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

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Antidumping Investigation of Certain Lined Paper Products from India

Summary

We have analyzed the case and rebuttal briefs of the petitioner [1] and respondents [2] for the final determination in the investigation of certain lined paper products ("CLPP") from India. We recommend that you approve the positions we have developed in the "Department's Position" sections of this memorandum.

Background

On April 17, 2006, the Department of Commerce ("the Department") published in the Federal Register the preliminary determination of sales at less than fair value ("LTFV") in the antidumping ("AD") investigation of CLPP from India.[3] The period of investigation ("POI") is July 1, 2004, through June 30, 2005. On June 26, 2006, we received case briefs from the petitioner and respondents. On July 6, 2006, we conducted a hearing at the Department, pursuant to a request submitted by respondents on May 17, 2006.

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[1] The petitioner in this investigation is the Association of American School Paper Suppliers and its individual members (MeadWestvaco Corporation; Norcom, Inc.; and Top Flight, Inc.) (collectively "the petitioner").

[2] The respondents in this investigation include Aero Exports ("Aero"), Kejriwal Paper Ltd. ("Kejriwal"), and Navneet Publications (India) Ltd. ("Navneet") (collectively, "respondents").

[3] See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products from India, 71 FR 19706 (April 17, 2006) ("Preliminary Determination").

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Comment 1: Calculation of CVD offset to the AD Cash Deposit Rate

The petitioner states that where there are parallel investigations, the Department's practice is to offset the antidumping margin to account for any countervailing duty imposed on the same merchandise. See Dupont Teijin Films USA, LP v. United States, 297 F. Supp. 2d 1367 (CIT 2003), aff'd, 407 F.3d 1211 (Fed. Cir. 2005). The petitioner also cites Departmental practice that if the final AD duty order and final countervailing duty ("CVD") order are released on the same day, the Department will not adjust the antidumping margin itself, but will rather make an adjustment to the cash deposit rate that accounts for the countervailing duties that have been imposed. See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from India, 67 FR 34899, 34901 (May 16, 2002) ("Polyethylene Film"). The petitioner argues that the Department states "{t}he calculations underlying the cash deposit rates resulting from an initial investigation are essentially equivalent to those determined in administrative reviews leading to the assessment of antidumping duties." Id., 67 FR at 34901.

The petitioner argues that the Department's current method of calculating the CVD offset for investigations departs from its method for calculating the same offset in administrative reviews. The petitioner states that in administrative reviews, the Department makes the offset by adjusting U.S. price, but in an investigation, the Department adjusts the weighted-average dumping margin

rather than the U.S. price. See Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France, 69 FR 46501, 46506 (August 3, 2004); See also, Polyethylene Film, 67 FR at 34901. The petitioner argues that the differing methodologies lead to different final cash deposit rates, and that the Department has not stated why its methodology in practice for investigations leads to a more accurate offset than the methodology it practices for reviews. The petitioner asserts that the statute requires that adjustments made to account for a CVD be made to U.S. price, instead of making adjustments to the weighted-average dumping margin.

The petitioner also argues that for calculating the final cash deposits, the Department should utilize the same offset calculation methodology that it applies in administrative reviews and make the CVD adjustment to U.S. price and not to the weighted-average dumping margin.

Respondents argue that the petitioner should have raised this issue at the commencement of the investigation and that the Department should not address the petitioner's request to consider the CVD offset in the calculation of the final cash deposit rates.

Department's Position:

We agree with the petitioner that it is our practice, in AD investigations, to initially calculate a dumping margin and then to offset that figure by any export subsidy cash deposit rate calculated in the concurrent CVD investigation in the cash deposit instructions sent to U.S. Customs and Border Patrol ("CBP"). Section 772(c)(1)(C) of the Tariff Act of 1930, as amended ("the Act") directs the Department to increase export price ("EP") or constructed export price ("CEP") by the amount of the CVD "imposed" on the subject merchandise "to offset an export subsidy." The basic economic theory underlying this provision is that in parallel AD and CVD investigations, if the Department finds that a respondent received the benefits of an export subsidy program, it is presumed that the subsidy contributed to lower-priced sales of subject merchandise in the U.S. market by the amount of any such export subsidy. Thus, the subsidy and dumping are presumed to be related, and the imposition of duties against both would in effect be "double-application"- or imposing two duties against the same situation. Section 772(c)(1)(C) of the Act therefore requires that the Department factor the affirmative subsidy determination into the AD calculations to prevent this "double-application" of duties.

The Department has interpreted the term "imposed" to mean "assessment" in past investigations, and the CIT has affirmed this interpretation. See Notice of Final Determination of Sales at Less Than Fair Value; Honey from Argentina, 66 FR 50611, 50613 (October 4, 2001) ("Honey from Argentina"); See also, Serampore Industries Pvt. Ltd. v. United States, 675 F. Supp. 1354, 1360 (CIT 1987). The Department also has recognized, however, that cash deposit rates are estimates of the AD duties which may ultimately be assessed, and are applied in investigations to provide the United States with security that it will collect AD duties upon completion of a review, should it find that dumping has occurred in the period covered by the review. Cash deposit rates become final assessment rates only when administrative reviews are not requested (See 19 CFR

351.212(c)), are subject to modification, and as noted above, serve a different purpose than assessment rates. However, they are calculated on the basis of all of the information on the record and, in most respects, are calculated in the same manner as assessment rates determined in reviews. Therefore, the Department has recognized that although Congress in the statute is silent as to the application of subsidy offsets during an investigation, the same underlying theory of "double-application" which applies to the imposition of duties also applies to the Department's calculation of a cash deposit rate. Thus, the Department's practice to date in an investigation is to offset the AD cash deposit rate by the export subsidy cash deposit rate.

Unlike administrative reviews, the Department calculates this offset in investigations not in the margin calculation program, but in the cash deposit instructions issued to the CBP. See Honey from Argentina, 66 FR at 50612. The Department's practice is a result of the practical administrative difficulties in applying the results of an ongoing CVD investigation to calculations in an ongoing AD investigation. A dumping margin calculation normally will be completed before the actual export subsidies have been calculated. Thus, the Department withholds its application of the subsidy offset until it issues its cash deposit instructions. Such problems typically do not arise in administrative reviews. The CIT has upheld the practice of adjusting the cash deposit instructions, not the AD margin, for an AD investigation. See Dupont Teijin Films USA, LP, Mitsubishi Polyester Film of America, LLC and Toray Plastics (America), INC., v. United States, Slip Op. 40-70, 17 (June 18, 2004).

Because it is our practice to adjust for the export subsidy offset in the AD cash deposit instructions, we will follow our normal practice for the final determination.

Comment 2: Financial Expense Ratio

Kejriwal argues that the Department was wrong to exclude newsprint turnover from the denominator of the financial expense ratio for the preliminary determination. According to Kejriwal, it performed many services in the process of trading newsprint, including obtaining letters of credit to guarantee payment to the mills for the newsprint and providing customer service.

Kejriwal contends that the purpose of the Department's financial expense rate calculation is to allocate a company's net financial expense to all of the company's activities and to the relative costs that are necessarily incurred to conduct these business activities. Kejriwal argues that the only way to accurately allocate financial expenses to all of its business activities and appropriately calculate a single consolidated financial expense ratio, is to include the cost of newsprint in the denominator of the financial expense ratio. Kejriwal contends that the majority of the interest expense it incurred was related to the letters of credit that it opened for newsprint transactions and that it only incurred minor financial expenses related to its lined paper business. Kejriwal argues that the financial expenses incurred should be matched with the source of the expenses (i.e., the newsprint turnover should be included in the denominator of the financial expense ratio to allocate the financial expenses to the business activity generating the expenses),

otherwise the result is a meaningless ratio in which all the financial expenses are assigned to the lined paper products. Kejriwal contends that it defies logic to allocate all the financial expense of the company to the lined paper produced solely because the cost of manufacture ("COM") of the lined paper is included in the cost of goods sold ("COGS") while the value of the newsprint traded is not.

According to Kejriwal, the petitioner's argument for excluding newsprint turnover from the denominator of the general and administrative ("G&A") and financial expense ratios relies on the fact that Kejriwal did not formally take title of the goods. While this is true, Kejriwal argues that the newsprint trading activity incurred financial expenses through lines of credit utilized to finance these transactions and not including a value for these newsprint transactions in the denominator of the Department's financial expense ratio would overstate lined paper financial expenses. Kejriwal argues that the Department should take into account the nature of the activity generating income or expenses and therefore, include the newsprint in the denominator of the G&A and financial expense ratio.

The petitioner believes that Kejriwal's financial expense rate should be calculated based on its company-wide consolidated financial statements (i.e., the newsprint is not included in Kejriwal's COGS in the financial statements, therefore it should not be included in the financial expense COGS denominator). The petitioner states that the Department's standard section D questionnaire prescribes that the interest expense should be calculated on the consolidated audited fiscal year financial statements of the highest consolidated level available.[4] Although the Department's cost verification report notes that Kejriwal incurred financial expenses related to its newsprint trading activities, the petitioner argues that the Department's practice requires that interest expenses be reported on a company-wide basis, rather than at the divisional level.[5]

Department's Position:

We agree with Kejriwal that the cost of the newsprint turnover should be included in the denominator of the financial expense ratio calculation. We recognize that in this case allocating all net financial expenses to lined paper would not be reasonable because the newsprint line of business of the company incurred financial expenses, yet the COGS of the newsprint is not in the denominator. Thus, allocating all financial expenses to lined paper would overstate the cost of production of lined paper.

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[4] See page D-14 of the Department's Standard Questionnaire, available at http://ia.ita.doc.gov/questionnaires/q-inv-sec-d-032003.pdf

[5] See Notice of Final Determination of Antidumping Duty Investigation: Silicomanganese from India, 67 FR 15531 (April 2, 2002), and accompanying Issues and Decision Memorandum at Comment 25 ("Silicomanganese from India").

