to file a market viability allegation is wrong, as the petitioners contend that it is not necessary where a dumping finding exists. See Alloy Piping.

The petitioners assert that the Department's rejection of East Young's U.K. sales does not involve a change of policy, as this was a new issue before the Department. The petitioners contend that East Young has misapplied Lamoile Valley. In that case, according to the petitioners, the D.C. Circuit Court was opining on the requirements of the Administrative Procedures Act ("APA"), and the CIT has stated that "the APA does not apply to antidumping administrative proceedings." See GSA S.r.L. v. United States, 77 F. Supp. 2d 1349, 1359 (CIT 1999).

The petitioners stress that Alloy Piping stands for the proposition that third country prices subject to an antidumping finding are per se unusable for calculating NV. The petitioners argue that the Department properly determined to reject East Young's prices to the United Kingdom on the weight of the EC Antidumping Finding, dated December 22, 2000, without gathering "further evidence" as to the true nature of East Young's dumping in the EC. The petitioners assert that the Department is not required to conduct an independent analysis of East Young's selling practices into the United Kingdom, and the Department is within its discretion to take administrative notice of a finding issued by a competent authority and member of the WTO.

According to the petitioners, even if the merchandise sold to the United Kingdom was "more similar" to U.S. merchandise than Morocco sales, the Department is still obliged to consider "other factors." The petitioners argue that where those "other factors" indicate that a particular market is not suitable for comparison purposes, the Department will reject that comparison market even where it is otherwise viable. See Notice of Final Determination of Sales at Less Than Fair Value; Fresh Atlantic Salmon From Chile, 63 FR 31411, 31418 (June 9, 1998); see also Certain Fresh Cut Flowers From Colombia; Preliminary Results of Antidumping Duty Administrative Review, 64 FR 8059, 8061 (February 18, 1999).

With respect to East Young's assertion that the selection of an "incidental" market (Morocco) over a market with "plentiful matches" (United Kingdom) contradicts Rhone Poulenc, the petitioners contend that "accuracy" is not necessarily achieved by selecting the country with the most product matches. The petitioners cite 19 CFR 351.401(e)(3) to highlight that "other factors" must also be considered. The petitioners stress that Alloy Piping emphasized accuracy, in that the Department did not rely on any comparison market prices subject to an antidumping finding. Accordingly, the petitioners state that the Department must continue to use Morocco as the comparison market for calculating NV.

Department's Position: We have continued to use Morocco as the basis for NV. Given the E.U.'s finding of dumping of Korean PSF, we believe that our request that East Young provide data on an alternative third-country comparison market was justified and in accordance with our regulations.

As the Court noted in Alloy Piping, the Department cannot rely on dumped third-country prices in calculating an accurate NV because the "goal of accuracy cannot be achieved" using such prices. See Alloy Piping, at 1267, 1277. The existence of an E.U. AD order against PSF from Korea is a relevant factor in determining whether to use the U.K. market as a basis for determining NV. Concerning East Young's claim that East Young is not specifically cited in the AD order, the order covers all PSF sold from Korea to the United Kingdom, including sales made by East Young. Contrary to East Young's arguments, we have followed the three criteria of section 351.404(e) in determining the appropriate comparison market for purposes of calculating NV. While the United Kingdom satisfies the first two criteria cited by East Young, we have rejected the United Kingdom on the grounds of the third criterion. As noted in the Preliminary Results, the Department evaluates "such other factors" on a case-by-case basis. In this case, the Department holds that the E.U. finding of dumping with respect to the same product from Korea is a significant factor that must be considered in determining whether the comparison market sales are appropriate for use in our analysis. Consistent with Alloy Piping, we find that the E.U. finding of dumping on Korean PSF renders the U.K. market an inappropriate comparison market and have continued to calculate NV based on sales to Morocco for the final results.

Comment 10: East Young's G&A Ratio

Respondent's Argument: East Young argues that the Department improperly calculated its G&A ratio by omitting various adjustments. East Young contends that the Department should deduct amounts for marine insurance and credit expense and less charge from the total amount of G&A used as the starting point in the G&A ratio calculation, as these expenses are already reported in the sales databases. East Young contends that, if the Department felt that East Young had not documented its right to these deductions, then it had an obligation to ask East Young for further documentation. East Young argues that, at a minimum, the Department should permit East Young to submit worksheets in support of the claimed adjustments.

