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A-580-816
Administrative Review
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MEMORANDUM

DATE: March 7, 2005

TO: Joseph A. Spetrini
Acting Assistant Secretary
Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
Import Administration

SUBJECT: Issues and Decisions for the Final Results of the Antidumping Duty New Shipper Review and the Antidumping Duty Administrative Review of Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Tenth Administrative Review (2002-2003)

I. Background

The Department of Commerce ("the Department") initiated this review on September 30, 2003, for all companies but Hyundai HYSCO ("HYSCO"). See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review, 68 FR 56262 (September 30, 2003). For HYSCO, the Department initiated the new shipper review on October 3, 2003. See Corrosion-Resistant Carbon Steel Flat Products from Korea: Initiation of New Shipper Antidumping Duty Review, 68 FR 57423 (October 3, 2003). The Department aligned the new shipper review with the administrative review on April 15, 2004. See Memorandum from Paul Walker, Case Analyst, to the File, Concerning Request for Alignment of Annual and New Shipper Reviews, dated April 15, 2004. On September 7, 2004, the Department published the preliminary results of its administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products ("CORE") from Korea. See Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review and Antidumping Duty New Shipper Review, 69 FR 54101 (September 7, 2004) ("Preliminary Results"). These reviews cover four manufacturers/exporters: Pohang Iron & Steel Company, Ltd. ("POSCO"), Pohang Coated Steel Co., Ltd. ("POCOS"), and Pohang Steel Industries Co., Ltd. ("PSI") ("collectively, POSCO"); Union Steel Manufacturing Co., Ltd. ("Union"); HYSCO; and Dongbu Steel

Corporation, Ltd. ("Dongbu"). The period of review ("POR") is August 1, 2002, through July 31, 2003.

II. Use of Facts Available

A. Incorporation of POSCO's Sales of Laminated Products

On November 14, 2003, Dongbu submitted a letter to the Department that raised the issue of whether laminated products should be treated as outside the scope of the order. Dongbu's letter cited a Department memorandum, dated November 21, 1995, from the second administrative review of this proceeding (1994-1995). The Department explained that, based on the information provided in the November 14, 2003, letter, the 1995 memorandum, other information on the record of this segment of the proceeding, and the fact that no formal scope request had been filed, Dongbu, as well as all other respondents in the instant review, should continue to report all sales of subject merchandise which fall under the scope of this proceeding. See Letter from Department of Commerce to Donald B. Cameron (counsel for Dongbu), Regarding Reporting of Laminated Products for Dongbu, dated December 19, 2003; see also, Memorandum from Michael Ferrier, Case Analysts, to the File, Concerning Reporting of Laminated Products for POSCO, dated March 18, 2004; see also, Letter from Department of Commerce to Donald B. Cameron (counsel for Union Steel Manufacturing Co., Ltd.), Regarding Reporting of Laminated Products for Union, dated December 19, 2003; see also, Letter from Department of Commerce to Warren E. Connelly (counsel for Hyundai HYSCO), Regarding Reporting of Laminated Products for HYSCO, dated December 19, 2003. In response to the Department's request, only two companies reported laminated sales: POSCO and Dongbu.

On December 12, 2003, POSCO submitted its sections B through D response, which included its home-market sales database (HM1). The Department sent a supplemental questionnaire to POSCO on March 17, 2004. On April 14, 2004, POSCO submitted its supplemental questionnaire response for sections A through C, which included a revised home-market database (HM2). The Department sent a second supplemental response to POSCO on October 19, 2004. On October 28, 2005, POSCO submitted its second supplemental questionnaire response for sections B and C, which included a third revision to the home-market database (HM3). All three databases, HM1 through HM3, included POSCO's sales of laminated products as well as related expense fields. On November 8 through November 19, 2004, and January 13 through January 14, 2005, the Department conducted verification of POSCO's sections A through D questionnaire responses.

In response to the Department's request, on January 24, 2005, POSCO submitted revised U.S. and home-market databases (HM4), based on changes and corrections submitted at the start of each verification. However, unlike its previous submissions, HM4 did not include the laminated sales and related expense fields that were contained in databases HM1 through HM3. As a result, we do not have on the record of this instant review a database of laminated sales and their

related fields which reflect changes and corrections submitted at the onset of each verification. Therefore, we find that POSCO did not properly report its laminated sales in the revised HM database it submitted after verification. Section 776(a)(2) of the Tariff Act of 1930, as amended, ("the Act") provides that:

> if an interested party or any other person – (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

As long recognized by the Court of International Trade ("CIT"), the burden is on the respondent, not the Department, to create a complete and accurate record. See, e.g., Pistachio Group of Association Food Industries v. United States, 641 F. Supp. 31, 39-40 (CIT 1987). POSCO failed to create a complete and accurate record with respect to its laminated sales and related expense fields. Thus, we find that POSCO failed to accurately report its laminated sales and related expense fields in a timely fashion and in the form and manner requested by the Department as required by section 776(A)(2)(B) of the Act. Therefore, in accordance with section 776(a)(2)(B) of the Act, we are applying facts otherwise available in calculating POSCO's dumping margin. As facts available, we have incorporated the laminated sales and related expense fields that POSCO submitted in HM3 into the revised HM4 that it submitted, at the Department's request, after verification. Using this merged HM database, we then calculated POSCO's dumping margin. See Memorandum from Lyman Armstrong, Case Analyst, to James Terpstra, Program Manager, Concerning Analysis Memorandum for Pohang Iron & Steel Company, Ltd. ("POSCO"), Pohang Coated Steel Co., Ltd. ("POCOS"), and Pohang Steel Industries Co., Ltd. ("PSI") -("collectively, the POSCO Group"): Final Results of 2002-03 Administrative Review of the Antidumping Duty Order on CORE from Korea, dated March 7, 2005 ("POSCO's Final Calculation Memorandum").

B. Classification of POSCO's and Dongbu's Laminated Sales in the Margin Program

We note that, under the product matching criteria established by the Department in this proceeding, the laminated sales reported by respondents (i.e., those of Dongbu and POSCO) do not have a corresponding CONNUM.[1] Therefore, pursuant to section 776(a)(1) of the Act, we are assigning the laminated sales of Dongbu and POSCO a product matching code of "B1B" for

[1] Union and HYSCO did not report any sales of laminated products during the POR.

purposes of calculating the dumping margin. Based on the facts otherwise available on the record of this segment of the proceeding, we find that the product matching code "B1B" constitutes the most appropriate category under which laminated sales should be classified. See POSCO's Final Calculation Memorandum; see also Memorandum from Preeti Tolani, Case Analyst, to James Terpstra, Program Manager, Concerning Analysis Memorandum for Dongbu Steel Corporation, Ltd.: Final Results of 2002-03 Administrative Review of the Antidumping Duty Order on CORE from Korea, dated March 7, 2005.

C. Calculation of Union's Freight Costs

In its sections B through D response at section B, page 14, Union reported its inland freight charge for certain home-market sales as "freight equalized" (i.e., Union splits the freight charge with the customer based on a freight schedule). At the Preliminary Results, and prior to verification, it appeared that Union reported the entire freight amount, including the amount paid by the customer. Thus, in the Preliminary Results the Department determined that the use of partial facts available was appropriate for purposes of determining the preliminary dumping margin for subject merchandise sold by Union. See Preliminary Results at 54104. Specifically, the Department applied partial facts available for various movement expenses and adjustments with respect to the comparison margin program for Union. See Memorandum from Mark Young, Case Analyst, to Eric Greynolds, Program Manager, Concerning Analysis Memorandum for Union Steel Manufacturing Co., Ltd. Preliminary Results of 2002-03 Administrative Review of the Antidumping Duty Order on CORE from Korea, dated August 30, 2004 ("Union's Preliminary Calculation Memorandum"); see also the Preliminary Results, at 54104.

However, at verification, company officials from Union clarified the freight equalization process. They stated that Union paid the entire inland freight including the customer's portion to the transportation company. Union then invoiced the customer, and the sales amount included the customer's portion of inland freight (i.e., the GRSUPRH field included the cost of the merchandise and the customer's portion of the inland freight). As a result, in the INLFTWH and INLFTCH fields, Union reported only its portion of the domestic inland freight. We confirmed Union's statements, by examining its Details of Transaction reports, tax invoice, domestic freight sub-ledger, and details of Union's product sales from its internal sales system. Therefore, as Union complied with and provided the Department with the aforementioned information at verification, we have determined that the use of partial facts available is unnecessary for Union in this case. For further information, see Comment 23.

III. Use of Adverse Facts Available in the Calculation of Dongshin's Margin

In the Preliminary Results, we applied adverse facts available ("AFA") to determine Dongshin's dumping margin as a result of its failure to respond to the Department's questionnaire. See Preliminary Results at 54104. We did not receive comments regarding this issue; therefore, pursuant to section 776(a)(2)(A) of the Act, we have continued to apply AFA to determine

Dongshin's dumping margin in the final results. Consistent with the Preliminary Results, in accordance with section 776(b) of the Act, we are assigning Dongshin an AFA rate of 17.70 percent, which is the highest margin upheld in this proceeding. See Id. We did not receive comments with respect to the selection of this rate; therefore, we have continued to apply the 17.70 percent rate for Dongshin.

IV. Summary

We have analyzed the comments in the case briefs submitted by the domestic interested parties, United States Steel Corporation ("US Steel") and International Steel Group Inc. ("ISG") (collectively, "petitioners") and by two of the respondents, POSCO and Union, as well as the rebuttal briefs submitted by domestic interested parties[2] and the respondents, HYSCO, Dongbu, POSCO, and Union (collectively, "respondents") in the antidumping duty administrative review of CORE from the Republic of Korea ("Korea").[3] 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 - General and Discussion of Issues - Company-Specific sections of this memorandum. Below is the complete list of the issues in this review for which we received comments from the parties:

General Issues:

Comment 1: Whether the Department Should Request Further Information and Change its Model-Match Methodology

Comment 2: Whether Expenses Incurred by Parent Companies in Korea for Activities Performed There Should Be Treated as Constructed Export Price ("CEP") Selling Expenses

Comment 3: Whether POSCO and Dongbu Have Provided Sufficient Evidence to Make a Case for the Department to Allow CEP Offsets

Comment 4: Whether the Department Should Modify its Existing Criteria for Adjusting U.S. Prices for Drawback and Restate or Disallow Respondents' Drawback Adjustments

Comment 5: Whether the Department Should Deduct "Safeguard Duties" When Calculating United States Prices

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[2] In their February 16, 2005 rebuttal brief, petitioners, ISG, claimed that POSCO submitted new factual information in its February 11, 2005 case brief. Specifically, ISG states that POSCO's statement that its rebates were granted post-sale constituted new information. We disagree. See POSCO's response to the Department's Sections B-D Questionnaire (December 12, 2003) ("POSCO Sections B-D") at 38-39. For further discussion of POSCO's rebate calculation, see Comment 8 below.

[3] The Nucor Corporation, another domestic interested party, did not submit a case brief or a rebuttal brief.

Company-Specific Issues:

Dongbu

Comment 1: Whether the Department Should Exclude Certain Low-priced Home-Market Sales from Dongbu's Database
Comment 2: Whether the Department Should Recalculate Dongbu's Credit Expenses on Home-Market Sales Denominated in U.S. Dollars
Comment 3: Whether the Department Should Reallocate Dongbu's Home-Market Indirect Selling Expenses on the Basis of Sales
Comment 4: Whether the Department Should Recalculate Dongbu's U.S. Interest Revenue Based on a 365-day Year
Comment 5: Whether the Department Should Use Dongbu's Standard Costs plus POR Variances or Historical Costs Adjusted for Inflation in Order to Calculate the Cost of Production of Merchandise Sold but Not Produced During the POR

POSCO

Comment 6: Whether the Department Should Exclude POSCO's "Unusual" U.S. Sale from its Margin Calculation Or, Alternatively, Treat it as Non-prime
Comment 7: Whether the Department Should Adjust POSCO's Reported Duty Drawback
Comment 8: Whether the Department Should Recalculate POSCO's Credit Expense to Take into Account On-invoice Rebates
Comment 9: Whether the Department Should Revise POSCO's General and Administrative Selling ("G&A") Expense Ratio
Comment 10: Whether the Department Should Revise POSCO's Interest Expense Ratio
Comment 11: Whether the Department Should Re-Calculate POSAM's U.S. Indirect Selling Expense ("ISE")
Comment 12: Whether the Department Should Calculate POSAM's Net Interest Expense and Add it to POSAM's U.S. Indirect Selling Expense
Comment 13: Whether Department Should Re-Calculate POSCO's U.S. Credit Expense
Comment 14: Ministerial Errors with Respect to POSCO's Overrun Sales and Seconds
Comment 15: Whether the Department Should Adjust POSCO's Home-Market Interest Revenue

Union

Comment 16: Whether Union's Scrap Offsets Include Value Added Tax ("VAT")
Comment 17: Whether Union Reimbursed Dongkuk International, Inc. for Antidumping Duties
Comment 18: Ministerial Errors for Union
Comment 19: Union's U.S. Indirect Selling Expenses - Commission Sales
Comment 20: Union's U.S. Indirect Selling Expenses - Slab and Scrap Revenue

Discussion of Issues - General

Comment 1: Whether the Department Should Request Further Information and Change its Model-Match Methodology

In their case briefs, petitioners reiterate the points raised in their May 28, 2004, submission to the Department in which they claimed that the Department's current model-match methodology is likely flawed because it is incompatible with respondents' current pricing practices. Specifically, they argue that the Department's physical characteristic sub-categories are too broad, and, as such, result in inaccurate comparisons and potentially inaccurate margins. Petitioners support their contentions regarding the Department's model-match methodology using the price lists submitted by respondents in their initial questionnaire responses.

Petitioners request that the Department require respondents to supplement their existing sales data by providing actual widths and thicknesses of its products, on a sale-by-sale basis, in order to supplement the identifying ranges requested in the Department's questionnaires. However, petitioners stress that they are only asking that the Department request the aforementioned data and not use that data prior to performing further analysis.

Petitioners note that the Department's current matching methodology allows respondents to categorize as "identical" models that are physically different and that are sold at different prices. They argue that the Department has a duty to calculate dumping margins as accurately as possible, and request relevant information to achieve that goal. Petitioners claim that the failure to request additional information may lead to comparisons between inappropriately matched sales thereby eliminating, or seriously understating, the antidumping margin on sales to the United States. Finally, petitioners add that, as a matter of administrative law, the Department

has full authority to change its matching methodology even though it has been using the current method for a number of years.