The vast majority of Kejriwal's business is as a trader of newsprint. Kejriwal lines up suppliers and purchasers of newsprint in the domestic Indian market. Kejriwal negotiates the purchase price with the newsprint manufacturer and the selling price with the prospective buyer. Kejriwal facilitates the sales process by providing letters of credit to the supplier of newsprint as well as advances. At verification, we noted that a significant amount of financial expense was incurred in Kejriwal's newsprint trading business.

Because of the unique facts in this case, it is appropriate to include the value of the newsprint traded as part of the denominator of the financial expense ratio in order to allocate the expenses to all of Kejriwal's business activities. While it is our normal practice to use the COGS from the income statements as our denominator, we are presented with unusual facts in this case where the purpose of the allocation ratio is thwarted because of the structure of the newsprint transactions. Thus, it is appropriate to allocate the financing expenses of the company as a whole to both the cost of goods manufactured directly by Kejriwal and the cost of the goods traded. For the final determination, we followed our normal approach of allocating company-wide interest to the activities of the company.

Comment 3: General and Administrative Expense Ratio

For the same reasons enumerated in the financial expense argument at comment 2 above, Kejriwal argues that the newsprint turnover should also be included in the denominator for the calculation of its G&A expense ratio. According to Kejriwal, the Department should calculate the G&A expense ratio at the consolidated entity level (i.e., company-wide) rather than at the divisional level, and in doing so it should include the newsprint division turnover in the denominator.

Kejriwal argues that the vast majority of its day-to-day activities are related to trading newsprint including facilitating the sales process by providing letters of credit to the suppliers of newsprint and a large portion of the expenses reported as "G&A" on the income statement relate to directly servicing newsprint customers. According to Kejriwal, six and a half of its seven national offices as well as the vast majority of its employees, do not work for the lined paper business. Kejriwal provided the Department with a worksheet showing the expenses related to servicing newsprint customers classified as G&A in its income statement.

Kejriwal disagrees with the petitioner's claim that the G&A information presented at verification is untimely, new and unreliable information. Kejriwal claims that the worksheet it prepared was in response to the Department's verification agenda which required it to identify the G&A and selling expenses of the company and to trace the G&A and selling expenses to the financial statements. According to Kejriwal, in the worksheet it classified certain G&A expenses as indirect selling expenses.

The petitioner argues that the newsprint turnover should not be included in the denominator of the G&A or financial expense ratios. Although the petitioner acknowledges that Kejriwal is

heavily involved in acting as an agent in the trading of newsprint, it believes that the degree of the company's involvement in trading activities is irrelevant. According to the petitioner, the cost verification report states that "Kejriwal does not take possession of the newsprint and the actual cost and associated sales revenue of the newsprint which is traded is not reflected in its income statement."[6] According to the petitioner, the Department's practice is to include the COGS as recorded in the company's audited financial statements and this is reflected in its standard Section D questionnaire.[7] The petitioner contends that including the turnover from newsprint trading in the denominator of the G&A and financial expense ratios, would constitute a significant departure from established Department policy. The petitioner states that in Certain Pasta from Italy, the Department did not exclude the cost of traded goods from the denominator because that was the way they were treated in the respondent's financial statements.[8] According to the petitioner, Indian generally accepted accounting principles do not allow for the inclusion of the value of turnover in a company's COGS if the company does not take title to the goods. According to the petitioner, in Silicomanganese from India,[9] a respondent that provided processing services under a tolling agreement argued unsuccessfully that the Department should include the cost of the raw materials supplied by the customer in the COGS, when in its normal books and records those costs are not included in its COGS.

The petitioner argues that the analysis of G&A expenses submitted during verification by Kejriwal is flawed in many respects. The petitioner contends that this analysis represents new information as well as a new methodology, therefore, it cannot be used for the final determination. In addition, the petitioner argues that the new G&A calculations are based on unreliable information because the new selling expenses identified contradict the conclusions of the sales verification report. The petitioner argues that the new information was prepared in advance and given to the verifiers in a guise of an analysis of the G&A expenses. The petitioner contends that the new information should be rejected as the Department rejected the new information submitted at verification in Butt-Weld Pipe Fittings From Malaysia[10].

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[6] See Verification of the Cost Response of Kejriwal Paper Limited in the Antidumping Investigation of Lined Paper from India (June 13, 2006) at pg. 8 ("Cost Verification Report").

[7] See page D-14 of the Department's Standard Questionnaire, available at http://ia.ita.doc.gov/questionnaires/q-inv-sec-d-032003.pdf.

[8] See Notice of Final Results and Partial Recision of Antidumping Duty Review: Certain Pasta from Italy, 64 FR 6615, at Comment 15 (February 10, 1999) "(Certain Pasta from Italy")

[9] See Silicomanganese from India, at Comment 20.

[10] See Notice of Final Results of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Malaysia, 65 FR 81825, and accompanying Issues and Decision Memorandum at Comment 6 (December 27, 2000)("Butt-Weld Pipe Fittings from Malaysia").

The petitioner also claims that in Kejriwal's G&A analysis, Kejriwal reclassified certain expenses as selling expenses. The petitioner argues that the majority of the allocations used to divide G&A into the five groups were based on rough estimates and management representations, some of which could not be verified. The petitioner contends that while employee salaries can be verified, the nature of the actual work performed by a specific employee in the past fiscal year is practically impossible to verify. The petitioner also notes that rent was allocated entirely to the newsprint/wastepaper division rather than in a more appropriate fashion.

According to the petitioner, Kejriwal stated at verification that some selling expenses were included in G&A expenses for the sake of simplicity. The petitioner contends that the split between G&A and selling expenses is the only adjustment that would affect the cost calculation, since under the Department's normal practice of using company-wide figures in the allocation between divisions is irrelevant. The petitioner argues that because Kejriwal has no CEP sales, any expenses identified as selling would not be included in the margin calculation. The petitioner claims that while Kejriwal identified new selling expenses during the cost verification, it did not mention them to the verifiers in the sales verification. According to the petitioner, the verifiers at the sales verification neither found any missing selling expenses[11] nor suggested that any of the G&A expenses should be reclassified as selling expenses. Therefore, the petitioner argues that the Department should rely on the results of the sales verification and continue to treat these expenses in accordance with their identification in the audited financial statements (i.e., as company-wide G&A expenses).

Finally, the petitioner argues that treating the newsprint/wastepaper expenses categorized as G&A on the income statement as COGS is inappropriate because the expenses represent trading activities, not manufacturing activities and, therefore, cannot be classified as either COGS or manufacturing expenses. According to the petitioner, trading activities cannot be classified as manufacturing costs unless the company takes possession of the goods, otherwise all expenses are considered G&A expenses.[12] According to the petitioner, reclassifying any G&A expenses from the numerator of the G&A calculation to COGS or COM is not supported by the Department's practice, which is to base G&A, interest expenses and COGS on the audited financial statements. Therefore, the petitioner argues that the Department should calculate the G&A and financial expense ratios based on the amount reported in the audited financial statements.

Department's Position:

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[11] See the Memorandum from Christopher Hargett and Joy Zhang to the file, "Verification of the Sales Responses of Kejriwal Paper in the Antidumping Investigation of Certain Lined Paper Products from India," (June 9, 2006) at 12-13 ("Sales Verification Report")..

[12] See Notice of Final Results of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Germany, 61 FR 13834 (March 26, 1996), at Comment 8: "Because the unconsolidated company is a non-producing holding company, the only expenses it incurs are general in nature."

We agree with the petitioner and Kejriwal that it is the Department's consistent practice to calculate G&A expenses based on the producing company as a whole and not on a divisional or product-specific basis. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden, 63 FR 40449, 40459 (July 29, 1998). This approach recognizes the general nature of these expenses and the fact that they relate to the company as a whole and is consistent with general accepted accounting principle treatment of such period costs. The Department's methodology also avoids any distortions that may result if, for business reasons, greater amounts of company-wide general expenses are allocated disproportionally among divisions. We consistently apply this methodology, unless the respondent provides case-specific facts that clearly support a departure from our normal practice of allocating company-wide G&A expenses over company-wide cost of sales. This approach is both reasonable and predictable. To allow a respondent to choose between the Department's normal method and an alternative method simply because one method results in a lower rate, would be a results-oriented approach.

During this proceeding, the Department reviewed all of the company's expenses and income items claimed as an offset to determine whether the income or expenses have been appropriately included in or excluded from the reported cost. Most expenses reported on a company's income statement can be categorized as either manufacturing, packing, selling, interest, investment-related, or G&A expenses. G&A expenses by their nature are indirect expenses incurred by the company as a whole. Unique circumstances in this case are present because the respondent reported, and we verified, that in addition to sales of subject merchandise the company earned significant revenues from its newsprint agency operation.

We agree with the petitioner that the cost of the raw materials supplied by the customer should not be included in the COGS because there was no recognized expense and there is no matching revenue item for those physical raw materials. See Silicomanganese from India at Comment 20. Accordingly, we have not included the cost of newsprint in the COGS but instead reclassified certain newsprint operation direct expenses from G&A expense to cost of newsprint revenue and included those expenses in the denominator of the G&A expense ratio calculation. We disagree with the petitioner that our finding contradicts the sales verification report. We did not reclassify the expenses directly attributable to the newsprint business as selling expenses but rather as cost of newsprint revenue.

