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MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Bernard T. Carreau
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Administrative Review of
Antidumping Duty Order on Top-of-the-Stove Stainless Steel Cooking
Ware from the Republic of Korea (Korea); Final Results

Summary

We have analyzed the comments and rebuttal comments of interested parties in the 2001 administrative review of the antidumping duty order covering top-of-the-stove stainless steel cooking ware (cookware) from Korea. As a result of our analysis, we have made changes from our preliminary results. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttal comments from parties.

Background

On October 9, 2002, the Department published the preliminary results of administrative review of the antidumping duty order on cookware from Korea. See Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review, 67 FR 62951 (October 9, 2002) (Preliminary Results). This review covers twenty-six manufacturers of subject merchandise: Daelim Trading Co., Ltd. (Daelim), Dong Won Metal Co., Ltd. (Dong Won), Cheflin Corporation, Sam Yeung Ind. Co., Ltd., Namyang Kitchenflower Co., Ltd., Kyung-Dong Industrial Co., Ltd., Ssang Yong Ind. Co., Ltd., O. Bok Stainless Steel Co., Ltd., Dong Hwa Stainless Steel Co., Ltd., Il Shin Co., Ltd., Hai Dong Stainless Steel Ind. Co., Ltd., Han II Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., East One Co., Ltd., Charming Art Co., Ltd., Poong Kang Ind. Co., Ltd., Won Jin Ind. Co., Ltd., Wonkwang Inc., Sungjin International Inc., Sae Kwang Aluminum Co., Ltd., Hanil

Stainless Steel Ind. Co., Ltd., Seshin Co., Ltd., Pionix Corporation, East West Trading

Korea, Ltd., Clad Co., Ltd., and B.Y. Enterprise, Ltd. The period of review (POR) is January 1, 2001, through December 31, 2001.

We invited parties to comment on our Preliminary Results of review. On November 8, 2002, we received case briefs from the Stainless Steel Cookware Committee (the petitioner), Dong Won, and Daelim (respondents). On November 13, 2002, we received rebuttal briefs from respondents and on November 15, 2002, we received the petitioner's rebuttal brief.

List of Issues

1. Countervailing Duty Offset
2. U.S. Sales Above Normal Value
3. Daelim's Cost of Manufacture
4. Duty Drawback for Dong Won
5. Application of Countervailing Duty Offset for Dong Won

Discussion of Issues

Comment 1: Countervailing Duty Offset

According to the respondents, the Department should apply the export subsidy offset as a direct reduction to the cash deposit and assessment rates. The respondents claim that the Department has granted offsets in precisely this manner in scores of antidumping cases and cite, as an example, Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from India, 67 FR 34899 (May 16, 2002) (PET Film from India) and accompanying Issues and Decision Memorandum, at Comment 1. If, however, the Department is inclined to disagree, the respondents argue that the Department is still obligated, at a minimum, to use this methodology with respect to the cash deposit rate in this review. The respondents contend that the Department has repeatedly stated, in the context of investigations, that section 772(c)(1)(C) of the Tariff Act of 1930, as amended (the Act), does not permit an adjustment to U.S. price for countervailing duties that have not yet become final (i.e., been assessed). Id.

The respondents claim that exactly the same rationale applies in this case and assert that the countervailing duties rate applicable to sales in the next and subsequent review periods to which the revised antidumping deposit requirements will apply have not yet become final. According to the respondents, the countervailing duties for such entries will only become final when they are assessed (either when no review is requested with respect to the sales or when a countervailing duty review is completed with respect to them). Therefore, the respondents contend that, under the Department's analysis, it is improper to calculate the cash deposit rate for these

sales by applying the export subsidy to U.S. price. Instead, the offset should be calculated as an adjustment to the final cash deposit rate.

In rebuttal, the petitioner asserts that the methodology the Department used in the Preliminary Results was consistent with the plain language of the statute, the Department's longstanding practice, and the Department's final results in the last administrative review of this proceeding. The petitioner states that section 772 (c)(1)(C) of the Act requires the Department to increase the price used to establish export price (EP) or constructed export price (CEP) to reflect countervailing duties attributable to export subsidies. Recognizing this statutory requirement, in the last administrative review of this order the Department "added to the U.S. price the amount of countervailing duty imposed on the subject merchandise to offset an export subsidy." See Top-of-the-Stove Stainless Steel Cooking Ware From the Republic of Korea: Final Results and Rescission, in Part of Antidumping Duty Administrative Review, 67 FR 40274, 40276 (June 12, 2002) (Cookware 2000). According to the petitioner, there have been no changes to the facts or law that warrant a departure from that finding in the current review.

The petitioner maintains that in administrative reviews the Department's longstanding practice is to adjust U.S. price in accordance with the plain language of the statute. See Cookware 2000, 67 FR at 40276; see also Notice of Final Results of Antidumping Duty Administrative Review; Certain Welded Carbon Steel Pipe and Tube from Turkey, 62 FR 51629, 51634 (October 2, 1997) (Certain Welded Carbon Steel Pipe and Tube from Turkey). Although the respondents cite a long list of cases in which the Department applied the export subsidy offset as a direct deduction to the final margin, all but one of these determinations pertain to original investigations, not administrative reviews.

In fact, the petitioner claims that the cases the respondents cite actually support the Department's stated distinction between investigations and reviews when adjusting for countervailing duties attributable to export subsidies. See PET Film from India, 67 FR 34899, and accompanying Issues and Decision Memorandum, at Comment 1. Because this case involves an administrative review of an antidumping duty order, the Department properly accounted for countervailing duties attributable to export subsidies by adding to the U.S. price the actual amount of duties paid.

The petitioner notes that in recent administrative reviews, including the most recently completed review of this order, the Department has calculated the countervailing duty offset by adding the amount of countervailing duties attributable to export subsidies to U.S. price when calculating both the final assessment rate and the cash deposit rate. See e.g., Notice of Preliminary Results and Partial Rescission and Intent Not to Revoke in Part: Certain Pasta From Italy, 67 FR 51827 (August 9, 2002) (Certain Pasta From Italy). Thus, according to the petitioner, the Department's calculation of the cash deposit rates in this review is entirely consistent with its practice and should not be changed for the final results.