Respondents argue that the Department rejected petitioners' request to change the model-match methodology in a memorandum dated August 27, 2004, and, furthermore, petitioners have not provided any new information that would cause the Department to change its position.

Department Position:

In an August 27, 2004, memorandum the Department addressed the above-mentioned issue that petitioners have raised, yet again, in their case briefs. See Memorandum from Eric B. Greynolds, Program Manager to Melissa G. Skinner, Office Director, Concerning Petitioners' Proposal for Changes to the Model Match Methodology, dated August 27, 2004 ("Model-Match Memorandum"). In that memorandum, the Department found that petitioners failed to adequately demonstrate the necessity for a revision to the model-match criteria currently in place; therefore, we did not alter the model-match criteria. Specifically we found that the price lists cited by petitioners in their submission contained no evidence indicating that the price lists reflect actual transaction prices, and, thus, we found that they do not necessarily reflect the Korean respondents' actual sales and pricing practices. We also found that the nature of petitioners' request to revise the model-match criteria raised complex and cross-cutting issues, and, as such, simply could not be adequately addressed or resolved at such a late stage of this segment of the proceeding. Finally, we stated that the Department cannot possibly account for every difference between products and, thus, may deem, within the meaning of the statute, certain products as "identical" even though they contain minor differences. See the "Analysis" and "Recommendation" sections of the Model-Match Memorandum.

Therefore, because we addressed these same issues raised by petitioners in the Model-Match Memorandum, and since petitioners have not presented the Department with any new arguments or evidence as to why the model-match methodology should be changed (which we agree, under the appropriate circumstances, could occur), we are not altering the model-match criteria. Because we have determined not to change the model-match criteria, we have likewise determined not to request additional information.

Comment 2: Whether Expenses Incurred by Parent Companies in Korea for Activities Performed There Should be Treated as CEP Selling Expenses

Petitioners argue that expenses incurred by respondents in Korea for activities performed there should be treated as CEP selling expenses to the extent they relate to the resale transactions by its affiliate in the United States. Citing 19 C.F.R. 351.402(b) of the regulations, petitioners contend that the concept of CEP supports the conclusion that expenses for activities associated with resale operations are CEP selling expenses, even when incurred in Korea, as stated by the regulation "no matter where or when paid."

Petitioners further argue that there is no reason to distinguish a foreign parent financing its affiliate from the parent actually performing the activities on behalf of its U.S. affiliate. According to petitioners, in both situations, the parent is assuming the affiliate's role and, therefore, U.S. expenses paid by the parent are CEP selling expenses. As such, petitioners assert that the Department should deduct those CEP selling expenses incurred in activities involved in the U.S. resale transaction. Petitioners urge the Department to apply this analysis to all four respondents.

Respondents maintain that petitioners' argument that selling activities performed by the parent qualify as CEP expenses contradicts the CEP concept in section 772(d)(1) the Act and the Statement of Administrative Action ("SAA"), which establish that expenses are deducted from CEP only when associated with economic activities actually occurring in the United States or when the parent pays selling expenses on behalf of the purchaser. Respondents contend that neither situation applies to any of the four respondents. They further argue that the record establishes that parent companies did not reimburse or otherwise pay directly any expenses incurred by its U.S. affiliate.

Respondents also contend that petitioners failed to identify a single case in which the Department has deducted foreign indirect selling expenses from CEP under similar facts as the present case. Respondents cite cases in which, they claim, the Department declined to deduct indirect selling expenses in the country of manufacture. See, e.g., Notice of Final Result of Antidumping Duty Administrative Review: Certain Internal-Combustion Industrial Forklift Trucks from Japan, 62 FR 5592, 5610-11 (February 6, 1997); see also Notice of Final Determination of Sale at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Germany, 67 FR 55802 (August 30, 2002). Respondents state that the U.S. Court of Appeals for the Federal Circuit has upheld the Department's reading of the statute regarding foreign indirect selling expenses in the CEP calculation in Micron Technology, Inc. v. United States, 243 F.3d 1301 (Fed. Cir. 2001), and that the Court of International Trade ("CIT") has also confirmed that the Department should not deduct foreign indirect selling expenses from CEP in Mitsubishi Heavy Industry Ltd. v. United States, 54 F. Supp.2d 1183 (CIT 1999).

Respondents claim the Department and the courts have previously rejected arguments similar to those raised by petitioners in the instant review. See Final Results of Antidumping Duty Administrative Reviews and Termination in Part: Tapered Roller Bearings from Japan, 62 FR 11825 (March 13, 1997) ("TRBs from Japan"). In TRBs from Japan, respondents claim that the Department viewed deductible foreign indirect selling expenses as those related to commercial activities performed in the United States, and that deductible expenses must be incurred on behalf of the buyer. Respondents also assert that the Department has held that indirect selling expenses are not deducted if these expenses do not result from or bear relationship to selling activities in the U.S. See Final Results of Antidumping Duty Administrative Review: Dynamic Random Access Memory Semiconductors from Korea, 62 FR 965, 968 (January 7, 1997).

Respondents maintain that the record evidence indicates that their selling expenses were not associated with economic activities in the United States and were not paid on behalf of the purchaser. Accordingly, respondents urge the Department to treat their Korean selling expenses as it did in the Preliminary Results and not deduct them from CEP.

Department Position:

There is no evidence on the record to suggest respondents' reported indirect selling expenses are directly attributable to U.S. sales. On the contrary, we verified that the home-market indirect selling expenses reported by the respondents are general in nature and are unrelated to commercial activities in the United States and to sales between the parent companies and their unaffiliated U.S. customers. It is the Department's practice not to deduct from the CEP calculation indirect selling expenses incurred outside the United States if the indirect selling expenses support sales to the affiliated purchasers and not to the unaffiliated customer. See Notice of Final Results of Antidumping Duty Administrative Review: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania, 70 FR 7237 (February 11, 2005) and Accompanying Decision Memorandum at Comment 4, see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico, 70 FR 2677 (January 26, 2005), and Accompanying Decision Memorandum at Comment 7. Accordingly, we have not altered our treatment of reported indirect selling expenses for U.S. sales from the Preliminary Results.

Comment 3: Whether POSCO and Dongbu Have Provided Sufficient Evidence to Make a Case for the Department to Allow CEP Offsets.

Petitioners argue that no company has established entitlement to CEP offsets. They state that parent companies routinely engage in interaction with U.S. subsidiaries that resell merchandise in the U.S. and that the parent engages in these activities to promote its own sales to the U.S. They argue that neither POSCO nor Dongbu provided sufficient evidence to identify selling activities at the CEP levels of trade ("LOT") and that they have the affirmative burden of proof. Citing SAA, H.R. Doc. No. 103-316 at 829 (1994). Thus, they assert that there is no record evidence to allow the Department to make a determination regarding LOT.

POSCO and Dongbu argue that the same circumstances exist now as were used by the Department in the Preliminary Results to grant the LOT offset to POSCO and Dongbu, and as were used in other proceedings to grant an LOT offset. See Notice of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Products from Korea, 67 FR 62,124 ("Cold-Rolled Steel from Korea"), and Accompanying Decision Memorandum at Comment 10 (October 3, 2002). POSCO and Dongbu state that the selling functions and the level of activity are the same as examined in Cold-Rolled Steel from Korea and for the Preliminary Results. They argue that in Cold-Rolled Steel from Korea and the Preliminary

Results, the Department concluded that POSCO and Dongbu did not have an LOT in its home market that was comparable to its U.S. CEP sales and that the home market was at a more advanced LOT than CEP sales. POSCO and Dongbu claim that in Cold-Rolled Steel from Korea and the Preliminary Results, the Department found no way to quantify the differences in LOT and, therefore, granted a CEP offset. In light of the Department's approach in these two cases, respondents argue that a CEP offset is warranted in these final results as well.

Department Position:

As noted in the Preliminary Results, section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the export price ("EP") or CEP transaction. Sales are at a different LOT if they are made at different marketing stages. See 19 C.F.R. 412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. Id. See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732 (November 19, 1997) ("Plate from South Africa"). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we review the distribution system in each market (i.e., the "chain of distribution"), including selling functions, class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying the LOT for EP and comparison market sales (i.e., NV based on either home-market or third country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities 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, Court Nos. 00-1058, 00-1060 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability. For CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT, and there is no basis for determining whether the difference in LOT between NV and CEP affected price comparability (i.e., no LOT adjustment was practicable), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See e.g., Plate from South Africa.

In the Preliminary Results, we found that the evidence on the record was sufficient to demonstrate that a CEP offset was warranted for Dongbu and POSCO's U.S. CEP sales. In particular, the information on the record in this review demonstrates that Dongbu's and POSCO's home-market sales were at a more advanced LOT than its CEP sales, and that a CEP offset is

warranted. See POSCO's Preliminary Calculation Memorandum; see also, Memorandum from Carrie Farley, International Trade Analyst, to Eric Greynolds, Program Manager, Concerning Analysis Memorandum for Dongbu Steel Co., Ltd. Preliminary Results of 2002-03 Administrative Review of the Antidumping Duty Order on CORE from Korea, dated August 30, 2004 ("Dongbu's Preliminary Calculation Memorandum"); see also, Dongbu's response to the Department's sections A-D Supplemental Questionnaire (May 3, 2004) at Exhibit A-23 ("Dongbu's Supplemental Response"). As to petitioners' claim that POSCO and Dongbu should not be granted a CEP offset because all of its U.S. sales are at the same LOT as their respective home-market sales, we adhere to our decision in the Preliminary Results where we determined that POSCO's and Dongbu's U.S. LOTs (i.e., CEP sales) are different, and thus less advanced LOT than that of the home market. For example, in the case of POSCO, the Department found that POSCO's U.S. sales affiliate ("POSAM") performed various U.S. selling activities including, inter alia, contacting the unaffiliated U.S. customer, and invoicing the unaffiliated U.S. customer. See POSCO's Preliminary Calculation Memorandum; see also, POSCO's response to the Department's Section A Questionnaire (November 19, 2003) ("Section A Response") at A-35. Likewise, for Dongbu the Department found significant selling activities performed by its U.S. affiliate as well. See Dongbu's Preliminary Calculation Memorandum; see also, Dongbu's Supplemental Response.

Moreover, the petitioners have not provided any new information or arguments that would lead us to change our decision in these final results. For a more detailed discussion, refer to our discussion of this issue in the Preliminary Results, POSCO's Preliminary Calculation Memorandum, and Dongbu's Preliminary Calculation Memorandum.

Comment 4: Whether the Department Should Modify its Existing Criteria for Adjusting U.S. Prices for Drawback and Restate or Disallow Respondents' Drawback Adjustments

Petitioners contend that for the final results, the Department should modify its long-standing practice on drawback by tying specific duties paid in Korea to specific materials that are used to manufacture specific goods for export to the United States. Petitioners argue that the Department's traditional standards are problematic in the context of Korean drawback law, which allows the exporter to claim drawback on particular exports that did not use imported materials. Petitioners further contend that the Department's rules for allowing the adjustments are conducive to manipulation and may yield unfair results in the case of Korean drawback. Petitioners submit that the Department should obtain information necessary to allocate the total duty drawback between all exports of subject merchandise and respondents' reported U.S. exports. If such information cannot be obtained, petitioners urge the Department to restate or disallow respondents' drawback adjustments.

Respondents argue that petitioners have not presented any support for its assertion that the Department should change its consistent practice of granting a full duty drawback adjustment

where its two-prong test is met. They contend that in Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Circular Welded Carbon-Quality Line Pipe from Korea, 69 FR 59885 (October 6, 2004) ("Line Pipe from Korea"), and Accompanying Decision Memorandum at Comment 2 and Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review: Certain Polyester Staple Fiber from Korea, 68 FR 34378, 34380 (June 9, 2003) ("Polyester Staple Fiber from Korea"), the Department has confirmed the Korean "individual rate" duty drawback program meets the two-prong test, and that no additional steps are required. See Line Pipe from Korea; see also Polyester Staple Fiber from Korea. They argue further that the Department historically requires respondents to report drawback received on a sale-by-sale basis for exports to the U.S. See Avesta Sheffield Inc. v. United States, 838 F.Supp. 608 (CIT 1993). On this basis, respondents claim that petitioners' duty drawback argument should be rejected.

Department Position:

We agree with the respondents that the duty drawback adjustment is justified in the present proceeding and should not be limited to only duties paid on inputs specifically used for exports to the United States. Petitioners have provided no compelling evidence that our long-standing practice is flawed and should be modified.

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 Machinery v. United States, 699 F.Supp. 309, 314 (CIT 1988).

In prior investigations and administrative reviews, the Department has examined the Korean individual-rate system and found that the government controls in place enable the Department to examine the criteria for receiving a duty drawback adjustment (i.e., that (1) the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and (2) there were sufficient imports to account for the rebates received). See Circular Welded Carbon-Quality Line Pipe from Korea at 55577; see also Certain Polyester Staple Fiber from Korea at 9366.

We find that petitioners' proposal to tie duties paid on particular imports to particular exports from Korea 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. Respondents provided and we verified such evidence. The statute does not warrant the modification to the Department's requirements for granting the duty drawback adjustments as petitioners proposed. Accordingly, for the final results, we have continued to grant the respondents' claimed duty drawback adjustments in full.

Comment 5: Whether the Department Should Deduct "Safeguard Duties" When Calculating United States Prices

Petitioners contend that the Department should treat safeguard duties ("section 201 duties") as any United States import duties and deduct these duties when calculating U.S. prices in the final results in accordance with section 722(c)(2)(A) of the Act.

Petitioners explain that the Department in Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod from the Republic of Korea ("Stainless Steel Wire Rod from Korea"), 69 FR 19153 (April 12, 2004), determined that safeguard duties and antidumping duties are both special types of duties, and should not be used in antidumping calculations. Petitioners argue that the fundamental premise of this decision is flawed because it failed to distinguish the differences between safeguard duties and antidumping duties. Petitioners assert that in Stainless Steel Wire Rod from Korea, the Department gave no consideration to judicial decisions in a former customs statute, section 402(e), which defines the U.S. value. Petitioners state that the U.S. value is analogous to U.S. price under section 772 of the Act, and duties, therefore, should be deducted in both contexts.