At the Department's request, Kejriwal prepared a detailed analysis of its G&A expense account. The Department asked for this analysis in order to review source documentation and the nature of the expenses to determine whether they were appropriately classified. In doing so, we reviewed the nature of the expenses and the relationship between the expenses and the general operations of the company. We found anomalies with the company's classification of certain expenses as G&A. For example, rent expense for the factory was classified as G&A where it is more appropriately classified as fixed overhead within the COM. We noted that depreciation on assets used in the administration of the company as a whole were included as a separate line item on the income statement whereas it is more appropriately classified as G&A. We also found that

Kejriwal classified certain costs that are directly associated with newsprint revenues as G&A. The newsprint operation direct costs included in G&A expense were for salaries, licenses, printing and stationary, office expenses, etc. Kejriwal identified the expenses related to its newsprint business based on a number of factors including an analysis of the salaries and duties of the workers, where the expenses were incurred, an analysis of the location at which the expenses were booked, and ratios of salaries of the employees working for each area. We have determined that the categorization of factory rent as G&A and the cost of newsprint revenue as G&A in Kejriwal's income statement was not reasonable and therefore have reclassified the factory rent to fixed overhead in the COM and reclassified the cost of newsprint revenues from G&A to newsprint revenues in the denominator of the G&A expense ratio calculation for the final determination. It would be inappropriate to include these miscategorized expenses in G&A because their inclusion would improperly overstate the G&A of the company. Contrary to the petitioner's claim, the information the Department requested was not new information but support for the figures already provided. At verification, the Department reviewed the analysis provided by Kejriwal which identified the expenses directly attributable to the newsprint business. The Department confirmed that the labor costs were allocated based on where the employees worked (i.e., at the corporate office, at the newsprint and waste paper operations offices, at the finance office or at the export division). While we disagree with Kejriwal's allocation of rent expense to the newsprint operations, we find that the other allocations were reasonable.

For the final determination, we have removed from the G&A numerator those expenses directly attributable to Kejriwal's newsprint business activities (with the exception of the rent expense) and reclassified the expenses as cost of newsprint revenues. We have included the cost of newsprint revenue in the COGS denominator used to calculate Kejriwal's G&A expense ratio. We have allocated the remaining G&A expenses over the revised cost of sales denominator which includes the cost of newsprint revenue, thereby allocating Kejriwal's actual G&A expenses over the cost of sales for the company as a whole.

Comment 4: Scrap Offset

The petitioner argues that the Department should not allow Kejriwal's claimed scrap offset because the paper scrap generated by Kejriwal was neither sold nor reintroduced into the production process during the POI. The petitioner contends that it is the Department's practice to allow by-product offsets for scrap which is actually sold or reintroduced into the production process.[13] However, Kejriwal did not sell any scrap during the POI, but instead sold a portion of

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[13] To support its claim, the petitioner cited the following cases: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews, 70 FR 54897, 54900 (September 19, 2005), and accompanying Issues and Decision Memorandum at Comment 8E; Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 18; Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68

the scrap after the POI. Therefore, the petitioner argues that no scrap offset should be allowed. However, the petitioner suggests that if the Department chooses to allow Kejriwal's scrap offset, the Department should limit the scrap offset to the amount sold as of November 2005 (i.e., after the POI).

Kejriwal argues that the Department should continue to allow its scrap offset. According to Kejriwal, the Department must consider the value of scrap produced during the POI, whether or not it was sold during the POI. Kejriwal contends that the value the scrap produced should be based on the market value of scrap.

Department's Position:

We disagree with the petitioner. Kejriwal began producing lined paper products during the POI. While Kejriwal did not sell any scrap during the POI, Kejriwal estimated the value of scrap generated as of March 31, 2005, based on market prices and recorded the amount in its stock statement and balance sheet. The fact that the paper scrap was sold after the POI demonstrates that the scrap produced had a commercial value. We also confirmed that the subcontractors which processed paper for Kejriwal into subject and non-subject products at their facilities returned the scrap to Kejriwal. Kejriwal valued the scrap produced during the POI using the average sales price it received for the scrap paper sold after the POI which we traced to invoices. The average selling price for scrap has been accepted by the Department in previous cases.[14] While Kejriwal did not sell all of its scrap paper there is no evidence on the record that all recovered scrap is not saleable. We disagree with the petitioner that its case cites are on point in this case because the cases cited by the petitioner were antidumping proceedings conducted in non-market economies. In the instant case, we followed the normal books and records of the respondent in accordance with Indian generally accepted accounting principles and the company keeps its records on an accrual basis. Thus, for the final determination we have not made any changes to Kejriwal's reported scrap offset.

FR 6885 (February 11, 2003); Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 49632 (September 28, 2001), and accompanying Issues and Decision Memorandum at Comment.

[14] See Notice of Final Results of Antidumping Duty Review: Oil Country Tubular Goods From Israel, 57 FR 11463 (April 3, 1992), at Comment 4, in which we stated "As for the value of the scrap generated in producing the OCTG under review, the Department calculated the scrap value using the actual yield and the average selling price for scrap. There was no evidence on the record which indicated that not all of the scrap generated was recoverable."

Comment 5: Depreciation Expense

The petitioner argues that while Kejriwal included the depreciation expense related to the export division (i.e., lined paper) in the reported cost, it excluded the remaining depreciation expense from the reported costs (i.e., difference between the total depreciation expense and the depreciation expense related to the export division). The petitioner asserts that the excluded depreciation expense should be included in the G&A expense rate calculation for the final determination.

Kejriwal argues that if the Department were to include the depreciation expense in the numerator of the G&A expense ratio calculation, it should also include the newsprint turnover in the denominator of the G&A expense ratio calculation, because the newsprint business is the cause of the vast majority of Kejriwal's depreciation. Otherwise, Kejriwal contends, the Department should exclude the depreciation attributable to the newsprint trading activities from the numerator of the G&A expense ratio calculation to preserve the symmetry between the numerator and the denominator.

Department's Position:

Depreciation expense was reported as a separate line item on Kejriwal's profit and loss statement. Kejriwal included the depreciation expense related to its factory in the calculation of the reported cost (i.e., as a part of fixed overhead). However, the remainder of its depreciation expense, which was related to the furniture and fixtures of the administrative offices, was excluded from the reported cost. We agree with the petitioner that the remaining depreciation expense should be included in the calculation of the G&A expense rate calculation in order to allocate the depreciation to the COGS of the company as a whole. While Kejriwal does not disagree that the depreciation should be included in the numerator of the G&A expense ratio, its main argument is that the Department should include the newsprint turnover in the denominator of the G&A expense ratio calculation if it includes the depreciation in the numerator. The argument regarding the proper denominator to use in the G&A expense ratio calculation has been addressed in the G&A issue above. For the final determination, we have included the depreciation attributable to the administrative offices in the numerator of the G&A expense ratio calculation.

Comment 6: Kejriwal's "Flexi Com Books" and "Personal Note Books": Scope Issue

The petitioner states that the scope of the order includes "single- and multi-subject notebooks, … with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive)." See Preliminary Determination. The petitioner argues that according to the Sales Verification Report, Kejriwal claimed that "personal notebooks" and "flexi com books" are outside of the scope of the investigation because they are smaller than in-scope merchandise, as the smaller side has a

size of 8.5 inches, less than the minimum requirement of 8.75 inches stated in the scope.[15] The petitioner argues that the entire universe of sales to the United States is in doubt; therefore, the petitioner asserts that the Department should assign Kejriwal a margin based on adverse facts available for the entire database or for all sales of subject merchandise incorrectly classified as out-of-scope.

Kejriwal rebuts the petitioner's assertion that Kejriwal's "flexi com books" and "personal note books" are subject merchandise. Specifically, Kejriwal argues that the Department's sales verification report contains an inaccurate reference to the dimensions of these two products. As a result, Kejriwal states that it properly excluded this non-subject merchandise from its reported databases.

Department's Position:

We agree with Kejriwal. The Department's verification report for Kejriwal inadvertently included an incorrect reference in its description of the dimensions of Kejriwal's "flexi com books" and "personal note books."[16] As explained in this memorandum on page one, the dimensions of these two products fall outside the scope of the investigation, therefore Kejriwal properly excluded them from their reported sales database.

Comment 7: Excise Tax Rebated and Duty Free Replenishment Certificates ("DFRC")

According to Kejriwal, the Department disallowed Kejriwal's claimed offset for the income from the DFRC and for the excise tax rebated. Kejriwal argues that both the income from the DFRC and the excise tax rebated should be allowed as an offset to cost. According to Kejriwal, it is subject to a 16 percent excise tax on raw material purchased domestically and on merchandise it sells domestically but is not liable for the excise tax if the merchandise is exported. Kejriwal claims to either buy goods under an excise bond, then export the finished product (in which case no tax is recorded to cost and no offset is claimed), or the company pays the excise tax on domestically sourced raw material inputs, then receives a rebate upon proof of export of the finished goods. In the latter case, Kejriwal states that it records the tax as part of the cost of production ("COP") in its records and also posts the payment received as a reduction to the COP. Kejriwal argues that the Department recognized that the tax was not a cost under the first scenario. However, in the preliminary determination the Department treated the excise tax as a cost under the second scenario. Kejriwal claims that in either scenario, the company does not pay excise tax; therefore, the excise tax rebate should be allowed to offset the excise tax paid. Kejriwal argues that if the Department continues to disallow the excise tax offset in the final determination, then it should also deduct the excise tax paid.

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[15] See "Sales Verification Report," at 7.

[16] See Memorandum to the file from Christopher Hargett through James Terpstra titled "Correction of the Department's Sales Verification Report for Kejriwal," dated July 5, 2006.

Kejriwal claims that all products manufactured during the POI were exported and, as a result, it received duty-free replenishment certificates. Kejriwal argues that the DFRC revenue is directly tied to its U.S. exports and should be offset against its COM for those exports.

The petitioner argues that the Department correctly excluded the revenue from the sale of DFRC and the excise tax rebate as offsets to Kejriwal's reported cost. According to the petitioner the DFRC and excise tax rebate do not pass the Department's two-prong duty drawback test, which states that there must be a sufficient link between the import duty and the rebate and that there must be a sufficient amount of raw materials imported and used in the production of the final exported product. In addition, the petitioner claim that the majority of the excise tax rebates were received after the POI; therefore, while the excise tax paid by Kejriwal effects the COM, the rebates do not.