East Young further asserts that the Department should deduct commissions from the G&A expense

ratio calculation because East Young paid no commission on sales in this review. In addition, East Young asserts that an amount related to compensation for problems with merchandise sold to a country not implicated in this review should be removed from the numerator of the G&A ratio. The final adjustment, as argued by East Young, involves an entry entitled “Reversal of severance pay liability.” East Young stresses that the Department included the amount from the severance pay account but did not deduct the amount of the reversal shown on the income statement. East Young argues that the Department should either remove both amounts from the calculation of the numerator or credit the reversal against the amount of the severance pay.

Petitioners’ Argument: The petitioners argue that the Department’s G&A calculation for East Young is correct. The petitioners assert that East Young previously made the arguments for disallowing the adjustments for marine insurance, credit expense and less charge, and commissions without providing any supporting documentation. See East Young’s October 29, 2002 submission, at 5. According to the petitioners, the Department, in its analysis of the petitioners’ sales below cost allegation, stated that it was unable to specifically identify in East Young’s financial statements the insurance and fees and charges East Young sought to have removed from the G&A expense calculation. See Memorandum from Team to John Brinkmann, “Petitioners’ Allegation of Sales Below the Cost of Production for East Young Co., Ltd.,” dated December 6, 2002 (“December 6 Memorandum”), at 4.

The petitioners further contend that East Young never objected to the G&A ratio as calculated by the Department, and the Department verified these expenses. According to the petitioners, the Department noted that East Young’s income statement did not segregate selling expenses from G&A expenses and stated that, based on the descriptions of the accounts, they all appeared to be general and administrative in nature. See Memorandum from Team to File, “Preliminary Results Calculation Memorandum for East Young Co., Ltd.,” dated June 2, 2003 (“East Young Preliminary Calcs”), at 3.

The petitioners argue that East Young’s assertions concerning a miscellaneous loss and severance pay also should be rejected. First, the petitioners contend that the validity of East Young’s claims cannot be substantiated because the record has been closed for several months. Second, the petitioners note that both expenses relate to general operations, and the Department has consistently included such expenses in the calculation of the G&A ratio. See SSSSC from Japan, at 30574, 30589-90. Accordingly, the petitioners contend that the Department should continue to calculate East Young’s G&A ratio in the same manner as the preliminary results.

Department’s Position: We agree with East Young in part, and have made certain adjustments to East Young’s G&A ratio calculation. With respect to marine insurance and less charge, we made deductions to the total G&A amount to the extent that we could tie these expenses to the United States, Morocco, and United Kingdom sales databases. While we recognize that the G&A ratio is calculated on a fiscal year basis (*i.e.*, year 2001), the record evidence does not allow us to tie expenses directly to year 2001 sales. Nevertheless, to include these expenses in the G&A ratio when they have been separately reported as selling expenses would be double-counting. Therefore, we have adjusted the

total G&A amount by the amount reported in East Young's U.S., Morocco, and U.K. sales databases. See Memorandum from Team to File, "Final Results Calculation Memorandum for East Young Co., Ltd.," dated October 6, 2003 ("East Young Final Calcs"). With respect to credit expenses, as stated in the Department's questionnaire, these expenses are "the interest expense incurred (or interest revenue foregone) between shipment of merchandise to a customer and receipt of payment from the customer."¹ The Department normally imputes this expense to capture the "opportunity costs (rather than actual costs) that are not reflected in the financial records of the company being investigated, but which must be estimated and reported for purposes of an antidumping inquiry."² Because these are imputed expenses that are not included in a company's financial statements, there is no evidence on the record that the Department is double counting these expenses by including the remaining "fee and charge" expenses in the G&A expense ratio calculation.

We have deducted commissions from the numerator of the G&A ratio because commissions are sale-specific direct selling expenses that should not be included in G&A expenses. Additionally, we agree with East Young's argument that a deduction should be made for compensation for problems with merchandise sold to a country not implicated in this review. East Young provided necessary documentation to support its assertion that this expense related to a sale outside of this review. See East Young Supplemental Questionnaire Response, dated December 20, 2002, at 4 & Exhibit SR-1. Although we agree that this deduction should be made, we have capped the amount of the adjustment by the actual amount of the claim, as reported in the supporting documentation (see East Young Final Calcs).

Finally, we disagree with East Young that an adjustment to the G&A amount for "Reversal of severance pay liability" is warranted. In the preliminary results, we denied this adjustment, stating that this income account pertained to a provision for severance liability made in prior periods (see East Young Preliminary Calcs, at 3). East Young has pointed to no evidence on the record to warrant changing our preliminary finding that this severance liability pertained to prior periods.

RECOMMENDATION

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

¹See the Department's antidumping questionnaire, Appendix I at "Credit Expense"

²Id. at "Imputed Expenses"

AGREE _____

DISAGREE _____

James J. Jochum
Assistant Secretary
for Import Administration

Date