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June 16, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Metal Calendar Slides from Japan: Final Determination of Sales at Less than Fair Value

RE: Issues and Decision Memorandum

I. Summary

We have analyzed the comments submitted by interested parties in the antidumping duty investigation of metal calendar slides (MCS) from Japan. As a result of our analysis, we have made certain changes to the margin calculation. We recommend that you approve the positions we have developed in the Discussion of Interested Party Comments section of this memorandum.

II. Background

On January 25, 2006, the Department of Commerce (the Department) issued its preliminary determination in the antidumping duty investigation of MCS from Japan. See Preliminary Determination of Sales at Less Than Fair Value: Metal Calendar Slides from Japan, 71 FR 5244 (February 1, 2006) (Preliminary Determination). The period of investigation (POI) is April 1, 2004, through March 31, 2005.

On February 21, 2006, we issued our preliminary finding that critical circumstances did not exist for Nishiyama Kinzoku Co., Ltd. (Respondent). See Notice of Preliminary Negative Determination of Critical Circumstances: Metal Calendar Slides From Japan, 71 FR 9779 (February 27, 2006). The Department conducted sales and cost verifications from February 13, 2006, through February 17, 2006, and from February 20, 2006, through February 24, 2006, respectively. See Verification of the Sales Response of Nishiyama Kinzoku Co., Ltd. in the Antidumping Duty Investigation of Metal Calendar Slides from Japan, March 24, 2006, (Sales Verification Report), and Verification of the Cost of Production and Constructed Value Data

Submitted by Nishiyama Kinzoku Co., Ltd. in the Antidumping Duty Investigation of Metal Calendar Slides from Japan, April 14, 2006, (Cost Verification Report). On April 18, 2006, the Department received comments from Stuebing Automatic Machine Co. (Petitioner), regarding the modification of the model matching criteria. On April 26, 2006, we received rebuttal comments from Respondent, responding to Petitioner's comments on model matching. On May 2, 2006, the Department received case briefs from Petitioner and Respondent. On May 8, 2006, the Department received a rebuttal brief from Respondent. Petitioner did not submit a rebuttal brief.

III. List of Issues

1. Changing Model Matching Criteria and Opportunity to Comment
2. Analysis of Model Matching Criteria
3. Average Sales Periods
4. Date of Sale
5. Post-Sale Price Adjustments
6. Critical Circumstances
7. Inventory Carry Costs
8. Adjustment to Cost of Sales Denominator for Overvaluation of Material Cost
9. Adjustment to Total Costs for Unreconciled Difference
10. Adjustment to Cost of Sales Denominator for Purchased Goods
11. Miscellaneous Losses
12. Adjustment to Steel Cost

IV. Changes Since the Preliminary Determination

Based on our findings at verification and on our analysis of the comments received, we have made certain minor adjustments to the margin calculations used in the Preliminary Determination. The adjustments are fully discussed below and in the Memorandum From Scott Lindsay, Senior Analyst, AD/CVD Operations, Office 6, and Dara Iserson, Analyst, AD/CVD Operations, Office 6, through Thomas Gilgunn, Program Manager, AD/CVD Operations, Office 6, to the File, "Final Analysis Memorandum for Metal Calendar Slides from Japan: Nishiyama Kinzoku Co., Ltd." (June 16, 2006) (Final Calculation Memorandum) and Memorandum from Ernest Z. Gziryan, Senior Accountant, through Taija A. Slaughter, Program Manager, to Neal M. Halper, Director, Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Nishiyama Kinzoku Co., Ltd." (June 16, 2006) (Cost Calculation Memorandum).

Export Price

We revised the U.S. market sales database to reflect correct payment terms for select observations, based on findings at the sales verification.

Normal Value
We made changes to the home market sales database to reflect correct invoice date, payment dates, credit expenses, and bank charges for select observations. We also made the following changes to the adjustment to normal value: converted the U.S. other direct selling expenses incurred in Japan from yen to dollars in the margin program; and recalculated U.S. inventory carrying costs to properly reflect the average monthly ending inventory value from January to December 2004.

Model Match
We made the following changes: uniformly ranked Respondent's home market and U.S. market numeric color variables; and provided the correct labels for the color product characteristic fields, which were used for concordance purposes in both the comparison market and margin programs.

Cost of Production
We made the following changes: revised the costs for a certain control number (CONNUM) in the cost of production (COP) and constructed value (CV) databases to reflect the proper third country product code, based on findings at the cost verification; weight-averaged the costs of certain CONNUMs that appear more than once in the COP and CV databases; revised costs for certain CONNUMs in the COP and CV databases to reflect the proper allocated color costs; corrected certain CONNUMs in the COP and CV databases to reflect product codes; revised the costs to correct the specific gravity for a certain CONNUM in the COP and CV databases; adjusted the cost of goods sold denominator used to calculate the general and administrative (G&A) and financial expense ratios for certain selling and G&A expenses and to reflect Respondent's overvaluation of material costs; adjusted the financial expense ratio to account for foreign currency exchange losses; adjusted the G&A expense ratio to include certain non-operating income items; and adjusted the total cost of manufacturing to include certain expenses for employees.

V. Discussion of Interested Party Comments

Comment 1: Changing Model Matching Criteria and Opportunity to Comment

In its April 18, 2006 comments, Petitioner requested that the Department change the model matching hierarchy used in the Preliminary Determination. Specifically, Petitioner argues that only by switching the order of width and length can the Department ensure that it is making the most accurate matches possible. Petitioner maintains that the Department has the authority to change the model matching hierarchy when making its final determination. Moreover, Petitioner argues that the Department has an obligation to do so in order to ensure the most accurate matching of MCS between the home and U.S. markets. Petitioner holds that the Department previously determined that it can reexamine and revise its model matching criteria if at least one interested party makes a valid argument to do so. See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in

Part, and Determination Not to Revoke in Part, 67 FR 66110 (October 30, 2002), and accompanying Issues and Decisions Memorandum, at Comment 1 (Steel Bars from Turkey); and Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol from the Republic of Korea, 68 FR 13681 (March 20, 2003) (Polyvinyl Alcohol from Korea).