According to the petitioner, the Department noted in its verification report that "the DFRC is available to exporters (irrespective of whether they use domestic or imported inputs in the manufacture of the exported items) for the subsequent import of inputs to be used in the manufacture of goods without having to pay custom duties."[17] The petitioner notes that Kejriwal did not use its DFRC licenses, but instead sold the licenses and claimed the profit as a duty-drawback adjustment. The petitioner argues that the savings on the paper cost resulting from the use of a DFRC license will equal that of the income from the sale of the license. The petitioner contends that the company chose to sell the DFRC licenses rather than use them because the revenue from selling them obviously exceeds the savings that they could have gotten by using the DFRC licenses themselves. According to the petitioner, the Department has treated the DFRC as a duty drawback adjustment to the U.S. price, and has applied the two-prong duty drawback test to it. According to the petitioner, there is no link between the sales revenue from the DFRC licenses and any imports or export transactions; therefore, Kejriwal has failed the first part of the two-prong duty drawback test. The petitioner claims that in Stainless Steel Wire Rods from India[18] the Department denied the respondent a duty drawback for the duty entitlement passbook scheme ("DEPS") stating that "In the 1997/1998 Final Results, we denied Viraj's claim for a duty drawback. The Department explained its decision as follows: An analysis of {information obtained at verification} does not demonstrate that the import duty paid and the duty drawback rebate were directly linked. Rather, they demonstrate that the amount of duty rebated is tied to the FOB price of the exported merchandise, and the amount of drawback credit is determined by the Government of India's pre-established determination of import content, this method fails to link the rebate received to the amount of import duties actually paid on raw materials actually imported. Consequently . . . we have determined that a duty drawback adjustment under

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[17] See Memorandum from Laurens van Houten to the file, "Verification of the Cost Response of Kejriwal Paper Limited in the Antidumping Investigation of Lined Paper from India" (June 13, 2006) at 2 ("Cost Verification Report")

[18] See Notice of Final Results and Determination to Revoke Order in Part: Stainless Steel Wire Rods from India, 70 FR 40318 (July 13, 2005), and accompanying Issues and Decision Memorandum at Comment 16 ("Stainless Steel Rod from India").

772(c)(1)(B) of the Act is not warranted." The petitioner argues that because Kejriwal cannot demonstrate a direct link between any duty paid and the rebate it claims as an offset, the Department should deny the DFRC offset.

Department's Position:

While we disagree with Kejriwal that the revenue from the sale of the DFRC should be used as an offset to Kejriwal's cost of production, we agree with Kejriwal that the excise tax rebated should be used to offset Kejriwal's cost of production. Excise tax and DFRC are completely different. Kejriwal either buys goods in the domestic market under an excise bond, then exports the goods (in which case no tax is recorded to cost and no offset is claimed), or the company pays the excise tax, then receives a rebate upon proof of export. In either case no excise tax is paid. We disagree with the petitioner that because the majority of the excise tax rebates were received after the POI, they have no effect on the COM. The fact remains that Kejriwal paid some excise taxes and after exporting the goods received a refund for the excise taxes paid. In the end, no excise taxes were paid. We found that Kejriwal accrues the tax rebateable in its normal books and records. Thus, we have allowed Kejriwal's excise tax rebate as an offset to the excise duties paid for the final determination.

The DFRC is an export incentive awarded by the GOI available to exporters irrespective of whether they use domestic or imported inputs in the manufacture of the exported items. Exporters receive these credits upon export of finished goods, to be used for subsequent duty free imports of inputs. The quantity of imports is limited to a standard input-output ratio of seventy-five percent of the exported fob value. An exporter can sell the entire or unutilized portion of the DFRC. If a company does not use the certificates, it can sell them. Kejriwal did not use its DFRCs to import goods, but instead sold them. In fact, Kejriwal did not import paper, duplex board or kraft board during the POI. Kejriwal, in its normal accounting system, records the revenue earned from the sales of DFRC as "Export Incentive." The value of the DFRC was recorded as an export incentive and included in the total sales revenue reported on Kejriwal's March 31, 2005, audited financial statements. Kejriwal did not include the sales revenue as an offset to its COP in its normal books and records and we have not allowed the revenue to offset Kejriwal's COP for the final determination.

Kejriwal has not claimed a duty drawback adjustment for the DFRC revenue; therefore, there is no duty drawback claim to evaluate for the final determination. No import duties were paid and subsequently refunded nor were any goods imported using the DFRC. If Kejriwal had claimed a duty drawback, the law specifically addresses how duty drawback is to be treated in the dumping calculation. Section 772(c)(1)(B) of the Act provides that duty drawback will be applied as a sales adjustment to the EP or CEP. The law dictates such treatment because the drawback is tied to the export sale, not the cost of production. If respondents cannot establish they are entitled to this adjustment, we deem it inappropriate to permit them to receive as a fallback an equivalent

adjustment as an offset to the COP or constructed value ("CV")[19]. Thus, for the final determination, we have continued to exclude the revenue from the sale of the DFRC.

Comment 8: Kejriwal's Packing Ministerial Error in Preliminary Determination

Kejriwal argues that the Department should use the weightPreliminary Determination and the Department indicated its intent to correct this error for the final determination, as stated in the Memorandum to
Melissa G. Skinner from James Terpstra, entitled, "Alleged Ministerial Errors in the Preliminary Determination," at 3, dated May 11, 2006.

The petitioner did not comment on this issue.

Department's Position:

We agree with Kejriwal. As stated in the in the Memorandum to Melissa G. Skinner from James Terpstra, entitled, "Alleged Ministerial Errors in the Preliminary Determination," at page 3, dated May 11, 2006, the Department will use the weighted-average packing expense for calculation of the final margin, in accordance with the Department's practice.

Comment 9: Kejriwal's Imputed U.S. Credit Expense

Kejriwal argues that the Department should use the credit rate stated in its narrative response for the calculation of imputed credit expense, which was based on the POI U.S. short-term bank prime loan, rather than the higher rate provided in Kejriwal's reported sales database.[20] Kejriwal states that exports during the POI were all made under a letter of credit. Kejriwal argues that the letter of credit is a highly secure way of handling commercial transactions, and therefore, any imputed interest rate should reflect credit available for the lowest risk loans. Kejriwal argues that the appropriate interest rate is either the rate reported in its narrative response or the rate listed at the Federal Reserve for short-term prime loans.

The petitioner did not comment on this issue.

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[19] See Notice of Final Results of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India, 70 FR 13451 (March 21, 2005), and accompanying Issues and Decision Memorandum at Comment 14.

[20] See Kejriwal's Section C Questionnaire Response dated January 6, 2006, at page C-32. See also, Kejriwal's Section C Questionnaire Response dated January 6, 2006, at page C-32.

Department's Position:

In cases where a respondent has no short-term borrowings in the currency of the transaction, we will use publicly available information to establish a short-term interest rate applicable to the currency of the transaction. For dollar transactions, we will generally use the average short-term lending rates calculated by the Federal Reserve to impute credit expenses. Specifically, we will use the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made. See Chlorinated Isocyanurates From Spain: Notice of Final Determination of Sales at Less Than Fair Value, 70 FR 24506 (May 10, 2005), and accompany Issues and Decision Memorandum at Comment 5; See also Notice of Final Results of the Seventh Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part, 70 FR 6832 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 26.

In this case, because the Department cannot determine whether credit expenses are reflected in the exporting country selling expenses used as a proxy for Kejriwal, we are not making a circumstance-of-sale adjustment for credit. As a result, the issue of the appropriate interest rate to use for U.S. credit is moot.

Comment 10: Kejriwal's Minor Correction Regarding USDUTYU Field

Kejriwal presented a minor correction at verification regarding its U.S. duties paid. As a result, Kejriwal states that the Department should disregard U.S. duties included in the USDUTYU field because it would result in double counting. Specifically, Kejriwal claims that it reported a more accurate accounting of its full U.S. duty costs along with its transportation expenses from factory to U.S. port in the USBROKU field.

The petitioner did not comment on this issue.

Department's Position:

We agree with Kejriwal that its U.S. duties were double counted. Therefore, we will utilize the reported duty costs in the USBROKU field and disregard the USDUTYU field for the final determination.[21]

Comment 11: Decision not to Verify the Sales and Critical Circumstances Responses of Aero and Navneet

Respondents Aero and Navneet argue that the Department was unjustified in its decision not to verify the sales and critical circumstances information reported by these two companies. They argue that the Sections A-C supplemental questionnaire responses were not due to the

[21] See Sales Verification Report, Exhibit 12 and Exhibit 15, at page 45.

Department at the time the decision was made to cancel the sales verifications. Further, Aero and Navneet stated that because the CVD team verified Aero and Navneet's critical circumstance information, the antidumping team should have verified the critical circumstance information as well.

The petitioner contends that the Department was fully justified in its decision not to verify the sales information provided by Aero and Navneet. Accordingly, the petitioner asserts that verification cannot be conducted if the information on the record is so deficient that its accuracy could not be ascertained without resort to new information. The petitioner challenges the assertion made by Aero and Navneet that the sales and critical circumstances data they reported was sufficient to warrant verification. Specifically, the petitioner references the Navneet adverse facts available ("AFA") memo which states that it is the Department's practice to reject a respondent's submitted information in total when flawed and unreliable costs render price-to-price comparisons impossible.[22] The petitioner argues that if the Department were to accept and verify sales information when costs do not verify, respondents would be able to manipulate the antidumping margin calculation by only selecting the information they wish the Department to use.

Department's Position:

The Department was justified in its decision not to verify the sales information reported by Aero and Navneet, which is explained in further detail in Comment 14. Moreover, the Aero and Navneet AFA memoranda explain in further detail the reasons the Department rejected their cost responses.

