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Tenth Administrative Review

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MEMORANDUM

DATE: June 2, 2004

TO: James J. Jochum
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty
Administrative Review of Certain Circular Welded Non-Alloy Pipe from the Republic
of Korea for the period November 1, 2001 through October 31, 2002

SUMMARY

We have analyzed the comments in the case briefs submitted by the domestic interested parties, Allied Tube and Conduit Corporation and Wheatland Tube Company (collectively, “domestic interested parties”) and one of the respondents, Hyundai HYSCO (“HYSCO”) and the rebuttal briefs submitted by the domestic interested parties and the respondents, HYSCO, Husteel Co., Ltd. (“Husteel”), and SeAH Steel (“SeAH”) (collectively, “the respondents”) in the antidumping duty administrative review of certain circular welded non-alloy pipe (“pipe”) from the Republic of Korea (“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 the complete list of the issues in this review for which we received comments from the parties:

Comment 1: Treatment of 201 Duties

Comment 2: Duty Drawback Adjustment

Comment 3: Inclusion of U.S. Affiliates’ Interest Expenses as a Component of U.S. Indirect Selling Expenses

- Comment 4: New Information Submitted by HYSCO at Verification
- Comment 5: HYSCO's Home Market Credit Expense Calculation
- Comment 6: Cost Files Used in HYSCO's Margin Calculation
- Comment 7: CEP Offset for Husteel and SeAH
- Comment 8: Husteel's Allocation of Export Selling Expenses
- Comment 9: Husteel's General and Administrative Expenses Calculation
- Comment 10: Husteel's and SeAH's Treatment of Foreign Exchange Gains and Losses
- Comment 11: New Information Submitted by SeAH at Verification
- Comment 12: SeAH's Consignment Sales
- Comment 13: Credit Expenses Incurred by SeAH's Home Market Affiliated Resellers HSC and SSP
- Comment 14: SeAH's U.S. Indirect Selling Expense Calculation

BACKGROUND

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses.

This administrative review was requested by the domestic interested parties and by, a Korean producer/exporter of the subject merchandise. The period of review ("POR") is November 1, 2001 to October 31, 2002. See Notice of Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 68 FR 68331 (Dec. 1, 2003). We invited parties to comment on our preliminary results. We received case briefs from the domestic interested parties and HYSCO on January 26, 2004, and rebuttal briefs from the domestic interested parties, Husteel, HYSCO and SeAH on February 5, 2004.

DISCUSSION OF ISSUES

Comment 1: Treatment of 201 Duties

The domestic interested parties argue that the statute requires deduction from U.S. price of increased customs duties caused by the President's section 201 determination. The domestic interested parties maintain that section 772(c) of the Tariff Act of 1930, as amended ("the Act"), instructs that export price ("EP") and constructed export price ("CEP") should 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... {772 (c)(2)(A)} (19 U.S.C. § 1677a(c)(2)(A))” (emphasis added by domestic interested parties). The domestic interested parties contend that because this provision requires the Department to deduct “any” United States import duties that are incident to the transactions, and does not explicitly or implicitly make an exception for section 201 duties, the Department must deduct section 201 duties from EP and CEP in the margin calculations.

The domestic interested parties contend that the section 201 duties should only be deducted from the EP/CEP when the first unaffiliated U.S. customer is not the U.S. importer. The reason for this, according to the domestic interested parties, is that the section 201 duties are not included in the price from the foreign producer or exporter when the first unaffiliated U.S. purchaser is the U.S. importer, because the U.S. importer pays the section 201 duties.

Further, the domestic interested parties claim that section 201 duties are as much United States import tariffs as the “special tariff” that the Department deducted from the U.S. price in Notice of Final Determination of Sales at Less Than Fair Value: Fuel Ethanol from Brazil, 51 FR 5572 (Feb.14, 1986) (“Fuel Ethanol from Brazil”) (in which the Department deducted from U.S. price additional duties over the existing ad valorem tariff for a particular type of ethyl alcohol). Additionally, the domestic interested parties state that the section 201 duties are simply an increase in the normally applicable ad valorem customs duties. See Presidential Proclamation, 67 FR 10553 (March 7, 2002); Presidential Memorandum for the Secretary of Treasury, the Secretary of Commerce, and the U.S. Trade Representative, 67 FR 10593 (March 7, 2002).

The domestic interested parties note that the 2003 Harmonized Tariff Schedule (“HTS”) treats section 201 duties as a temporary modification to the regular customs duties. Consistent with the description of section 201 duties in the Presidential Proclamation and the head notes to the chapter, HTS Chapter 99 first identifies the existing (i.e., normal) tariff rate for each product covered by the safeguard action and then simply notes an additional increase in that duty (e.g., the duty stated in HTS Chapter 72 plus 15 percent). Also, the domestic interested parties note that U.S. Customs and Border Protection (“CBP”) regulations are instructive on this point and they clearly spell out the difference between regular and “special duties.” Specifically, the domestic interested parties point out that 19 C.F.R. 159, subpart D, includes a category entitled “special duties,” which includes antidumping and countervailing duties while it does not include section 201 duties. Therefore, the domestic interested parties conclude that for purposes of customs law, section 201 duties are regular duties.

The domestic interested parties further assert that the deduction of section 201 duties from U.S. price does not constitute double counting, which is another reason that has been given for the Department’s policy against deducting antidumping duties from U.S. price. See August 13, 2002, memorandum from Gary Taverman to Bernard Carreau, “Recommendation Memorandum – Section 201 Duties and Dumping Margin Calculations in Antidumping Duty Investigation: Carbon and Certain Alloy Steel Wire

Rod from Trinidad and Tobago” in Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago, 67 FR 55788 (August 30, 2002) (“Wire Rod From Trinidad and Tobago”). In the memorandum, the Department analogizes the section 201 duties to antidumping duties. The memorandum quotes the CIT’s ruling in Hoogovens Staal v. United States, 4 F. Supp. 2d 1213 (CIT 1998) that “antidumping duties derive from a calculated margin of dumping, not from an assessment against value, as in the case for normal customs duties” and their deduction would double count the antidumping margin. The domestic interested parties contend that the Department’s August 13, 2002 memorandum ignores the fact that section 201 duties are an assessment against value and are not derived from the calculation of a dumping margin. Since section 201 duties are calculated differently than dumping duties the domestic interested parties argue that they should also be treated differently by the Department in the margin calculations.

Lastly, the domestic interested parties argue that the deduction of section 201 duties from U.S. price is required in order to maintain the effectiveness of both the section 201 relief and the antidumping duty order. If foreign producers and their affiliated importers absorb section 201 duties by effectively lowering their U.S. prices and these duties have not been subtracted from U.S. price, the domestic interested parties contend that the amount of dumping will be understated and the domestic industry will not benefit from the section 201 relief. Alternatively, the domestic interested parties argue that the failure to deduct section 201 duties from U.S. price would result in an unfair comparison of U.S. price and normal value (“NV”) because the U.S. price would contain a duty that is not part of NV. Therefore, the domestic interested parties argue, the failure to subtract section 201 duties from U.S. price in margin calculations will either negate the section 201 relief or replace the relief granted under the antidumping duty provisions with the section 201 relief. For all of the above reasons, the domestic interested parties contend that the Department should deduct section 201 duties from U.S. price in calculating dumping margins.

The respondents maintain that the Department should not deduct section 201 duties from U.S. price. Husteel and SeAH state that the section 201 duties were found by the World Trade Organization (“WTO”) to be inconsistent with the United States’ obligations under the WTO Agreement on Safeguards. See generally, United States-Definitive Safeguard Measures on Imports of Certain Steel Products, WT/DC248/R, WT/DC249/R, WT/DC251/R, WT/DC252/R, WT/DC253/R, WT/DC254/R, WT/DC258/R, WT/DC259/R (11 July 2003); United States-Definitive Safeguard Measures on Imports of Certain Steel Products, WT/DC248/AB/R, WT/DC249/AB/R, WT/DC251/AB/R, WT/DC252/AB/R, WT/DC253/AB/R, WT/DC254/AB/R, WT/DC258/AB/R, WT/DC259/AB/R (10 Nov. 2003). As a result of the WTO’s decision, President Bush lifted the duties at the end of 2003. See Proclamation of President George Bush, To Provide for the Termination of Action Taken with Regard to Imports of Certain Steel Products by the President of the United States of America a Proclamation (December 4, 2003).