Additionally, Petitioner points out that the Department has changed model matching criteria used in preliminary results to obtain the most accurate matches for its final results. See, e.g., Roller Chain, Other than Bicycle from Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 63671, 63679 (November 16, 1998) (Roller Chain 1998); and Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other than Bicycle from Japan, 62 FR 60472, 60475 (November 10, 1997) (Roller Chain 1997).

Finally, Petitioner maintains that the Department instructed the Respondent to report widths and lengths of its MCS in preestablished ranges. See Department's Memorandum "Selection of Model Matching Criteria for Purposes of Antidumping Duty Questionnaire" September 26, 2005 (Matching Memorandum). However, Petitioner argues that the Department matched Respondent's sales by its actual width and lengths for the Preliminary Determination, not in the preestablished ranges. Petitioner states that the Department did not give it an opportunity to comment on the issue of using actual width and length instead of the preestablished ranges before changing its stated methodology for the Preliminary Determination. Therefore, Petitioner argues that comments on this issue should be considered and the Department should consider making revisions for the final determination.

In rebuttal, Respondent argues that the Department provided Petitioner with ample opportunity to comment on the issue of reporting its actual widths and lengths rather than ranges prior to the Preliminary Determination. Specifically, Respondent argues that Petitioner lodged no challenge to its October 5, 2005 request to report actual width and length measurements in millimeters. See Respondent's "Request for Modification of Model Match Coding" (October 5, 2005) (Respondent's Modification Request). Moreover, Respondent argues that Petitioner did not challenge the Department's letter authorizing Respondent to report its measurements as such. See Department's letter to Respondent, "Response to Request for Modifications of Model Match Coding" (October 25, 2005). Finally, Respondent notes that Petitioner did not challenge its reporting the actual width and length of its MCS in Respondent's November 14, 2005, questionnaire response. See sections B and C Questionnaire Response (April 26, 2006). Therefore, Respondent argues, the Department should reject Petitioner's position that it did not have ample opportunity to comment on this issue.

Department's Position

The Department may reexamine and revise the model matching hierarchy during the course of the proceeding and after the Preliminary Determination to avoid potential mismatches, mis-evaluated characteristics, the accidental disregarding of pertinent sales, and to obtain the most

accurate matches possible. For purposes of calculating normal value (NV), section 771(16) of the Tariff Act of 1930 (the Act) defines "foreign like product" as merchandise which is either (1) identical or (2) similar to the merchandise sold in the United States. See sections 771(16)(A), (B), and (C) of the Act; see also, section 351.411(a) of the Department's regulations. Where there are no identical products sold in the comparison market, the Department will identify, by employing an appropriate product matching methodology, the product sold in the comparison market that is most similar to the product sold in the United States. Because the antidumping statute does not detail the methodology that must be used in determining what constitutes "similar" merchandise, the Department has broad discretion, implicitly delegated to it by Congress, to apply an appropriate model match methodology to determine which home market models are properly comparable with U.S. models under the statute. See, e.g., Koyo Seiko Co., Ltd, et al. v. United States, 66 F.3d 1204, 1209-1210 (Fed. Cir. 1995). The Courts will uphold the Department's model match methodology as long as it is reasonable. See, e.g., AK Steel Corporation, et al. v. United States, Slip Op. 97-152 (CIT 1997).

It is the Department's objective to establish a model matching hierarchy that ensures the most accurate and fair comparisons of sales between the home and U.S. markets. Therefore, because Petitioner has raised a legitimate concern, the Department has reexamined the model matching criteria for purposes of our final determination. As discussed in the Department's Position on Comment 2, our analysis of the physical characteristics of MCS focused on the significance of width and length on the functionality, production, pricing, and marketing of MCS.

Finally, the Department finds that all interested parties had opportunity prior to and after the Preliminary Determination to comment on the issue of using actual MCS dimensions instead of ranges. Petitioner was served with Respondent's October 5, 2005, request and did not raise any concerns with the request. Furthermore, Petitioner did not raise any concerns after the Department issued its October 25, 2005, letter allowing Respondent to report actual product specifications. Moreover, as noted by Respondent, Petitioner did not raise any concerns about the matching criteria after the questionnaire response had been submitted and it did not raise any concerns in its comments submitted prior to verification.

In Respondent's Modification Request, Nishiyama argued that the ranges established by the Department in its Matching Memorandum did not reflect the merchandise it sold to the home and U.S. markets, and provided information in support of this argument. As noted, Petitioner did not comment on Respondent's submission. After reviewing the arguments and supporting information submitted by Respondent, the Department agreed that the Respondent should not report according to the ranges established in the Matching Memorandum and could report actual sizes, which were then used for matching purposes in the Preliminary Determination. Thus, Petitioner had multiple opportunities to raise the issue of ranging prior to the model match comments it filed on April 18, 2006. Moreover, even in its April 18, 2006 comments on model matching, Petitioner did not propose any alternative ranges for the Department to consider for purposes of model matching. Petitioner simply used this argument to bolster its position that the Department has the authority to revisit model match and has to provide the parties with an

opportunity to comment on model match. Therefore, we continue to use the actual width and length as reported by Respondent for the final determination.