It is the Department's practice to reject a respondent's submitted information in total when flawed and unreliable cost responses render price-to-price comparisons impossible. Because no cost or sales verification could reasonably be performed for Aero and Navneet, and due to the fact that the Department is applying adverse inferences to both companies, there is no reason for the Department to verify critical circumstances information for either Aero or Navneet.

Comment 12: Decision not to Fully Extend the Final Determination

Respondents argue that the Department should fully extend the final determination for CLPP from India so that the issues pertaining to Navneet's and Aero's cost submissions can be clarified and resolved. Respondents state that the Department fully extended the Indonesian final for a single mandatory respondent and also extended the AD China investigation, even though the Chinese respondents did not have the demands associated with concurrent AD and CVD

[22] See Memorandum from Ji Young Oh to The File, regarding "Use of Adverse Facts Available for the Preliminary Determination – Navneet Publications (India) Ltd.," at page 5, dated April 7, 2006 ("Navneet AFA Memo"); Memorandum from Sheikh Hannan to Neal M. Halper, regarding "Use of Adverse Facts Available for the Preliminary Determination – Aero Exports," at page 4, dated April 7, 2006 ("Aero AFA memo").

investigations. Therefore, respondents argue that the Department's refusal to fully extend the final determination of India was arbitrary and capricious. Furthermore, respondents argue that the combination of short deadlines and concurrent demands of the AD and CVD investigations impeded respondents' right to a reasonable opportunity to respond to the Department's questions and defend them at verification.

The petitioner argues that the Department was justified in its decision not to fully extend the final determination for CLPP from India. The petitioner notes that, according to the Department's regulations, an extension of the final determination affects only the time period after the preliminary determination. The petitioner states that all cost information was due before the preliminary determination and any extension of the final would not have given respondents more time to address the Department's questions. Therefore, the petitioner states that no additional time should be granted beyond the Department's current extension of the final determination. Furthermore, the petitioner argues that respondents have not cited any evidence that shows that any harm resulted from the Department's decision not to extend the final determination.

Department's Position:

We find that any additional extension of the final determination for CLPP from India is not warranted by the facts of this investigation. As referenced in the Preliminary Determination, the Department applied adverse inferences to Aero and Navneet due to their failure to act to the best of their abilities. As a result of this decision, the Department is unable to grant any additional time for these two respondents to more substantively answer the Department's questionnaires subsequent to the Preliminary Determination.

We disagree with respondents' assertion that the demands of the concurrent AD and CVD investigations impeded their ability to such an extent as to deny them a reasonable opportunity to respond to the Department's questions. Respondents were granted numerous extensions and provided several opportunities to submit the required cost information prior to the Preliminary Determination. Therefore, we find that the Department was reasonable in its efforts to afford respondents the time necessary to fully respond to the Department's questionnaires within the confines of the statutory deadlines.

We also disagree with respondents' assertion that Aero and Navneet were prejudiced based upon an arbitrary decision not to fully extend the final determination of the instant investigation. There is no legal requirement for the Department to maintain identical extensions among the three countries subject to this investigation. The facts and circumstances that influence the granting of extensions in the China, Indonesia, and India investigations are distinct and, therefore, may result in extensions that differ from each respective country-specific case in this investigation. Furthermore, the requirements of the instant investigation were fulfilled in accordance with the statute, thus enabling a final determination to be issued by the Department on July 31, 2006. Specifically, the Department issued its sales and cost verification reports regarding Kejriwal on June 9, 2006, and June 13, 2006, respectively. The Department

subsequently completed the briefing process on June 27, 2006, and conducted a public hearing on July 6, 2006. Therefore, there is no compelling reason to further delay the investigation beyond the current extension of 105 days, as referenced in the Preliminary Determination.

Comment 13: Whether the Cost Investigation was Unlawful and Not Based on Substantial Evidence

Respondents argue that the Department initiated a cost investigation without sufficient justification. According to respondents, there was no evidence in the financial statements of the three mandatory respondents to suggest that the subject merchandise was sold below cost. Thus, respondents contend that the initiation of the cost investigation was unlawful and unsupported by substantial evidence.

The petitioner argues that the Department's cost investigation for this case was fully justified. The petitioner asserts that the record evidence demonstrated that not only did the petitioner provide sufficient information for the Department to reasonably believe that the sales of subject merchandise in the home market were made at prices below the fully absorbed COP, but the Department also examined the information and found the statutory criteria for the initiation of such an investigation were met. According to the petitioner, it used information reasonably available such as market research data, and the home market and U.S. market producers' experience in preparing its sales-below-cost allegation. The petitioner asserts that the Department has routinely accepted, as best available information, the financial data for comparable entities or from entities within the same country market. Therefore, the petitioner maintains that its cost allegation was conservative and accurately reflected the levels of dumping in the U.S. market.

The petitioner also points out that the Department carefully reviewed the petitioner's cost allegation and cost model, requesting several corrections and clarifications, and made several changes to the petitioner's cost allegation for initiation purposes. The petitioner asserts that the Department clearly assessed the validity of the petitioner's allegation and upheld its statutory obligation to ensure that there was a reasonable basis to believe that sales in the home market were being made below the respondents' COP. Consequently, the petitioner contends that the Department's actions were consistent with its statutory directive to investigate the sales-below-cost allegations and to initiate the cost investigation on a country-wide basis based on section 773(b)(2)(A)(I) of the Act.[23] Thus, the petitioner argues that the Department properly initiated its sales-below-cost investigation concurrent with the initiation of the antidumping duty investigation as permitted by statute and the Statement of Administrative Action ("SAA").

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[23] To support its position, the petitioner cites Uruguay Round Agreements Act, SAA, H.R. Rep. No. 104-316, reprinted in 1994 U.S.C.C.A.N. 4040, 4171 ("{i}t is the Administration's intent that the standard for initiation of a sales below-cost investigation should be the same as the current standard for initiating an antidumping investigation based on a comparison of prices").

Department's Position:

We disagree with respondents that the cost investigation was initiated without sufficient justification. On September 9, 2005, the petitioner filed the petition for an AD investigation of CLPP from India. The petition provided information that there were reasonable grounds to believe or suspect that the sales of CLPP in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested the Department to conduct a country-wide sales-below-cost investigation. According to the SAA at 833, the standard for initiation of a sales-below-cost investigation is the same as the standard for initiating a antidumping investigation. Thus, a sales-below-cost allegation, like an allegation of anntidumping, must be supported by information reasonably available to the petitioner, including information already on the record. In this case, because the allegation was made at the petition stage and respondents' data was not on the record, the petitioner calculated the COM based on the experience of a U.S. CLPP producer during the proposed POI, adjusted for known differences between the costs incurred to manufacture CLPP in the United States and in India using publicly available data. To calculate SG&A and financial expenses, the petitioner relied upon amounts reported in the financial statements of an Indian CLPP producer. The Department reviewed the petitioner's submitted petition along with the sales-below-cost allegation and revised the reported COP due to errors in the cost allegation (i.e., manufacturing overhead ratio and SG&A ratio). See Initiation of Antidumping Duty Investigation: Certain Lined Paper Products from India, Indonesia, and the People's Republic of China, 70 FR 58374 (October 6, 2005) ("CLPP India Intiation") and India Initiation Checklist. Then, the Department compared the prices of the foreign like product in the home market to the recalculated (i.e., revised) COP of the product and found that there were reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(I) of the Act. Consequently, the Department initiated a country-wide sales-below-cost investigation.

As stated in the CLPP India Initiation and India Initiation Checklist, the petitioner's sales-below-cost allegation and the Department's sales-below-cost investigation were based on a country-wide cost investigation and consistent with 19 CFR 351.301(d)(2)(i)(A). The sales-below-cost allegation was filed by the petitioner based on the experience of a U.S. producer, adjusted for known differences between the costs incurred to manufacture CLPP in the United States and India using publicly available data. The Department initiated the sales-below-cost investigation based on that information with certain revisions. Furthermore, contrary to respondents' claim, there is no basis on which to assume that there should be a relationship between the Department's decision for initiating the sales-below-cost investigation and the mandatory Indian respondents' financial statements. The financial statements include all products produced by the company (i.e., both merchandise under consideration and merchandise not under consideration). Moreover, the merchandise under consideration includes various products and each product has different product characteristics which lead to differences in production costs. However, since the financial statements do not show product-specific costs, its users are unable to determine which products are sold below cost or vice versa.

As explained above, the decision for initiating a country-wide sales-below-cost investigation should be based on the information demonstrating reasonable grounds to believe or suspect that sales of foreign like product in the home market were made at prices below the fully absorbed COP using publicly available data. In this case, the Department determined that the the petitioner's sales-below-cost allegation met this burden. Thus, the Department disagrees with respondent that its sales-below-cost investigation was not fully justified. See CLPP India Initiation for detailed information on the initiation of the sales-below-cost investigation.

Comment 14: Adverse Facts Available for Navneet and Aero

Navneet and Aero contend that for the Preliminary Determination the Department erroneously alleged several deficiencies in their cost submissions, rejected their entire cost responses, cancelled the planned cost and sales verifications, did not calculate margins based on their submitted data, and applied total AFA. Navneet and Aero claim that throughout the proceeding they were cooperative, and that the Department should not have taken such actions against them, which are normally applied to the most recalcitrant respondents. Both respondents request that the Department base its final determination on neutral facts available by calculating margins based on the verified cost data of Kejriwal, another respondent in this investigation, because Navneet and Aero claim that they have acted to the best of their ability in responding to the Department's questionnaires and submitted all requested information within the extended deadlines, and that their responses are not deficient.