In addressing the Department's concerns in Stainless Steel Wire Rod from Korea, 69 FR at 19160, that making deductions for safeguard duties would constitute a double collection, petitioners argue that this concern is not even reached if the merchandise is sold at fair prices in the United States. They argue that even when the merchandise is dumped and antidumping duties are assessed, the result of deducting safeguard duties is no different than the effect of deducting ordinary duties.

Respondents argue that the Department should reject petitioners' request for a reconsideration of its decision in Stainless Steel Wire Rod from Korea not to deduct section 201 duties from U.S. price. They contend that deduction of section 201 duties is not required by the antidumping statute because they are not analogous to "ordinary" customs duties. They further argue that the term "United States import duties" specified in section 772(c)(2)(A) of the Act does not include section 201 duties, and that the Department has affirmed this in Stainless Steel Wire Rod from Korea, 69 FR at 19160. Respondents further contend that safeguard measures are special exceptions permitted under international agreements, and that placement of section 201 duties in Chapter 99 of the HTSUS does not suggest that they constitute normal duties. Contrary to petitioners' assertion, respondents argue that the deduction of section 201 duties from U.S. price would illegally provide a double safeguard remedy to domestic industries, and that the deduction will not necessarily achieve a fair comparison with normal value, as petitioners suggest. In support of their contention, respondents cite the Notice of Final Determination at Sales at Less Than Fair Value: Stainless Steel Wire Rod from Trinidad and Tobago, 67 FR 55788 (August 30, 2002), in which they claim the Department found that deducting section 201 duties from U.S. price would improperly double count the effect of these special protective measures.

Department Position:

Consistent with the Department's decision in Stainless Steel Wire Rod from Korea, we disagree with the petitioners that 201 duties should be deducted from the U.S. price. Most of the issues raised by the petitioners and rebutted by the respondents in this review were addressed in the Department's decision in Stainless Steel Wire Rod from Korea.

As stated in Stainless Steel 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. See Stainless Steel Wire Rod from Korea, 69 FR 19153 (April 12, 2004), at Appendix I; see also Notice of Final Results of the Antidumping Duty Administrative Review: Certain Circular Welded Non-Alloy Pipe from the Republic of Korea, 69 FR 32492 (June 2, 2004) and Accompanying Decision Memorandum Comment 1.

For the final results, 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.

Discussion of Issues - Company-Specific

Dongbu

Comment 1: Whether the Department Should Exclude Certain Low-Priced Home-Market Sales from Dongbu's Database

Petitioners argue that the Department should exclude certain low-priced, non-prime sales for being outside the ordinary course of trade in accordance with the section 771(15) of the Act. They assert that these sales were low-priced, and, thus should not be used as a standard for normal value against which U.S. sales are compared. They assert further that the Department should exclude any other sales that were made in similar circumstances.

Dongbu states that the sales at issue were not defective, but were rather prime grade material sold at a lower price because the merchandise did not fit the customer-specific requirements. Citing Exhibit S-18 of Dongbu's February 1, 2004, verification report (Dongbu's Cost and Sales Verification Report), Dongbu explains that it originally produced the merchandise for one customer, who then cancelled the partial shipment. Dongbu claims it disposed of the

merchandise by selling it to another customer at a lower price. Dongbu argues that the exclusion of these sales does not fit the purpose for which the ordinary course of trade provision was created. See SAA, H.R. Doc. No. 103-316 (1994) at 834. Citing section 771(15) of the Act, Dongbu argues that sales that fail the cost test or sales to affiliated parties are statutory examples of sales outside the ordinary course of trade. In addition, Dongbu argues that there is nothing extraordinary about low-priced sales being below an average price. Thus, Dongbu asserts that certain low-priced home-market sales should not be excluded.

Department Position:

The Department agrees with Dongbu that certain low-priced home-market sales should not be excluded as being outside the ordinary course of trade and that the merchandise in question here is prime grade material. During verification, the Department examined several of these low-priced home-market sales. See Dongbu's Cost and Sales Verification Report at 3 through 5, 36, and Exhibit S-18. The Department found that these sales were for prime grade material, not defective material.

Section 771(15) of the Act defines the term "ordinary course of trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind." The SAA clarifies this portion of the statute further when it states at 164 that "Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market." The Department will normally consider the totality of the circumstances in evaluating whether sales in a given market are not ordinary when compared to other sales generally made in the same market. The Department's evaluation will include such factors as: 1) whether there are different standards and product uses, 2) comparative volume of sales and number of buyers in the home market, 3) price and profit differentials in the home market, and 4) whether sales in the home market consisted of production overruns or seconds. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Korea, 65 FR 41437 (July 5, 2000) ("Steel Beams from Korea"), and Accompanying Decision Memorandum at Comment 1.

In the case of Dongbu, record evidence indicates that the sales in question are not outside the ordinary course of trade when evaluated pursuant to the four factors described above. Furthermore, the fact that record evidence indicates that the Dongbu merchandise in question was sold as prime also argues against consideration of the sales as outside the ordinary course of trade. Therefore, we continue to consider these sales as made in the ordinary course of trade and, thus, have continued to include these sales in our calculations of NV.

Comment 2: Whether the Department Should Recalculate Dongbu's Credit Expenses on Home-Market Sales Denominated in U.S. Dollars.

Petitioners argue that Dongbu disregarded the Department's instruction to recalculate credit expenses and, thus, the Department should reject Dongbu's reported calculation. They cite Dongbu's supplemental response where the Department instructed Dongbu to recalculate credit expenses using Dongbu's weighted-average U.S. dollar short-term borrowing rate, the gross unit price in U.S. dollars, and the actual payment dates for Dongbu's home-market sales denominated in U.S. dollars. Petitioners claim that, in spite of the Department's instructions, Dongbu calculated its credit expense using a won-based interest rate. Therefore, petitioners assert that the Department should either recalculate Dongbu's credit expenses, or deny the adjustments *in toto*.

Dongbu rebuts that a won-based interest rate was the proper rate to use when calculating its credit expense. Dongbu argues that it invoices its customers in U.S. dollars since the letter of credit is in dollars, but it records the sale in Korean won in its records since it receives payment from the customer in Korean won. Dongbu further argues that since the Department used the won value in the margin analysis for the Preliminary Results, and the customer payment is made in Korean won, it is appropriate to use the won-based short-term borrowing rate to calculate the credit expense in the final results. Lastly, Dongbu claims that the Department has verified a number of Korean cases where the average accounts receivable turnover methodologies used were such that they could not be split based on the terms of payment. The average accounts receivable turnover period, which Dongbu uses to determine the payment date, is based on the total sales and total receivables of an individual customer, all of which are recorded on a won basis for all transactions in the accounting ledger. Thus, it is not necessary to recalculate the credit expense for local sales for these final results.

Department Position:

It is the Department's normal policy to base calculations of credit expenses upon a short-term interest rate tied to the same currency as the sale. See Import Administration Policy Bulletin 98/2 "Imputed Credit Expenses and Interest Rates" (February 23, 1998). The currency of the sale is based on evidence "determining the amount the purchaser ultimately would pay." See Notice of Amendment of Final Determination of Sales at Less Than Fair Vale: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 66 FR 45279 (August 28, 2001) (Stainless Steel from Korea). See also Final Determination of Sales at Less Than Fair Value: Fresh Cut Flowers From Columbia, 60 FR 6980 (February 6, 1995), in which the Department found the currency of the sale to be in U.S. dollars "since home market sales were transacted in dollars and the payments made, although in pesos, were based on constant dollar value." In making this determination, the Department looks to evidence such as the dollar amount appearing on the sales invoice, the prices fixed on the date of sale, and the denomination of the invoiced and received payment for the sales in question. See Stainless Steel from Korea; see also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Mexico, 65 FR 39358 (June 26, 2000).

Although Dongbu records both U.S. dollar-and won-denominated sales invoices in won in its accounting system, we find it is more appropriate to calculate Dongbu's home-market credit expenses using a U.S. dollar-denominated interest rate. In accordance with Department practice, we find that the currency of the sales in question is U.S. dollars because the amount the purchaser ultimately paid is directly linked to a U.S. dollar amount, as indicated on Dongbu's U.S. dollar denominated sales invoices. See, e.g., Stainless Steel from Korea. For example, when Dongbu negotiates and invoices a U.S. dollar price for its home-market sales, it foresees and incurs an opportunity cost linked to that currency (e.g., the U.S. dollar). Whether the customer may later remit payment in won or whether Dongbu records the sale in won is immaterial. Therefore, consistent with Policy Bulletin 98/2 and our past practice, we have used a U.S. dollar short-term interest rate to calculate Dongbu's home-market credit expenses for U.S. dollar-denominated sales.

Comment 3: Whether the Department Should Reallocate Dongbu's Home-Market Indirect Selling Expenses on the Basis of Sales.

Petitioners argue that Dongbu's reliance on the number of employees to allocate its home-market indirect selling expenses is flawed and, thus, the Department should reject Dongbu's methodology for these final results. Specifically, petitioners state that the Department should correct this methodology by allocating the indirect selling expense on the basis of sales rather than head count.

Dongbu argues that petitioners rely solely on information from Dongbu's Section B questionnaire response and do not look to the verification report or exhibits for clarification of this issue. It argues that the verification report and exhibits clarify that Dongbu started with total POR G&A expenses, and then allocated them on the basis of headcount to split them between selling and general expenses. It states that once expenses related to the flat-rolled division were allocated, then Dongbu split the total flat-rolled expenses, except bad debt, among the different categories using sales value. Dongbu argues that allocation by headcount is a reliable basis to make a distinction between general and selling expenses, as this information is maintained in their ordinary course of business.

Department Position:

The Department agrees with Dongbu that the home-market indirect selling expenses were reasonably allocated. The Department examined Dongbu's allocation of indirect selling expenses during verification and found the allocation to be reasonable and accurate. The Department found no evidence that the allocation was distortive. See Dongbu's Cost and Sales Verification Report at 25.

Comment 4: Whether the Department Should Recalculate Dongbu's U.S. Interest Revenue Based on a 365-Day Year.

Petitioners argue that the Department should reject Dongbu's use of a 360-day year for calculating U.S. interest revenue, as this increases interest revenue, thereby increasing U.S. price. They further argue that if the Department accepts this calculation, then Dongbu's credit expenses should be restated as well, as Dongbu used a 365-day year.

Dongbu argues that they used 360 days to determine the interest revenue because this is the basis on which Dongbu and the customer agreed to calculate the amount for interest revenue owed. Dongbu argues to use any other days would be different from what the customer actually pays Dongbu and what Dongbu invoices. On the other hand, Dongbu states that the calculation for credit expense is calculated on 365 days because its short-term interest rate is calculated on a calendar basis.

Department Position:

The Department agrees with Dongbu that it correctly calculated its U.S. interest revenue. The Department verified Dongbu's methodology and found that Dongbu used a bank rate of 360 days, on which Dongbu and the customer agreed to calculate the amount for interest revenue owed. See Dongbu's Cost and Sales Verification Report at 50. Thus, the Department finds no reason for Dongbu to recalculate its U.S. interest revenue nor its credit expenses.

Comment 5: Whether the Department Should Use Dongbu's Standard Costs Plus POR Variances or Historical Costs Adjusted for Inflation in Order to Calculate the Cost of Production of Merchandise Sold but Not Produced During the POR

Petitioners argue that for this calculation, the Department should request that Dongbu submit its historical costs and adjust those values for inflation. They argue that in Antifriction Bearings, infra, the Department did not use surrogate models, but rather used historical costs adjusted for inflation based on producer price indices. See Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination to Revoke Order in Part: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom, 69 FR 55574 (September 15, 2004)("Antifriction Bearings"), and Accompanying Decision Memorandum at Comment 28. Petitioners state that it is not possible to determine the physical difference between the actual products sold in the POR and the "surrogate" products used for reporting because Dongbu submitted the cost of the surrogate product without adjustment for inflation. Citing Dongbu Pub. Supp. Resp. (November 8, 2004) at 2. Thus, petitioners argue that the Department should request Dongbu to submit its historical costs adjusted for inflation.

Dongbu argues that it applied a consistent methodology based on the physical characteristics of the merchandise to select the surrogate cost for products that were sold but not produced during the POR. It states that the surrogate cost was reported as the cost for the product with the least number of differences, and when the surrogate and the non-produced product differed in form, then Dongbu adjusted the cost of manufacture to account for these differences. In addition, it questions petitioners' reliance on Antifriction Bearings, stating that Dongbu is uncertain of the factual circumstances that led to the Department applying a different methodology in that situation. Dongbu states that their methodology was clear from their section D questionnaire response and further reviewed during verification, thus requesting more information at this time is untimely.

Department Position:

The Department agrees with Dongbu. In situations where a product is sold but not produced, the Department can use a variety of costing methods. See Notice of Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not to Revoke the Order in Part: Ball Bearing and Parts Thereof from France, 68 FR 35623 (June 16, 2003)("AFB 13th Administrative Review"). Petitioners reference to Antifriction Bearings is off point. In that case the Department used historical costs because the product had not been produced for over a decade and the Department had no information on record on whether the responding company's model was obsolete or related to the cost of a similar model. See Antifriction Bearings and Accompanying Decision Memorandum at Comment 28. We verified that Dongbu used the Department's hierarchy to choose the most similar product produced during the POR as a surrogate and found no evidence of distortion in this methodology. Further, the product had been produced within the wind period of the POR. See Dongbu's Cost and Sales Verification Report at 25. Therefore, we will continue to use Dongbu's methodology for reporting cost for these final results.