Comment 2: Analysis of Model Matching Criteria

In its April 18, 2006 and May 2, 2006 submissions, Petitioner requested that the Department "modify the product matching criteria used for purposes of calculating normal value." Petitioner contends that information now on the record of this investigation demonstrates that the model matching hierarchy[1] used in the Preliminary Determination was based on incorrect assumptions about the respective importance of the width and length of an MCS. Petitioner now argues that the length of an MCS, which if a MCS is hanging on a wall would be the long, left-to-right dimension, is more important than its width, which is the shorter, top-to-bottom dimension.

Petitioner contends that MCS length is more important than MCS width in terms of MCS functionality. Petitioner argues that it is not feasible for an MCS's length to differ from the width of the calendar because it would be obvious to the end-user that the length and width do not match when viewing the calendar as it hangs on the wall. Conversely, Petitioner argues that if width of the MCS is a few millimeters larger or smaller than a customer's order, the calendar would still be able to function properly. Therefore, Petitioner argues that while a customer might order an MCS on the basis of length without regard to width, they would not be likely to select an MCS on the basis of width without regard to length.

Further, Petitioner argues that as a practical matter, MCS width only affects functionality in that width determines whether the MCS can hold only a single sheet calendar or a multiple sheet calendar. As such, Petitioner argues that width will be determined by the calendar manufacturer's requirement that the MCS hold either a single sheet or multiple sheet calendar. However, Petitioner maintains that a consumer would always have concerns about the length of an MCS because the length of an MCS must match the width of the calendar regardless of whether the calendar is single sheet or multiple sheet. Therefore, Petitioner argues that the length of the MCS is more important than its width with regard to functionality.

Petitioner argues that because MCS length cannot differ from the width of the calendar, the length of an MCS is more important to the marketing of an MCS than its width. Petitioner also argues that its MCS brochure attached to the Petitioner's "Petition for the Imposition of Antidumping Duties on Metal Calendar Slides from Japan," at Tab 5 (June 29, 2005) (Petition), sets forth the MCS length prior to MCS width, showing that length is more significant than width in its published marketing materials. Moreover, Petitioner argues that the matching criteria should favor matching to a product that will be visually similar and has greater chance of substitutability. In its case brief, Petitioner notes that it offers a broad range of product lengths (8 inches to 36 inches), but a limited range of product widths (½ inch to 7/8 inch), demonstrating

[1] 1) Width, 2) Length, 3) Color, 4) Type of Eyelet, and 5) Number of Eyelets

that product length is the primary differentiating factor among MCS. See Petition. Therefore, with regard to the Department's marketing criteria, Petitioner argues that length is a more important product characteristic than width.

Petitioner also argues that because the production costs for two nonidentical products would correlate more closely based on their lengths than based on their widths, MCS length is a more important product characteristic than MCS width. See Petitioner's Case Brief, at 7 (May 2, 2006).

Petitioner provides specific observations from the Department's preliminary margin calculation concordance that show similar CONNUM matches where the U.S. products were matched to home market products of vastly different lengths and production costs. See Petitioner's Case Brief, at 7. Petitioner argues that these product matches resulted in an inaccurately calculated margin. Therefore, Petitioner argues that the Department should use its authority to rectify the model match hierarchy by inverting the order of width and length for the final determination.

Petitioner argues that the extent of MCS price changes resulting from changes in MCS length also demonstrates that length is the primary driver of MCS price. Petitioner cites its own prices and provides its own analysis of Respondent's net prices which, it claims, demonstrates that differences in the price of the shortest MCS and the longest MCS (8 inches to 36 inches) is much greater than the differences in prices of the narrowest MCS and the widest MCS (½ inch to 7/8 inch). See Matching Memorandum, at 8; and Petitioner's Case Brief, at Attachment A and B. Petitioner argues that the vast price differences between the low and high end of length demonstrate that length, rather than width, drives the pricing of MCS.

Moreover, Petitioner argues that Respondent has stated that length has a significant effect on price. Petitioner points out that on page 16 of the Verification of the Sales Response of Nishiyama Kinzoku Co., Ltd. in the Antidumping Duty Investigation of Metal Calendar Slides from Japan (Period of Investigation: 04/01/2004 - 03/31/2005) (April 14, 2006) (Sales Verification Report), the Department noted that "the length of the MCS determines the size of the metal sheet needed to produce the MCS and has a significant effect on the price of the slide." Petitioner argues that Respondent's own statements, when taken with the above, demonstrates that length is a more important product characteristic than width.

In rebuttal, Respondent argues that Petitioner has failed to provide any actual evidence to support its recent claim that length is a more important factor than width, and instead has only provided arguments based on "common sense" and hypothetical situations. See Respondent's Rebuttal Brief, at 2 (May 8, 2006). Further, Respondent points out that prior to the Preliminary Determination, Petitioner argued that width was a more important factor than length. Respondent argues that the Department correctly ordered the model matching hierarchy in the Preliminary Determination, based on the evidence on the record, and that the same model matching hierarchy should be applied in the final determination.

Respondent states that the Department correctly determined that the width of the MCS determines the functionality of the MCS. See Respondent's Rebuttal Brief, at 2-3. Respondent argues that the MCS functionality, as far as the calendar manufacturer is concerned, is determined by the number of sheets that the MCS can hold, which is dictated by the MCS width. If a calendar manufacturer wanted to create a multi-sheet MCS, it would use a wider MCS than it would for a single sheet calendar. See Respondent's Rebuttal Brief, at 2 (citing Petitioner's product catalog).

As an MCS manufacturer, Respondent maintains that its customers are calendar manufacturers, not calendar end-users. Respondent maintains that when its customers order MCS, they specify the exact width and length that they require. Because a calendar manufacturer would never order an MCS that wasn't exactly the size it required, Respondent contends that Petitioner's scenario where a customer might order a specific length MCS without regard to its width is unrealistic and does not inform this discussion.

Respondent states that Petitioner's position fails to take into account that both product width and length are produced to exact measurements. Respondent argues that Petitioner has not demonstrated any substitutability of either width or length, and therefore neither is clearly more important.