The respondents maintain that the United States import duties do not include section 201 duties.¹ Although HYSCO acknowledges that neither the statute, the Department's regulations, nor the legislative history defines the term "United States import duties," HYSCO maintains that this term is clearly not all-inclusive, given the Department's longstanding policy of not deducting antidumping duties (absent a determination of duty reimbursement) or countervailing duties from U.S. price. See 19 CFR 351.402(f); Outokumpu Copper v. United States, 829 F. Supp. 1371 (CIT 1993); Certain Cold-Rolled and Corrosion-Resistance Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404, 18421-22 (April 15, 1997) ("1994/1995 Flat Products from Korea"). According to HYSCO, the Department's treatment of antidumping duties and countervailing duties as duties that are separate from other customs duties has effectively created two categories of import duties: normal customs duties and special customs duties. See 1994/1995 Flat-Products from Korea. The respondents note that the Department's policy of not subtracting special customs duties from U.S. price has been upheld by the CIT because such deductions "would reduce the U.S. price – and increase the margin – artificially" (Hoogovens Staal v. United States, 4 F. Supp. 2d 1213, 1220 (CIT 1998)); see also AK Steel Corp. v. United States, 988 F. Supp. 594 (CIT 1998) (making an additional deduction from U.S. price for the same antidumping duties that correct this price discrimination would result in double counting); U.S. Steel v. United States, 15 F. Supp. 2d 892, 898-900 (CIT 1998) (making a deduction from U.S. price for countervailing duties would result in a double remedy by inflating the dumping margin). Furthermore, deducting special duties from U.S. price would be inconsistent with the United States' commitments under the WTO. See United States-Definitive Safeguard Measures on Certain Imports of Circular Welded Carbon Quality Line Pipe from Korea, WT/DS202/AB/R, paras. 82 and 83 (15 Feb. 2002). Husteel and SeAH classify the section 201 duty as an escape clause action, intended to provide short-term relief to an industry in severe and extraordinary circumstances. Because these safeguard duties require extraordinary circumstances and findings, by their nature they are not "regular" import duties.

Further, HYSCO argues that section 201 duties are not normal customs duties, but are "special" customs duties because: 1) like antidumping and countervailing duties, they are specifically imposed to protect domestic industries against certain imports in accordance with the WTO agreements; 2) they are designed as a remedy for a domestic industry to adjust to increased imports; 3) they are not merely an extra cost or expense to the importer; 4) the placement of section 201 duties in chapter 99 of the HTS demonstrates that they are special customs duties – Congress establishes normal customs duties

¹ Although the respondents commented on the issue of whether section 201 duties should be subtracted from U.S. price in calculating dumping margins in the context of this case, HYSCO noted that the Department recently invited public comment on this issue. Thus, HYSCO urges the Department to wait until it has reviewed these comments and made a decision on the issue before reaching a conclusion in the present case. SeAH and Husteel noted that the Department's decision will likely be made in a proceeding prior to the final results in this review, or in the context of its September 2003 public inquiry.

which are published in chapters 1 through 98 of the HTS, and delegates its power to the executive branch to impose special customs duties, such as antidumping, countervailing and section 201 duties. Thus, the mere inclusion of section 201 duties in the HTS does not render them “normal” customs duties; and 5) CBP does not consider section 201 duties to be normal import duties - it refers to them as a “special duty for targeted steel products,” and “new additional duties” that are “cumulative on top of normal duties, antidumping/countervailing duties...”²

HYSCO also notes that the WTO allows member states to provide temporary protection to a domestic industry alleging injury from imports. The WTO recognizes such safeguard measures as being short-term. HYSCO urges the Department to treat section 201 duties in the same manner and not deduct them from U.S. price, consistent with its practice for other special duties.

HYSCO further claims that, similarly, the rationale the Department applied in Fuel Ethanol from Brazil does not apply to section 201 duties because 1) the tariff in Fuel Ethanol from Brazil was added to the HTS by Congress whereas the section 201 duties are imposed by the U.S. President, and 2) section 201 duties are imposed to counter injury to the domestic industry due to increased imports whereas the tariff in Fuel Ethanol from Brazil was imposed to offset a federal excise tax subsidy that domestic producers received for fuel-grade ethanol.

Moreover, the respondents argue that the deduction of section 201 duties from U.S. price will result in an illegal double safeguard remedy for the domestic industry. Such deductions would be in violation of U.S. law and the WTO Agreements. See Certain Cold-Rolled Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review, 63 FR 781, 787 (January 7, 1988), and accompanying Issues and Decision Memorandum, at Comment 7; Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement), Art. 9.3. According to HYSCO, the deduction of section 201 duties will increase the amount of antidumping duties owed by the amount of the section 201 duties paid, and will inappropriately amplify the remedial impact on the domestic industry. The respondents argue that the Department’s recommendation in Wire Rod From Trinidad and Tobago, that the deduction of section 201 duties from U.S. price would improperly double count the effect of the safeguard measure, should be adhered to in the present review.

HYSCO claims that courts have been unwilling to support a deduction in an antidumping calculation that would double the effect of import relief or artificially inflate the calculated margins. HYSCO further claims that the law does not intend for the Department to create dumping margins artificially through the deduction of other special protective tariffs and that it is contrary to good trade policy for the Department to do so. Husteel and SeAH also point out that the European Union has addressed the

² See U.S. Bureau of Customs and Border Protection, “Steel 201 Questions and Answers” (March 29, 2002), available at <http://www.customs.ustreas.gov>

issue of double counting of safeguard tariff measures and anti-dumping measures, and has considered measures to avoid double-counting. See Council Regulation (EC) No 452/2003, Official Journal of the European Union (6 March 2002). Therefore, the respondents argue that a decision to deduct section 201 duties from U.S. price in calculating dumping margins would be blatantly contrary to the Department's prior recommendations, court precedent and the WTO Agreements.

Finally, HYSCO claims that the deduction of section 201 duties from U.S. price further increases the impact of section 754 of the Act (19 U.S.C. 1675c), the "Byrd Amendment." Specifically, the respondent contends that if the Department subtracts section 201 duties from U.S. price it will increase the amount of antidumping duties owed and distributed under the "Byrd Amendment." HYSCO states that the WTO Appellate Body has found that the Byrd Amendment "is a non-permissible specific action against dumping" contrary to Article 18.1 of the WTO's Antidumping Agreement because it increases the remedy to U.S. industries through higher dumping margins and provides foreign producers and exporters with a further incentive to reduce their exports to the United States.

Department's Position:

Consistent with the Department's recent decision in Stainless Steel Wire Rod from Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 19153 (April 12, 2004) ("Wire Rod from Korea"), we disagree with the domestic interested parties that 201 duties should be deducted from the U.S. price. Most of the issues raised by the domestic interested parties and rebutted by the respondents in this review were addressed in the Department's decision in Wire Rod from Korea.

As stated in Wire Rod from Korea, we do not find that section 201 duties are normal customs duties, but rather, like antidumping duties they are special remedial duties. Consistent with the Department's treatment of antidumping and countervailing duties, which are not deducted from the U.S. price in the Department's dumping calculations, the Department determined in Wire Rod from Korea that the Department is not required to deduct, and it is the Department's longstanding practice not to deduct, special duties from U.S. price. We agree with the respondents that deducting 201 duties from U.S. price would effectively result in collecting the 201 duties twice - - first as 201 duties, and a second time through an increase in the dumping margin. Where there was no pre-existing dumping margin, the deduction of 201 duties from U.S. prices in an antidumping proceeding could create a margin. Nothing in the legislative history of section 201 or the antidumping law indicates that Congress intended such results. Moreover, nothing in section 201 indicates that Congress believed that 201 duties must have any particular effect on prices in the United States in order to provide an effective remedy for serious injury. If Congress had intended such a requirement, it presumably would have provided some mechanism for measuring the effect of 201 duties on U.S. prices and adjusting those duties if they did not have the intended effect. Congress provided no such mechanism.

As stated in Wire Rod from Korea, the Department's 1986 determination in Fuel Ethanol from Brazil is not relevant to the issue of the treatment of 201 duties. In that determination, the Department deducted

special tariffs on imported fuel ethanol from the initial U.S. prices. The tariffs in question were not 201 duties. In fact, they were not remedial duties under *any* trade remedy law, but rather were tariffs added to the HTS by Congress to offset a tax subsidy that producers received for fuel-grade ethanol. The concurrent investigation by the International Trade Commission did not find injury to a U.S. industry.³ Consequently, Fuel Ethanol from Brazil is not relevant to the issue of whether 201 duties should be subtracted from U.S. prices in calculating dumping margins.

In conclusion, the Department will not deduct 201 duties from U.S. prices in calculating dumping margins because 201 duties are not “United States import duties” within the meaning of the statute, and to make such a deduction effectively would collect the 201 duties a second time. Our examination of the safeguards and antidumping statutes, and their legislative histories indicates that Congress plainly considered the two remedies to be complementary and, to some extent, interchangeable. Accordingly, to the extent that 201 duties may reduce dumping margins, this is not a distortion of any margin to be eliminated, but a legitimate reduction in the level of dumping.

Comment 2: Duty Drawback Adjustment

The domestic interested parties contend that for the final results the Department should deny the duty drawback adjustment to U.S. price because it is unclear whether import duties were paid on inputs used to produce the merchandise sold in the home market. Citing to Hornos Electricos de Venezuela, S.A. v. United States, 285 F. Supp. 2d 1353, 1360 (CIT 2003) (“HEVENSA”) the domestic interested parties contend that the Court of International Trade (“CIT”) has upheld the Department’s prerequisite that import duties be paid on inputs used to produce merchandise sold in the home market. See also, Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 68336, 68338 (December 8, 2003) (“Flat Products from Thailand”) and Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea, 56 FR 16305, 16314 (April 22, 1991) (“1991 PET Film from Korea”). Specifically, in HEVENSA, the court cited Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 63 FR 6899, 6909 (February 11, 1998) to support the prerequisite that import duties on imports used for sales in the domestic market are necessary in order to support a duty drawback claim. The domestic interested parties therefore assert that, for the final results, the Department should conform to the Department’s practice, as approved in HEVENSA, that the establishment of the payment of import duties on inputs used to produce merchandise sold in the home market is a prerequisite for granting the drawback adjustment.