POSCO

Comment 6: Whether the Department should exclude POSCO's "Unusual" U.S. sale from its margin calculation or, alternatively, treat it as non-prime

POSCO argues that the Department should exclude its "unusual" sale from the margin calculation program or, alternatively, treat the sale as a non-prime sale. According to POSCO, the "unusual" sale represented a significant departure from its normal sales process. Under POSCO's standard U.S. sales process, after receiving an inquiry from a U.S. customer, POSAM transfers the order request to POSCO for approval. See Section A Response at A-38, A-44. POSCO then considers whether its production schedule can accommodate the customer's order and informs POSAM of the acceptable price. POSCO negotiates the relevant terms of the sale with the U.S. customer, including quantity, price, terms of payment, often beginning with a price list as a start. See Section A Response at 20. In this instance, POSCO negotiated the order with

the unaffiliated U.S. customer and informed the customer of the type of product which should be produced. See POSCO's supplemental response to the Department's Questionnaire Sections A-C (April 14, 2004) ("POSCO's Supplemental Response A-C") at 6. After the merchandise cleared U.S. Customs and Border Protection ("CBP"), however, the customer rejected the merchandise and refused to accept delivery because the merchandise did not meet its brightness requirements. Since the merchandise had already cleared CBP and POSAM does not maintain warehouses in the United States, POSAM found a new U.S. customer for the merchandise and negotiated a price lower than normal. According to POSCO, POSAM did not utilize the standard process for negotiating a sales price with customer. That is, POSCO did not have the final authority to accept or reject the ultimate sales price or terms of sale. As a result, POSCO claims the sale was a departure from its usual U.S. sales pricing and sold at an aberrational price and, thus, is unusual. As such, it should not be considered for these final results.

POSCO also argues that the CIT has recognized that the Department has an obligation to exclude sales made outside the normal course of trade. According to POSCO, the CIT has specifically stated that the inclusion of certain sales which are atypical undermines the fairness of the comparison of foreign and U.S. sales. See Chang Tieh Indus. Co., Ltd., et. al. v. United States, 840 F. Supp. 141, 145 (CIT 1993) ("Chang Tieh Indus. Co., Ltd., et. al. v. United States"). Accordingly, POSCO contends where a sale is unusual the Department can exclude that sale from the margin calculation. POSCO argues that the sale in question is unusual and that the Department has an obligation to exclude it from the margin calculation.

Finally, POSCO argues if the Department decides not to exclude this sale, at a minimum, it should be treated as a non-prime sale because of its unrepresentative nature. POSCO claims that, as verified by the Department, unlike all other home and U.S. market sales, POSCO played no role in procuring the ultimate customer or negotiating and approving the terms of sale. See page 23 of POSCO's February 1, 2005, sales verification report (POSCO's Sales Verification Report). POSCO further contends that the physical qualities of the merchandise did not meet the requirements of the original customer, and the ultimate customer paid less than the standard price for merchandise with such qualities. As such, POSCO argues that it is Departmental practice to treat such sales as non-prime and match it to other non-prime sales. See Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination to Revoke Order in Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Canada, 69 FR 2566 (January 16, 2004), and Accompanying Decision Memorandum at Comment 8, where the Department explained that its practice is to ". . . include comparison market sales of non-prime merchandise in its analysis, matching prime merchandise sold in the United States with prime merchandise sold in the home market, and matching non-prime merchandise sold in the United States with non-prime merchandise sold in the home market." Therefore, for these final results, POSCO argues that the Department should treat the sale in question as non-prime.

Petitioners disagree with POSCO that the sale should not be classified as prime merchandise. Petitioners point out that, while POSCO initially classified this sale as prime merchandise, in its supplemental questionnaire response POSCO stated that the sale should be classified as non-prime because it did not meet the customer's expectations. See Section A Response at 20; see also, POSCO's Supplemental Response A-C at 6. According to petitioners, POSCO specifically stated that the merchandise did not consist of overruns and did not meet the customer's expectations. Further, according to petitioners, following importation, the customer rejected the merchandise because it did not meet the surface requirements. See POSCO's Supplemental Response A-C at 6. Petitioners explain that POSCO officials acknowledged that although the merchandise did not meet the customer's requirements, the merchandise itself was not defective. See POSCO's Sales Verification Report at 23. According to petitioners, the Department's practice with regard to classification of non-prime merchandise is clear: in order to be properly classified as non-prime, the merchandise in question must contain a defect or be damaged prior to shipment to the customer. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip Coils from Italy, 64 FR 30750 (June 8, 1999) ("Stainless Steel Sheet from Italy"), and Accompanying Decision Memorandum at Comment 8. Petitioners argue that in Stainless Steel Sheet from Italy, the Department rejected respondent's request to classify certain coils as non-prime because the merchandise was not defective. Specifically, the Department defined non-prime merchandise as "steel that suffered some defect during the production process, or at any time before delivery to the customer." See Stainless Steel Sheet from Italy and Accompanying Decision Memorandum at Comment 8. In this instant case, petitioners claim that it is clear that the merchandise in question did not suffer any damage or defect. See POSCO's Sales Verification Report at 23.

Petitioners also note that the Department's questionnaire states that if subject merchandise meets a specification, it should not be classified as non-prime merchandise solely because it does not meet the specification originally intended. See POSCO Sections B-D at field 22. In this instance, the customer clearly consented to the merchandise specifications that POSCO produced. Further, POSCO stated at verification that it exported only prime merchandise to the United States. See POSCO's Sales Verification Report at 16. Petitioners assert that for these final results the Department should continue to classify these sales as prime merchandise.

In its rebuttal comments, POSCO argues that the Department should not classify, as petitioners request, its "unusual" sale as prime based merely on the fact that there was no defect in or damage to the merchandise. According to POSCO, the Department's overall goal is to ensure an accurate product comparison in order to derive an accurate margin. POSCO contends that verified record evidence demonstrates that the sale was atypical and unrepresentative of POSCO's ordinary course of trade and sale process in the U.S. market due to POSCO's deviation from its standard pricing and negotiation practices. POSCO also claims that the aberrational terms of sales were also due to the fact that POSAM had to sell the merchandise as quickly as possible due to a lack of a warehouse facilities as well as the fact that the physical qualities of the merchandise did not meet the original customer's requirements.

Further, POSCO states if the Department were to continue to classify the sale as a prime sale, it should compare it to non-prime sales. For example, POSCO claims that in a previous review a respondent had four home-market sales of "unusual" products, which petitioners had requested the Department exclude from the margin calculations. See Final Results of the Antidumping Administrative Review: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 64 FR 12927 (March 16, 1999) ("CORE from Korea the 4th review"), and Accompanying Decision Memorandum at Comment 8. POSCO asserts that the sales addressed in CORE from Korea the 4th Review were of unusual painted steel color for which the Department recognized the same market did not exist as for more standard color products. Id. According to POSCO, in that review, the Department determined that the prices and profits for the four sales were comparable to respondent's sales of non-prime merchandise that contained defects, even though it did not categorize the four sales themselves as non-prime. For these final results, POSCO argues that the Department should follow the precedent established in CORE from Korea the 4th Review and exclude the U.S. sale in question, or alternatively classify it as non-prime, and compare it to sales of non-prime merchandise in the home market.

Petitioners contest whether the sale was made outside the normal course of business. In order for the Department to exclude U.S. sales from an administrative review, petitioners argue the circumstance must be "exceptional" and the proponent must demonstrate that inclusion of those sales would be "extremely distortive." Petitioners cite Chang Tieh Indus. Co., Ltd., et. al. v. United States as an example of such a circumstance. Petitioners argue that in Chang Tieh Indus. Co., Ltd., et. al. v. United States, the Court held that "exclusion of sales may be necessary to prevent fraud on Commerce's proceeding." They claim it is clear that the instant case does not even come close to meeting the above standard. Petitioners state that a U.S. customer's rejection of merchandise that did not meet its requirements is a normal occurrence in the commercial world and is hardly exceptional. Further, they argue that the sale in question was bona fide and commercially reasonable. Moreover, petitioners claim POSCO failed to demonstrate that including the sale would be distortive.

Finally, petitioners contend that the sale should not be treated as non-prime. Petitioners note that page 23 of POSCO's Sales Verification Report indicates that the sale in question did not involve damaged or defective steel. Thus, they contend that the Department should treat the sale as a prime sale.

Department Position:

We agree with petitioners that the "unusual" sale should not be excluded from the margin calculation program because it was not outside the ordinary course of trade, nor should it be treated as non-prime. In order for the Department to exclude sales, the circumstance must be "exceptional" and the proponent must demonstrate that inclusion of those sales would be "extremely distortive." See Chang Tieh Indus. Co., Ltd., et. al v. United States. There is

nothing exceptional about this sale. A customer agreed to purchase an amount of material from POSCO, but they chose not to accept the merchandise. Because the original customer refused to take to the merchandise, POSAM sold it to another customer. This does not make the sale unusual nor does it make the sale aberrational. See POSCO's Sales Verification Report at 23 and Verification Exhibit U.S.-18. Moreover, our position is consistent with existing case law supporting the use of U.S. sales in the margin calculation, unless we find exceptional circumstances, such as "prevention of fraud on Commerce's proceedings." See e.g., Chang Tieh Indus. Co., Ltd., et. al. v. United States. We disagree with POSCO's view that the U.S. "unusual" sale is outside the ordinary course of trade, and therefore should be excluded. This line of reasoning only applies to the calculation of normal value based on home-market sales and not to U.S. sales. The CIT has held, in two separate decisions, that U. S. sales both within and outside the ordinary course of trade are to be included in the U.S. price calculations.[4]

In addition, POSCO has failed to show that the sale should be considered non-prime. In Stainless Steel Sheet from Italy, the Department rejected respondents request to classify certain coils as non-prime because the merchandise was not defective. Specifically, the Department defines non-prime merchandise which was "steel that suffered some defect during the production process, or at any time before delivery to the customer." See Stainless Steel Sheet from Italy and Accompanying Decision Memorandum at 8; see also Final Results of the Antidumping Administrative Review of Granular Polytetrafluoroethylene Resin from Italy, 68 FR 2007 (January 8, 2003) and Accompanying Decision Memorandum at Comment 4. In the instant case, it is clear that the merchandise in question did not suffer any damage or defect. The product in question met the same specifications as products produced for this customer by other Korean manufacturers in the past. See POSCO's Sales Verification Report at 23 and Verification Exhibit u.s.-18. For the above-stated reasons, for the final results of this review, the Department will classify these sales a prime and include them in our margin calculation program.

Comment 7: Whether the Department Should Adjust POSCO's Reported Duty Drawback

Petitioners argue that the Department should correct for errors discovered at verification with respect to POSCO's duty drawback claim. See POSCO's Sales Verification Report at 27.

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4 See Bowe Passat Reingigungs-und Washchereitechnik GmbH v. United States, 926 F. Supp. 1138, 1147-48 (CIT 1996) and Floral Trade Council v. United States, 15 CIT 497, 508 n. 18, 775 F. Supp. 1492 (CIT 1991).

POSCO argues that the Department does not need to make an adjustment to its duty drawback calculation for these final results. According to POSCO, the Department states that POSCO made a calculation error on all U.S. sales in which it claimed a duty drawback when it divided the numerator by a metric-ton rather than by a kilogram. See POSCO's Sales Verification Report at 32. Although the duty drawback documentation that the Department examined at verification designates the quantity of the merchandise in kilograms, POSCO reported per-unit duty drawback on a metric-ton basis pursuant to the Department's questionnaire. See POSCO Sections B-D at 22. Since POSCO properly reported all its per-unit duty drawback, it claims no adjustment to its calculations are necessary for these final results. Therefore, POSCO argues that the Department should continue to use POSCO's duty drawback calculation for these final results.

Department Position:

We agree with POSCO that no correction to POSCO's duty drawback field is necessary. At verification the Department reviewed the duty drawback documentation and tied the claimed amount to individual sales. The documentation reviewed at verification was in kilograms. See POSCO's Sales Verification Report at 27 and Verification Exhibit s-1. POSCO correctly converted this field so that the per-unit expense would match the gross unit price in metric tons. See POSCO Sections B-D at 22, 35, and Exhibit C-18. Since POSCO correctly converted its duty drawback into metric tons, no revision to this field is necessary for these final results.

Comment 8: Whether the Department Should Recalculate POSCO's Credit Expense to Take into Account On-invoice Rebates

Petitioners argue that the Department should treat certain rebates from POSCO as on-invoice discounts, not as post-sale adjustments. Petitioners assert that POSCO's Sales Verification Report does not state that the rebates in question were post-sale adjustments. Therefore, for the final results petitioners argue that the Department should revise POSCO's home-market credit expense, treating the rebates in question as on-invoice discounts.

POSCO states that the Department does not need to recalculate its imputed credit expense. POSCO claims that the Department verified that the rebates in question were post-sale adjustments. See POSCO's Sales Verification Report at 16 and Exhibits S-16 through S-21. POSCO contends that while the rebates tied to particular invoices, POSCO did not return the funds to the customer until well after the sale and delivery of the product to the customer. Further, POSCO claims that it did not offer any on-invoice discounts or rebates during the POR. See POSCO Sections B-D at 38-39. Therefore, POSCO argues that the Department should not make an adjustment to POSCO's credit expense for these final results.

Department Position:

We agree with POSCO. The record clearly demonstrates that the rebates at issue are not on-invoice discounts but rather rebates earned on monthly sales that are applied to customers on end-of-the-month invoices. During the POR, certain POSCO customers received rebates if they purchased a particular product during the POR. As explained in POSCO's questionnaire response, these rebates tied to particular invoices and were refunded to the customer in full at the end of each month. See POSCO Section A at 51. At verification, we tied the amounts refunded to two customers for the months of October 2002 and March 2003. See POSCO's Sales Verification Report at Verification Exhibit s-26. While the rebates tied to particular invoices, they were refunded after the sales were made. We also confirmed, contrary to petitioners' contention, that POSCO offered only one type of rebate, i.e., the post-sale rebate. See POSCO's Sales Verification Report at Exhibit S-19. Therefore, no adjustment is necessary with respect to POSCO's home-market imputed credit expense.

Comment 9: Whether the Department Should Revise POSCO's G&A Expense Ratio

Petitioners argue that gains on the sale of marketable securities should not be included in the calculation of G&A expense. Petitioners note that the Department found that the amount at issue were "gains" not interest income. See POSCO's Cost Verification Report at 22. They contend the Department's longstanding practice is not to treat gains on the sale, or revised valuation, or marketable securities as an offset to the company's G&A expense. According to petitioners, in Circular Weld Non-Alloy Pipe from Korea, the Department rejected the inclusion of such gains and explained that it did not include gains on investment activities. See Notice of Final Results of Antidumping Administrative Review: Circular Weld Non-Alloy Pipe from Korea, 66 FR 18747 (April 11, 2001) ("Circular Weld Non-Alloy Pipe from Korea"), and Accompanying Decision Memorandum at Comment 11. As such, the Department should exclude gains from both the sale and revaluation of investment income from the G&A expense calculation for these final results.