Further, Respondent argues that Petitioner's own brochure makes specific recommendations to its calendar manufacturer customers with respect to the proper MCS width for particular applications (e.g., number of pages, page thickness), yet it makes no such recommendations regarding MCS length. See Respondent's Rebuttal Brief, at 7. Respondent also contends that the Petitioner's price lists are organized first by width, then by length. See Petition, at Exhibit 17. Respondent argues that if length were more important than width for marketing MCS, then Petitioner's brochure would offer advice on how to choose the proper length and its price lists would be organized by length.

Respondent argues that the largest cost component for the MCS is the amount of steel used to produce it. Respondent states that any incremental change in width will have a greater effect on amount of steel used in production than the same change in length, because the change in width will be multiplied across the entire length of the MCS, whereas the change in length is multiplied only by the much smaller width. Respondent provides calculations in its rebuttal brief demonstrating that, for Nishiyama, the change in an MCS width has a greater impact on amount of steel used, and therefore MCS cost, than the same change in MCS length. See Respondent's Rebuttal Brief, at 9.

Respondent maintains that any incremental increase to the width of an MCS has a greater impact on the price than the same incremental increase to the length of an MCS. Respondent claims that its analysis of Petitioner's price list shows that a one-eighth inch increase in width has a much greater impact on price than even a one-inch increase in length. See Respondent's Model Matching Rebuttal Comments, at Attachment 1 (August 29, 2005). In addition, Respondent

states that its pricing experience yields a similar result with regard to the relative significance of length and width to price.

To further support its argument, Respondent cites Petitioner's own past statements on the record, where Petitioner stated:

> "As the price lists show, while color accounts for the biggest difference in price between products, the next important factor that affects price is width. The wider the slide, the more costly it becomes to manufacture and the more expensive it becomes to the consumer." See Petitioner's August 17, 2005 Submission.
>
> "Prices do not vary between lengths to the same extent that they vary by either width or color." See Id. at 7.

Based on this, Respondent argues that with regard to price, MCS width is more important than MCS length.

Department's Position

The Department's analysis of the model matching criteria for purposes of the questionnaire focused on the significance of the effect that width and length had on functionality, production, pricing, and marketing of MCS. See Matching Memorandum. Petitioner and Respondent both argued and the Department agreed that width should be placed before length in the hierarchy established in the Matching Memorandum. Petitioner's current arguments with respect to the functionality, production, pricing, and marketing of MCS are not sufficient to overturn the rationale supporting the model matching hierarchy that was set forth in our original Matching Memorandum. Specifically, we disagree with Petitioner's argument that marketing materials (i.e., catalogues and price lists) set forth MCS length prior to MCS width, and therefore, length is more significant than width in the marketing of MCS. The record shows that width and length are each important to the marketing of MCS, as customers order in the exact sizes they require. We also do not agree with Petitioner's argument on functionality, that an MCS customer might order an MCS on the basis of length without regard to width rather than vice versa. All evidence on the record of this investigation demonstrates that MCS customers specify both the width and length of each MCS they order. Moreover, Petitioner has stated that as a practical matter, MCS customers must specify the width of an MCS because the width of an MCS determines how an MCS functions (i.e., whether the MCS will hold a single sheet or multiple sheet calendar.) Finally, Petitioner fails to cite any record evidence to support its argument that the production of two non-identical MCS would correlate more closely based on their lengths rather than their widths.

Petitioner's argument that the total variation of prices from the longest to the shortest length is larger than the price variation from the widest to the narrowest width, although true, is not relevant. The fact that MCS manufacturers offer a broader range of lengths than widths does not inform our analysis of the effect of width and length on MCS price. Our analysis in the

Matching Memorandum indicated that the width of an MCS had a more significant impact on price than the length of an MCS. As was shown in our price analysis from the Matching Memorandum, incremental changes in width have a larger impact on the price of an MCS than incremental changes in length. Indeed, our analysis of Petitioner's data showed that a 1/8th inch increase in the width of a slide has a more significant impact on the price of an MCS than even a six inch increase in the length of an MCS. See Matching Memorandum. Therefore, we have continued to order the model matching characteristics as: 1) width, 2) length, 3) color, 4) eyelets, and 5) number of eyelets for the final determination.

Comment 3: Average Sales Periods

Petitioner argues that the Department should shorten the POI averaging periods to ensure more accurate matches for the final determination. Petitioner maintains that section 351.414(d)(3) of the Department's regulations states that the Department may "calculate weighted averages for such shorter periods as the Secretary deems necessary" when "normal values, export prices . . . differ significantly over the period of investigation or review." See Petitioner's Case Brief, at 16 (citing Final Determination of Sales at Less than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from The Republic of Korea, 58 FR 15467, 15476 (March 23, 1993)). Petitioner argues that the Department has a practice of using averaging periods of less than one year when production and sales comparisons may be distorted due to general price levels changing in a way that renders prices during one part of the POI as not equivalent to prices for the same merchandise during other parts of the POI.

Petitioner states that the Department confirmed at verification that MCS production and sales activity are highly cyclical, where "most sales are made during a fraction of the calendar year." See Sales Verification Report, at 31. As a result, Petitioner explains that the sales prices of MCS are likely to be higher during the time of year when demand is higher. Petitioner contends that matching products sold in different calendar years may produce inaccurate comparisons between sales sold at different times of the year. Therefore, Petitioner argues that the Department should shorten the averaging periods by splitting the POI into either calendar quarters, calendar months, or at a minimum, calendar years, for the final determination.