Department's Position: We disagree with the respondents that the Department should amend its calculation methodology to apply the countervailing duty offset through a direct reduction to the cash deposit and assessment rates. The methodology used in the Preliminary Results is consistent with the statute and the Department's practice. See e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey, 62 FR at 51634; Certain Pasta From Italy, 67 FR at 51830.

Section 772(c)(1)(C) of the Act requires an addition to the starting price for EP or CEP for any countervailing duties imposed on the merchandise to offset an export subsidy. Where actual assessment of countervailing duties is being made under an outstanding order, the actual amount of duties would be added directly to the EP or CEP in performing the margin calculation. See Certain Pasta from Italy, 67 FR at 51830.

Further, the methodology espoused by the respondents applies only to an investigation. As the Department explained in PET Film from India,

Unlike administrative reviews, the Department calculates this offset in investigations not in the margin calculation program, but in the cash deposit instructions issued to the Customs Service. . . .The Department's practice is a result of the practical administrative difficulties in applying the results of an ongoing CVD investigation to calculations in an ongoing AD investigation. A dumping margin calculation normally will be completed before the actual export subsidies have been calculated. Thus, the Department withholds its application of the subsidy offset until it issues its cash deposit instructions. Such problems typically do not arise in administrative reviews.

See PET Film from India, 67 FR 34899 and accompanying Issue and Decision Memorandum at Comment 1.

Thus, the methodology used in the Preliminary Results is consistent with the statute and Department practice. Accordingly, we have continued to apply this methodology for these final results.

Comment 2: U.S. Sales Above Normal Value

For purposes of the Preliminary Results, the Department calculated the overall dumping margins by treating sales to the United States made at or above normal value as having no dumping margin. The respondents submit that this practice, which they refer to as "zeroing," is unlawful under both U.S. and international law and should not be followed in the final results for this review.

According to the respondents, the WTO Appellate Body ruled that the practice of zeroing negative margins in the calculation of dumping margins violates the terms of the WTO Antidumping Agreement. See European Communities-Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R (March 1, 2001) (Bed Linen). The respondents argue that a fundamental error in this practice, as observed by the Panel and the Appellate Body, is that such practice rests upon an impermissible fiction. For all transactions that are treated as zero, the administering agency arbitrarily assumes “the weighted-average export price to be equal to the weighted-average normal value. . . despite the fact that it {is}, in reality, higher than the weighted-average normal value.” Id. Further, the respondents state that the Appellate Body also correctly concluded that this practice violates the “fair comparison” requirements of Article 2.4 and 2.4.2 of the Antidumping Agreement by, among other things, not taking fully into account “all comparable export transactions” as specified in those provisions.

The respondents state that they recognize the Department’s position, as stated in recent administrative determinations, that the Bed Linen ruling is not technically binding on the United States because the United States was not a party to that particular dispute resolution proceeding. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 66 FR 36551 (July 12, 2001) and accompanying Issues and Decision Memorandum, at Comment 38. However, the respondents contend that arguments like this are based on purely procedural technicalities and fail to address the underlying substantive issue of whether the practice of zeroing negative margins does or does not violate the Antidumping Agreement. At most, this argument simply asserts the position that the Department is not willing to even address this important legal issue until forced to do so through WTO litigation.

According to the respondents, there is nothing in the Bed Linen decision that does not make it equally applicable to, and therefore prohibitive of, the Department’s own practices. According to the respondents, the Appellate Body in Bed Linen announced an interpretation of the provisions of Article 2.4 and 2.4.2 of the Antidumping Agreement which prohibits investigation agencies from treating negative margins as if they were zero margins in the calculation of overall dumping margins. The respondents maintain that there was nothing in the facts of that case, the legal regimes, or the practices at issue that meaningfully distinguish them from those applied by the Department in the Preliminary Results of this case.

Further, the respondents submit that no distinction can be drawn between Bed Linen and this case based on the fact that the former involved an investigation and not, as here, an administrative review. Such a distinction, the respondents maintain, is flatly incorrect because the WTO Antidumping Agreement explicitly states that calculation methodologies specified in Article 2.4 and its subparagraphs apply to antidumping reviews. Therefore, the respondents argue, that if zeroing of negative margins is unlawful pursuant to Articles 2.4 and 2.4.2 in the investigation phase, it is by definition also unlawful in the review phase.

Finally, the respondents claim that, contrary to the Department's previously stated position, the Bed Linen determination is in fact binding on the Department as a matter of U.S. law. The respondents assert that it is a time-honored canon of Federal statutory interpretation (the so-called "Charming Betsy Doctrine") that "absent express Congressional language to the contrary, statutes must not be interpreted to conflict with international obligations." See Federal Mogul Corporation v. United States, 63 F. 3d 1572, 1581 (Fed. Cir. 1995) (Federal Mogul) (citing Alexander Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch.) 64, 118 (1804)). According to the respondents, the Court observed that the various GATT (now WTO) agreements are "international obligations." See Federal Mogul, 63 F. 3d at 1581. The respondents argue that this is even more the case now than under the previous GATT regimes because the Uruguay Round Agreements Act (URAA) specifically endorsed the WTO Antidumping Agreement and sought to implement its terms.

In conclusion, the respondents maintain that in this case the Department can point to no provision of U.S. law that requires the Department to treat negative dumping margins as if they were zero. According to the respondents, the Department's methodology in this area was developed solely through administrative practice. Thus, the respondents contend that because there is no "express Congressional language to the contrary," the Department is under a clear legal duty, as a matter of U.S. law under the "Charming Betsy Doctrine" to interpret and apply the U.S. dumping laws in a manner which does not conflict with its international obligations under the WTO Antidumping Agreement. Accordingly, to avoid conflict with its international obligations, the Department may not replace negative with zero margins in this, or any other, review. With this in mind, the respondents urge the Department to revise its calculation of overall dumping margins for the final results of this review by including negative margins in the calculations.