³ *Certain Ethyl Alcohol from Brazil*, Inv. No. 731-TA-248, USITC Pub. 1818 (Final)(March 1986).

The objective of the drawback statute, according to the domestic interested parties, is “to adjust for an imbalance between the cost of producing export merchandise and the cost of producing merchandise sold in the home market.” See domestic interested parties’ case brief at 17. The domestic interested parties assert that in HEVENSA, the CIT stated that: (1) “Commerce has reasonably established the payment of import duties on imports used for sales in the domestic market as a necessary prerequisite for the establishment of a duty drawback claim” (2) “Payment of . . . duties on the importation of inputs used for domestic sales, but not for export sales, is necessary to establish a drawback claim” and (3) “failure to create a record showing the payment of duties on the importation of inputs used for domestic sales, but not for export sales, defeats its duty drawback claim.” 285 F. Supp. 2d 1353, 1360 (CIT 2003). The domestic interested parties assert that prior to HEVENSA the CIT made other rulings which recognize cost and price comparability as an objective of the duty drawback adjustment. In Huffy Corp. v. United States, 632 F. Supp. 50, 52 (CIT 1986), the Court stated that the duty drawback adjustment was allowed by Congress “because purchasers in the home market presumably must pay the passed on cost of import duties when they buy the merchandise. Since the duties are rebated when the merchandise is exported, presumably no similar cost is passed on to purchasers in the United States. By adding the amount of the rebate to United States price this adjustment accommodates the difference in cost to the two different purchasers.” In Far East Machinery Co., Ltd. v. United States, 699 F. Supp. 309, 314 (CIT 1988), the CIT asserted that the purpose of the drawback adjustment to U.S. price is to maintain price comparability “since the receipt of duty drawback on goods exported to the United States, allows the seller to charge a lower price on exports than the price charged on home market sales, without practicing price discrimination.” However, the domestic interested parties argue that when there is no difference in the cost of inputs between the export and the home market merchandise, a drawback adjustment is not appropriate. In this review the domestic interested parties claim that no drawback is appropriate since the cost of import duties on inputs is not included in the cost of production of the merchandise under review, whether sold in either the home market or exported.

The domestic interested parties contend that to grant a duty drawback adjustment absent payments of import duties on inputs used to produce merchandise sold in the home market would distort the price comparison. Furthermore, they assert that granting an unjustified and gratuitous adjustment precludes the “fair comparison” in the margin calculation required by the statute and case precedent.” Torrington Co. v. United States, 68 F.3d 1347, 1352 (Fed. Cir. 1995); see also section 772 of the Act.

The domestic interested parties argue that, according to HEVENSA, the drawback adjustment may not be “greater than the extent to which import duties are included in the cost of producing the merchandise sold in the home market.” Domestic interested parties’ case brief at 19. Because, in the present review, some of the inputs used in producing the merchandise under review were sourced domestically, the domestic interested parties argue that, at a minimum, the duty drawback adjustment should be limited to the amount of duties included in the cost of producing the merchandise sold in the home market. The domestic interested parties calculated the percentage of home market sales made with imported inputs and suggest that the Department multiply the reported duty drawback adjustments by

the domestic interested parties' calculated ratios for the final results.

The respondents counter that the Department should continue to grant the duty drawback adjustment because the respondents fulfilled both parts of the Department's two-prong test and the information submitted on duty drawback was verified by the Department. The respondents note that neither of these facts was disputed by the domestic interested parties. SeAH and Husteel assert that the Department has confirmed, and the courts have approved, that the Korean individual application duty drawback system fulfills the requirements of the Department's two-prong test, namely that the import duty paid and rebate payment are linked to and dependent on one another, and that there are sufficient imports of raw materials. See, e.g., Circular Welded Non-Alloy Steel Pipe from Korea; Rescission of Antidumping Duty Administrative Review and Clarification of Final Results of Changed Circumstances Review; Final Results of Antidumping Duty Administrative Review, 63 FR 32833, 32844 (June 16, 1998) ("Korean Pipe Fourth Review"); 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) ("Expandable Polystyrene Resins from Korea"), and accompanying Issues and Decision Memorandum, at Comment 4; Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Korea, 60 FR 33561, 33564 (June 28, 1995); Avesta Sheffield Inc. v. United States, 838 F.Supp. 608 (CIT 1993).

HYSCO argues that the premise of the domestic interested parties' duty drawback argument is incorrect. HYSCO asserts that the domestic interested parties' attempt to add a third-prong to the Department's two-prong duty drawback test, based on the CIT's ruling in HEVENSA, is unsupported by the statute and Department practice, and is inapplicable to the type of duty drawback program at issue in the current review. According to HYSCO, the objective of the drawback statute is not to adjust for cost imbalances, but rather to account for imbalances in the price charged in the home market (where duties are not refunded) and the price charged in the United States (where the producer receives a duty drawback). See section 772(c)(1)(B). In fact, HYSCO points out that the case used by the domestic interested parties to support the assertion that the drawback statute is designed to adjust for cost differences is the same case in which the court stated that "price comparability is maintained by the addition of drawback of U.S. price." Far East Mach. Co., Ltd. v. United States, 699 F. Supp. 309, 314 (CIT 1998).

HYSCO argues that without a drawback adjustment, the Department could find that a company dumped, even if the prices were otherwise identical.

The respondents contend that HEVENSA is distinguishable from the present review. According to HYSCO, the case is distinguishable for the following reasons. *First*, in HEVENSA, the Department rejected the duty drawback claim because the respondent failed to provide documentation requested by the Department regarding the duty drawback claim. See 285 F. Supp. 2d at 1359. In contrast, in the current review the respondents answered all of the Department's questions, and the responses were completely verified by the Department.

Second, the duty drawback program in HEVENSA was an exemption program, whereas the program in the present review is a refund program. See Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Venezuela, 67 FR 15533 (April 2, 2002), and accompanying Issues and Decision Memorandum, at Comment 6. Because it was an exemption program, and because the respondent in HEVENSA did not respond to the Department's supplemental questionnaire, the Department had no basis to grant a duty drawback adjustment because it could not be certain that any duty was paid on imported inputs.

Third, the Department does not require respondents to demonstrate that they paid import duties on imports used to produce merchandise in the home market. Neither HEVENSA nor the other cases cited by the domestic interested parties support this argument. HYSCO asserts that, because the import duties were included in the reported cost of manufacture in the present review, the respondents have established that import duties were paid on inputs used to produce subject merchandise sold in the home market. HYSCO argues that the domestic interested parties' reliance on Flat Products from Thailand is misplaced because in that case, the program in question was an exemption program. HYSCO also claims that the domestic interested parties misread 1991 PET Film from Korea because nothing in that determination indicated that the Department either adjusted duty drawback to account for raw materials purchased from domestic sources or required the respondent to show that import duties are paid on inputs used to produce merchandise sold in the home market. Furthermore, in that case, the Department accepted the respondent's full duty drawback claim.

Fourth, rather than demonstrating that the Department should add a third prong to the duty drawback test (i.e., requiring that respondents demonstrate that duties were paid on inputs used for home market sales), HEVENSA supported the existing two prong test. HYSCO argues that the domestic interested parties' third prong actually functions as the first prong of the Department's analysis of the exemption program.⁴

Finally, HYSCO asserts that the domestic interested parties' argument that the duty drawback adjustment should be limited to import duties paid on inputs for home market sales is unsupported by case law or Department practice. According to HYSCO, the statute only mandates that U.S. price be adjusted by the amount of any import duties that have been rebated or not collected by reason of exportation (see section 772(c)(1)(B)), and the Department has reached this conclusion in previous cases before the Department, refusing to adopt the position advanced by the petitioners. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe From the Republic of Korea, 57 FR 53693 (Nov. 12, 1992); Top-of-the-Stove Stainless Steel Cooking Ware

⁴ In a refund program a company must demonstrate that the import duties are directly linked to the inputs used to manufacture the exported products, and thereby it also necessarily establishes that duties were paid on the manufacture of home market merchandise. In an exemption program, respondents have to "show that they paid duties on inputs in home market sales because otherwise no evidence shows that they paid any duties." HYSCO's rebuttal brief at 19.

from Korea: Final Results and Rescission, in Part, of Antidumping Duty Administrative Review, 68 FR 7503 (Feb. 14, 2003), and accompanying Issues and Decision Memorandum, at Comment 4.

HYSCO argues that there is no mention in the statute of limiting the adjustment to the amount of import duties paid on inputs used for home market sales and, therefore, the Department should not limit the duty drawback adjustment to the amount of imported inputs used for subject merchandise sold in the home market.