Petitioners also argue that the Department should not include the reversal of bad debt in POSCO's G&A expense calculation. According to petitioners, it is Department practice not to include the gain on bad debt redemption as an offset to G&A. See Circular Weld Non-Alloy Pipe from Korea and Accompanying Decision Memorandum at Comment 11. Accordingly, for these final results the Department should remove POSCO's gains on bad debt from the G&A ratio and include such gains as indirect selling expense for the final results.

Finally, petitioners contend that the Department should deduct packing cost in the calculation of the G&A expense ratio regardless of whether the correction is insignificant. Petitioners note that in Circular Weld Non-Alloy Pipe from Korea, the Department made an adjustment to a respondent's G&A regardless of the effect of the change to the ratio. See Circular Weld Non-Alloy Pipe from Korea and Accompanying Decision Memorandum at Comment 4.

POSCO argues that the Department need not revise its G&A expense ratio for these final results. According to POSCO, while short-term investments (e.g., money market and short-term mutual funds) are generally classified as cash and cash equivalents on financial statements under U.S. GAAP, it claims that the Department has previously included gains on the disposition and valuation of marketable securities in the numerator of the G&A expense ratio of respondents in Korean cases. For example, POSCO claims that in Cold-Rolled Steel from Korea, the Department found that under Korean GAAP, certain short-term investments (e.g., money market and short-term mutual funds) are classified as current marketable securities on the financial statement and generate short-term interest income. Consistent with Department practice, POSCO argues that its gains on its sales of marketable securities should be included in the short-term interest income as an offset to interest expense. See Cold-Rolled Steel from Korea and Accompanying Decision Memorandum at Comment 8. POSCO further argues that the Department verified that the interest generated by these marketable securities was from short-term investments. See POSCO's Cost Verification Report at 22. Since the Department verified that the gains from the disposition and valuation of marketable securities were short-income interest income, it should continue to use this analysis for these final results. POSCO maintains that it is reasonable to use these gains as an offset to general expenses, as well as an offset to interest expense. Thus, POSCO contends that the Department should continue to include such gains in the G&A expense ratio as well as in the interest expense calculation.

POSCO also argues that it is reasonable to include reversal of bad debt allowances in the numerator of its G&A expense ratio. POSCO states that the Department has previously found that it is appropriate to offset reversals of bad debt allowance from G&A expenses. See Final Determination of Sales at Less than Fair Value: Random Access Memory from Korea, 63 FR 8934 (February 23, 1998). Accordingly, POSCO contends its gain on the reversal of the bad allowance is properly included in the G&A calculation because it is not related to any investments or selling activities, but rather, pertains to the company's general operations. However, POSCO notes that it is reasonable for the Department to include this offset as in the indirect selling expense calculation for these final results.

Finally, POSCO states that it is not necessary for the Department to deduct packing cost from its calculation of G&A expense for these final results. If the Department determines to deduct packing expense from the denominator of its G&A expense calculation, the impact of this result is so minimal that an adjustment is not warranted. Citing Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea, POSCO argues that it is not necessary for the Department to make adjustments that are minimal. See Final Results and Rescission, in Part, of Antidumping Duty Administrative Review: Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea, 68 FR 7503 (February 14, 2003), and Accompanying Decision Memorandum at Comment 3. Thus, POSCO argues that the Department should not make an adjustment for packing expenses with respect to POSCO's calculation of its G&A expense for these final results.

Department Position:

When determining whether it is appropriate to include or exclude a particular item from the G&A expense ratio calculation, the Department reviews the nature of the activity and the relationship between this activity and the operation of the company. In Circular Weld Non-Alloy Pipe from Korea, cited by petitioners, the Department disallowed gains on marketable securities in the G&A expense rate calculation because they did not relate to the normal operations of the company and the income generated was not necessarily short-term. In the case of POSCO, we verified that the items at issue in this case were money market funds and short-term investments, and that the income generated was short-term interest income and related to the company's normal operations. See POSCO's Cost Verification Report at 22. Under Korean GAAP, certain short-term investments (e.g., money market, short-term mutual funds, etc.) are classified as a current marketable securities on the financial statements and generate short-term interest income. See Cold-Rolled Steel from Korea and Accompanying Decision Memorandum at Comment 8. Therefore, consistent with our normal practice, we have included the short-term interest income as an offset to G&A expense. See also, Notice of Final Results Antidumping Duty Investigation of Stainless Steel Bar from Italy; Final Determination, 67 FR 3155(January 23, 2002), and Accompanying Decision Memorandum at Comment 22, and Notice of Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Administrative Review: Finding 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, 61 FR 57629 (November 7, 1996), and Accompanying Decision Memorandum at Comment 24.

With regard to gains on redemption of bad debt, we consider bad debt expenses to be properly reported as indirect selling expenses, not G&A expenses. See Circular Weld Non-Alloy Pipe from Korea and Accompanying Decision Memorandum at Comment 11. We have excluded short-term income from POSCO's G&A calculation and applied it to its home-market indirect selling expenses. However, in this particular instance, adjusting POSCO's home-market indirect selling expenses to account for reversal of bad debt has no impact on the calculation of this ratio. See POSCO's Cost Verification Report at 22; see also, POSCO's Final Calculation Memorandum.

Finally, with respect to excluding packing cost from the denominator, it is the Department's practice to exclude company-wide packing cost from the calculation of the G&A expense ratio, where available. See Final Result of Antidumping Administrative Review: Certain Pasta from Turkey, 67 FR 68429 (December 11, 1998), at 68434. Therefore, we have recalculated POSCO's G&A ratio to disallow reversal of bad debt in the numerator and have taken into account packing expenses in the denominator. See POSCO's Final Calculation Memorandum.

Comment 10: Whether the Department Should Revise POSCO's Interest Expense Ratio

POSCO argues that it is not necessary to adjust its interest expense ratio to account for packing cost for these final results. With respect to the interest expense calculation, POSCO claims the Department never requested that POSCO report its cost of goods sold net of its packing cost. See POSCO Sections B-D. Further, POSCO contends that if the Department determines to deduct packing expense from the denominator of its interest expense calculation, the resulting impact is so minimal that the adjustment is not warranted. POSCO argues that the Department has previously determined that it is not necessary for the Department to make adjustments that are minimal. See Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea, 68 FR 7503, and Accompanying Decision Memorandum at Comment 3. For these reasons, POSCO contends the Department should continue to use POSCO's calculation of interest ratio for these final results.

Petitioners contend that the Department should make an adjustment for POSCO's interest expense regardless of the significance of the correction. In Circular Weld Non-Alloy Pipe from Korea, the Department adjusted a respondent's G&A regardless of the effect of the change on the ratio. See Circular Weld Non-Alloy Pipe from Korea and Accompanying Decision Memorandum at Comment 4. Therefore, they argue that for these final results, the Department should deduct packing cost in the calculation of the interest expense ratio.

Department Position:

We agree with petitioners. As noted above in Comment 9, we have adjusted POSCO's G&A expense ratio to account for packing cost. Likewise, we have adjusted POSCO's interest expense ratio to exclude packing expense for these final results. See POSCO's Final Calculation Memorandum.

Comment 11: Whether the Department Should Re-Calculate POSAM's U.S. Indirect Selling Expense

Petitioners argue that the Department should re-calculate POSAM's U.S. indirect selling expense ratio because the denominator is grossly overstated. Petitioners claim that to calculate the denominator of its U.S. indirect selling expense ratio, POSAM included product sales, the full sales value of its UPI transactions, as well as the service revenue earned on other transactions. See POSCO's Sales Verification Report at 28 and Exhibit u.s.-12. According to petitioners, the full sales value of the UPI transactions should not be included in the denominator of the U.S. indirect selling expense ratio because POSAM's role in these sales was, at best, as a mere processor of the transactions.

Petitioners acknowledge that the Department recently rejected their argument regarding indirect selling expenses. See Carbon Steel Flat Products from Korea and Accompanying Decision Memorandum at Comment 4. In Carbon Steel Flat Products from Korea, the Department included the entire value of the UPI sales in the denominator of the U.S. indirect selling ratio.

Petitioners argue that, in that decision, the Department's reasoning was flawed. Petitioners claim that under U.S. GAAP, the full sales value of the UPI transactions was not considered to be part of the revenue of POSAM. Specifically, in POSAM's audited financial statements, prepared in accordance with U.S. GAAP and, in particular, EITF Issue No. 99-19 (relating to whether sales can be recognized on a gross or a net basis), only the "service charge revenue" on the UPI transactions, not the gross sales value, was recognized as revenue on the income statement. See POSCO's Financial Statements submitted on April 27, 2003, at Exhibit 27. Petitioners claim it was the service charge revenue that represented POSAM's expenses incurred in the handling of the UPI transactions, plus an element of profit. On this basis, they argue that only the service charges revenue on the UPI transactions should be included in the denominator of POSAM's U.S. indirect selling expense ratio.

Petitioners also note that in Certain Cold-Rolled Carbon Steel Flat Products from Korea the Department noted a disparity between accepting the expenses in the numerator and reducing the revenues in the denominator. See Certain Cold-Rolled Carbon Steel Flat Products from Korea at Accompanying Decision Memorandum at Comment 4. Petitioners argue that this conclusion is incorrect. They contend the expenses in the numerator directly correspond to the revenues in the denominator so long as the service revenue – not the gross sales – is included in the denominator.

POSCO argues that the Department should continue to use its U.S. indirect selling expenses calculated for these final results. POSCO points out that petitioners acknowledge that its request to reduce POSAM's denominator in its U.S. indirect selling expense runs counter to the Department's practice. See Certain Cold-Rolled Carbon Steel Flat Products from Korea at Accompanying Decision Memorandum at Comment 4. POSCO argues that in Carbon Steel Flat Products from Korea, as in the current case, the Department (1) verified that POSAM's numerator of the indirect selling expense ratio includes all expenses reported in POSAM's book and records, and (2) noted no discrepancies. See POSCO's Sales Verification Report at 28 through 29. Because in the instant review POSCO included all expenses in connection with the purchase and resale of steel in the numerator of the ratio, including only the service charge on the UPI transactions in the denominator would cause a misallocation of the expenses, thereby overstating the indirect selling expense ratio. Further, POSCO contends that in Carbon Steel Flat Products from Korea, the Department found that POSAM maintained its general ledger in accordance with U.S. GAAP and that the general ledger was the proper source upon which to base the revenue used to determine POSAM's indirect selling expense ratio. Because petitioners failed to provide new information that contradicts the Department's prior decision and have not disputed that POSAM's general ledger is maintained in accordance with U.S. GAAP, POSCO asserts that the Department should continue to use the denominator reported by POSAM.

Further, POSCO rebuts petitioners' assertion that the expenses in the numerator directly correspond with the denominator so long as the service revenue-not the gross sales value-is included in the denominator. As POSCO explained in Carbon Steel Flat Products from Korea,

most of POSAM's indirect selling expenses are common and cannot be segregated and, thus, it is appropriate to allocate these expense over the total gross sales value, otherwise the calculation would be overstated. Further, POSCO argues that because the indirect selling expense ratio is applied to the gross unit price, POSCO must include in that ratio the full sales value of the UPI transactions. Accordingly, POSCO asserts that the Department should continue to use its calculation of U.S. indirect selling expenses for these final results.

Department Position:

We agree with POSCO that we should use POSAM's gross sales figure from its UPI transactions, as reported on POSAM's financial statements in the denominator of its U.S. indirect selling expense ratio, rather than the lower sales value based only on the UPI sales' service revenue. The Department has determined that because a majority of POSAM's interest and SG&A expenses incurred during the POR were associated with sales to an affiliate, it is not appropriate to use the net sales figure reported on POSAM's financial statement in our calculation of U.S. indirect selling expenses. Additionally, the exclusion of the UPI transactions' gross sales amount from the denominator of the U.S. indirect selling expense calculation would result in a misallocation of expenses, and, thus, an inaccurate reflection of POSAM's total sales value. In particular, we note that the numerator of the ISE ratio is based on all expenses reported in POSAM's books and records (prepared in the normal course of business) incurred in connection with the gross sales value. Accepting petitioners' argument would result in a disparity between the expenses used in the numerator and the value of sales in the denominator upon which those expenses were incurred.

The audited financial statements of POSAM substantiate that POSAM's books and records are maintained in accordance with U.S. GAAP. We recognize that U.S. GAAP principle EITF 99-19 dictates that POSAM report its net sales value on its financial statements, for hot-band steel purchased from POSCO and resold to UPI, for purposes of preparing its financial statements. However, as stated above, a substantial portion of POSAM's expenses related to the sales to the UPI are embedded in POSAM's total indirect selling expenses. Consequently, to calculate the indirect selling expense ratio to be applied to the gross unit selling prices of POSAM's U.S. sales, it is appropriate to include POSAM's total sales revenue in the denominator. It is, therefore, necessary to utilize POSAM's total sales revenue rather than the total sales revenue as reported in its audited financial statements. In doing so, we are relying on the underlying data in the audited financial report, i.e., the audited books and records of POSAM, which establish the invoiced value of POSAM's sales to UPI and to its unaffiliated customers. Accordingly, the Department accepts POSAM's calculation of its indirect selling expense ratio for the final result.

Further, we agree with POSCO that the inclusion of the net sales value as reported on POSAM's financial statements, would inaccurately inflate POSCO's indirect selling expense ratio and margin. Therefore, we find the gross sales value POSAM reported during the POR more accurately reflects its sales revenue. As such, for these final results, we will continue to include

POSAM's total sales value in the indirect selling expense calculation.

Comment 12: Whether the Department Should Calculate POSAM's Net Interest Expense and Add it to POSAM's U.S. Indirect Selling Expense

Petitioners argue that the Department should calculate POSAM's net interest expense and add it to POSAM's U.S. indirect selling expense. In the Preliminary Results, the Department intended to add POSAM's net interest expense to POSAM's U.S. indirect selling expenses. However, neither the Department nor POSAM calculated POSAM's net interest expense for the Preliminary Results. In order to perform this calculation, the Department must first identify the sales of subject merchandise as a percentage of POSAM's total sales. Petitioners state that U.S. GAAP does not recognize POSAM's affiliate UPI transactions. Therefore, only a small percentage of POSAM's total sales represents revenues of subject merchandise. Using this percentage POSAM's net interest expense is greater than its imputed credit expense and should be added to POSAM's U.S. indirect selling expense or the Department should simply subtract this amount from the gross unit price. See Attachment 1 of U.S. Steel's Case Brief. Therefore, the Department should correct POSCO's U.S. indirect selling expense for these final results.