In rebuttal, the petitioner contends that the Bed Linen decision is irrelevant to the Department's decision in this review. According to the petitioner, under the express terms of the WTO Dispute Settlement Understanding, WTO decisions apply only to the parties to the dispute. Thus, because the United States was not a party to the dispute in Bed Linen, the WTO decision in that case cannot possibly create an international obligation for the United States.

Further, the petitioner claims that there are other reasons that the respondents' argument has no bearing on the Department's calculation methodology in the final results of review. According to the petitioner, the Court of International Trade (CIT) has twice affirmed the Department's application of precisely the same calculation methodology challenged here. See Bowe Passat Reinigungs-Und Waschereitechnik Gmbh v. United States, 675 F Supp. 354 (CIT 1996); see also Serampore Industries Pvt., Ltd., v. United States, 675 F. Supp. 1354 (CIT 1987). Therefore, the petitioner maintains that the respondents are asking the Department to reverse a longstanding administrative practice that the CIT has affirmed twice in the last 15 years, on the basis of an irrelevant WTO decision not involving the United States.

With regard to the respondents' reliance on the "Charming Betsy Doctrine," the petitioner claims that the U.S. courts have consistently upheld a permissible administrative construction of a silent or ambiguous statute notwithstanding an actual or potential conflict with an international trade agreement. As an example, the petitioner cites Algoma Steel Corp. v. United States, 688 F. Supp. 639, 645 (CIT), aff'd, 865 F. 2d 240 (Fed. Cir. 1989), where the CIT rejected plaintiff's argument that the U.S. International Trade Commission, in order to comply with the 1947 GATT, must determine the percentage of imports that were sold at dumped prices in order to ensure that its injury determination was based solely on dumped sales.

The petitioner contends that the deference accorded by U.S. courts to agency determinations is particularly pronounced where the agency is charged with administering the statute in question. For example, in Federal Mogul, 63 F. 3d 1572, 1582, when discussing the Department's administration of the antidumping statute, the Court stated that "Commerce is due judicial deference in part because of its established expertise in administration of the Act, and in part because of the foreign policy repercussions of a dumping determination."

In fact, the petitioner states that it is unable to find a single case in which a U.S. court has struck down an agency's permissible construction of a silent or ambiguous statute because of a conflict with an international trade agreement. According to the petitioner, the case most often cited when Charming Betsy-type issues are raised, Suramerica De Aleaciones Laminadas v. United States, 966 F.2d 660, 663 (Fed. Cir. 1992) (Suramerica), is particularly instructive. In Suramerica, the appellees argued that the Department's pre-URAA practice of presuming industry support for an antidumping petition was contrary to the statute and to an unadopted GATT panel report involving the U.S. antidumping order on certain stainless steel hollow products from Sweden. In affirming the Department's practice, the Court observed that the statutory phrase in question was not defined in the statute. Id. at 666-67. The statute was, in fact, open "to several possible interpretations." Id. at 966 F. 2d. at 667. Then, without mentioning Charming Betsy by name, the Court dismissed the argument that the gap in the statute must be interpreted in a manner that is consistent with the GATT or the GATT panel ruling. Id. 966 F. 2d. at 667-68.

According to the petitioner, subsequent cases have cited Suramerica in support of the view that international trade agreements, such as the 1947 GATT or the WTO Agreement, are irrelevant or unnecessary to the court's interpretation of an enabling statute that is silent on its face or otherwise ambiguous. For example, in Torrington Co. v. United States, 903 F. Supp. 79, 94 (CIT 1995), the plaintiff argued that the Department's methodology for assessing antidumping duties was inconsistent with the statute and Article 11 of the GATT Antidumping Code. Although it found the statute to be silent on its face, the court affirmed the Department's interpretation without considering the GATT agreement. Citing Suramerica, the court ruled that it "need not consider whether the challenged regulation conflicts with the GATT since this Court finds that the Department's interpretation of the antidumping duty statute was reasonable." Id. 903 F. Supp. at 89.

Further, the petitioner notes that Footwear Distributors and Retailers of America v. United States, 852 F. Supp. 1078, 1096 (CIT 1994) (Footwear Distributors), also involved a GATT panel ruling. Unlike Suramerica, however, the panel report at issue in Footwear Distributors had been adopted by the appropriate GATT body. Id. 852 F. Supp. at 1084-85. The petitioner states that the case is noteworthy because the Court drew an important distinction between international trade agreements, such as the 1947 GATT or the WTO Agreement, and panel reports issued by the GATT or the WTO. The former, the court declared, reflect international law that is binding upon all signatories. The latter, however, do not, in the words of the court, “constitute a ‘binding’ obligation upon the state-parties.” Id. 852 F. Supp. at 1093. Because it considered panel reports, even adopted ones, to be non-binding, it viewed the question before it as political and, therefore, committed to either the Executive Branch or the Congress.

In summary, the petitioner maintains that the WTO decision in Bed Linen creates no international legal obligation in the United States because the United States was not a party to the dispute. Even if the United States were a party to the case, however, international trade agreements, such as the WTO Agreement, generally lack direct legal effect within the United States. It is the implementing legislation, rather than the agreement itself, that is given effect as law within the United States. Furthermore, contrary to the respondents’ arguments concerning the Department’s “legal duty” to interpret the U.S. antidumping law consistent with the WTO decision in Bed Linen, no provision of U.S. law requires the Department to treat negative dumping margins as if they were zero. U.S. courts have consistently upheld a permissible administrative construction of a silent or ambiguous statute notwithstanding an actual or potential conflict with an international trade agreement. Therefore, the petitioner asserts, neither U.S. nor international law requires the Department to conform to the Bed Linen decision.

Department’s Position: As we have discussed in prior cases, our calculation methodology is required by the Act. See, e.g., Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review, 67 FR 63616 (October 15, 2002) (Polyester Staple Fiber from Korea) and accompanying Issues and Decision Memorandum, at Comment 2; Stainless Steel Wire Rod From India: Final Results of Antidumping Duty Administrative Review, 67 FR 37391, 37392 (May 29, 2002) and accompany Issues and Decision Memorandum, at Comment 5; Notice of Final Determination of Sales at Less Than Fair Value: Certain Not-Rolled Carbon Steel Flat Products From the Netherlands, 66 FR 50408 (October 3, 2001) (Certain Not-Rolled Carbon Steel Flat Products From the Netherlands) and accompanying Issues and Decision Memorandum, at Comment 1. Under this methodology, sales that do not fall below normal value are included in the weighted-average margin calculation as sales with no dumping margin. The value of such sales is included in the denominator of the weighted-average margin along with the value of dumped sales. We do not however, allow sales that do not fall below normal value to cancel out dumping found on other sales.