SeAH and Husteel argue that the issue in HEVENSA was whether the first prong of the test was satisfied; namely, did the respondent establish that import duties were actually paid and rebated, and that there was a sufficient link between the import duties paid and the rebate granted. The adjustment was denied in that case because the respondent failed to provide documentation requested by the Department and there was conflicting evidence as to whether the program was an exemption or refund program. HEVENSA at 1358. According to SeAH and Husteel, the domestic interested parties place great emphasis on the fact that in HEVENSA the Court stated that the respondent failed to establish that it paid import duties on inputs used to produce subject merchandise sold in the home market. However, both Husteel and SeAH state that the cost of the import duties was included in each respondent's weighted-average cost of manufacture. Husteel and SeAH also note that the CIT has ruled that the only limit on the allowance for duty drawback is that the adjustment to the U.S. price may not exceed the amount of import duty actually paid. Laclede Steel Co. v. United States, 18 CIT 965 (1994) ("Laclede"), citing Far East Mach. II, 12 CIT 972, 974-75, 699 F. Supp. 309, 311-12 (1988). Husteel and SeAH point out that in Laclede, which was the appeal filed by the domestic industry to the results of the original investigation of this case, the Court ruled that the Department was not limited to transaction-specific duty drawback adjustments and that an average duty drawback adjustment was permissible. In Laclede, the domestic interested parties had argued that only transaction-specific duty drawback adjustments were permissible. In this review, the respondents provided transaction-specific duty drawback data, and now the domestic interested parties want to reject that methodology. The respondents contend that, since they fulfilled both prongs of the Department's two-prong test, the Department should continue to grant the duty drawback adjustment in full for the final results.

Department's Position: We agree with the respondents that the duty drawback adjustment is justified in the present review and should not be limited to the extent that duties were paid on inputs used for home market sales. The domestic interested parties have attempted to add a third prong to the Department's duty drawback test by proposing that the duty drawback adjustment be conditional on import duties being linked to inputs used for merchandise sold in the home market and limited to the extent that such duties are paid. The statute does not warrant this modification to the Department's requirements for granting the duty drawback adjustment, nor do we agree with the domestic interested parties that the CIT mandated this requirement in HEVENSA.

Relying almost solely on the CIT's recent decision in HEVENSA, the domestic interested parties contend that because the respondents have not demonstrated that import duties were paid on inputs

used to produce the subject merchandise in the home market, the duty drawback adjustment should be denied. First, we note that the respondents in this review have demonstrated that import duties were included in the reported raw material costs. The cost data submitted in the respondents' section D responses, and subsequently verified by the Department, includes the duties paid on imported raw materials.

In accordance with section 772(c)(1)(B) of the Act, the duty drawback adjustment is an adjustment to the U.S. *price* to account for 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." See Far East Mach. Co., Ltd. v. United States, 699 F. Supp. 309, 314 (CIT 1998) ("Far East Mach. Co."). Finally, we find that the domestic interest parties' assertion that the duty drawback adjustment should be limited to the amount of duties paid on merchandise sold in the home market is supported neither by the statute nor Department practice. The statute dictates that U.S. price be adjusted by the amount of any import duties that have been rebated or not collected by reason of exportation. See section 772(c)(1)(B) of the Act. The only limitation placed on the duty drawback adjustment is that the adjustment to the U.S. price may not exceed the amount of import duty actually paid. Laclede, citing Far East Mach. Co. HEVENSA does not state that the duty drawback adjustment should be limited to the amount of duties paid on merchandise produced for sale in the home market. In numerous cases where the Department has found that the duty drawback adjustment was warranted, the adjustment was granted in full. See, e.g., Korean Pipe Fourth Review, and Expandable Polystyrene Resins from Korea.

Further, we find that the facts in HEVENSA are distinct from those in the present review for several reasons. In HEVENSA, the drawback program was a duty exemption program and the respondent failed to provide specific information requested by the Department. We agree with HYSCO that the court affirmed the Department's denial of the duty drawback adjustment in HEVENSA because the respondent failed to satisfy the first-prong of the duty drawback test; namely, establishing 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)." HEVENSA at 6, citing Far East Mach. Co., (quoting Huffy Corp. v. United States, 632 F. Supp. 50, 53 (CIT 1986)). In HEVENSA, the respondent failed to demonstrate that it paid import duties on inputs used in the production of silicomanganese sold in the home market, as would be required for a duty exemption program. In the present review, the respondents have demonstrated and the Department verified that import duties were included in the reported weighted-average cost of manufacturing. Accordingly, for the final results, we have continued to grant the respondents' claimed duty drawback adjustments in full.

Comment 3: Inclusion of U.S. Affiliates' Interest Expenses as a Component of U.S. Indirect Selling Expenses

The domestic interested parties argue that the Department should revise the respondents' reported U.S.

indirect selling expenses (“ISE”) rate to include actual interest expenses incurred in the United States in accordance with section 772(d)(1) of the Act and Department practice. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part, 65 FR 11767 (March 6, 2000); Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 66 FR 3540 (January 16, 2001) (“1998/99 Flat Products from Korea”). The respondents did not include interest expenses in ISE because, they argued, to deduct actual interest expenses as well as imputed U.S. credit costs and imputed U.S. inventory carrying costs would result in double-counting. Specifically, in its July 28, 2003 questionnaire response at 3, HYSCO cites Stainless Steel Sheet and Strip in Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review, 67 FR 7668 (February 20, 2002) (“Sheet and Strip From Germany”), and accompanying Issues and Decision Memorandum, at Comment 3, in which the Department states that it “did not include any of the affiliate’s U.S. interest expense in the ISE calculation because it was already reflected in the accounts receivables and inventory” used to calculate credit expenses and inventory carrying costs.

According to the domestic interested parties, the Department has made inconsistent findings as to whether actual interest expenses are included in imputed credit expenses. The domestic interested parties contend that in some cases⁵ the Department has found credit expenses represent only “opportunity costs” or “theoretical” interest expenses, but not actual interest expenses. In other cases,⁶ the Department has found that double-counting would occur if U.S. interest expenses, imputed U.S. credit costs and U.S. inventory carrying costs were deducted from the starting price.

The domestic interested parties argue that making sales on credit and carrying inventory do not result in actual interest expenses or increase a seller’s need to borrow. In LMI- La Metalli Industriale, S.p.A. v. United States, 912 F.2d 455, 460 (Fed. Cir. 1990) (“LMI- La Metalli”), the Federal Circuit stated that “{t}he imputation of credit cost is based on the principle of the time value of money.” Rather, the need to borrow arises when a company’s revenues do not cover expenses. According to the domestic

⁵Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, 63 FR 31724 (June 10, 1998) (“Flowers”); Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 63 FR 37334 (July 10, 1998) (“1998 PET Film”); Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Indonesia, 67 FR 55798 (August 30, 2002) (“Wire Rod From Indonesia”), and accompanying Issues and Decision Memorandum, at Comment 1; Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta From Italy, 65 FR 7349 (February 14, 2000) (“Pasta”); NTN Bearing Corp. of Am. v. United States, 104 F. Supp. 2d 110, 122 (CIT 2001), citing Mitsubishi Heavy Industries, Ltd. v. United States, 54 F. Supp. 2d 1183, 1188 (CIT 1999).

⁶1998/99 Flat Products From Korea; Sheet and Strip From Germany.

interested parties, contrary to HYSCO's claims, many companies that sell all of their merchandise on credit have no interest expenses. This is because the need to borrow is not only affected by the opportunity cost aspect of credit sales, but also by the additional revenue generated from credit sales, since the credit seller charges more for sales on credit, and hence earns more revenue than on cash sales of the same product. See Policy Bulletin 98.2 "Imputed Credit and Interest Expenses;" Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 6713 (Feb. 10, 2003) ("Sheet and Strip from Korea"), and accompanying Issues and Decision Memorandum, at Comment 13.

The domestic interested parties disagree with the Department's position in 1998/99 Flat Products from Korea, in which the Department found that deducting credit and interest expenses would result in double counting. The domestic interested parties contend that the Department's analysis in that case was flawed because it considered only the timing of payments to the seller and did not also take the amount paid to the seller into consideration. The domestic interested parties assert that a complete analysis of whether credit sales result in interest expenses must recognize the increased payment the credit seller receives as well as the opportunity costs it incurs. According to the domestic interested parties, when both are considered, it becomes apparent that credit sales do not result in interest expenses.

With respect to inventory carrying costs, the domestic interested parties claim that while a seller carrying inventory does incur opportunity costs associated with the capital sitting in the finished goods inventory, holding inventory can also benefit the producer and the U.S. affiliate. The producer benefits because it is able to manufacture larger volumes of popular merchandise, which is more economical. The U.S. sales affiliate benefits by having inventory on hand, which allows the U.S. customer to receive merchandise quickly, without waiting weeks for it to be shipped from the foreign producer. The ability to provide quick delivery, in the eyes of the domestic interested parties, enhances the value of the merchandise to the buyer and, thus, increases the seller's revenue. Therefore, as with credit sales, the domestic interested parties assert that the carrying of inventory does not imply that interest expenses are incurred. Rather, the extra revenue generated from carrying inventory often equals or exceeds the opportunity costs of tying up the capital invested in the inventory until sale. Thus, the domestic interested parties assert that carrying inventory and extending credit increase the seller's revenue and accordingly do not increase a seller's need to borrow. Therefore, for the final results, the domestic interested parties urge the Department not to reduce the interest expense component of ISE by imputed credit expenses and imputed inventory carrying costs.