According to Navneet, a review of its preliminary determination memorandum suggests a lack of understanding by the Department of Navneet's submitted cost reconciliation.[24] Navneet asserts that the Department concluded its reported costs were based on the COGS instead of the COM and that it did not adjust the costs for the POI change in the finished goods inventory. Navneet maintains that the POI change in finished goods inventory was accounted for in the cost reconciliation and, therefore, the reported costs were based on the COM and not on the COGS.[25]

Navneet also claims that the Department incorrectly determined that its last section D questionnaire response contradicted previous responses with respect to how production costs are captured and maintained in the computerized system. Navneet argues that there are no contradictions because the last response is presumed to be the most accurate and replaces previous responses. Moreover, Navneet argues that it has repeatedly informed the Department that it does not have a cost accounting system, does not track product-specific costs in its normal course of business, and manually tabulates the data maintained in the computer system for reporting purposes. Navneet asserts that it could have supported these facts at the previously scheduled cost verification. According to Navneet, cost verifications are essential to examine

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[24] See Navneet AFA Memo.

[25] In support of this position, Navneet refers to the revised cost reconciliation submitted in its March 29, 2006, third supplemental Section D response at exhibit 3-1.

and clarify the respondent's accounting system, records maintained, and reported costs, but the Department cut this vital step out of its normal investigative process.

Based on its review of the Navneet AFA Memo, Navneet further claims that the Department wrongly alleged that it failed to provide supporting documents for the per-unit cost calculations of the selected control numbers and also failed to provide a reconciliation of the production quantity from the cost data file to either the sales quantity or the production quantity in the POI quantity reconciliation schedule. Navneet asserts that it has provided the requested per-unit cost information for the selected control numbers and answered all relevant questions.[26] Navneet also contends that in addition to providing the production quantity reconciliation, it explained the insignificant difference between the quantity reported in the cost reconciliation and the quantity used for calculating the reported per-unit costs. According to Navneet, the difference resulted from a timing issue because its accounting system allows calculation of full product cost based on job order quantities. Navneet argues that the Department cannot compel a company to do something that cannot be done by its existing record keeping system. Navneet maintains that it came as close as was reasonably possible to reporting actual POI costs which routinely require such adjustments or inferences due to the fact that companies do not set up their records to address future antidumping cases based on a specific arbitrary window in time to report costs.

According to Navneet, the Department asserts that Navneet did not provide a schedule of all its POI job orders.[27] Navneet maintains that it has explained the reasons for not providing the requested job orders to the Department.[28] Navneet asserts that the Department's request was unreasonable because during the POI there were several thousand job orders. Moreover, these job orders do contain some costs, but not all the costs required for the Department, and would have been of no use to the Department because the total POI job order cost would not equal the total POI production cost. Navneet reiterates that it offered the Department access to its record keeping system at the scheduled verification, and would have dispelled any notion of the utility of this largely unreasonable and burdensome request for the job orders.

Aero contends that a review of the preliminary determination memorandum[29] will show that the Department erred in applying total AFA despite Aero providing all the requested information within the extended deadlines. Aero states that it is a small company managed by a single individual with a rudimentary record keeping system. According to Aero, it took most of the preliminary phase to provide the cost information because a single person who manages the

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[26] In support of this position, Navneet refers to the answers to questions 8 to 10 of its March 29, 2006, third supplemental Section D response.

[27] See Navneet AFA Memo at page 6.

[28] In support of this position, Navneet refers to its March 29, 2006, third supplemental Section D response, at page 5.

[29] See Aero AFA Memo.

company was also responsible for responding to both the AD and CVD duty cases. Therefore, this should not be a reason for the Department to assert that the company was non-cooperative. Aero also contends that the Department erred in violating its own policy where Aero disclosed certain financial facts in good faith and also proceeded with its CVD verification.

Navneet and Aero point out that the Department unfairly rejected their April 21, 2006, request for reconsideration of the verification even though the Department in the past accepted similar requests in other cases.[30] Both the respondents assert that in the Firth Rixon case, the respondent failed to provide a cost database for a subsidiary involved in the production and sale of subject merchandise until late in the investigation. The Department, at the request of the respondents' counsel, issued a supplemental questionnaire after the preliminary determination date to get more cost information from Firth Rixon. Navneet and Aero maintain that in contradiction to Firth Rixon, they submitted numerous pages of narration and worksheets in support of their reported costs. According to Navneet and Aero, section 782(e) of the Act contemplates that the Department will solicit and use the information submitted on the record even if it is not entirely complete. Both the respondents maintain that their cost responses met this statutory standard and should not have been rejected in whole over a few misunderstandings. In addition, Navneet and Aero claim that the Department's determination that they failed to act to the best of their ability in responding to the antidumping questionnaire is not based on substantial evidence on the record.[31]

Navneet and Aero accuse the Department of conducting the AD investigation entirely in a vacuum, seemingly incognizant and uncaring of the small size of the US market the Indian respondents command, the limited number of company staff able to respond to the questionnaire in the case of Aero, the unanticipated complexity of the scope, and the simultaneous obligations imposed by the CVD investigation. Navneet and Aero contend that despite the above limitations and constraints, they have acted to the best of their ability in responding to the Department's cost questionnaires. Navneet and Aero acknowledge that the Department has granted them several extensions to respond to the Department's cost questionnaires. However, they point out that such extensions are routine and often granted by the Department.

Navneet and Aero maintain that the Department's deadline of March 29, 2006 to respond to the third supplemental section D questionnaire conflicted with the CVD verifications that were scheduled during the last week of March 2006. Moreover, during February 2006, both the companies had to respond to one sales and two cost supplemental questionnaires. According to Navneet and Aero, they requested that the Department grant them an extension to the third

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[30] Navneet and Aero cite Firth Rixon Special Tools Ltd. v. United States, Slip Op. 03-70 (CIT June 27, 2003) ("Firth Rixon"), at pages 10 - 11.

[31] In support of this position, Navneet and Aero cite Mannesmannrohren-Werke A.G. and Mannesmann Pipe and Steel Corp. v. United States, Slip Op. 99-118 (CIT October 29, 1999) ("Mannesmannrohren - Werke"), at page 20. Moreover, Navneet and Aero claim that their submission of numerous detailed responses and worksheets in the AD and CVD investigations of CLPP from India dispel the notion that they were not coperative.

supplemental section D questionnaires until April 10, 2006 (i.e., after the preliminary determination date), the day the sales supplemental questionnaire responses were also due, but the requests were not entertained. Navneet and Aero assert that the Department should not have deemed them uncooperative when they responded to the third supplemental section D questionnaire within the March 29, 2006, deadline. Navneet and Aero state that they are aware of the fact that the Department must operate within statutory deadlines, but claim that the Department went out of its way to single out India for the curtailment of these deadlines by denying the request for a full extension of the final determination, which would have provided the Department and the respondents time to clarify and verify their responses.

The petitioner contends that for the preliminary determination, the Department has appropriately applied AFA to Navneet and Aero, and that the Department for the final determination should continue to do so because, in spite of four opportunities (i.e., the original section D questionnaire and three supplemental section D questionnaires), both the respondents failed to provide information responsive to the Department's requests. Navneet and Aero in their responses compounded error with error and refused to provide the Department with the information necessary to calculate an accurate margin. Moreover, the Department in the Navneet and Aero AFA memoranda outlined a number of serious deficiencies that warranted the application of AFA. According to the petitioner, Navneet and Aero's arguments that their responses were fully compliant with the Department's requests which necessitated verifications[32] are simply incorrect.

With regard to Navneet's claim that they have submitted a detailed cost reconciliation, the petitioner points out that Navneet, neither in its responses nor in its brief, did not address its failure to provide any explanations or supporting documents for the reconciling items. In addition, the petitioner takes note of Navneet's complaint that the Department misunderstood the submitted cost reconciliation by stating that the burden of creating a clear and an accurate record was on Navneet.[33]

Further, the petitioner claims that Navneet provided different descriptions of its cost reporting methodology from response to response, and provided no explanation regarding these contradictions. Also, Navneet cites no precedent in support of its assertion that a company's last response is presumed to be the most accurate and replaces the previous responses. The petitioner maintains that the Department is not required to resort to rules of statutory construction in order to decode questionnaire responses. The submitted responses should be clear, complete, and internally consistent.[34]

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[32] See respondents' brief dated June 20, 2006, at 17-29.

[33] In support of this position, the petitioner cites China Steel Corp. v. United States, 306 F. Supp. 1291, 1306 (CIT 2004). According to the petitioner, in this case the court noted that the burden of creating an accurate and complete record is on the respondent.

[34] In support of this position, the petitioner cites China Steel Corp. v. United States, 306 F. Supp. 1291, 1307 (CIT 2004). According to the petitioner, in this case the court ruled that the provision of incomplete and/or

With regard to Navneet's assertion that it has provided the requested per-unit cost calculations of the selected control numbers and answered all relevant questions (i.e., questions 8 to 10 of its March 29, 2006 third supplemental section D response), the petitioner alleges that Navneet did not provide supporting documents for its reported per-unit costs and once again attempted to shift the burden to the Department to ensure that the Department understands the intended meaning of ambiguous or unexplained submissions.[35] Further, the petitioner points out that the majority of Navneet's answers to question number 8 and its subpart consist of a point blank refusal to provide information. Further, the petitioner maintains that Navneet provided none of the explanations required by questions number 9 and 10, and the worksheets that were provided as an exhibit are non-responsive to the requests for explanation and are not accompanied by supporting documents.[36] With respect to Navneet's claim that it has provided the production quantity reconciliation in the best possible manner as permitted by its existing accounting system, the petitioner maintains that Navneet is not relieved of the obligation to provide information to the Department that is within its possession[37] because Navneet does not keep its records in a way that renders them convenient for the dumping investigation.

With regard to Navneet's refusal to provide the job orders on the grounds that it would have been no use to the Department, the petitioner maintains that Navneet should not determine what the Department needs to make a determination. Instead, Navneet should provide the requested information that it has in its possession.