The Act requires that the Department employ this methodology. Section 771(35)(A) of the Act defines “dumping margin” as “the amount by which normal value exceeds the export

price or constructed export price of the subject merchandise.” Section 771(35)(B) of the Act defines “weighted-average dumping margin” as “the percentage determined by dividing the

aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.” These sections, taken together, direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which normal value exceeds EP or CEP, and to divide this amount by the value of all sales. The directive to determine the “aggregate dumping margins” in section 771(35) makes clear that the singular “dumping margin” in section 771(35)(A) applies on a comparison-specific level, and does not itself apply on an aggregate basis. At no stage in this process is the amount by which EP or CEP exceeds normal value on sales that did not fall below normal value permitted to cancel out the dumping margins found on other sales.

Finally with respect to the respondents’ WTO-specific arguments, U.S. law is fully consistent with our WTO obligations. See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. No. 103-316 at 669 (1994). Moreover, the WTO decision in Bed Linen concerned a dispute between the European Union and India, and imposes no obligation upon the United States.

Comment 3: Daelim’s Cost of Manufacture (COM)

In the Preliminary Results, the Department used the COM reported by Daelim in its July 12, 2002, cost submission without adjustment. According to the petitioner, the total COM reported in Daelim’s cost response does not reconcile with the company’s accounting records. Therefore, the petitioner argues that in the final results of review the Department should increase Daelim’s COM by the under reported amount and re-calculate Daelim’s general and administrative (G&A) and interest expenses using the adjusted COM.

The petitioner contends that in at least one previous case the Department has adjusted a respondent’s reported COM as a result of its inability to reconcile it with its financial statements. According to the petitioner, the Department increased respondent’s total COM by the percentage by which the adjusted cost of goods sold reported in its financial statements exceeded the COM reported in its cost files. See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Taiwan, 67 FR 35484 (May 20, 2002) and accompanying Issues and Decision Memorandum, at Comment 1. Similarly, in this case, Daelim is unable to reconcile its reported COM to the adjusted costs reported in its financial statements. Therefore, the Department should increase Daelim’s reported COM by the under reported amount.

According to the petitioner, the Department should attribute the full under reported amount of costs to the COM of the subject merchandise as partial adverse facts available (FA). Section 776(a) of the Act directs the Department to use FA if, among other actions, an interested party withholds

information or fails to provide information by the deadlines for submission of the information. The petitioner contends that Daelim did not indicate the nature of the under reported costs in its original cost response or its supplemental response. That is, Daelim did not indicate whether the under reported amounts related to the production of subject or non-subject merchandise. Thus, the petitioner asserts that the Department does not have the information it needs to allocate these costs and has no choice but to turn to the facts otherwise available.

When selecting FA, section 776(b) of the Act provides that the Department may use an adverse inference if the Department determines that the interested party “failed to cooperate by not acting to the best of its ability to comply with a request for information.” The petitioner contends that Daelim failed to explain the nature of its under reported costs in its supplemental questionnaire response even though the Department requested that Daelim remedy its “inadequate reconciliation information.” See Letter from the Department to Daelim and accompanying Section A-D Supplemental Questionnaire dated August 13, 2002. According to the petitioner, instead of explaining the discrepancy, Daelim merely characterized it as “trivial.” Thus, the petitioner argues that although Daelim could have provided the necessary information, it chose not to do so. Clearly, the petitioner contends, Daelim failed to cooperate by not acting to the best of its ability. Therefore, the Department’s use of an adverse inference, is consistent with the requirements of the statute.

However, if the Department determines not to use FA, the petitioner contends that it should allocate the under reported amount to the COM of the subject and non-subject merchandise based on the same ratio Daelim used to allocate the weighted-average COM reported in its cost response. The Department should then re-calculate Daelim’s G&A and interest expenses using the adjusted COM.

In rebuttal, Daelim states that the Department routinely finds small differences between respondents’ reported costs and the costs as recorded in the respondents’ financial accounting records and has reported such findings in scores of previous cases, including in prior segments of this proceeding. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Italy, 67 FR 3155 (January 23, 2002) and accompanying Issues and Decision Memorandum, at Comment 15. Daelim contends that such reconciling differences occur because most companies, including Daelim, do not track costs in the ordinary course of business in the manner necessary for antidumping reporting purposes. As a result, these companies must establish a reporting system based on the companies’ ordinary books and records to derive and report costs for subject merchandise in the format prescribed by the Department. According to Daelim, fulfilling these requirements often necessitates slightly different methodological approaches, timing differences, rounding differences, and other minor variations that, when taken together, result in small aggregate differences between the reported costs and the costs maintained by respondents in the ordinary course of business.

According to Daelim, the specific reasons for the residual difference between the booked and reported costs often cannot be discerned. Daelim argues that the Department has recognized on

numerous occasions that a dissection of the reporting process is not necessary where the reconciling difference is small, and in these cases, has accepted the respondents' costs as reported without regard to the reconciling difference.

While admitting that, in some instances, the Department has found that the reconciling difference is of such a magnitude that adjustment of the respondents' costs is necessary, Daelim contends that there has been no case where the Department has treated a negligible disparity between reported costs and recorded costs as evidence, by itself, of failure by the respondent to "cooperate" with the Department within the meaning of the adverse FA provision. And, Daelim asserts that there is nothing in the facts of this case or in the manner in which it reported its costs that gives rise to an inference that Daelim has been uncooperative. Daelim contends that the fact that it was able to reconcile its reported costs to within less than one percent of its booked costs is proof that it has developed and implemented an effective reporting methodology, not that it has failed to cooperate.

Under section 776(b) of the Act, the test for application of adverse FA is whether the respondent acted to the best of its ability in complying with a request for information from the Department. Daelim states that at no time in this review has it failed to comply, or failed to act to the best of its ability in complying, with a request from the Department that it further explain or dissect its reconciling difference.