The respondents contend that in numerous cases the Department has recognized that imputed credit expenses and imputed inventory carrying costs are directly related to interest expenses, and, therefore, would result in double-counting if the Department deducted each expense in full from U.S. price. Furthermore, Husteel and SeAH contend that the domestic interested parties' arguments mirror those made by the domestic interested parties in the seventh administrative review of Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon

Steel Flat Products From Korea, 67 FR 11976 (March 18, 2002) (“1999/2000 Flat Products From Korea”), and accompanying Issues and Decision Memorandum, arguments which were rejected by the Department. Furthermore, Husteel notes that because of the minuscule impact it would have on its U.S. ISE ratio, it did not reduce its ISE ratio by the amount of actual credit expenses in excess of the imputed amount. SeAH states that it did not add any interest expenses incurred by its affiliate, Pusan Pipe America (“PPA”), to the calculation of SeAH’s U.S. ISE ratio because SeAH’s imputed credit expense on U.S. sales of subject merchandise during the POR is higher than the portion of PPA’s interest expenses allocated to U.S. sales of subject merchandise. SeAH states that this calculation is consistent with the Department’s decision in 1999/2000 Flat Products from Korea.

Husteel and SeAH point out that the domestic interested parties cite 1998/99 Flat Products from Korea in their own case brief, a case in which the Department found that double-counting would result from deducting both imputed credit expenses and actual interest expenses. HYSCO points to the Department’s decision in Stainless Steel Plate in Coils From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 66 FR 64107 (Dec. 11, 2001) (“Plate from Korea”), and accompanying Issues and Decision Memorandum, at Comment 14, which states that the Department may exclude a U.S. sales affiliate’s interest expenses from the calculation of ISE. HYSCO also contends that to deduct the full amount of interest expense (as a component of U.S. ISE), as well as imputed credit expense and inventory carrying cost when calculating U.S. price would result in double-counting.

HYSCO states that the domestic interested parties’ citation to Flowers is misplaced, because in that case the Department was dealing with the allocation of CEP profit, not the calculation of U.S. ISE. HYSCO also contends that 1998 PET Film, Pasta, Wire Rod From Indonesia, and LMI- La Metall support the allegation that credit expenses only represent “opportunity costs” or “theoretical” interest expenses. However, HYSCO maintains that the Department has long recognized that imputed credit expenses and inventory carrying costs represent components of actual interest expense. While HYSCO acknowledges that the credit expense is a manifestation of the time value of money, the interest paid to borrow funds to finance accounts receivable represents the same time value of money, and hence to deduct both from the U.S. price would result in double-counting. HYSCO contends that the statute and the Department’s regulations clearly state that adjustments will not be double-counted. See section 772(d)(1) of the Act; 19 CFR 351.401(b)(2); Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review, 62 FR 18476 (April 15, 1997), and accompanying Issues and Decision Memorandum, at Comment 3; Pohang Iron and Steel Co. Ltd. v. United States, Slip Op. 00-77 (CIT 2000). Furthermore, Sheet and Strip from Korea, at Comment 13, states that “{i}t has been the Department’s well-established practice to offset interest expenses by the imputed credit expense...in order to avoid double-counting imputed credit and interest expenses.”

HYSCO contends that if the Department decides to include U.S. interest expenses in the calculation of ISE, it must first offset HYSCO’s U.S. affiliates’ interest expenses by imputed credit and imputed

inventory carrying costs, consistent with its prior practice.

Finally, HYSCO states that in arguing that the Department's analysis in previous cases did not consider the amount paid to the seller, the domestic interested parties ignore the fact that the Department relies on the actual amount paid to the seller, whether in cash or credit sales, for its analysis. Additionally, HYSCO argues that credit sales do increase a seller's need to borrow. In 1999/2000 Flat Products from Korea, at Comment 1, the Department recognized that, if a seller received cash at the time of shipment instead of extending credit, the improved cash flow from the sale would reduce the seller's need to borrow. Accordingly, the respondents argue that the Department should reject the domestic interested parties' arguments and disregard interest expense in its calculation of U.S. ISE.

Department's Position: While the statute and Department practice prescribe that interest expenses incurred in the United States should be included in the margin calculation, such expenses are included *only* to the extent that they will not be double counted. This position is clearly stated in 1999/2000 Flat Products from Korea, where the Department concluded that it is Department practice "to include interest expenses incurred by the U.S. affiliate in the total pool of U.S. ISE under section 772(d)(1)(D) of the Act." However, the Department continued, "a certain amount of double-counting will occur if we deduct both U.S. interest expenses, imputed U.S. credit costs and U.S. inventory carrying costs from the starting price." 1999/2000 Flat Products from Korea, at Comment 1.

In this review, we are deducting the full amounts of imputed U.S. inventory carrying costs and imputed U.S. credit costs from the starting price. To avoid double counting, we are not deducting actual interest expenses. Husteel's U.S. sales affiliate had no borrowings during the POR and, therefore, there are no actual interest expenses that are unaccounted for. With respect to SeAH, because PPA's imputed credit and inventory carrying expenses exceeded its actual interest expenses, all interest expenses were accounted for in the reported sales adjustments. Concerning HYSCO, while the U.S. affiliate's interest expenses exceeded the amount of the imputed credit and inventory carrying expenses, the actual expenses exceeded the imputed expenses by such a negligible amount, to include the additional interest expense would have had no impact on the calculation of U.S. indirect selling expenses. As stated in 1998/99 Flat Products from Korea, the Department will include actual interest expenses in the ISE calculation only if they constitute an "appreciable amount." Therefore, we find that no adjustment to the any of the respondents' reported ISE is necessary for the final results.

We disagree with the rationale put forward by the domestic interested parties that making sales on credit and carrying inventory do not result in actual credit expenses or increase a seller's need to borrow. We also disagree that our analysis in 1998/99 Flat Products from Korea was flawed because we focused solely on the timing of payments and did not take into account the amount paid to the seller. While the domestic interested parties are correct that sellers may elect not to borrow to finance sales on credit or inventory, the Department's longstanding practice is to impute costs for those activities. Furthermore, where the seller does borrow, the Department recognizes that the borrowed funds are taking the place of revenues that have not yet been received from the sale because it was a credit sale

or because the merchandise sits in inventory. Thus, while the domestic interested parties would have the Department treat actual borrowing costs as unrelated to the activities of making credit sales or carrying inventory, we do not agree. Instead, we view borrowing as a means of financing these activities and consequently double counting would occur if we deducted the imputed and actual expenses.

Comment 4: New Information Submitted by HYSCO at Verification

The domestic interested parties argue that the new information submitted by HYSCO at its CEP sales verification does not qualify as a minor correction to HYSCO's U.S. sales questionnaire response. According to the domestic interested parties, the new information is a "wholesale substitution" of originally reported information of sales between HYSCO and its affiliate in the United States, Hyundai Corporation ("HC"), including the addition of new sales between HC and the unaffiliated U.S. customer. They contend that the Department should reject this new information, except for the purpose of assigning facts available based on the volume of omitted sales. Furthermore, the domestic interested parties note that this information was presented long after the deadline for submitting new factual information provided in 19 CFR 351.301(b)(2). The domestic interested parties also urge the Department to reject revised U.S. duty information submitted at the beginning of the Korean sales verification as an untimely and major modification to HYSCO's U.S. sales listing. According to the domestic interested parties, the revised U.S. duty information has a significant effect on the calculation of U.S. price and, thus, should be rejected by the Department.

HYSCO argues that the revised sales data for sales made through HC and the revised U.S. duty information constitute minor corrections to the U.S. sales listing. HYSCO points out that the errors were limited to certain fields in the sales listing and the Department was immediately notified of the error and provided a list of the complete and accurate updated information at the onset of the CEP verification. Likewise, the U.S. duty changes were discovered during HYSCO's preparation for verification and were submitted on the first day of the verification. HYSCO asserts that the corrections to the U.S. sales listing constitute minor corrections. HYSCO states that the Department thoroughly verified the revised sales information at the Korean sales and CEP verifications. Moreover, HYSCO notes that the Department has considered and rejected the domestic interested parties' argument with respect to the corrections submitted at the CEP verification in the Preliminary Results.

Department's Position: We disagree with the domestic interested parties that the data submitted by HYSCO at its Korean and CEP verifications are untimely and constitute major modifications to its U.S. sales listing. Consistent with the Preliminary Results, we find that the revised sales data submitted by HYSCO at verification constitute minor corrections to existing sales information already on the record in this proceeding and do not constitute new information. The revised sales data only amended a select number of U.S. sales adjustments, were submitted at the beginning of the CEP sales verification and were thoroughly verified by the Department. Accordingly, we have included the revised sales data

submitted at the Korean CEP sales verifications in our final results margin calculations.

Comment 5: HYSCO's Home Market Credit Expense Calculation

The domestic interested parties argue the Department should revise HYSCO's home market credit expense calculation for the final results. They contend that HYSCO included the VAT tax in average daily receivables and, therefore, overstated the credit period. According to the domestic interested parties, the tax is not related to the price charged by HYSCO for the merchandise and should not be included in its calculation. Moreover, they argue that the Department has stated previously that inclusion of the VAT in the calculation of credit expenses is distortive. See 1998/99 Flat Products from Korea.