The petitioner contends that Aero failed to cooperate to the best of its ability because less than two weeks prior to the preliminary determination, Aero disclosed certain financial facts that made the reported costs unuseable. The petitioner argues that throughout the proceeding Aero was aware and had possession of these financial facts, and yet preferred to disclose this information late in the proceeding, only when Aero realized that the disclosed information would have been discovered by the Department at the scheduled cost verification. In addition, the fact that Aero took months to provide source accounting records that should have been maintained as part of normal records further demonstrates that the submitted information is not useable. Further, the petitioner claims that Aero did not provide the requested schedule of stock journal vouchers which was necessary for the Department to test the reasonableness of Aero's reported costs. Moreover, the late disclosure of certain financial information made the need for the detailed stock journal voucher schedule even more critical. The submission of this schedule

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internally inconsistent responses support the application or AFA.

[35] See respondents' brief dated June 20, 2006 at 18-19.

[36] In support of this position, the petitioner refers to the answers made by Navneet in response to questions 8 to 10 in its March 29, 2006, third supplemental Section D response.

[37] In support of this position, the petitioner cites China Steel Corp. v. United States. 306 F. Supp. 1291, 1304 (CIT 2004).

would have established a certain level of reliability regarding the POI material cost pool, the production quantities, and the reported per-unit material costs.

The petitioner notes that both Navneet and Aero requested multiple extensions to the Department's cost questionnaires, thereby giving the appearance that they were able to provide the requested information.[38] Instead, Navneet failed to provide the requested information, made contradictory statements, and did not inform the Department that the information would not be forthcoming. Aero withheld certain financial information until just prior to the preliminary determination date. Moreover, the petitioner finds Navneet's and Aero's argument for conducting a cost verification, unpersuasive. The petitioner points out that verification is not conducted as the respondents claim, "to examine and clarify the company's cost systems, records, and reported costs." The petitioner maintains that verification is not the time for recreation or re-invention of the cost response, and accordingly, verification cannot be conducted if the information on the record is so deficient that its accuracy cannot be ascertained without resort to new information. The petitioner claims that in the Firth Rixon case, the Department refused to verify any of the respondent's information and applied total AFA because the respondent failed to provide a cost database for a no-longer extant subsidiary. In this case, Navneet's and Aero's failure to cooperate is not limited to some severable or compact issue. Rather, Navneet and Aero have produced extremely deficient information regarding its own costs.

Department's Position:

We disagree with Navneet and Aero. For the preliminary determination, we applied total AFA to Navneet and Aero, because after three rounds of supplemental questionnaires covering more than 140 days past the issuance of the initial section D questionnaire, and nine days prior to the preliminary determination date, both of the respondents failed to provide the requested information that was in their possession. In addition, Aero's disclosure of certain financial facts (which we believe Aero was aware of throughout the proceeding) nine days prior to the preliminary determination date made the reported costs unuseable. The Department in the Navneet and Aero AFA memoranda listed the deficiencies contained in their responses, and explained in detail the reasons for applying AFA in the preliminary determination. Further, we do not agree with Navneet's and Aero's arguments that for the final determination, as neutral facts available, we should calculate their margins based on the verified cost data of Kejriwal. Therefore, for the final determination, we have continued to apply total AFA to Navneet and Aero's cost responses.

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[38] The petitioner cites China Steel Corp. v. United States. 306 F. Supp. 1291, 1302 (CIT 2004). According to the petitioner, in this case the court noted that requests for extensions indicate that information requested will be forthcoming.

Navneet:

In the preliminary determination, the Department applied total AFA to Navneet's reported costs for the following reasons: 1) incomplete cost reconciliations and failure to provide an explanation and supporting documentation for reconciling items, 2) lack of a coherent explanation of their product cost calculation methodology for either the reported costs or as recorded in their normal books and records, 3) no supporting documentation for the per-unit cost calculation of selected control number ("CONNUMs"), 4) no reconciliation of the production quantity from the cost database to either the sales quantity or the production quantity in the POI, 5) lack of a clear explanation for the differences in the total POI purchased paper value and quantity amounts, between the POI paper purchase schedule and the POI paper inventory movement schedule, and 6) failure to provide the requested POI job order worksheet. See Navneet AFA Memo.

We disagree with Navneet that it properly adjusted the reported costs for the finished goods inventory changes during the POI. Specifically, because Navneet failed to provide a complete cost reconciliation throughout the proceeding, the Department issued a third supplemental section D questionnaire on March 16, 2006, along with a cost reconciliation worksheet outline, which the Department prepared based on Navneet's prior submission. In the third supplemental section D questionnaire, the Department requested Navneet to provide the missing figures in the cost reconciliation outline schedule, along with an explanation and supporting documentation for each reconciling item. Since the finished goods inventory is associated with determining the COGS and not with determining the COM for a given period, the Department specifically listed the finished goods inventory changes during the POI as one of the adjustments (i.e., to exclude it from the reported costs) in the cost reconciliation outline schedule.[39] Thirteen days later on March 29, 2006 (i.e., 140 days after issuing the original section D questionnaire), the Department received Navneet's third supplemental section D questionnaire response and found that Navneet failed to exclude the finished goods inventory changes during the POI from the reported costs as requested by the Department.[40] As explained above, the finished goods inventory changes are associated with determining the COGS, not the COM . Thus, in order to derive the POI-reported COM, the finished goods inventory changes should have been excluded from the POI COGS. Because Navneet failed to exclude the finished goods inventory changes from the reported costs, its reported costs were based on the POI COGS instead of the POI COM. This difference is important because COGS includes the cost of products produced in prior periods and excludes the cost of goods produced but not sold. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil, 69 FR 76910 (December 23, 2004), and the accompanying Issues and Decision Memorandum at Comment 21,

[39] See the third supplemental section D questionnaire at question 1 and attachment 1, dated March 16, 2006.

[40] See the third supplemental section D questionnaire response exhibit SD3-1, dated March 29, 2006, the second supplemental section D questionnaire response exhibit SD-13, dated March 8, 2006 (i.e., Navneet's trial balance), and the section A questionnaire response exhibit 13.2 page 40 (Navneet's audited financial statements).

where the Department excluded the finished goods inventory adjustment from the respondent's reported costs. Furthermore, Navneet failed to provide an explanation and supporting documentation for any of the reconciling items in the cost reconciliation worksheet in spite of the Department's multiple requests. Thus, Navneet's cost reconciliation schedule is incomplete and grossly deficient.

We also disagree with Navneet's argument that there were no contradictions between its responses with respect to how production costs were captured and maintained in the computerized system. Specifically, in the section D questionnaire response at page 13 dated January 11, 2006, Navneet stated that it calculates each machine's hourly labor rate or hourly machine rate and applies these rates to finished products based on the total machine hours utilized for that finished product to calculate the conversion costs in the normal course of business. Also, in the first supplemental section D questionnaire response at page 22 dated February 21, 2006, Navneet confirmed this statement. However, in the same first supplemental section D questionnaire response at page 24, Navneet stated that "Navneet does not calculate product costs in the normal course of business. Navneet does track labour hours by production order. These were used to compute the reported costs." Thus, not only did Navneet's statement in the first supplemental section D questionnaire response contradict its section D questionnaire response but, statements within the first supplemental section D questionnaire response also contradicted themselves.

Furthermore, contrary to the statement in the first supplemental section D questionnaire response (i.e., "Navneet does not calculate product costs in the normal course of business. Navneet does track...these were used to compute the reported costs."), in the second supplemental section D questionnaire response at page 15 dated March 8, 2006, Navneet again referred to the section D questionnaire response in which Navneet stated that it calculates each machine's hourly labor rate or hourly machine rate and applies these rates to finished products based on the total machine hours utilized for that finished productto calculate conversion costs in the normal course of business. Also, based on a review of Navneet's sample production reports, it appeared that Navneet has a sophisticated SAP® job order system which calculates detailed product costs. Nevertheless, at page 17 of the second supplemental section D questionnaire response, Navneet again claimed that it does not calculate product-specific costs in the normal course of business.

In addition, contrary to its statements in the original section D response and the subsequent supplemental section D questionnaire responses,[41] Navneet stated in the third supplemental section D questionnaire response at page 7 dated March 29, 2006 that "in order to meet the Department's product specific cost reporting requirements, Navneet has undertaken the task of manual allocating all labour, fixed and variable cost to each subject and like product produced

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[41] Navneet calculates each machine's hourly labor rate or hourly machine rate and applies these rates to finished products based on the total machine hours utilized for that finished product to calculate the conversion costs in the normal course of business. See the section D response at pages 12 - 16, the first supplemental section D questionnaire response at pages 21-22, and the second supplemental section D questionnaire response at pages 15-16.

during the POI." Therefore, in spite of three different supplemental section D questionnaire responses, it was still unclear whether Navneet calculates finished product-specific costs in the normal course of business and, if so, how these normal product costs were used to calculate the reported product costs. Also, it was unclear how the product costs from its SAP® job order system were used to calculate the reported product costs.

As another example we note that Navneet made contradicting statements between its responses and within the same response with respect to how production costs were calculated. Nevertheless, Navneet did not provide any explanation regarding its contradictions and which statements were superceded within its responses. Also, Navneet stated in the third and final supplemental section D questionnaire response at page 10 dated March 29, 2006, "please refer to our detailed explanation for the method adopted to report each field in COP/CV file using the system data and in our original and supplemental response." Thus, we do not find Navneet's argument persuasive that "A company's last response is presumed to be the most accurate and replaces previous responses."