Daelim points out that it identified and quantified the reconciling difference between its reported costs and the costs in its financial accounting system in its original Section D response. It maintains that if the Department wanted it to explain the reason for the difference, it could have easily asked it to provide such an explanation in a supplemental questionnaire. In sum, Daelim argues that the record shows that it fully cooperated with the Department in both the reporting and the reconciling of its cost information and responded to the best of its ability to all of the Department's requests for information. Accordingly, it argues that adverse FA is not implicated here.

Department's Position: We agree with Daelim and have not adjusted its reported costs. We reviewed the reconciliation of Daelim's total reported costs to its audited financial statements, noting a minor difference (less than one percent). We note that minor differences between reported and financial costs are not unusual. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Italy, 67 FR 3155 (January 13, 2002), and accompanying Issues and Decision Memorandum, at Comment 15; Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan, 64 FR 30573, 30589 (June 8, 1999); Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews, 63 FR 12725, 12734 (March 16, 1998) (CTL Plate from Canada).

The Department's responsibility is to ensure that costs incurred for production of subject merchandise during the POR have been properly reported, and that the allocations employed are not distortive. CTL Plate from Canada 65 FR at 12734. Based on our review of record evidence, we find that the methodology and reconciliation methods used by Daelim with respect to these costs are reasonable. Thus, we are not revising Daelim's COM, G&A, and interest expense for the final results.

Comment 4: Duty Drawback for Dong Won

In the Preliminary Results, the Department denied Dong Won an adjustment for duty drawback. Dong Won submits that this finding is in error and should be reversed in the final results of this review.

Dong Won points out that in order to determine whether a duty drawback offset is warranted, the Department determines whether (1) the import duty and rebate are directly linked to, and dependent upon, one another; and (2) there are sufficient imports of the imported raw materials to account for the duty drawback on the exports of the manufactured product. See Federal-Mogul v. U.S., 862 F. Supp. 384, 409 (CIT 1994) (Federal-Mogul). Dong Won maintains that it has explained and documented in its submissions to the Department, that both of these prongs are satisfied in this case. Moreover, Dong Won states that the Department has previously examined the Korean fixed-rate duty drawback system at issue here and has found that it satisfies both the first and the second prong of the Department's test. See e.g., Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Bar from Korea 67 FR 3149 (January 23, 2002) (Stainless Steel Bar from Korea) and accompanying Issues and Decision Memorandum, at Comment 2.

As to the first prong, Dong Won notes that it has placed on the record the Korean Customs laws and regulations governing the various duty drawback systems, as well as a publication of the Korean Customs Service describing the operation of the drawback systems. According to Dong Won, these materials establish conclusively that, under the Korean fixed-rate duty drawback system, the amount of the import duty is directly linked to, and dependent on, the import duties paid.

According to Dong Won, the rate of drawback permissible under the fixed-rate duty drawback system is determined by Korean Customs each year on the basis of a review of the actual, detailed drawback applications that were filed by exporters under the regular individual drawback system during the previous year. See Dong Won's September 3, 2002 Supplemental Questionnaire Response at Attachment C-23 (September 3rd Supplemental). Dong Won explains that the data from these individual applications, including extensive data on material consumption rates and duty incidence, is used by Korean Customs authorities to calculate, on a product-specific basis, the average utilization of the various imported raw materials used to produce the finished product and the corresponding duty-paid content of the exported finished products. The rate of duty drawback under the simplified system is then determined on the basis of this detailed, technical assessment of the relationship between import duties paid on imports and

consumption of the imported materials in the production of the exported finished products by actual Korean firms in the previous year.

Dong Won claims that the manner in which Korean Customs calculated the fixed-rate duty drawback rate is designed to ensure that there is a specific and direct relationship between the import duties that are actually incurred on imports of raw materials and the duties that are rebated upon the export of the finished cookware products into which these raw materials are incorporated. According to Dong Won, this is hardly surprising since the Korean government has an interest in making sure that companies are not rebated import duties in an amount greater than what they are entitled to. Further, Dong Won maintains that the record evidence shows that the Korean fixed-rate duty drawback system is actually conservative, often providing applicants with a lower drawback rate than the one they might have obtained had they filed individual applications. *Id.* Dong Won argues that this approach strikes the necessary balance between providing smaller-sized firms with a means to obtain a duty rebate without having to use the individual drawback system, which would be prohibitively expensive and time-consuming for such firms, and ensuring that the amount of import duties rebated are properly related to actual import duties paid. Dong Won maintains that it would be unfair for the Department to disregard the careful balance established by Korean Customs and, on threat of denying Korean small-sized firms any adjustment for duty drawback rebates received under the fixed-rate system, force these firms to resort to the burdensome individual drawback system.

According to Dong Won, in the Preliminary Results, the Department incorrectly assumed that the duty drawback rate is linked to the FOB price of the merchandise, not to import duties paid on, and usage of, raw materials. See Dong Won's Calculation Memorandum for the Preliminary Determination of the 2001 Administrative Review of the Antidumping Duty Order on Top-of-the-Stove Stainless Steel Cooking Ware from Korea, from Ron Trentham to the File, dated October 3, 2002 (Dong Won's Preliminary Calculation Memorandum). However, Dong Won states that the rate itself is determined by Korean Customs on the basis of average drawback amounts granted under the individual application system in the previous year. Therefore, according to Dong Won, the fact that the drawback rate is expressed in terms of the FOB value of merchandise does not diminish the fact that the rate itself is determined by a thorough examination of import duties paid on raw materials and actual rates of consumption of these raw materials in the production of the manufactured product for export.