HYSCO responds that the Department properly revised HYSCO's home market credit expense to remove the VAT tax from the calculation for the Preliminary Results.

Department's Position: We agree with HYSCO that the Department revised HYSCO's home market credit expenses to exclude the VAT tax in the Preliminary Results. The Department revised HYSCO's home market credit expense in the Preliminary Results comparison market program. See Memorandum to the File, "Preliminary Results Calculation Memorandum for Hyundai HYSCO," dated November 26, 2003 ("HYSCO Calculation Memorandum"), at page 2.

Comment 6: Cost Files Used in HYSCO's Margin Calculation

HYSCO argues that the Department should correct an inadvertent programming error in its margin analysis program. According to HYSCO, the Department used one cost file (file "B") to calculate CEP profit and a second cost file (file "A") to calculate constructed value ("CV") and for the sales below cost test. HYSCO contends that in accordance with the Department's past practice, cost file B, which combines costs of self-produced and further manufactured pipe (i.e., one cost per CONNUM), should be used throughout the margin program. HYSCO asserts that cost file A, which reports costs separately for self-produced and further manufactured pipe, should not be used in the margin program. Moreover, HYSCO asserts that the Department intended to use cost file B in its analysis because it did not use the merchandise field ("MERCH/U") in its margin program to distinguish between products.

HYSCO notes that in the fourth review of these proceedings, the Department combined costs for self-produced and further manufactured pipe because HYSCO did not link the further processed product to a specific supplier. See Korean Pipe Fourth Review. HYSCO maintains that the facts in the instant review are no different. HYSCO points out that it provided a list of unaffiliated suppliers of pipe that is further manufactured and subsequently resold in its February 11, 2003 Section A questionnaire response, but did not link its sales of further manufactured pipe to specific suppliers. Accordingly,

HYSCO reported the combined weighted-average cost of both self-produced and further manufactured pipe in its March 13, 2003 supplemental questionnaire response.

The domestic interested parties agree with HYSCO that for consistency, the Department should use one cost file throughout its analysis. However, the domestic interested parties argue that the Department correctly used one cost file (*i.e.*, cost file A) to calculate CEP profit, CV and the sales below cost test and not, as HYSCO contends, multiple cost files. Furthermore, they contend that HYSCO's reported variable costs of manufacture ("VCOM") and total cost of manufacture ("TCOM") reported in its June 24, 2003 supplemental questionnaire were based on cost file A.

Second, the domestic interested parties argue that because the costs of further manufactured pipe differ from self-produced pipe, cost file A more accurately measure the differences for the difference in merchandise ("difmer") adjustment and more accurately tests whether sales have been made below COP. See IA Policy Bulletin 94.6 "Treatment of Adjustments and Selling Expenses in Calculating the COP and CV" (March 25, 2004).

Finally, the domestic interested parties disagree with HYSCO's contention that the Department intended to use cost file B throughout its analysis because the Department did not use MERCH/U. According to the domestic interested parties, it was not necessary to use this field to distinguish between products because the cost file A CONNUMs end with the letter "P" or "F," indicating whether the merchandise was self-produced or further manufactured. The domestic interested parties also contend that the Department's use of cost file A indicates that the Department distinguished between the costs of self-produced and further-manufactured merchandise in its margin analysis.

Department's Position: We agree with the domestic interested parties that the Department used a single cost file (*i.e.*, cost file A "HYSCP03A") in its margin analysis to calculate the COP, CV and in the CEP profit calculation. In the "Database and Variable Macro Definitions" section of the margin program, the Department defined HYSCP03A as the CV database. See "HYSCO Calculation Memorandum," at Attachment 1, line 426. Moreover, the Department was consistent when it used cost file A to define the COP database for the sales below cost test in the comparison market program. See "HYSCO Calculation Memorandum," at Attachment 3, line 6806.

However, we agree with HYSCO that the Department erred in the Preliminary Results margin analysis by using cost file A. The Department's standard Section D questionnaire at page D-2 directs respondent companies to:

"Calculate reported COP and CV figures on a weighted-average basis using the CONNUM specific production quantity, regardless of market sold, as the weighting factor. Thus, each CONNUM should be assigned only one cost, regardless of the market, or markets in which the products are sold."

Consistent with these instructions, HYSCO properly reported the weighted-average costs of self-produced and further manufactured pipe in its January 6, 2003 section D response.

The Department has determined in prior reviews that further manufactured products should be treated as HYSCO's products in its analysis. See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Administrative Review, 66 FR 18747 (April 11, 2001) ("Korean Pipe Seventh Review"), and accompanying Issues and Decision Memorandum; see also, Korean Pipe Seventh Review Memorandum to the File, "Extension of Due Dates for Questionnaire Responses, Reporting of Cost Data on Fiscal Year Basis, and Reporting of Resales," dated February 22, 2000. Therefore, consistent with past reviews, we are basing the final results margin analysis on the weighted-average, CONNUM-specific data for products sold in both the U.S. and comparison markets (i.e., cost file B).

Comment 7: CEP Offset for Husteel and SeAH

SeAH and Husteel argue that the Department should grant a CEP offset in the final results because home market prices are compared to U.S. prices made at a different level of trade ("LOT"). SeAH and Husteel argue that they demonstrated in their questionnaire responses and at verification that their U.S. subsidiaries, PPA and Husteel USA Inc., respectively, were responsible for all interactions with U.S. customers, price negotiations, invoicing, acting as the importers of record, handling U.S. customs clearance, arranging for and paying U.S. duties, brokerage and wharfage, extending credit, and conducting U.S. market research. Additionally, SeAH contends that PPA was responsible for marine insurance in the United States and for certain inventory costs of its consignment sales. SeAH and Husteel assert that the Department's conclusion that the CEP LOT is "sufficiently similar" to the home market LOT was in error.

SeAH and Husteel note that section 773(a)(1)(B) states, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP and CEP transactions. They contend that the NV LOT is the starting sales price in the comparison market, while the CEP LOT is the price after all deductions are made pursuant to section 772(d). See Micron Technology, Inc. v. United States, 243 F.3d 1301, 1314-1315 (Fed. Cir. 2001); Industrial Nitrocellulose From the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review, 67 FR 52447, 52449 (August 12, 2002) ("Industrial Nitrocellulose"). SeAH and Husteel argue that their questionnaire responses, which were verified by the Department, detail the differing channels of distribution of home market and U.S. CEP sales, and identify the differences in selling functions between these different sales channels.

SeAH and Husteel assert that the unadjusted price at the home market LOT includes extending credit, selling activities associated with price negotiation and invoicing, home market research, and arranging freight to the customer. SeAH and Husteel assert that, because they do not perform those activities for U.S. sales, which are performed by their U.S. affiliates, the home market price is at a more advanced

LOT than the price at the CEP LOT. SeAH and Husteel claim that, in past decisions, the Department has granted a CEP offset (to SeAH) based on identical facts. See Certain Welded ASTM A-312 Stainless Steel Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review, 64 FR 72645, 72647 (December 28, 1999) and Analysis Memorandum dated December 17, 1999, at 3 (“Steel Pipe (A-312) from Korea”); see also 1999/2000 Flat Products From Korea. Similarly, according to SeAH and Husteel, in Industrial Nitrocellulose, the Department granted a CEP offset based on a finding that the foreign producer performed sales administration and sale services at “a higher level of intensity for its home market sales than for its CEP sales.” As the Department has not distinguished this review from these other aforementioned cases, a CEP offset is necessary to account for these differences and to achieve price comparability.

The domestic interested parties argue that the record supports the Department’s preliminary finding that a CEP offset is not warranted. They cite to Corus v. United States where the Department “denied CEP offset on the ground that CES’ selling activities in support of U.S. sales were not substantially distinguishable from CES’ selling activities in support of home market sales.” See Corus v. United States, Slip Op. 03-110 (CIT 2003). According to the domestic interested parties, the same circumstances are true in the present case, as significant selling activities and all arrangements for international transport on SeAH’s U.S. sales were conducted in Korea. Further, they contend that SeAH’s selling activities for U.S. sales and those for its home market sales are “sufficiently similar to constitute comparable levels of trade” as found in the Preliminary Results.

Similarly, the domestic interested parties note Husteel states that, for its U.S. sales, Husteel, and not Husteel USA, “handles all foreign movement expenses.” In addition, Husteel “does not provide technical advice, after-sale warehousing, advertising, or other sale support activities for any U.S. or home market customers.” As a result, the domestic interested parties affirm that Husteel’s selling activities for U.S. sales and home market sales are “sufficiently similar to constitute comparable levels of trade,” and accordingly, the Department should not make a CEP offset in this review.