Respondent argues that Petitioner did not demonstrate that "normal values, export prices, or constructed prices differ significantly over the period of investigation," in accordance with section 351.414(d) of the Department's regulations. Moreover, Respondent argues that with respect to its individual customers, prices typically did not change throughout the POI. Respondent states that it sold one size of MCS to one customer in May 2004, October 2004, November 2004, and March 2005 and its price remained constant throughout the POI. Therefore, Respondent argues that the Department should reject Petitioner's request for shortening the periods used for comparisons.

Department's Position

When determining whether the subject merchandise is being sold at less than fair value, the Department can compare the "weighted average of the normal values to the weighted average of the export prices. . ." See section 777A(d)(1)(A) of the Act and section 351.414(a) of the Department's regulations. Section 351.414(d) of the Department's regulations provides that when applying the average-to-average method, the Secretary normally will calculate weighted averages for the entire period of investigation. Pursuant to section 351.414(d)(3) of the Department's regulations, the Department may use an averaging period shorter than the entire POI if it finds that significant differences in prices over the POI would lead to a distorted margin. Thus, "when normal values export prices, or constructed export prices differ significantly over the course of the period of investigation," the Secretary may calculate weighted averages for shorter periods if the Department finds it appropriate. See Id.

We have analyzed the normal values and export prices for the 2004 and 2005 periods within the POI. We found that although there are differences between prices during these two periods, there is no consistent pattern of price differences. Further, we also found no consistently significant difference between prices for the same products sold in each period, as required by section 351.414(d) of the Department's regulations. The full analysis is contained in Memorandum from Team to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, "Antidumping Duty Investigation of Metal Calendar Slides from Japan: Analysis of Average Sales Periods" (June 16, 2006) (Average Sales Periods Memo). Therefore, we will continue to use the POI as the averaging period for the final determination.

Comment 4: Date of Sale

In its questionnaire response, Respondent reported invoice date as its date of sale. However, Petitioner argues that purchase order date is the correct date of sale for Respondent's U.S. sales. Specifically, Petitioner maintains that Nishiyama did not change the material terms of sale for MCS shipped to the United States during the POI between the purchase order date and the invoice date. As such, Petitioner argues that the Department should use purchase order date for U.S. sales, as order date is the first date on which the terms of sale for U.S. sales are established.

Petitioner argues that the Department verified that during the POI, Respondent's sales terms for MCS sold to the United States were established in the purchase order and did not change in the subsequent invoice. Petitioner states that Respondent presented sales documentation indicating that the sole instance where terms of sale had changed between the issuance of the purchase order and the invoice for goods sold to the United States during the POI was not for the sale of MCS. See Sales Verification Report, at 14. Petitioner further argues that the only instances where the sales terms for U.S. sales of MCS changed between the purchase order and the invoice occurred after the POI. See Sales Verification Report, at 14. Therefore, Petitioner argues that the Department should use purchase order date as the date of sale for U.S. sales of MCS for the final determination.

Respondent argues that invoice date is the appropriate date of sale for its U.S. sales of MCS because its commercial practice is that terms of sales are not set until products are invoiced and shipped to customers. Respondent argues that the Department verified that Nishiyama allows its customers to modify the terms of sale before shipment. See Sales Verification Report, at 11. Respondent also stated that the Department verified changes to its terms of sales for home market sales. See Sales Verification Report, at 20-22. Therefore, Respondent argues that it is clear that its normal commercial practice is to allow changes to material terms of sales up until the shipment and invoicing of products.

In addition, Respondent argues that terms of sale changed for one sale to its sole U.S. customer during the POI. Respondent states that it did not set payment terms for this sale, which consisted of non-subject merchandise, until it issued the invoice at date of shipment. See Sales Verification Report, at 14. Respondent argues that it does not specify payment terms to its U.S. customer for both subject and non-subject merchandise until time of invoice and shipment.

Further, Respondent argues that the Department verified that it used different payment terms for U.S. sales prior to the POI. Respondent argues that payment terms for certain U.S. sales changed at the start of the POI. Respondent states that prior to the POI, payment terms in the shipping invoice stipulated that the U.S. company paid Nishiyama half in advance and half on pay date. However, in 2004, it modified its payment terms for sales to its U.S. customer by requiring total payment for merchandise 30 days after shipment. See Sales Verification Report, at 13. Respondent indicates that it issued its first 2004 invoice to the U.S. customer in May 2004, during the POI. Therefore, Respondent argues that the record shows that payment terms for MCS shipped to the U.S. customer during the POI were not established until it issued shipping invoices to its U.S. customer.

Moreover, Respondent argues that it demonstrated to the Department during verification that, with regard to MCS, it used different payment terms for sales immediately prior to the POI and that payment terms changed at the start of the POI. See Respondent's Rebuttal Brief, at 15. Therefore, given the verified record and the Department's practice of using the invoice date as the date of sale, Respondent argues that the Department should continue to use invoice date as date of sale.

Department's Position

Section 351.401(i) of the Department's regulations sets a rebuttable presumption that "the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business" as the date of sale. However, the Department's regulations also state that the Department "may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." See Id. The record of this investigation shows that Respondent records its U.S. sales based on invoice date in its sales and accounting records kept during the normal course of business. See Verification Report, at 11. This fact alone is not dispositive for finding that invoice date should be the date of sale. However, in this case,

Respondent has only one U.S. customer for subject merchandise. Thus, the sales to this U.S. customer reflect Respondent's sales practices in the U.S. market with respect to subject merchandise. At verification, Respondent provided evidence that, in its selling practices with this U.S. customer, there have been actual changes to the material terms of sale, either the price or quantity, between purchase order date and invoice date. See Sales Verification Report, at 13-14. When taken as a whole, the evidence examined at verification, with respect to Respondent's sales practices in the United States for subject merchandise, supports Respondent's contention that invoice date better represents the date of sale in the U.S. market. Accordingly, we find that the presumption has not been rebutted and we will continue to use invoice date as the date of sale.