POSCO argues that it is not necessary to make an adjustment to POSAM's net interest expense and add it to POSAM's U.S. indirect selling expense. First, it claims nothing in the Department's calculation memorandum states that recalculation of POSAM's U.S. indirect selling expenses is necessary. Further, POSCO argues petitioners' calculation is based upon the premise that the Department include only service charges instead of the full sales value. However, it claims including the full sales value of these transactions when calculating indirect selling expenses is both appropriate and consistent with Department precedent. POSCO contends that by accounting for the full sales value of all transactions, as POSAM did in its normal general ledger, the POR net interest expense attributable to subject merchandise is less than the imputed interest expense reported in the U.S. sales file, which would result in a negative net interest expense factor. Thus, no change is necessary for these final results.

Department Position:

We agree with petitioners in part. The Department stated that it added POSCO's net interest expense to POSCO's U.S. indirect selling expense for the Preliminary Results. See Preliminary Results at 54106. However, we failed to make such an adjustment. The statute and Department practice prescribe that net interest expense incurred in the United States should be included in the margin calculation and that such expenses are included *only* to the extent that they are not double-counted. This position is clearly stated in CORE from Korea the 7th Review, 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. indirect selling expenses under section 772(d)(1)(D) of the Act." See Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea , 67 FR 11976 (March 18, 2002) ("CORE from Korea the 7th Review"). 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." See CORE from Korea the 7th Review and Accompanying Decision Memorandum at Comment 1.

In this review, we deducted the full amount of imputed U.S. credit expense from the starting price. POSCO reported no U.S. inventory expenses during the POR. However, because POSAM's imputed credit expense exceeds its net interest expense, in relation to its subject merchandise, all interest expense was accounted for in the reported sales adjustment.

With respect to adjusting POSAM's U.S. indirect selling expense to account for only subject merchandise we are making no adjustment since reducing POSAM's revenue would distort its U.S. indirect selling expense ratio. For further discussion see Comment 11 above. Therefore, no adjustment with respect to interest expense is necessary for these final results.

Comment 13: Whether the Department Should Re-Calculate POSCO's U.S. Credit Expense

Petitioners argue that the Department should re-calculate POSCO's U.S. credit expense. Petitioners explain that in POSCO's supplemental response POSCO stated that it revised its inventory carrying cost incurred in the country of exportation (DINVCARU) to account for the entire time between final production of the merchandise and the arrival of the merchandise in the United States. Petitioners further explain that in the same questionnaire response POSCO also revised its credit expense to account for the period of time from the arrival date of the merchandise in the United States to the final payment date in order to avoid overlapping of the period from shipment date to the arrival date. Petitioners argue that POSCO's treatment of its credit expense is contrary to the Department's practice. See Stainless Steel Wire Rod from Korea, 69 FR 19153 (April 12, 2004) ("Wire Rod from Korea"), and Accompanying Decision Memorandum at Comment 4. Petitioners contend that, unlike DINVCARU, credit expense directly reduces the U.S. gross unit price. Thus, the Department should correct is credit expense calculation for these final results.

POSCO argues that it is not necessary to re-calculate its credit expense. It claims that it originally reported its DINVCARU based upon the period between the date of production and the date of shipment for the factory and calculated its credit expenses based upon the period between the date of shipment and the date POSAM received payment from the customer. See POSCO Sections B-D. POSCO explains that subsequently, in its March 17, 2004, Supplemental Sections A-C Questionnaire, the Department instructed POSCO to report inventory carrying cost incurred in Korea "to account for the entire time between final production and the arrival in the United States." See POSCO's Supplemental Response A-C at 40-41. To comply with the Department's instructions, POSCO claims it had to revise its credit period to begin with the arrival date in the United States. POSCO argues that to otherwise calculate the credit period

would double the opportunity cost between the date of shipment and the date of arrival. POSCO argues that the Department has found in numerous cases that the credit period and the inventory carrying period should not overlap. See Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstance Determination: Silicomanganese from India, 67 FR15531 (April 2, 2002) ("Silicomanganese from India"), and Accompanying Decision Memorandum at Comment 19; see also, Notice of Final Administrative Review: Stainless Steel Sheet and Strip in Coils from Taiwan, 69 FR 5960 (February 9, 2004) ("Sheet and Strip from Taiwan"). Accordingly, POSCO contends that the Department should make no adjustment to POSCO's credit expense for these final results.

Department Position:

The Department's practice is to calculate a credit expense based upon the date the merchandise was shipped to the date on which the customer paid for the merchandise. See Wire Rod from Korea at Comment 4. Accordingly, for POSCO, we have calculated the credit period as the time the subject merchandise is shipped to the U.S. customers from the factory in Korea to the time the U.S. customer pays POSAM. This time frame coincides with the terms of sale established by POSCO and its U.S. customers. See POSCO Sections B-D at 19. In order not to double count the opportunity cost incurred by POSCO and the customer, we have recalculated POSCO's domestic inventory for its U.S. sales. For these final results we have corrected POSCO's inventory carrying cost and imputed credit expense.

Comment 14: Ministerial Errors with Respect to POSCO's Overrun Sales and Seconds

Petitioners argue that the Department should correct two ministerial errors in the margin program. According to petitioners, it is the Department's policy to match prime sales in the home market to prime sales in the United States, and non-prime sales in the home market to non-prime sales in the United States. However, in the programming language used in the Preliminary Results, non-prime home-market sales are matched to prime U.S. sales. Petitioners contend that to correct this error, the Department should revise the program language to ensure matches between non-prime sales. See POSCO's Preliminary Calculation Memorandum. Petitioners further argue that the Department should correct its programming language to exclude overrun sales from the margin program. Petitioners argue that, in spite of the Department's stated intentions, the programming language from the Preliminary Results fails to exclude such sales. See Preliminary Results at 54105.

POSCO did not comment on this issue.

Department Position:

We agree with petitioners. In the Preliminary Results, the facts on the record led us to find that POSCO's overrun sales were outside the ordinary course of trade and, thus, should have been

excluded from the margin program. See Preliminary Results at 54105. However, we made an inadvertent error in our preliminary margin program when we failed to exclude overrun sales. In the Preliminary Results, we also intended to match prime sales in the home market to prime sales in the United States. We have corrected these errors for these final results. See POSCO's Final Calculation Memorandum.

Comment 15: Whether the Department Should Adjust POSCO's Home-Market Interest Revenue

Petitioners argue that the Department should assign POSCO's home-market interest revenue to only a small portion of its home-market sales for these final results. According to petitioners, in rare cases POSCO charges interest for late payment on home-market sales. However, petitioners state that POSCO allocated the aggregate amount across all sales. See POSCO's Supplemental Response A-C at 24. Petitioners state that POSCO claims its approach was necessary because it was unable to tie this expense to particular invoices. A fairer approach, according to petitioners, would be to allocate all of the interest revenue only to one percent of POSCO's home-market sales. Petitioners also claim that the fact that the Department noted discrepancies pertaining to POSCO's home-market interest revenue is further indication that an adjustment is necessary. See POSCO's Sales Verification Report at 31.

POSCO disagrees with petitioners and states that no adjustment to its home-market interest revenue is necessary for these final results. Specifically, POSCO asserts that petitioners have misrepresented POSCO's methodology for reporting interest revenue. As explained in its original and supplemental response, POSCO's accounting system cannot readily tie interest revenue to specific transactions and, in fact, it does not charge interest revenue on a specific transaction basis. See POSCO Sections B-D at 53; see also, POSCO's Supplemental Response A-C at 24. Therefore, POSCO allocated this revenue on a customer-specific basis by dividing the total interest revenue received from each customer by the total sales revenue for the same customer, and applied the resulting ratio to the gross unit price. POSCO claims that the Department verified this methodology and noted no discrepancies. See POSCO's Sales Verification Report at 31 and Exhibits s-25 and s-33.

POSCO further argues that the Department's regulations state that any party seeking to report an expense or a price adjustment on an allocated basis must demonstrate that the allocation does not cause distortions. Because POSCO could not link interest revenue on a transaction-specific basis, it instead reported interest revenue on a customer-specific basis, which was the most reasonable method of reporting. POSCO asserts that petitioners' suggestion to allocate one percent of the interest revenue to all sales is more distortive because it does not relate to the amount of interest revenue that was charged for each customer. Therefore, for these final results, the Department should continue to use POSCO's methodology of reporting interest revenue.

Finally, POSCO contests petitioners' claim that the Department "noted a discrepancy" regarding

POSCO's home-market interest revenue. POSCO asserts that the record evidence clearly indicates that petitioners are citing a section of POSCO's verification report that contains a typographical error. POSCO contends that the verification report should have instead stated, "We noted no discrepancies." According to POSCO, the verification exhibits demonstrate that the reported expenses were consistent with POSCO's accounting records. See POSCO's Sales Verification Report at page 31 and Exhibits S-25 and S-33. Moreover, POSCO contends that nothing else in the report indicates that POSCO's home-market interest revenue was inaccurately reported.

Department Position:

We agree with POSCO that it is not necessary to recalculate POSCO's home-market interest revenue. First, the Department made an inadvertent typographical error when it stated that it "noted a discrepancy" in POSCO's home-market interest revenue. The sentence should have read "we noted no discrepancies." See POSCO's Sales Verification Report at 31. Furthermore, nowhere in the report does the Department state that POSCO was instructed to revise its interest revenue calculation.

Moreover, at the beginning of POSCO's sales verification report, where the Department summarized issues for further discussion, there is no mention of home-market interest revenue. See POSCO's Sales Verification Report at 1-3. Finally, the verification exhibits provided by POSCO and sales traces examined at verification demonstrate that POSCO reported its home-market interest revenue correctly. See POSCO's Sales Verification Report at page 31 and Exhibits S-25 and S-33. Therefore, for these final results, we have not changed POSCO's home-market interest revenue.

Union

Comment 16: Whether Union's Scrap Offsets Include VAT

Petitioners argue that the Department must make certain that any scrap offsets are based on values exclusive of value added tax (VAT). Citing Notice of Final Results of Administrative Review: Circular Welded Non-Alloy Steel Pipe and Tube from Mexico, 62 FR 37014, 37016 (July 10, 1997), petitioners state that the Department must ensure that Union has not included VAT in any offset claims in conjunction with its section D costs. See ISG Case Brief at 41 and 42.

Union asserts that it reported its scrap offsets exclusive of VAT. Union states that during the Department's verification of Union's scrap revenue, the Department examined the summary data for the POR as well as source documents for December 2002. Union adds that, from the list of scrap customers for December 2002, the Department verified the source documentation for one customer. The amounts for that customer, exclusive of VAT, are circled on each invoice

provided in the Union Cost Exhibit 15. Accordingly, argues Union, the Department verified that the scrap revenue reported by Union, and applied as an offset to its reported costs, does not include VAT.

Department Position:

We agree with Union. As found at verification, Union reported its scrap offsets exclusive of VAT. Department officials examined detailed documentation of Union's calculation of its scrap revenue, including scrap offsets. The officials found no discrepancies with Union's reporting methodology. It is clear from Union cost verification exhibit 15 that Union's applied offset, as reported, does not include VAT. [5]

Comment 17: Whether Union Reimbursed Dongkuk International, Inc. for Antidumping Duties

Petitioners argue that in order to be certain that Union did not reimburse Dongkuk International, Inc. (DKA) for payments of antidumping duties, the Department must request additional information from Union before the Department calculates the final results of this administrative review.

Union asserts that it did not reimburse its subsidiary DKA for payment of antidumping duties. Union states that the note on page 12 of DKA's financial statements, which is cited by the Department in the verification report, makes clear that no reimbursement occurred. Union explains the proprietary details of its relationship with DKA in its case brief. For more detail, see Union's Preliminary Calculation Memorandum.

Department Position:

We agree with Union. During verification, Department officials examined DKA's functions, as related to sales of both Union and non-Union products. Department officials found no evidence that Union reimbursed DKA for payment of antidumping duties. Further, it is clear from the details found at verification, including DKA's financial statement, that Union does not reimburse DKA for antidumping duties. See page 6 of Unions's February 1, 2005, cost and sales verification report ("Union's Cost and Sales Verification Report"). For further discussion of the proprietary facts regarding this issue, see Memorandum from Martin Claessens, Case Analyst, to James Terpstra, Program Manager, Concerning Analysis Memorandum for Union Steel Manufacturing Co., Ltd. Final Results of 2002-03 Administrative Review of the Antidumping Duty Order on CORE from Korea, dated March 7, 2005 ("Union's Final Calculation Memorandum").

[5] See Memorandum from Mark Young and Martin Claessens, regarding the verification of Union's cost and sales data, dated February 1, 2005 (Union Verification Report), at 15 and at Cost Exhibit 15.

Comment 18: Ministerial Errors for Union

1) Date for Window Period for Home-Market Sales

Petitioners allege that the Department did not set a date that was sufficient to include home-market sales within three months of the earliest reported U.S. date of sale. Petitioners suggest that the window period begin three months before the first reported U.S. date of sale.

Union did not rebut this argument.

Department Position:

We agree with petitioners. For the final results, we have changed the window period so that it begins three months prior to the first reported U.S. date of sale. See Union's Final Calculation Memorandum.

2) Selling and Packing Expenses Excluded from the Cost Test

Petitioners state that in the calculation of the total cost of production in the home-market sales program, the Department failed to include total direct and indirect selling expenses and packing expenses. Petitioners argue such expenses should be included in the calculation of total cost of production.

Union did not rebut this argument.

Department Position:

We agree with petitioners. For the final results, the Department has included total direct and indirect selling expenses and packing expenses in the total cost of production in the home-market sales program. See Union's Final Calculation Memorandum.

3) Matching by Prime and Non-Prime

Petitioners state that the Department's preliminary margin program allowed matching of prime U.S. sales to non-prime home-market sales. Petitioners suggest that the Department change its programming language to correct for this error.

Union did not rebut this argument.

Department Position:

We agree with petitioners. We have changed our programming language to allow for matching of prime U.S. sales to prime home-market sales and non-prime U.S. sales to non-prime home-market sales. See Union's Final Calculation Memorandum.