Department’s Position: We are not granting a CEP offset to either Husteel or SeAH in the final results. As stated in the 1998-1999 Administrative Review of this case, “[f]or both EP and CEP, the relevant transaction for LOT is the sale from the exporter to the first U.S. purchaser, whether or not affiliated.” See Korean Pipe Seventh Review, at Comment 13. We disagree with Husteel and SeAH’s contention that, based on this level of comparison, there are differences in the LOTs of the two markets which would merit a CEP offset. As set forth in section 351.412(f) of the Department’s regulations, a CEP offset will be granted where (1) NV is compared to CEP, (2) NV is determined at a more advanced LOT than the LOT of the CEP, and (3) despite the fact that the party has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in LOT affects price comparability. Based on our review of Husteel and SeAH’s selling functions (i.e., sales and marketing, warranty and technical services, freight and delivery, and inventory and warehousing), we do not find significant differences between the NV LOT and the U.S. LOT. In identifying LOT for CEP sales, the Department considers only the selling expenses reflected in the price

after the deduction of expenses and profit under section 772(d) of the Act. See Micron Technology, Inc. v. United States, 243 F.3d 1301, 1314-1315 (Fed. Cir. 2001). Then, only if the NV LOT is more remote from the factory than the CEP LOT and we are unable to make an LOT adjustment, shall the Department grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997). In the present review, freight and delivery were provided by SeAH and Husteel for their home market sales and sales to their U.S. sales affiliates. There was no difference in the other selling functions that were provided for sales to either market. Accordingly, neither Husteel nor SeAH has met criterion 2 (above), as neither performed more selling functions for sales in the home market than for its CEP sales.

We recognize that, in Steel Pipe (A-312) from Korea and Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review, 66 FR 47163 (September 11, 2001), we recognize that the Department granted a CEP offset to the respondent SeAH. However, it must be noted that the present case addresses different subject merchandise and potentially different selling functions. The Department makes its findings concerning all adjustments, including the CEP offset, on a case-specific basis based on the particular facts on the record. In this case, we continue to find that SeAH and Husteel do not qualify for a CEP offset.

Comment 8: Husteel's Allocation of Export Selling Expenses

The domestic interested parties argue that export selling expenses have not been properly allocated in Husteel's calculation. They contend that Husteel allocated the expenses based on the number of employees that work exclusively on sales to the United States. According to the domestic interested parties, this is not a proper basis for allocation because the number of employees that work exclusively on sales to the United States cannot be accurately verified. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61736 (Nov. 19, 1997). They assert that the Department typically allocates selling expenses based on sales value rather than a head count, and should do so in this case.

Husteel contends that it allocated certain export expenses to U.S. sales based on headcount or employees' salaries because its accounting records do not separately record selling, general and administrative expenses by department. Husteel asserts that this methodology is consistent with its practice in the original investigation and prior reviews of this case. See Korean Pipe Fourth Review at 32847. Husteel points out that, while the Department prefers to allocate ISE based on sales volume, it will accept alternatives that are reasonable and do not cause inaccuracies or distortions. See Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1 (1994) at 153-54; see also Final Determination of Sales at Less Than Fair Value: New Minivans From Japan, 57 FR 21937 (May 26, 1992), and accompanying Issues and Decision Memorandum, at Comment 33. Husteel explains that it

allocated these expenses based on headcount because many of the expenses were related to the number of employees in each division. Husteel argues that the Department verified this information and should accept Husteel's allocation methodology in the final results.

Department's Position: We agree with domestic interested parties that the Department's normal practice is to allocate export selling expenses based on sales value. We acknowledge Husteel's argument that, in previous segments of this case, the Department has relied on headcount as a reasonable method of allocating export selling expenses. In this segment, we do not find this methodology to be a more appropriate basis for allocation given information available on the record. At verification, the Department obtained Husteel's 2002 sales values by export market (i.e., United States and other third-country markets). As a result, we find that it is possible, and we believe more appropriate, to allocate selling expenses based on sales value in order to reduce possible distortions caused by factors that are more difficult to quantify (i.e., whether the number of employees devoted to U.S. sales correspond to the expenses associated with those sales). Therefore, we have recalculated Husteel's export selling expenses based on 2002 sales values for the final results.

Comment 9: Husteel's General and Administrative Expenses Calculation

The domestic interested parties contend that Husteel's calculation of its general and administrative expenses ("G&A") ratio improperly excluded the payment for lawsuits, referring to this as "investment activity." According to domestic interested parties, the settlement of lawsuits is a general expense to Husteel. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 64 FR 38756, 38792 (July 19, 1999) ("Brazil Hot-Rolled"). They assert that the Department should revise Husteel's G&A rate calculation to include expenses related to the above-mentioned general expense.

In addition, the domestic interested parties assert that Husteel made a deduction for an additional gain on investment which should have been excluded from the G&A rate calculation. See Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Portugal, 67 FR 60219, 60221 (September 25, 2002) ("Sulfanilic Acid"). Accordingly, domestic interested parties contend that the Department should revise Husteel's G&A rate to exclude this improper adjustment.

Husteel contends that it properly reported its G&A expenses in accordance with its practice in prior reviews. Husteel explains that it excluded the payment for lawsuits because this payment is classified as an investment activity by the company, as it was made to a former shareholder which had paid a portion of the offering price for newly issued Husteel stock. According to Husteel, the former shareholder filed suit to recover the amount it had invested in Husteel stock, and as a result of the Court's decision, Husteel was required to reimburse the former shareholder for its investment. Husteel contends the second adjustment raised by the domestic interested parties involved a similar payment related to investment activity. Husteel argues that these amounts are not for the settlement of lawsuits specifically related to investment activity, and therefore, are properly excluded from Husteel's G&A

calculation.

Department's Position: We agree with the domestic interested parties that the payment in connection with lawsuits that Husteel excluded from its G&A ratio calculation should be included because it relates to the general operations of the company as a whole. See Brazil Hot-Rolled at Comment 52. Additionally, we concur with domestic interested parties that a gain on investment by equity method reported as an offset to Husteel's G&A calculation should be excluded. It is the Department's normal practice to exclude gains on equity holdings and income from traditional securities because they relate to investment activity. See Sulfanilic Acid at 60221. We have revised the final results margin calculations accordingly.

Comment 10: Husteel's and SeAH's Treatment of Foreign Exchange Gains and Losses

The domestic interested parties state that Husteel and SeAH received foreign currency exchange gains in excess of foreign currency exchanges losses during the POR and this absolute difference was subtracted from interest expenses. The domestic interested parties argue that "the Department's preferred methodology has been to amortize the gains and losses based on the repayment schedule of the underlying loans." See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the Republic of Korea, 66 FR 33526, 33528 (June 22, 2001) ("Steel Concrete Rebar"). Therefore, the domestic interested parties contend that, for the final results, the Department should revise the interest expense calculations to amortize foreign exchange gains and losses over a five-year period.

Husteel and SeAH contend that the domestic interested parties objection rests on a 2001 decision, Steel Concrete Rebar. Husteel and SeAH assert that the Department has a new practice regarding the treatment of foreign exchange gains and losses. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the Republic of Korea, 68 FR 13681, 13684 (Mar. 20, 2003) ("Polyvinyl Alcohol"). Husteel and SeAH argue that the Department includes "all foreign exchange gains or losses in the interest expense rate computation," and that, the Department should continue to accept their interest expenses, as reported, for the final results.

Department's Position: We agree with Husteel and SeAH that the Department's current practice is to include all foreign exchange gains or losses in the interest expense rate computation. In Polyvinyl Alcohol, the Department stated that it was changing its practice in recognition of the fact that "the key measure is not necessarily what generated the exchange gain or loss, but rather how well the entity as a whole was able to manage its foreign currency exposure in any one currency." See Polyvinyl Alcohol at 13684. Because the domestic interested parties have cited a case that precedes the Polyvinyl Alcohol decision, we have continued to accept Husteel and SeAH's treatment of foreign exchange gains and losses for the final results.

Comment 11: New Information Submitted by SeAH at Verification

At SeAH's CEP sales verification, SeAH submitted a list of several new U.S. sales as part of its minor corrections. Citing to Florex v United States, 705 F. Supp. 582, 588 (CIT 1998) ("Florex"), the domestic interested parties argue that the CIT has held that even the omission of a single U.S. sale is a "serious error" because the "capture of all U.S. sales at their actual price is at the heart of ITA's investigation." The domestic interested parties urge the Department to assign the highest non-aberrant margin to SeAH's omitted U.S. entries as facts available for the final results.

SeAH argues that the sales in question were submitted at the start of the CEP sales verification, in accordance with the Department's regulations which allow respondents to submit information at the beginning of verification to correct errors found during the course of preparing for verification. SeAH maintains that it promptly notified the Department verifiers of the mistakenly omitted sales, and the Department subsequently verified these sales in their entirety. SeAH also cites to 19 USC 1677m(e), which states that the Department may not refuse to consider information if (1) the information is submitted by the deadline established for the submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has acted to the best of its ability in providing information to the Department; and (5) the information can be used without difficulty. See also Maui Pineapple Company, Ltd. v. United States 264 F. Supp. 2d 1244, 1256 (CIT 2003). Since SeAH has satisfied all the criteria of 19 USC 1677m(e), it argues that the application of adverse facts available is unreasonable and unwarranted.