Comment 5: Post-Sale Price Adjustments

Petitioner argues that post-sale payments to Respondent's customers should be allowed only where supported by pre-existing agreements. Further, Petitioner argues that the Department should consider some of Respondent's home market post-sale billing adjustments to correct invoicing errors to be rebates, because these adjustments reduce the beginning price of the merchandise. Petitioner indicates that the Antidumping Manual states that the Department will deduct rebates from normal value, on two main conditions: 1) if there was a pre-existing agreement at the time of sale; or 2) if there was a historical pattern of issuing rebates without a pre-existing agreement between parties. See Petitioner's Case Brief, at 23 (citing the Antidumping Manual, at Chapter 8, pp. 11 and 12). Petitioner argues that the Department must apply this standard to all home market post-sale billing adjustments claimed by Respondent.

Petitioner states that with respect to home market sales, the Department must not automatically accept Respondent's price adjustments, especially if they were not paid pursuant to a pre-existing agreement. Petitioner argues that there was no pre-existing agreement at the time of sale, and that Respondent has not established a historical pattern of issuing rebates to customers without a pre-existing sales agreement. Therefore, Petitioner argues that the Department should not make adjustments to the normal value for unsupported post-sale price adjustments for the final determination.

Respondent argues that it correctly reported its post-sale billing adjustments. Respondent states that the Department verified sales transactions containing rebates/discounts (REBATH, OTHREBATH) and examined "bank statements demonstrating payments made," finding that Nishiyama correctly reported its rebates or discounts. See Sales Verification Report, at 24.

Respondent argues that there is a historical pattern for issuing rebates to its customers without a pre-existing sales agreement. Respondent references submissions on the record that explain how rebates/discounts work and the conditions under which customers receive them. See Respondent's Rebuttal Brief, at 19 (May 8, 2006). Further, Respondent indicates that during verification, the Department viewed selected sales traces where the customers were given discounts/rebates for particular sales and noted no discrepancies in this practice. See Sales

Verification Report, at Exhibits 21 and 27. Respondent contends that Petitioner's accusation is based on a misreading of the Antidumping Manual, which disallows rebates "which are instituted retroactively after the filing of the Petition." See Respondent's Rebuttal Brief, at 11 (citing the Antidumping Manual, at Chapter 8, p. 11). Respondent argues that Nishiyama established its standard business practice of granting rebates/discounts long before the filing of the petition. Therefore, Respondent argues that because there were no unsupported post-sale price adjustments during the POI, the Department should dismiss Petitioner's argument regarding this matter.

Department's Position

Section 351.401(b)(1) of the Department's regulations states that in calculating adjustments to the normal value under section 773 of the Act, the party that is in possession of the relevant information has the burden of establishing, to the satisfaction of the Department, the amount and nature of a particular adjustment. Section 351.401(c) of the Department's regulations states that the Department will use a price that is net of any price adjustment that is reasonably attributable to the foreign like product.

We continue to accept Respondent's reported and verified billing adjustments to its home market sales for the final determination. In its questionnaire response, Respondent explained the conditions under which these invoices were adjusted. See Respondent's section C Questionnaire Response, at 14-16 (November 14, 2005). Moreover, the Department verified that Respondent's standard practice of making billing adjustments was in existence well in advance of the filing of the Petition. See Sales Verification Report, at Exhibits 1-A, 21, and 27. Our review of the home market sales listing demonstrates that the reported billing adjustments made during the POI were all made *prior* to the filing of the Petition. Based on these facts, and consistent with our practice, we have accepted Respondent's reported billing adjustments in the home market sales listing for the final determination. See, e.g., Stainless Steel Plate in Coils from Belgium: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 32573 at 32575, (June 3, 2005) (unchanged in final results).

Comment 6: Critical Circumstances

Petitioner argues that Respondent's 2005 shipments and imports of MCS greatly increased during the post-petition period (i.e., July - December 2005) as compared to the pre-petition period (i.e., January - June 2005). Petitioner points out that these increases clearly meet the Department's standards for determining that imports were massive within a relatively short period. Therefore, Petitioner argues that if the other criteria (i.e., importer knowledge) is met, the Department should find that critical circumstances exist for the final determination.

Respondent contends that not all of the criteria for an affirmative critical circumstances finding have been met, as there is no record evidence of knowledge of dumping on the part of importer.

Therefore, Respondent argues that Petitioner's argument regarding critical circumstances should be rejected.

Department's Position
Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if:

> (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

The Department normally considers a history of dumping in the United States or elsewhere or margins of 25 percent or more for export price sales sufficient to impute knowledge of dumping. See e.g., Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 31972, 31978 (June 11, 1997) unchanged in Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964 (November 28, 1997).

In this case, we determine that there is not a sufficient basis to find that the importer should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales pursuant to sections 735(a)(3)(A) of the Act, because: there is no history of dumping of this product in the United States or elsewhere (See Memorandum "Search for Antidumping Duty Orders on Metal Calendar Slides from Japan in the United States or Elsewhere," June 15, 2006); and the calculated final margin for Nishiyama's EP sales and for "all other" exporters is less than the 25 percent knowledge threshold. Therefore, we determine that critical circumstances do not exist for imports of subject merchandise because, as required section 735(a)(3)(A) of the Act, there is no evidence that importers knew, or should have known, that the exporter was selling subject merchandise at LTFV.

Comment 7: Inventory Carrying Costs

Respondent argues that the Department incorrectly recalculated its average inventory days for U.S. sales at verification, and therefore should not amend the final determination to reflect this miscalculation. Respondent states that the Department bases its average inventory day calculation on an average of the monthly ending inventory values of U.S. sales. However, Respondent argues that during verification the Department overlooked the beginning inventory value for January 2004, and therefore calculated the average inventory days from February 2004 through December 2004. Respondent asserts that because the calculation in the Sales Verification Report does not reflect the average inventory days for January 2004, the

Department's average inventory days calculation is incorrect. See Sales Verification Report at 30. Therefore, Respondent argues that the Department should use its reported inventory carrying costs for U.S. sales, which includes the average beginning inventory value for January 2004, for the final determination. Petitioner did not comment on this issue.