With respect to the second prong of the Department's test to determine whether a duty drawback offset is warranted, Dong Won maintains it has submitted documentation establishing that it had sufficient imports of the imported raw materials to account for the duty drawback on the exports of the subject merchandise. Dong Won states that its September 3rd Supplemental provided the Department with worksheets showing its usage of imported raw materials eligible for duty drawback, copies of sample import permits supporting the amount of duties paid on imports of raw material, and copies of duty drawback applications submitted to the Korean government. Dong Won notes that this documentation showed the total import duties paid on imports of raw materials used in the production of stainless steel cookware for export. The documentation also showed the amount received in rebates

for duties paid during the POR. Dong Won acknowledges that the amount it received in rebates exceeds the amount of total import duties paid by several thousand Korean Won. It explains that the difference between these two amounts is accounted for by indirect payments of import duties made when it purchased raw materials from domestic suppliers who passed on their duty costs in the raw material purchase price. Thus, according to Dong Won, the record evidence demonstrates that it had sufficient imports of the imported merchandise to account for the full amount of the duty drawback received on exports of stainless steel cookware.

Dong Won states that from the Department's approach in previous segments of this proceeding, it recognizes that the Department is hesitant to allow an offset for the amount of indirect duty payments that Dong Won makes in the ordinary course of business. Nevertheless, according to Dong Won, the Department is obliged to make an adjustment for the portion of rebated duty drawback that is accounted for by direct duty payments during the POR. Dong Won maintains that the payment of these duties has been fully and appropriately documented in its submissions, as has the rebate of those duties to Dong Won. Thus, Dong Won argues that there is no reason for the Department to deny it an adjustment for at least this portion of the POR duty drawback amount.

In the Preliminary Results, the Department stated that Dong Won had not demonstrated that "the raw material imported, and on which it paid duties, was used in the production of subject merchandise specifically destined for export to the United States." See, Dong Won's Preliminary Calculation Memorandum. Dong Won disagrees. It claims that although it was not asked by the Department to provide a detailed breakdown of the types of raw material imported and thereafter incorporated into subject merchandise, Dong Won states that it did explain to the Department that "{t}he imported materials consist primarily of metals used to form the bodies of the exported cookware" and provided specific samples showing the purchase of various types of imported clad steel used to produce subject merchandise. See, September 3rd Supplemental at 9 and Attachment C-23. Dong Won maintains that if the Department indicated that it required further documentation of each type of imported raw material, or had it asked for this documentation in its questionnaires, Dong Won would have been able to provide it. However, Dong Won asserts that it should not be penalized now, once the record is officially closed, for not anticipating that the additional supplemental documentation might be deemed important to the Department.

Finally, Dong Won contends that even if the Department decides not to grant it a drawback adjustment for the duties rebated under the fixed-rate duty drawback system, the Department should still account for the rebated funds in its antidumping analysis. According to Dong Won, there is no question that the amounts received by Dong Won under the duty drawback system are a rebate of a percentage of the cost of materials used to produce the merchandise under review. Dong Won submits that as a real and practical matter, these rebated amount lower Dong Won's costs of producing the subject merchandise. Thus, Dong Won claims that the Department cannot establish a proper "apples-to-apples" comparison between sales of the subject merchandise and sales of the foreign like product,

unless it makes, at a minimum, an adjustment to Dong Won's G&A expenses for the amount of the rebated funds.

In rebuttal, the petitioner notes that the CIT has repeatedly held that the burden of establishing both prongs of the Department's duty drawback test rests with the party seeking the duty drawback adjustment. See, Allied Tube and Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1093 (CIT 2001). In the Preliminary Results, the Department properly denied Dong Won's claims for a duty drawback adjustment to U.S. price because Dong Won failed to satisfy its burden of establishing either prong of this two prong test.

With respect to the first prong of the test, the petitioner states that the Department properly determined that Dong Won did not adequately establish a link between the import duties paid and the rebates granted. The CIT has held that to satisfy the first prong of the Department's duty drawback test, the party claiming the adjustment must establish that "import duties are actually paid and rebated, and there is a sufficient link between the cost to the manufacturer (import duties paid) and the claimed adjustment (rebate granted)." See Far East Mach. Co. v. United States, 699 F. Supp 309, 313 (CIT 1988)(Far East Machinery) (quoting Huffy Corp. v. United States, 632 F. Supp. 50, 53 (CIT 1986)). According to the petitioner, the information Dong Won submitted for the record fails to meet this standard. The petitioner notes that Dong Won indicated that the amount of duty drawback it is eligible for under the system is calculated by applying the fixed-rate to the FOB value of its export shipment. Dong Won then provides tables summarizing the import duties it paid and the drawback it received. The petitioner maintains that other than providing a couple of sample import permits and export permits to support the amounts listed, the tables are largely unsupported by any documentation. See September 3rd Supplemental at Attachments C-23-B, C-23-C, C-23-D. Thus, the petitioner asserts that Dong Won fails to establish that "the import duties are actually paid and rebated."

According to the petitioner, Dong Won's failure to provide all the source documents necessary to support the reported amounts is especially troubling given that this is the third consecutive administrative review in which the Department has denied Dong Won a duty drawback adjustment because of Dong Won's inability to supply documentation demonstrating its entitlement to such an adjustment. The petitioner maintains that Dong Won had ample warning that it needed to provide all documentation necessary to support the amounts of import duties it paid and the amounts of drawback it received. However, after two administrative reviews in which Dong Won's duty drawback adjustment was at issue, in its response to the Department's Section C questionnaire, Dong Won provided a sample table (with no source documents) of its duty drawback calculation for one invoice and a table showing the duty drawback rate. See Dong Won's July 12, 2002 Section B, C, and D Response at Attachments C-9, C-10. The petitioner states that in recognition of the deficiency in this response, the Department in its supplemental questionnaire requested that Dong Won, among other information, provide "{c}opies of import permits to support the amount of duties paid on imports of raw materials" and "copies of duty drawback applications submitted to the Korean government to support the amount of the duty drawback adjustment Dong Won claims." See Letter to Dong Wong

from the Department dated Aug. 12, 2002. The petitioner notes that Dong Won responded to this request by providing a sample of two import permits and one duty drawback application. See September

3rd Supplemental at Attachments C-23-B, C-23-C, C-23-D. Dong Won stated that “{i}f requested, Dong Won would be pleased to provide all of the listed 2001 import permits” and “duty drawback permits.” Id. But the petitioner submits that Dong Won fails to mention that the Department had already asked Dong Won to provide all the documentation necessary to support the amount of duties paid on imports of raw materials and the amount of duties rebated. The petitioner contends that the statutory timeframe for administrative reviews simply does not permit the Department to repeatedly ask the same question in hopes of finally receiving a complete response.