Comment 19: Union's U.S. Indirect Selling Expenses - Commission Sales

Petitioners argue that the Department should restate Union's U.S. indirect selling expenses in three ways. First, petitioners identify certain expenses that it claims are errors in Union's indirect selling expense calculation.[6] Second, petitioners state that Union applied its U.S. indirect selling expense ratio to all U.S. sales, including sales involving payment of commissions. Petitioners argue that this results in an over-statement of selling expenses incurred on the sales using selling agents and understates the amounts on all other sales. Third, petitioners assert that DKA omitted an amount of bad debt from its indirect selling expense calculation, and that this amount should be included in Union's U.S. indirect selling expenses.

Union argues that it correctly reported the amounts of its U.S. indirect selling expenses. Union states that it reported DKA's indirect selling expenses, as recorded in its accounts, during the POR. Further, Union claims the Department verified DKA's reported SG&A expenses in conjunction with its income statements and trial balances to set forth the POR totals of DKA's indirect selling expenses, as documented in CEP Exhibit 11. Union further argues that the Department verified the details of these expenses for the POR, as footnoted in DKA's 2002 and 2003 financial statements. Union contends that there was no error in the reporting of these or any other of DKA's indirect selling expenses.

Union also argues that no additional adjustment to its indirect selling expense ratio is required to account for Union's sales where commissions were paid to unaffiliated selling agents. Union adds that because commissions are only paid to selling agents for identifying customers that result in sales by DKA, the commissions do not cover the many expenses incurred by DKA in conducting that sale once the sale is confirmed. Union also states that all of DKA's selling activities are not captured by the commission paid.

Union concludes that it is the Department's practice to recognize that many SG&A expenses are part of the cost of business and, thus, such costs must somehow be recognized as an expense (i.e., by allocating them proportionally to all sales).

Department Position:

Regarding petitioners' first point, we find that Union did not err in its calculation of its U.S. indirect selling expense ratio in the manner alleged by petitioners. Because this issue involves proprietary information, it cannot be addressed in a public forum. See Union's Final Calculation

[6] The expenses enumerated by petitioners are proprietary and cannot be disclosed in the public record.

Memorandum. Also, concerning petitioners' second point, whether DKA paid a commissioned agent for a sale does not change the fact that DKA incurred indirect selling expenses on that sale. A review of DKA's ISEs reported by Union indicates that certain expenses would be indirectly incurred regardless of whether DKA paid a commission.

However, we agree with petitioners that Union omitted an amount of bad debt from its indirect selling expense ratio calculation. In order to account for this error, we have used Union's revised indirect selling expense ratio calculation from CEP Exhibit 11 in our final results. See Union's Final Calculation Memorandum.

Comment 20: Union's U.S. Indirect Selling Expenses - Slab and Scrap Revenue

Petitioners argue that Union's calculation of DKA's indirect selling expenses is incorrect. Specifically, petitioners claim that the denominator of DKA's company-wide indirect selling expense ratio incorrectly includes DKA's POR gross sales value of slab and scrap to its parent company. Petitioners argue that the inclusion of these slab and scrap sales is incorrect because (1) DKA only acts as an agent for such transactions, (2) the implementation of accounting principle EITF 99-19 required DKA to change the manner in which it reported slab and scrap revenue, and (3) the Department has previously determined that a respondent's transfers of raw material to its parent should be excluded from the indirect selling expense ratio. See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico, 69 FR 6259 (February 10, 2004) (SSS from Mexico). In addition, petitioners urge the Department to include in the numerator of the indirect selling expense ratio all the expenses of DKA, including the expenses relating to DKA's participation in slab and scrap sales. Alternatively, petitioners suggest that the Department base its indirect selling expense ratio calculation on other DKA documents found at verification. See Union's Cost and Sales Verification Report at CEP Exhibit 14 and U.S. Steel's Case brief at Attachment 6.

Union argues that it correctly reported the appropriate sales denominator for calculating its U.S. indirect selling expense ratio. Union states that in all prior reviews, the Department has accepted Union's indirect selling expense ratio methodology, which is based on DKA's gross sales value. Union further argues that no interested party has previously questioned this approach in prior reviews, whether before or after the adoption of the EITF 99-19 accounting principle. Union further asserts that DKA's activities in the purchase and sale of slab and scrap to DSM are substantial and comparable to DKA's activities for purchase and sale of finished products and, therefore incur similar selling functions.

Union also argues that Department precedent supports Union's calculation methodology. It claims that in the most recent review of this order, the Department addressed a comparable argument made by petitioners with respect to the sales denominator used to calculate POSCO's U.S. indirect selling expense ratio. See CORE from Korea the 7th Review. Union claims that in

CORE from Korea the 7th Review, the Department rejected the use of the new accounting principle EITF 99-19.

Union further argues that the Department has consistently held that the expense amount and the total sales value should reflect the same pool of sales such that the total expense amount is divided by the total value of the sales for which the expense was actually incurred.[7] Union argues that in SSS from Mexico, the Department did not endorse the new accounting rule as binding or relevant. Rather, Union argues, in SSS from Mexico the Department focused on the verified facts particular to the limited nature of the respondent's selling expenses in making its determination in that case.

Finally, Union states that DKA's role in the scrap and slab sales process was similar to its role in the purchase and sale of finished products. The evidence presented at verification confirmed that most of DKA's expenses are common and cannot be directly segregated by product, asserts Union. Union concludes that the exclusion of the gross sales value of DKA's raw material sales from the denominator would vastly inflate Union's U.S. indirect selling expense ratio.

Department Position:

We agree with Union. As illustrated in the verification report and exhibits, Department officials thoroughly examined Union's calculation of its U.S. indirect selling expense ratio at verification.[8] Additionally, the Department devoted substantial resources at verification and conducted a detailed analysis to determine whether DKA's selling expenses and sales revenue could be segregated between its Union and Dongkuk divisions. The result, as seen in CEP Exhibits 11 and 14, indicates that a large amount of U.S. indirect selling expenses of DKA cannot be tied to a particular division of DKA or to subject or non-subject merchandise. The expenses are listed in detail in CEP Exhibits 11 and 14 but cannot be listed here due to their proprietary nature. As seen in CEP Exhibit 14 at pages one and two, DKA's selling activities for its sales of slab and scrap to DSM are substantial and vary little from its selling activities for finished-product sales.

Union is correct when it states that the Department has consistently held that the expense amount and the total sales value in a ratio should reflect the same pool of sales such that the total

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[7] To illustrate this point, Union cites TRB's from Japan at 2568; Final Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod from Spain, 66 FR 10988 (January 15, 2001), Issues and Decision Memorandum at Comment 2; Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from the United Kingdom, 67 FR 3146 (January 23, 2002), Issues and Decision Memorandum at Comment 3; Final Results of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet and Strip from Korea, 65 FR 55003 (September 12, 2000), Issues and Decision Memorandum at Comment 4; and Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan, 61 FR 38139, at Comment 1.

[8] See Union Verification Report at 32-33 and at CEP Exhibits 11 and 14.

expense amount is divided by the total value of the sales for which the expense was actually incurred. See e.g., TRB's from Japan 62 FR 11836. In the instant administrative review, if the Department removed the sales revenue of scrap and slab to DSM, the indirect selling expenses used in the same ratio would not reflect the same pool of sales as the revenue.

Further, we find that petitioners misinterpret the Department's position in SSS from Mexico. In that case, the Department determined that Mexinox USA's sales of raw materials to its parent could be construed as inter-company transfers of merchandise, involving merely a routine transfer of raw materials to a parent company. See SSS from Mexico 69 FR 6259. The facts in the instant are distinct from those of SSS from Mexico. Department officials verified that DKA's selling functions for sales of slab and scrap to DSM are substantial and that a large amount of DKA's indirect selling expenses are common and cannot be directly tied to sales of raw materials or sales of finished products. Therefore, DKA's sales of slab and scrap to DSM cannot be judged as merely inter-company transfers, because they involve very similar selling activities to those required in DKA's sales of finished products.

The audited financial statements of DKA substantiate that DKA's books and records are maintained in accordance with U.S. GAAP. We recognize that U.S. GAAP principle EITF 99-19 dictates that DKA report its sales of slab and scrap to DSM as agent sales for purposes of preparing its financial statements. However, as stated above, a substantial portion of DKA's expenses related to the sales of scrap and slab are embedded in DKA's total indirect selling expenses. Consequently, to calculate the indirect selling expense ratio to be applied to the gross unit selling prices of DKA's U.S. sales, it is appropriate to include DKA's total sales revenue in the denominator. It is, therefore, necessary to utilize DKA's total sales revenue rather than the total sales revenue as reported in its audited financial statements. In doing so, we are relying on the underlying data in the audited financial report, i.e., the audited books and records of DKA, which establish the invoiced value of DKA's sales to DSM and to its unaffiliated customers. Accordingly, the Department accepts Union's calculation of its indirect selling expense ratio for the final result.

Comment 21: Union's Treatment of Bad Debt Expenses

Petitioners contend that Union's allocation of the allowance for bad debt to the subject merchandise is understated, arguing that the entirety of the bad debt allowance must be included in the expenses allocable to the subject merchandise. Regarding bad debt write-offs, petitioners

argue that the Department should treat certain bad debt write-offs as direct selling expenses related to subject merchandise.[9]

Union argues that no adjustment is required for Union's reporting of bad debt. Union states that DKA calculated a provision for bad debt based on its estimate of what was likely to be collectable. Union further asserts that DKA's total amount was recognized as an offset to the accounts receivable balance on DKA's balance sheet. Union explains that it then divided the amount of net contribution to the bad debt allowance for the unresolved claims between the Union and Dongkuk divisions.

Union adds that the remaining portion of the bad debt allowance results from a comparable calculation of the estimated bad debt resulting from unpaid sales to two customers of the Dongkuk division. DKA calculated its POR contributions to bad debt allowance for the Union division and the Dongkuk division, dividing the contributions where possible, and allocating the amount for the two Dongkuk customers to the Dongkuk division.

Union also argues that it properly excluded the write-off of bad debt from the calculation of its U.S. indirect selling expense ratio. Union explains that DKA's bad debt expense consists of two parts – a bad debt allowance and bad debt write-offs. The bad debt allowance is a calculation based on unpaid outstanding balances and estimates as to the amount that is unlikely to be collected. According to Union, a bad debt allowance cannot be tied to specific sales because it is impossible to determine which sales will actually become bad debt. Union asserts that DKA's bad debt write-offs were mostly related to sales made prior to the POR. Such sales are also those

[9] Petitioners cite various cases to argue that bad debt, even with respect to sales made prior to the POR, should be treated as a direct expense. See AOC International v. United States, 721 F. Supp. 314, 319 (CIT 1989), where the Court determined it improper for the Department to require that the sale giving rise to bad debt take place during the POR. Petitioners assert that the Department has since repeatedly recognized this principle in Sanyo Elec. Co. v. United States, 9 F. Supp. 2d 688, 695 (CIT 1998), Zenith Elecs. Corp. v. United States, 18 CIT 882, 888 (CIT) 1994, Final Results of Antidumping Duty Administrative Review: Color Television Receivers from Korea, 61 FR 4408, 4412 (February 6, 1996).

that provide the basis for DKA's determination as to the amount of the balance to be maintained in its allowance for doubtful accounts, and, in turn, the amount of the bad debt allowance to be charged against income each year and added to the allowance for doubtful accounts to meet the targeted balance. Union states that it treats this bad debt allowance as an indirect selling expense and includes it in the U.S. indirect selling expense ratio.

Union states that where a write-off for bad debt occurred with respect to sales during the POR, Union reported the amount in the field OTHDISU. Similarly, where the customer underpaid the invoiced amount during the POR, Union reported the unpaid amount in the field OTHDISU.

Regarding the cases cited by petitioners, Union claims that all involve home-market sales where the Department had not deducted any bad debt expenses because the Department does not deduct indirect selling expenses in calculating normal value and because the bad debt written off related to specific sales made prior to the POR. Union argues that the Court rejected the Department's approach, finding that the Department was applying a standard in which an adjustment for bad debt in the home market could almost never be granted.[10] Thus, Union claims that petitioners' request that the Department deduct both DKA's bad debt allowance and its bad debt write-offs would result in the double-counting of bad debt.

Department Position:

We agree with Union. Although the Department and Union found minor errors in DKA's bad debt allocation method as part of its U.S. indirect selling expense ratio,[11] Department verifiers found no other discrepancies with the way in which Union calculated and reported its bad debt. We verified that Union had both bad debt allowance (included in its U.S. indirect selling expense ratio) and bad debt write-offs attributable to actual sales (reported in the field OTHDISU).

The Department verified each type of bad debt in detail at DKA. The record shows that the portion of the bad debt allowance that petitioners question is attributable to two Dongkuk division customers, not to Union customers. Also, the list of customers was one of many detailed documents Department officials reviewed during verification at DKA. After adjusting for minor changes, Union correctly reported the proper portions of its bad debt as indirect selling expenses in its revised indirect selling expense ratio calculation. See Union's Cost and Sales Verification Report at page 43 and CEP Exhibit 11. Furthermore, the bad debt that Union could tie to specific sales was reported in the field OTHSIDSU and these amounts were also verified on site at DKA.

In addition, we find that petitioners' suggestion that the Department deduct both DKA's bad debt write-offs and bad debt allowance would effectively double-count bad debt. The Department

[10] Union cites AOC International v. United States, 721 F.Supp. 314, 319 (CIT 1989).

[11] See Union Verification Report at 33. See also CEP Exhibit 11.

cannot deduct both the bad debt allowance attributable to delinquent sales and the bad debt written off, when the provision for the bad debt was charged against income in a prior year. Union's verified, revised, and reported bad debt, as part of its indirect selling expense ratio, accounts for all bad debt in the given period during which indirect selling expenses are reported and does not double-count. Accordingly, we are not revising Union's indirect selling expense ratio calculation.

Comment 22: Union's Net U.S. Interest Expense

Petitioners argue that the Department should recalculate Union's net U.S. interest expense and deduct it from U.S. sales. Petitioners explain that Union calculated its interest expense attributable to subject merchandise by calculating a ratio of the sales value of subject merchandise to DKA's total sales value. This ratio was then applied to the total interest expense amount to calculate the portion of net interest expense allocable to subject merchandise. Petitioners argue that Union improperly included the amount for sales of slab and scrap sold to DKA in the denominator of this ratio calculation.