Department's Position

At verification, we found that Nishiyama calculated its U.S. inventory carrying costs by summing the total ending monthly inventory values for its 2004 U.S. sales, including January's beginning inventory, and then averaged them by 13 months. See Sales Verification Report at 30. When calculating the average inventory days for the POI, it is the Department's practice to use the average ending monthly inventory values for U.S. sales for the 12 months of the POI or calendar year. See, e.g., Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Indonesia, 64 FR 14690 (March 26, 1999) (revising inventory carrying costs to reflect an average of the entire period and not for only nine months, as reported); and Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Reviews, 56 FR 24370 (May 30, 1991) (calculating inventory carrying costs by using a twelve-month average). Because we are using January through December 2004 ending inventory values to calculate average inventory days, we divided the total ending monthly inventory values by 12. Including January's beginning inventory value would effectively add the prior month's ending inventory (i.e. December's) into this equation, which is not our practice. Therefore, for the final determination, we recalculated the average inventory days reported by the Respondent by averaging the January - December 2004 ending monthly inventory values for U.S. sales for the final determination.

Comment 8: Adjustment to Cost of Sales Denominator for Overvaluation of Material Cost

Respondent argues that for the final determination the Department should adjust the cost of goods sold denominator used to calculate the G&A and financial expense ratios to reflect its overvaluation of material cost. Respondent notes that while Nishiyama normally values its ending raw material inventory at the current cost, for reporting purposes the company adopted a conservative methodology and valued the ending raw materials inventory at the average of beginning inventory and 2004 purchases, thus reporting higher material cost than recorded in its books and records. Therefore, Respondent claims that the cost of sales denominator should be increased to reflect its reported higher material cost, otherwise the G&A and financial expense ratios will not be calculated and applied on the same basis and will thus be overstated. Petitioner did not comment on this issue.

Department's Position

The Department's normal practice is to ensure that the G&A and financial expense ratios are calculated and applied on the same basis. See Final Determination of Sales at Less Than Fair Value: Diamond Saw Blades and Parts Thereof from the Republic of Korea, 71 FR 29310 (May 22, 2006) and accompanying Issues and Decision Memorandum, at Comment 38 (Diamond Sawblades) ("In its cost of manufacturing reported to the Department, Shinhan deducted the prior

years' inventory adjustment. Therefore, in order for the cost of goods sold used in the denominator of the G&A and financial expense rate calculations to be on the same basis as the reported costs, we have deducted the prior years' inventory adjustment from the cost of goods sold used in the denominator of the G&A and financial expense rate calculations.")

In this case, the additional material costs were included by Nishiyama in the total reported per-unit costs to which the ratios are applied, but were excluded from the cost of sales denominator used to calculate the ratios. Accordingly, for the final determination, to ensure that the G&A and financial expense ratios are calculated on the same basis as the reported cost, we increased the cost of goods sold denominator for the additional costs resulting from the higher reported cost of raw materials.

Comment 9: Adjustment to Total Costs for Unreconciled Difference

Respondent claims that at verification the Department found that Nishiyama over-reported its cost. Respondent refers to the unreconciled difference between the total reported costs and the costs from its books and records noted in the Department's verification report. Respondent argues that in past cases the Department has adjusted reported costs for the unreconciled differences, and thus, should also make a downward adjustment to the reported cost for the final determination in this case. See Respondent's Case Brief, at 5, (citing Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Taiwan, 71 FR 7519 (February 13, 2006) and accompanying Issues and Decision Memorandum, at Comment 17). Petitioner did not comment on this issue.

Department's Position

The Department has a long-standing practice of denying a claim for an adjustment where the Department could not verify the claimed adjustment because the Respondent failed to provide supporting evidence. See, e.g., Final Results of Antidumping Duty Administrative Review: Polyvinyl Alcohol From Taiwan, 63 FR 32810, 32819 (June 16, 1998), at Comment 7. In previous cases, the Department has stated that the burden of proof to substantiate the legitimacy of a claimed adjustment falls on the respondent party making that claim. See, e.g., Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 71 FR 7517 (February 13, 2006) and accompanying Issues and Decision Memorandum, at Comment 4. In the instant case, Nishiyama made several adjustments to its normal books and records to account for the differences between how the specific product costs are normally recorded and how the specific product costs were required to be reported by the Department for this proceeding. For example, adjustments were made to Nishiyama's inventory values recorded in its normal books and records in order to comply with the requirement that reported costs reasonably reflect the costs associated with the production and sale of the subject merchandise. See section 773(f)(1)(A) of the Act. As such, due to this adjustment and several other adjustments made by Nishiyama it is not clear whether the reconciliation adjustment is warranted or not. As noted earlier, when faced

with a potential adjustment, the burden of proof falls on the respondent to demonstrate what the unreconciled difference relates to. Therefore, for the final determination, we did not make an adjustment to the reported cost for the unreconciled difference. See Diamond Sawblades.

Comment 10: Adjustment to Cost of Sales Denominator for Purchased Goods

Petitioner argues that for the final determination the Department should exclude the cost of purchased merchandise from the cost of goods sold denominator used to calculate the G&A and financial expense ratios. According to Petitioner, the proper denominator should include only expenses related to manufacturing of products, while merchandise purchased for resale is unrelated to the manufacture of metal calendar slides and other finished products.