Further, the petitioner notes that the largely unsupported tables that Dong Won submitted demonstrate that the amount of import duties Dong Won claims to have paid on imports of raw material used to produce stainless steel cookware is less than the amount of duty drawback it received on its exports of finished stainless steel cookware. Id. at Attachments C-23-B, C-23-B. Thus, the petitioner asserts that rather than establishing “a sufficient link between the cost to the manufacturer (import duties paid) and the claimed adjustment (rebate granted),” Dong Won demonstrates that the amount rebated exceeds the amount it claims it paid in import duties.

The petitioner argues that, at most, Dong Won establishes that it calculated the amount of duty drawback reported to the Department by multiplying a fixed-rate to the FOB value of its export shipments. According to the petitioner, the Department has expressly stated that the goal of the test is not to establish a link between the value of the goods exported and the amount of the rebate received; rather the goal of the test is to establish that the amount of the actual import duties paid correspond to the amount of the rebates received. See Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review, 65 FR 31302 (May 17, 2000) and accompanying Issues and Decision Memorandum, at Comment 3. In fact, the petitioner points out that based on this very same information, in the last administrative review the Department determined that Dong Won failed to establish a direct link between the amount of import duties paid and the rebate received. Instead, Dong Won demonstrated “only that the amount of duty rebated is tied to the FOB price of the exported merchandise.” See Cookware 2000, 67 FR 40274, and accompanying Issues and Decision Memorandum, at Comment 5. The petitioner claims that Dong Won has provided no new information that would require the Department to revisit this determination.

With respect to the second prong of the Department’s two pronged test, the petitioner submits that in the Preliminary Results, the Department correctly determined that Dong Won did not establish that it made sufficient imports of raw materials to account for the duty drawback it received on exported stainless steel cookware.

The petitioner notes that the unsupported information Dong Won did provide in support of its duty drawback claim indicates that Dong Won received more in rebated duties upon export of its

cookware, than the duties it paid on the imported raw material used to manufacture its cookware. Thus, the petitioner contends that Dong Won's own information clearly indicates that it did not make sufficient imports of the raw materials to account for the drawback received.

In its questionnaire response, Dong Won explains that the difference between the imported duties paid and the rebates received is accounted for by the "import duties paid indirectly when purchasing raw materials from domestic suppliers on a duty-inclusive basis." See September 3rd Supplemental at 11. The petitioner notes that although Dong Won explains that the discrepancy may be explained by "indirect duty payments," Dong Won concedes that it has no documentation to establish the existence of any of these indirect payments. According to the petitioner, Dong Won's decision not to request certificates establishing these indirect payments is even more troubling given that the Department in the previous two administrative reviews denied Dong Won a duty drawback adjustment, in part, because it could not establish that it made sufficient imports of raw materials to account for the duty drawback amounts it received during the POR. Further, the petitioner submits that as early as the 1999 administrative review, Dong Won made the identical argument at verification and the Department denied Dong Won's claim for a duty drawback adjustment.

In conclusion, the petitioner maintains that consistent with its determination in the previous two administrative reviews, the Department properly determined that Dong Won failed to establish that it satisfied the second prong of the Department's test.

Finally, the petitioner states that the Department properly denied Dong Won an adjustment to its G&A expenses for duty drawback. Contrary to Dong Won's claim, the Department's determination to deny such an adjustment is consistent with the statute and the Department's practice; thus, the Department has no reason to change its determination for the final results.

According to the petitioner, Dong Won cites no legal authority in support of its claim that an adjustment to its G&A expenses for duty drawback is proper, because there is none. The statute expressly provides for an adjustment to U.S. price to account for duty drawback; it contains no provision for the treatment of duty drawback refunds in the calculation of a respondent's costs. In fact, in reliance on the statute's express intent to adjust sales prices—not cost data—to account for duty drawback, in the Notice of Final Determination of Sales at Not Less Than Fair Value: Expandable Polystyrene Resins from the Republic of Korea, 65 FR 69284 (November 16, 2000) and accompanying Issues and Decision Memorandum, at Comment 8, the Department declined to adjust respondent's cost to account for rebated import duties on raw materials.

Thus, the petitioner notes that the Department has recognized that the statute provides express guidance regarding how a duty drawback adjustment should be made. If the respondent fails to provide information that would enable the Department to make the adjustment specified by the statute, the Department is not permitted to make the same adjustment in a different way.

The petitioner claims that Dong Won, having failed to establish its entitlement to a duty drawback adjustment as provided for in the statute, is making a “back door” attempt at the same adjustment. The Department denied Dong Won a duty drawback adjustment, however, because Dong Won failed to provide documentation demonstrating that there is a link between the import duties paid and the drawback received and that it made sufficient imports to account for the drawback received. Dong Won now claims that even though it has not provided the documentation necessary to satisfy the Department’s duty drawback adjustment test, the Department is supposed to include duty drawback rebates received as income in its G&A expenses, because Dong Won’s reported cost of materials include import duty payments. However, according to the petitioner, Dong Won’s argument fails to recognize that Dong Won cannot document that it actually paid import duties in quantities sufficient to account for the drawback received. In fact, the information Dong Won provided for the record demonstrates that it actually received more drawback than it paid in import duties. Consequently, the Department should reject Dong Won’s back door attempt at an adjustment—making an adjustment in this manner would undermine both the plain language of the statute and the Department’s established practice.

Department’s Position: As in past segments of this proceeding, we have denied Dong Won’s claimed duty drawback for these final results of review. As noted above, we apply a two-pronged test to determine whether a respondent has fulfilled the statutory requirements for a duty drawback adjustment. Section 772(c)(1)(B) of the Act provides for an upward adjustment to U.S price for duty drawback on import duties which have been rebated (or which have not been collected) by reason of the exportation of the subject merchandise to the United States. In accordance with this provision, we will grant a duty drawback adjustment if we determine that (1) import duties and rebates are directly linked to and are dependent upon one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports to account for the duty drawback received on exports of the manufactured product. See, e.g., Stainless Steel Bar From Korea, 67 FR 3419, and accompanying Issues and Decision Memorandum, at Comment 2. The CIT has upheld the reasonableness of this test. See, e.g., Federal-Mogul, 862 F. Supp. 384, 409 (CIT 1994).