Department's Position: We disagree with the domestic interested parties that adverse facts available should be applied to the U.S. sales submitted at the start of SeAH's CEP sales verification. We find that these sales were properly submitted at the start of the CEP verification as a minor correction to the information already on the record. These few sales were sales entered at the end of the POR that were inadvertently omitted from SeAH's sales listing. Unlike in Florex, where at verification the errors and omissions from the respondent's submissions were found to be numerous and widespread, in the present review, the minor corrections submitted by SeAH at the onset of its CEP verification were limited. The sales in question were completely verified and can be used without undue difficulty. Therefore, for the final results we have included the additional U.S. sales submitted at the onset of the CEP verification in our margin calculations without applying adverse facts available.

Comment 12: SeAH's Consignment Sales

The domestic interested parties argue that the sales that SeAH classified as consignment sales were not consignment sales because the merchandise was never held by a party other than SeAH, or its U.S.

sales affiliate, PPA, before release to the unaffiliated U.S. customer. For its consignment sales, SeAH reported sales invoiced by PPA during the POR rather than entries during the POR. By reporting sales invoiced during the POR rather than sales entered during the POR, the domestic interested parties contend that a portion of SeAH's so-called consignment sales were excluded from the U.S. sales listing. The domestic interested parties argue that the CIT has upheld the Department's long-standing practice which requires that, when known, the respondents report entries of the subject merchandise in an administrative review. See Helmerich & Payne Inc. v. United States, 24 F. Supp. 2d 304, 309-310 (CIT 1998). The domestic interested parties contend that, as facts available, the Department should assign the highest non-aberrant margin to the omitted U.S. entries of so-called consignment merchandise.

The domestic interested parties further contend that, because the sales in question are not real consignment sales, the use of PPA's invoice date as the date of sale is inappropriate. Rather, the domestic interested parties suggest that the purchase order date, which was the date of sale for SeAH's non-consignment sales, should have been used as the date of sale for the so-called consignment sales. The domestic interested parties cite Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From Mexico, 64 FR 14872, 14880 (March 29, 1999) ("Rubber from Mexico"), which involved an order that established the price and quantity and the Department found the transaction to be a contract rather than a consignment sale. The domestic interested parties argue that because the date of sale for the so-called consignment sales was improperly designated, facts available should be used to establish the date of sale. As facts available, the domestic interested parties recommend that the Department match all the so-called consignment sales which were reported to home market sales in the month with the highest NV.

SeAH states that its consignment sales ("Channel 2 sales") are distinct from the rest of its U.S. sales ("Channel 1 sales") in numerous ways, most significantly in that the merchandise entered under this arrangement is held in a warehouse in the United States, as PPA's inventory, prior to shipment to the customer. SeAH asserts that consignment sales also differ from Channel 1 sales in that until shipment, PPA holds the merchandise on its books as inventory rather than accounts receivable and the credit period does not start until the merchandise is shipped to the customer from the warehouse. In contrast, Channel 1 sales are booked as sales immediately upon entry into the United States. Furthermore, title does not pass until the customer asks for the merchandise to be released from the warehouse. SeAH contends that its treatment of Channel 2 sales is consistent with previous Department decisions. 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 38; Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From France, 67 FR 31204, 31208 (May 9, 2002). Additionally, SeAH argues that because the Department did not ask SeAH to submit its database on both an invoice date and contract date basis, the application of facts available to SeAH Channel 2 sales would be improper. Therefore, SeAH argues that the Department should continue to classify SeAH's Channel 2 sales as consignment sales in the final results.

In response to the domestic interested parties' allegation that SeAH failed to report all Channel 2 sales, SeAH contends that it correctly reported only those consignment sales invoiced by its U.S. affiliate, PPA, during the POR. SeAH explains that this was necessary because all Channel 2 merchandise that entered during the POR was not sold during the POR, nor did all sales during the POR enter during the POR. SeAH asserts that this approach is consistent with the Department's treatment of consignment transactions in other cases and, therefore, should be upheld in the final results.

Department's Position: We disagree with the domestic interested parties that SeAH's U.S. Channel 2 sales were not consignment sales. Based on the information submitted by SeAH in its questionnaire responses and information examined at verification, for the reasons discussed below, we find that SeAH's Channel 2 sales were indeed consignment sales.

We find that the terms of sale for SeAH's consignment sales were not set until the merchandise was withdrawn from inventory. In contrast, in Rubber from Mexico, because the price terms of the long-term contracts "were based on a set formula of published monthly prices for major inputs which were outside either contracting party's control," the Department found the price is fixed on the contract dates. Rubber from Mexico, at 14880. Moreover, in Rubber from Mexico, the annual quantity purchased was stated in the contracts and was found by the Department to be the date on which the quantity was fixed. In the present review, neither the price nor the quantity are fixed until the time when the merchandise is withdrawn from inventory. As indicated in the SeAH verification report, the quantity sold is not established until the time when the merchandise is withdrawn from inventory. See SeAH's November 25, 2003 verification report at 9. As stated in SeAH's questionnaire response, and verified by the Department, SeAH does not have contracts or written agreements for its consignment sales. Because the terms of sale are not established until the merchandise is withdrawn from inventory, and because title does not pass from PPA to the customer until the merchandise is withdrawn from inventory, SeAH's Channel 2 sales are distinct from the Channel 1 sales, and the use of a different date of sale is appropriate.

We also find that SeAH correctly reported the Channel 2 sales invoiced during the POR rather than the POR entries. In the questionnaire issued to SeAH, we instructed SeAH to report U.S. sales of "merchandise entered for consumption during the POR, except: . . . (2) for CEP sales made after importation, report each transaction that has a **date of sale** within the POR." Department's Antidumping Questionnaire, January 6, 2003, page C-1. SeAH's Channel 2 sales fall under this second category, CEP sales made after importation. As such, we find that SeAH properly reported the Channel 2 sales that were invoiced by PPA during the POR rather than POR entries.

Comment 13: Credit Expenses Incurred by SeAH's Home Market Affiliated Resellers HSC and SSP

Since SeAH's Korean sales affiliates, Haiduk Steel Co., Ltd. ("HSC") and Seoul Steel Pipe Company, Ltd. ("SSP"), were not able to calculate customer-specific credit periods, company-wide credit periods were calculated. The domestic interested parties argue that in NSK Ltd. v. United States, 896 F. Supp. 1263, 1275 (CIT 1995), the Court upheld the Department's rejection of credit expenses calculated on a company-wide basis. Because SeAH did not calculate customer- or transaction-specific credit expenses, the domestic interested parties argue that the Department should deny the credit adjustment on home market sales by SeAH's affiliates HSC and SSP for the final results.

SeAH asserts that its affiliated parties, HSC and SSP, do not keep computerized records, and were therefore unable to calculate customer-specific credit periods. SeAH contends that the Department verified the calculations and noted no discrepancies. SeAH also cites previous cases in which the Department accepted company-wide credit periods in the credit period calculation. See, e.g., Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea, 58 FR 37716, 37184 (July 9, 1993); Steel Wire Rope From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 60 FR 63499 (December 11, 1995), and accompanying Issues and Decision Memorandum, at Comment 6.

Department's Position:

We agree with SeAH that the company-wide credit period calculations for HSC and SSP were reasonable. Although the Department prefers customer-specific credit calculations, if a respondent does not have the information necessary to calculate customer-specific credit periods, we will accept a company-wide credit period calculation. See section 782(e) of the Act. SeAH stated in its questionnaire responses and we verified that HSC and SSP could not calculate customer-specific credit periods.

Comment 14: SeAH's U.S. Indirect Selling Expense Calculation

The domestic interested parties allege that SeAH under-reported its U.S. ISE amount by multiplying its calculated U.S. ISE ratio by the gross unit price minus billing adjustments, marine insurance, U.S. wharfage, U.S. brokerage, U.S. duty, and U.S. 201 duties. The net U.S. price was then multiplied by a ratio that was calculated using a denominator that was not reduced by these items. The domestic interested parties argue that for the final results the Department should recalculate SeAH's U.S. ISE amount by applying the ISE ratio to the gross U.S. price, without reductions for brokerage, duties or other adjustments.

SeAH responds that the domestic interested parties confused the calculations of the ISE incurred in Korea and in the United States. SeAH notes that the domestic interested parties' discussion of the calculation of the net U.S. price used in the ISE calculation cites the November 25, 2003 sales and cost verification report at page 16, which refers to the verification of the ISE ratio for export, i.e., the ISE rate incurred in the home market. On the other hand, the domestic interested parties' discussion of the calculation of the denominator of the ISE ratio references the December 10, 2003 CEP verification report at 8. The CEP verification report discussed the calculation of the ISE ratio for SeAH's U.S. affiliate, PPA, and did not concern the calculation of the ISE rate in Korea. Therefore, SeAH contends that the U.S. ISE were correctly calculated.

Department's Position:

We disagree with the domestic interested parties that the U.S. ISE were under-reported. SeAH is correct that the domestic interested parties confused the items that were discussed in each of the verification reports. The calculation of the net U.S. price referenced by the domestic interested parties was used in the calculation of the U.S. ISE incurred in Korea, while the denominator of the ISE ratio referred to by the domestic interested parties was used in the calculation of PPA's ISE ratio. Accordingly, we have made no adjustment to the reported U.S. ISE amounts for the final results.

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 in the Federal Register.

AGREE _____

DISAGREE _____

James J. Jochum
Assistant Secretary
for Import Administration

(Date)