Respondent notes that according to the Department's section D Questionnaire, G&A expenses are those period expenses which relate indirectly to the general operations of the company rather than directly to the production process. Respondent maintains that because the G&A and financial expenses relate to the general operations of the company, Petitioner's argument that purchased merchandise costs should be excluded from the denominator is against the Department's practice. Nishiyama further argues that, even assuming these costs should be excluded from the denominator, the numerator of the ratio also would need to be adjusted to remove the general costs associated with purchased merchandise. Therefore, Respondent concludes, the Department should reject Petitioner's argument with regard to an adjustment to the denominator used to calculate the G&A and financial expenses.

Department's Position
The denominator used to compute a company's G&A and financial expense ratios should include the cost of merchandise purchased for resale. The Department normally considers as G&A expenses those expenses that relate to the general operations of the company as a whole rather than to the production process. See, e.g., Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy, 64 FR 6615, 6627 (February 10, 1999). As part of its normal operations, Respondent purchases merchandise for resale to satisfy customer needs. As such, the Department considers its purchases for resale and the corresponding expenses to be related to the general operations of the company. Therefore, for the final results, we continued to include the cost of purchased merchandise in the cost of sales denominator used to calculate the G&A and financial expense ratios.

Comment 11: Miscellaneous Losses

Petitioner, noting that in the Preliminary Determination the Department adjusted Respondent's reported financial expenses to include foreign exchange losses, argues that the Department should also include miscellaneous losses recorded on Respondent's income statement in the calculation of the financial expense ratio. According to Petitioner, Respondent's explanation that these losses resulted from financial investments unrelated to the manufacture of the subject merchandise should not serve as a basis for excluding them. Petitioner argues that, according to

the Department's policy, all financial expenses are part of the cost of production and must be considered either financial expenses or, alternatively, G&A expenses.

Respondent notes that to the extent that Petitioner argues that miscellaneous losses should be accounted for, the proper place to consider them is in G&A expenses and not financial expenses, because the losses are general in nature and not financial expenses. Respondent cites to Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil, 69 FR 13813 (March 24, 2004) and accompanying Issues and Decision Memorandum, at Comment 10 (Silicomanganese from Brazil), in support of its contention that the Department normally includes miscellaneous expenses and revenues only if they relate to the general operations of the company.

According to Respondent, nearly all of the miscellaneous expenses did not relate to the general operations of the company, and as such, the inclusion of miscellaneous losses in the reported cost is not appropriate. Respondent further argues that if the Department decides to include miscellaneous losses, the Department should also include non-operating income by analyzing the nature of each income and expense item. Respondent states that the largest expense item, i.e., loss on sale of condo, was an investment and was recorded as such on the company's books. Respondent claims that the only loss item that could be considered related to the general operations of the company was the write-off of a bad debt due to a customer's bankruptcy. On the other hand, Respondent suggests, non-operating income items eligible for inclusion would be subsidy received from hiring seniors, sales of scrap, and income from vending machines, which, if included, would offset the loss due to the bad debt entirely.

Department's Position

The Department normally reviews the nature of each income or expense item to determine whether it relates to the general operations of the company and should be included in the reported cost. See, e.g., Silicomanganese from Brazil, at Comment 10. Based on our analysis of the miscellaneous income and expense items recorded in Respondent's financial statements, we have determined it appropriate to include certain income and expense items that relate to the general operations of the company. Specifically, we included bad debt expense (as indirect selling expense) and income from a subsidy received for hiring seniors and income from sales of scrap. We excluded gains and losses on investment activities (including the sale of the condo) because such activities do not relate to the general operations of the company, but instead, are related to separate profit making activities. See Notice of Final Results of Antidumping Duty Administrative Reviews: Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom, 67 FR 55780 (August 30, 2002), and accompanying Issues and Decision Memorandum, at Comment 40.

Comment 12: Adjustment to Steel Cost

Petitioner claims that the Department's decision to allow Respondent to shift the cost reporting period from the POI (i.e., 4/1/2004-3/31/2005) to its fiscal year 2004 (i.e., 1/1/2004-12/31/2004)

results in the understatement of certain costs. Petitioner states that cost data submitted by Respondent show that there were significant differences in prices between Respondent's purchases of steel inputs for the period January - March 2005 as opposed to January - March 2004. Petitioner argues that because steel costs are a significant portion of the total cost of manufacturing, for the final determination the Department should adjust the reported direct material cost to reflect the differences in steel costs.

Respondent maintains that the use of the fiscal year for cost reporting purposes provides the most appropriate basis for calculating the company's costs, because the company calculates its production costs only on a fiscal year basis. According to Respondent, because the fiscal year and the POI share nine months and because of decreases in other production costs during the POI, the small increase in per-unit steel cost is offset by other costs decreases, and the total per-kilogram costs for the fiscal year and for the POI are comparable. Respondent contends that no adjustment to Respondent's reported steel costs is appropriate, because the use of production costs within three months of the POI is consistent with the Department's practice and did not have a material effect on Respondent's reported costs.

Department's Position

The Department may allow the respondent to shift the cost reporting period by up to three months provided such a shift does not measurably impact the reported costs (i.e., such costs are comparable). See, e.g., section 782(c)(1) of the Act; section 351.301(c)(2)(iv) of the Department's regulations; and Preliminary Results of Antidumping Duty Administrative Review: Silicomanganese From Brazil, 70 FR 53628, 53629 (September 9, 2005). We allowed Respondent to use its fiscal year 2004 rather than the POI as the basis for reporting manufacturing costs because, when analyzed in total, there were no significant cost differences between the periods. See Preliminary Determination, 71 FR at 5346. Therefore, because the fiscal year and the POI total manufacturing costs are comparable, we disagree that it would be appropriate to only increase the costs for certain elements within the total cost for the fiscal year. Accordingly, for the final determination we did not adjust for the differences in steel costs.

Recommendation

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

Agree____ Disagree____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
(Date)