The first prong of the test requires the Department “to analyze whether the foreign country in question makes entitlement to duty drawback dependent upon the payment of import duties.” See Far East Machinery, 699 F. Supp. at 311. This ensures that a duty drawback adjustment will be made only where the drawback received by the manufacturer is contingent on import duties paid or accrued. The second prong requires the foreign producer to show that it imported a sufficient amount of raw material (upon which it paid import duties) to account for the exports, based on which it claimed rebates. Id.

We note that there have been cases where specific respondents have been able, on their own, to demonstrate an entitlement to an upward adjustment to U.S. price for duty drawback under the fixed-rate scheme. See, e.g., Stainless Steel Bar From Korea, 67 FR 3419, and accompanying Issues and Decision Memorandum at Comment 2. However, the Department has repeatedly found that the

fixed-rate system, by itself, does not meet the Department's two-prong test. See Polyester Staple Fiber from Korea, 67 FR 63616, and accompanying Issues and Decision Memorandum, at Comment 2.

The fixed-rate scheme fails to meet the Department's two-prong test on its own merits because the amount of rebate upon export is based upon the average experience of companies using the individual-rate scheme. See e.g., Steel Wire Rope From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 61 FR 55965, 55968 (October 30, 1997) ("the Korean Government determines the simplified drawback amount using average import duties paid by companies using the individual reporting method."). Notwithstanding the results in Stainless Steel Bar From Korea, the respondents in that case also acknowledged "the Korean [fixed-rate] system set the drawback rate based on the rebate ratio of other exporters who receive duty drawback. . . ." See Stainless Steel Bar From Korea, 67 FR 63616, and accompanying Issues and Decision Memorandum, at Comment 2. Indeed, Dong Won acknowledges that the amount of drawback permissible under the fixed-rate duty drawback system is determined by Korean Customs each year on the basis of its review of actual detailed drawback applications filed by exporters under the regular individual drawback system during the previous year. See September 3rd Supplemental at 8. In other words, the amount of rebate received by Dong Won and other companies under the fixed-rate system is not based on their own individual experience and, therefore, may be more, less, or equal to the amount of the actual paid on the inputs.

In fact, there have been many instances where the Department has found rebates under the fixed-rate scheme to be in excess of duties paid on inputs. See, e.g., Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea, 62 FR 55574, 55577 (October 27, 1997). Dong Won admitted as much in its September 3rd Supplemental. Although it was able to provide some documentation on the amount of import duties paid, it admitted that the amount of import duty payments was less than the amount of duty drawback claimed and explained that the difference can be accounted for by the import duties paid indirectly when purchasing raw materials from domestic suppliers. See September 3rd Supplemental at 11. However, it failed to provide evidence to support its contention in this or the previous segment of this proceeding. See Cookware 2000, 67 FR 40274, and accompanying Issues and Decision Memorandum, at Comment 5. We note that it is incumbent upon respondents under the fixed-rate system to demonstrate that they meet both prongs of our two-pronged test. With respect to prong one, there is no record evidence that the amount of duty rebated and received by Dong Won is directly linked to or dependent upon import duties paid by Dong Won. Further, Dong Won failed to provide record evidence that it had sufficient imports to account for the duty drawback received. Therefore, for these final results, we have denied Dong Won's claim for a duty drawback.

Further, we disagree with Dong Won that if it fails to meet the Department's criteria for duty drawback, we must allow the duty drawback as an offset to its G&A expenses. The duty drawback

arises from sales to export markets. As such, the law directs the Department to account for such amounts as an adjustment to the sales prices generating such amounts. Section 772(c)(1)(B) of the Act specifically provides that duty drawback will be addressed as an adjustment to EP or CEP. If respondents cannot establish they are entitled to this adjustment, we deem it inappropriate to permit them to receive as a fall back an equivalent adjustment as an offset to the cost of production (COP) or constructed value (CV).

It would not be appropriate to reduce COP, which is used for testing whether home market sales were made at or below cost prices, since the duties were not rebated on those sales. Similarly, the duty must be included in CV, since the EP or CEP would be increased for duty drawback received on export sales. The CV must therefore include the duties as the drawback would otherwise be double-counted, if the respondent qualified for a duty drawback adjustment. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea, 65 FR 16880 (March 30, 2000), and accompanying Issues and Decision Memorandum, at Comment 16 (stating that it would be double-counting to permit a respondent to both reduce its CV and increase its U.S. price by the same duty drawback claims). Therefore, we have not allowed duty drawback as a reduction to product costs. See Polyester Staple Fiber from Korea, 67 FR 63616, and accompanying Issues and Decision Memorandum, at Comment 6.

Comment 5: Application of Countervailing Duty Offset for Dong Won

In the Preliminary Results the Department made an adjustment to the dumping margin for the countervailing duty rate attributed to export subsidies for Daelim but not for Dong Won. Dong Won submits that this was in error. According to Dong Won, the Department correctly found that it was entitled to such an adjustment in the last administrative review. Dong Won maintains that there have been no changes in the facts or law that warrant a departure from that finding in this segment of the proceeding. Therefore, Dong Won contends that its margin calculation should be revised for the final results to include an offset for export subsidies.

The petitioner did not address this issue.

Department's Position: We agree with Dong Won and have corrected the error in the Department's margin calculation program by adding to the U.S. price the amount of countervailing duty imposed on the subject merchandise to offset an export subsidy. See Calculation Memorandum for the Final Results of the 2001 Administrative Review of the Antidumping Duty Order on Top-of-the-Stove Stainless Steel Cooking Ware from Korea for Dong Won Metal Co., Ltd., from Ron Trentham to the File, dated February 6, 2003.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these

recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margins for all reviewed firms in the Federal Register.

AGREE _____ DISAGREE _____

Faryar Shirzad
Assistant Secretary
for Import Administration

(Date)