First, argue petitioners, DKA does not sell raw materials to DSM. Rather, they claim DKA is only the commissioned agent for these sales. Next, petitioners state that, as ordered in U.S. Accounting Principle EITF 99-19, DKA's sales of scrap and slab are considered "agent sales." Under U.S. GAAP, DKA is not permitted to include the gross sales amount in its financial statements. Petitioners cite section 773(f)(1)(A) of the Act, in arguing that the Department should use DKA's own costs, as such records are kept in accordance with the GAAP of the exporting or producing country. Next, petitioners argue, DKA acts only as a selling agent for scrap and slab sales to DSM. DKA is paid a commission by DSM, and accordingly, argue petitioners, the net interest expense calculated in CEP Verification Exhibit 11 does not pertain to the slab and scrap transactions.

Petitioners offer a recalculated ratio, using the DKA gross sales value reported in DKA's financial statements, excluding scrap and slab sales values. Petitioners state that the Department should apply the revised U.S. interest expense factor to each U.S. sale based on gross unit price.

Union argues that it properly determined the portion of DKA's interest expense allocable to sales of subject merchandise. Union states that the Department verified that DKA incurred interest expenses in relation to its purchases and sales of raw materials to DSM. Therefore, when allocating the portion of interest expense attributable to Union's sales of subject merchandise, the gross sales value of raw materials, as well as finished goods, must be included in the calculation.

Union argues that petitioners' proposal of treatment of DKA's interest expenses would effectively attribute most of the interest expenses incurred with respect to raw material purchases to sales of subject merchandise. Union asserts that the Department cannot treat raw material sales and finished product sales differently when interest expenses on both types of sales were

incurred on the same basis – the gross value.

Union adds that the Department cannot rely solely on the reporting treatment of sales dictated by an applicable accounting principle when doing so does not accord with the facts on the record and the type of analysis applicable in an antidumping case. Union states that financial accounting principles use a conservative approach with respect to the reporting of gross sales to affiliates and that the principles focus on the presentation of the overall financial position of the company. In this instance, the Department's goal should be to accurately attribute interest expenses to sales of subject merchandise. In using gross sales value for this allocation, the Department must treat sales of both subject and non-subject merchandise in a comparable manner, argues Union. Union concludes by stating that the Department has never endorsed an absolute standard of relying on accounting principles, and when appropriate, the Department has accepted methodologies more suitable to the facts of the case. As support, Union cites Notice of Final Results of Antidumping Duty Administrative Review: Certain Cold-Rolled Corrosion-Resistant Carbon Steel Flat Products from Korea, 67 FR 11,976 (March 11, 2002) at Issues and Decision Memorandum Comment 3.

Department Position:

We agree with Union. Both DKA's sales of scrap and slab and DKA's sales of finished products incurred interest on the basis of gross value. Excluding the value of slab and scrap from the calculation of net interest expense would distort the reality of DKA's interest incurred and, therefore, not allow for an accurate depiction of net interest for purposes of calculating a final antidumping margin. These facts were verified by the Department on site.[12] Although the U.S. GAAP principle EITF 99-19 mandates that DKA report its sales of slab and scrap as agent sales in its financial statements, the Department cannot ignore the fact that DKA incurred interest on such sales. It would be improper for the Department to change its calculation of interest expenses solely due to a change in accounting principles. See Comment 20, above. Accordingly, we have not revised Union's U.S. net interest expense.

Comment 23: Whether to Use Partial Facts Available for Union - Freight Costs

Union requests that the Department use its reported freight (INLFTCH and/or INLFTWH) in the final results of the current administrative review. Union explains that it correctly reported and described its freight costs, including freight equalization, in its section B response (December 5, 2003) and supplemental response (April 2, 2004). Finally, Union states that the Department verified the accuracy of Union's response, as detailed in the Union Verification Report.

Petitioners argue that the Department should continue to use partial facts available for home-market sales for which the freight charge was "freight equalized." Petitioners cite

[12] See Union Verification Report at CEP Exhibit 9.

inconsistencies in Union's responses and findings at the verification of Union as reasons not to use Union's reported freight for such sales. Petitioners assert that Union has failed to provide a satisfactory explanation with respect to freight-equalized sales, and, therefore, the Department should continue to apply partial facts available to such sales.

Department Position:

We agree with Union. Department officials verified these expenses and found no distortions of the facts or problems with the reporting methodology. Union's Cost and Sales Verification Report at 28. As a result, we are not applying partial facts otherwise available in calculating Union's dumping margin for the final results this review.

HYSCO

Comment 24: Whether the Department Should Treat HYSCO's U.S. After-Sale Technical Service As A Direct Selling Expense

Petitioners contend that, based on HYSCO's statement that the company provided after-sale technical services as part of its program for quality control, HYSCO may have incurred after-sale technical service expenses for its U.S. sales, but failed to report it as a direct selling expense. Petitioners urge the Department to pursue this issue, and develop an adjustment and apply the adjustment as facts available to all HYSCO's U.S. sales.

HYSCO states that the company did not provide any after-sale technical services for its U.S. customers. HYSCO argues that even if it incurred after-sale technical service expenses, they are not considered direct selling expenses unless they are variable costs in accordance with the Department's practice. HYSCO maintains that the expenses incurred as part of a company's overall quality control program do not qualify as direct selling expenses under the Department's practice, citing Notice of Final Result of Antidumping Administrative Review: Color Picture Tubes From Japan, 62 FR 34201 (June 25, 1997); see also, Notice of Final Results of Antidumping Duty Administrative Review: Calcium Aluminate Cement from France, 59 FR 14136, 14139 (March 25, 1994).

Department Position:

We agree with HYSCO that it fully responded to the Department's inquiry on this issue and confirmed that it did not incur any direct after-sale technical expenses in the United States. See HYSCO April 23, 2004 submission at 8. In addition, we verified the information submitted by HYSCO and did not find any technical expenses that are variable, i.e., costs that would not otherwise have been incurred if the specific sale in question had not occurred. See HYSCO Verification Report at Exhibits SVE-13 and SVE-14. Accordingly, we do not agree with petitioners that we should apply facts available to HYSCO's U.S. sales for the final results.

Comment 25: Whether HYSCO Failed to Report Warehousing Expenses for Its U.S. Sales

Petitioners raise questions concerning HYSCO's statement in its questionnaire response that it "may keep products for a short period of time from production date until shipment date for a specific customer's order." First, petitioners argue that HYSCO may have misreported shipment date as the date of sale. According to petitioners, if HYSCO produces goods to order and warehouses them, then the sales must have been made before shipment date. Second, petitioners allege, if the proper date of sale precedes shipment, then HYSCO failed to report U.S. warehousing expenses as a movement expense. Petitioners urge the Department to assign a warehousing expense from "facts available" and apply it to all of HYSCO's U.S. sales.

HYSCO argues that petitioners made claims without checking the facts. Facts of record, HYSCO states, are (1) HYSCO's invoice to the U.S. customer is issued after the product is shipped from the factory; (2) as verified by the Department, HYSCO stores finished goods temporarily at the company's Suncheon factory, and as such, cannot be characterized as warehousing under the Department's definition; and (3) HYSCO did not incur any U.S. warehousing expenses for U.S. sales during the POR. HYSCO maintains that the Department should reject petitioners' claims.

Department Position:

We agree with HYSCO. We verified during the factory tour at Suncheon that HYSCO produces goods and stores them temporarily at the plant. See HYSCO Verification Report at 23. Storing goods temporarily at the factory that produces the merchandise is not considered warehousing in accordance with the Department's practice. See the Department's Sections B and C questionnaire instructions regarding warehousing expense. We also verified that HYSCO issued invoices to its U.S. customers after shipment date. It is the Department's practice to use the date of shipment as the date of sale where date of shipment precedes invoice date. See Notice of Preliminary Results of Antidumping Duty Administrative Review: Honey from Argentina, 69 FR 623, (January 6, 2004); see also Notice of Final Determinations of Sales at Less than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada, 68 FR 52741, (September 5, 2003) and accompanying Decision Memorandum at Comment 3. In addition, we verified HYSCO's U.S. sales' terms of delivery, which indicate no U.S. warehousing. See HYSCO Verification Exhibits SVE-13 and SVE-14.

Comment 26: Whether HYSCO Failed to Report U.S. Commissions

Petitioners claim that given that HYSCO's affiliate HPA was compensated for its services in selling goods to the unaffiliated purchaser in the United States, the compensation, i.e., the amount of the difference between the payment it receives from HYSCO's unaffiliated customer and the amount it remits to HYSCO, could be a selling commission. Petitioners urge the

Department to request HYSCO to report all commissions, and resort to facts available if necessary.

HYSCO contends that petitioners are engaging in pure speculation in alleging that HPA's compensation from mark-ups could be commissions. HYSCO argues that it did not pay commissions to HPA, and that mark-ups earned by an U.S. affiliate cannot be categorized as commissions. In support of its contention, HYSCO cites Steel Beams from Korea, 65 FR 41437, at Comment 24. HYSCO states that the Department verified the completeness of HYSCO's U.S. selling expenses and found no evidence of unreported commissions.

Department Position:

We agree with HYSCO. There is no evidence that HYSCO had any U.S. commissioned sales during the POR. We verified that HYSCO transferred title of the product to HPA and that HPA subsequently transferred title to the U.S. customer as shown by the invoices. Had these been commissioned sales, HYSCO would have invoiced the ultimate purchaser directly. See HYSCO Verification Report at Exhibits SVE-13, SVE-14. HPA correctly reported the mark-ups it earned from selling goods to the unaffiliated U.S. purchaser as part of SG&A expenses and not as commissions.

Comment 27: Whether HYSCO Misreported its Home-Market Indirect Selling Expenses

Petitioners argue that HYSCO's home-market selling expenses have not been properly allocated in HYSCO's calculation. They contend that HYSCO allocated its expenses based on the number of employees, where the correct methodology is to allocate indirect selling expenses based on sales value. Petitioners state that they urged the Department to examine this issue at verification, but "some issues remain unresolved, because the verification report is silent, leaving the record problematic." Petitioners urge the Department to reallocate HYSCO's home-market indirect selling expenses for the final results.

HYSCO counters petitioners' claims that its methodology for allocating home-market indirect selling expenses is unreasonable. HYSCO maintains that its reported indirect selling expenses derive from the expenses categorized as SG&A in its income statement, and that HYSCO reasonably allocated these expenses based on the nature of the underlying activity. HYSCO further contends that it allocated certain expenses based on headcount because these expenses are incurred by all SG&A personnel and thus are appropriately attributable to both G&A and selling activities. According to HYSCO, these expenses do not vary based on sales values, rather, they fluctuate based on the number of employees. To support its methodology for reporting indirect selling expenses, HYSCO cites Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip From the Republic of Korea, 66 FR 64950 (Dec. 17, 2001) ("Stainless Steel Sheet and Strip"), in which the Department accepted respondent's allocation of selling expenses based on the number of

employees performing a given function or the level of salaries and bonuses.

Department Position:

We do not agree with petitioners that HYSCO's methodology for allocating home-market indirect selling expenses is unreasonable. We discussed with company officials and examined HYSCO's calculation methodology for the home-market indirect selling expenses at length at verification. There is no evidence that HYSCO's methodology is distortive and unreasonable. See Verification Report at 13-14 and Exhibit SVE-17. Because HYSCO accounted for all of the SG&A expenses included on its income statement, and prepared its allocation using a standard methodology accepted by the Department, we are not making any changes for the final results of review regarding this calculation, consistent with Stainless Steel Sheet and Strip, 66 FR 64950 (Dec. 17, 2001), Comment 15.

Comment 28: Whether the Department Should Treat Certain HYSCO's Local Sales as U.S. Sales

Petitioners urge the Department to treat HYSCO's certain local sales as U.S. sales, claiming that HYSCO "knew or should have known" that its products were destined to the United States. See Petitioners' Case Brief at 30. Petitioners allege that the Department did not pursue their concerns during HYSCO verification, even though the issues were raised.

HYSCO argues that for the local sales in question, the customers either consumed the product and used the product to manufacture non-subject merchandise, or slit/sheared the product prior to resale. Under either scenario, HYSCO did not know the timing, destination, or specific product characteristics of further processed products resold to end users. HYSCO asks the Department to reject petitioners' speculative argument regarding HYSCO's local sales.

Department Position:

The Department's general practice is that if a company knew or should have known that, at the time of a specific sale, the product was destined for the United States, the sale should be reported as a U.S. sale. We made several inquiries with regard to HYSCO's local sales over the course of this review and examined it at length at verification. See the Department's supplemental questionnaires, dated December 22, 2003, January 26, 2004 and November 30, 2004, and HYSCO Verification Report at 7, 15-16. In its responses, HYSCO explains that in its normal course of business, the company classifies sales to domestic customers that consume the product in Korea and subsequently export a new product as local sales. See HYSCO's April 23, 2004 submission at 6 and December 16, 2004 submission at 5. HYSCO maintains that consistent with the Department's practice, the company included its local domestic sales as part of its reported home-market sales. For sales to customers that in turn slit or shear the product prior to resale, HYSCO states that it has no knowledge or control over the subsequent production as it transfers both possession and title to the customers and retains no rights to its product. See HYSCO's Rebuttal Brief at 25-26.

We agree with the respondent that there is no evidence on the record to indicate that HYSCO knew or should have known, when it sold the subject merchandise, that its goods were destined for the United States. Petitioners provided no evidence that HYSCO misreported these sales. Accordingly, we will continue to accept HYSCO's treatment of these local sales as home-market sales.

Comment 29: Whether the Department Should Recalculate HYSCO's Costs by Applying Different Production Yields

Petitioners contend that the Department should recalculate HYSCO's section D costs by applying different production yields.

HYSCO argues that HYSCO has correctly calculated and applied its yields at each stage of production.[13]

[13] We cannot address the specifics of petitioners' claim in a public forum, as a meaningful discussion is only possible by means of reference to business proprietary information. See HYSCO cost calculation memorandum from Joy Zhang and Martin Claessens, Analysts, to Melissa Skinner, Director, AD/CVD Operations, dated March 7, 2005.

Department Position:

We agree with HYSCO that its reported production yields are reasonable. We examined HYSCO's revised production yields calculations and for selected months, we tied the input and output weight for each line/process to HYSCO's corresponding production reports without exception. See Verification Report at 28 and Exhibit CVE-16. Therefore, we have not made adjustments to HYSCO's costs for the final results.

Recommendation

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

Agree _____ Disagree

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
Date