We further disagree with Navneet that it provided the requested per-unit cost information for the selected CONNUMs and answered all relevant questions in questions 8 to 10 of the third supplemental section D questionnaire response dated March 29, 2006. Because Navneet failed to provide requested supporting documentation for the per-unit cost calculation of selected CONNUMs in its previous two supplemental section D questionnaire responses, the Department specifically requested Navneet to provide supporting documents, such as total production quantity, raw material consumption quantity, and raw material consumption rates for the selected CONNUMs in question 8. Navneet, in turn, only submitted the sample computer screen "shot" of the production reports and stated that "the data is based on the production order and production confirmation entries would run into thousands of entries. Reporting the same would be unduly burdensome."[42] Also, in question 8, the Department asked questions about a certain exhibit and specifically requested Navneet to provide supporting documents such as production hours, and the calculation of overhead and labor rates for each type of variable overhead cost (i.e., (1) total machine or labor hours incurred at the cost center and (2) total expenses incurred at the cost center). In reply to this question, Navneet simply referred back to figures in the same exhibit in the prior response for which the Department was trying to obtain the supporting information. Moreover, contrary to Navneet's claim, questions 9 and 10 were related to the clarification of CONNUM worksheet calculation errors and were not related to requesting supporting documentation. Thus, Navneet's CONNUM calculation worksheet argument is misleading. Consequently, we cannot conclude that Navneet's answers were in anyway responsive to the Department's specific requests and find that they failed to provide the supporting documentation for the per-unit cost calculation of selected CONNUMs.

We also disagree with Navneet that it provided the reconciliation of production quantity and explained the insignificant differences between the quantity reported in the reconciliation and the

[42] See pages 9 and 10 of the third supplemental section D questionnaire response dated on March 29, 2006.

quantity used for calculating the reported per-unit cost (i.e., cost database). Because Navneet failed to provide the production quantity reconciliation schedule in its previous two supplemental section D questionnaire responses, the Department specifically requested in the third supplemental section D questionnaire that Navneet reconcile the production quantity from the cost database to either the sales quantity or the production quantity in the POI production quantity reconciliation schedule. However, Navneet again failed to provide the requested information. Specifically, in its POI production quantity reconciliation schedule, Navneet simply listed four different figures: 1) the production quantity per the COP/CV database, 2) the sales quantity (U.S. and domestic sales), 3) the third country sales quantity, and 4) production quantity during the POI. Navneet stated that the difference between the production quantity per the COP/CV database (which it asserts should agree with its cost database) and the production quantity during the POI was caused by timing differences.[43] The assertion of a timing difference did not answer the question.

Because Navneet's reconciliation schedule failed to illustrate the flow of inventory quantity from the beginning inventory quantity, the production quantity during the POI, the sales quantity during the POI, and the ending inventory quantity, this reconciliation schedule was not reliable without any underlining supporting documents. More importantly, the figure for the production quantity per the COP/CV database from the POI quantity reconciliation schedule did not even agree with the production quantity reported in the cost database.[44] Consequently, the production quantity differences between the POI production quantity reconciliation schedule and the cost database were greater than Navneet's representation. While Navneet claims that it provided the POI production quantity reconciliation schedule in the best possible manner as permitted by its existing accounting system, Navneet's reported production quantity appears unreliable because it did not reconcile the reported total production quantity from its cost database to any of its submitted information. In addition, Navneet also failed to provide an explanation and reconciliation schedule for the differences in the total POI purchased paper value and quantity amounts between the POI paper purchase schedule and the POI paper inventory movement schedule in spite of the Department's specific request. See Navneet AFA Memo. Therefore, we find that Navneet failed to provide the reconciliation of production quantity from the cost database to either the sales quantity or the production quantity in the POI production quantity reconciliation schedule.

We further disagree with Navneet that the Department was unreasonable in requesting the job order worksheet and that these job orders do not contain all production costs. As described in the Navneet AFA Memo and above, the Department encountered numerous difficulties obtaining reliable production cost information throughout this proceeding. The Department requested the POI job order worksheet as a last attempt to establish a certain level of reliability of the total POI

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[43] See the third supplemental section D questionnaire response at pages 4-5 dated March 29, 2006.

[44] See the third supplemental section D questionnaire response at pages 4-5 dated March 29, 2006 and Navneet's reported cost database.

cost pool and to have placed on the record information directly from respondent's records that could have been verified. This was important because it appeared that, at least according to some of Navneet's statements, their reported costs and quantities were derived from job orders. Nevertheless, Navneet did not provide these data and stated that "each production order runs into hundreds of line items. Therefore, it would be unduly burdensome {to} gather the materials and they would be too voluminous to include as an attachment to this submission. This data is stored on our system and will be available for review at the time of the verification."[45] Furthermore, Navneet claimed that the job order worksheet did not contain all the costs required by the Department. However, Navneet stated in the third supplemental section D questionnaire response at page 6 dated March 29, 2006, that the cost difference between the total POI COM (i.e., all products including merchandise under consideration and merchandise not under consideration) and all job orders for the reported costs (i.e., merchandise under consideration in cost database) were 1) the cost of merchandise not under consideration and the merchandise under consideration that pertains to third countries and 2) the net difference due to production of certain job orders carried out before the POI and after the POI. Since the latter item was reflected as a reconciling item in the reconciliation schedule, it appears that the job order worksheet could have been used as a reliable source to establish a certain level of reliability of the total POI costs and the reported production costs. Therefore, we do not find Navneet's argument that the job order worksheets do not contain all the costs required by the Department persuasive.

Navneet argues throughout its brief that the Department would have been able to find Navneet's reported costs reliable if the Department had conducted the cost verification. We note that verification is the process by which the Department checks, reviews, and corroborates factual information previously submitted by the respondent(s) and not the time for new information. This process enables the Department to plan its own verification and gives the petitioner an opportunity to submit pre-verification comments. Moreover, the purpose of verification is to test information provided by a party for accuracy and completeness, not to audit every item in a response. For this reason, the Department conducts sample testing and relies on the fact that amounts reported reconcile to a respondent's audited financial statements (where available). Audited financial statements undergo detailed testing by independent auditors and serve as a reliable benchmark for financial statement users. Before assessing the reasonableness of a respondent's cost allocation methodology, the Department must ensure that the aggregate amount of the reported costs capture all costs incurred by the respondent in producing the subject merchandise during the period under examination. This is done by performing a series of reconciliations of the respondent's submitted cost data to the company's audited financial statements, where such statements are available. In situations where the respondent's total reported costs differ from amounts reported in its financial statements, the reconciliation of the costs from the financial statements to the submitted per-unit costs assists the Department in identifying and quantifying those differences in order to determine whether it was reasonable for the respondent to exclude certain costs for purposes of reporting COP and CV. Although the format of the reconciliation of submitted costs to actual financial statement costs depends greatly

[45] See the third supplemental section D questionnaire at page 5 dated March 29, 2006.

on the nature of the accounting records maintained by the respondent, the cost reconciliation represents the starting point of the cost verification because it assures the Department that the respondent has accounted for all costs before allocating those costs to individual products. As stated above, verification is the process by which the Department checks, reviews, and corroborates factual information previously submitted by the respondent(s). Thus, without a reliable overall cost reconciliation, and the clear explanation of Navneet's product cost calculation method in the normal corse of business and the reported costs prior to the verification, the Department is unable to proceed with the cost verification and, as a result, Navneet's submitted information was unverifiable. Moreover, verification is not the place to begin to reconcile figures.

We also find Navneet's reliance on Firth Rixon in its argument for reconsideration of the verification to be misplaced. In Firth Rixon, the Department, in the preliminary determination, applied AFA because the respondent in Firth Rixon did not identify until late in the investigation an affiliated party which produced and sold the subject merchandise during the POI, and then failed to provide sales and cost data for that affiliate. The Department subsequently issued a supplemental questionnaire after the preliminary determination asking for sales and cost data of the affiliated producer. In short, once the Department learned of the affiliated party and it became clear that the information was necessary, the Department properly gave the respondent a chance to correct the deficiency. However, the respondent failed to provide the requested sales and cost data. Consequently, the Department did not conduct the cost verification and continued to apply AFA for the final determination. In Firth Rixon, the deficient information was related to an affiliated party. However, this case is distinguishable from the facts in Firth Rixon. The deficient information relates to Navneet and Navneet's failure to correct these deficiencies after three rounds of supplemental questionnaires covering more than 140 days after the issuance of the initial section D questionnaire. The Department provided ample opportunities to Navneet to remedy its deficiencies. Nevertheless, Navneet's argument implies that the Department should have issued another supplemental questionnaire to Navneet as was done in Firth Rixon. The Department clearly warned Navneet with the issuing of the third supplemental section D questionnaire that its repeated failure to provide the requested information has resulted in a questionnaire response that the Department would not be able to adequately analyze and rely upon in its current form.[46] Navneet clearly knew that the Department was not going to issue another supplemental questionnaire and all of its deficiencies had to be resolved in its third supplemental questionnaire response in order for the Department to calculate an accurate antidumping margin.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information by the deadlines for such information or in the form and manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in

[46] See the third supplemental section D questionnaire dated March 16, 2006.

reaching the applicable determination. In addition, section 776(a)(1) of the Act provides that the Department can resort to facts available if the necessary information is not available on the record. In this case Navneet failed to provide: (1) a verifiable reconciliation of the total POI COM allocated to subject and non-subject merchandise to amounts recorded in their normal books and records; (2) the requested details on how costs are allocated to specific product groups in its normal books and records; and (3) complete supporting documentation for the per-unit cost calculation of selected CONNUMs, the POI production quantity reconciliation schedule, the POI purchased paper reconciliation schedule, and the POI job order schedule.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and, to the extent practicable, shall provide that person the opportunity to remedy or explain the deficiency. The Department's supplemental questionnaires provided Navneet with opportunities to correct its deficiencies. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department, subject to section 782(e) of the Act, may disregard all or part of the original and subsequent responses, as appropriate. However, as explained above, Navneet's responses continued to remain unsatisfactory and unresponsive. The absence of coherent answers to the Department's three supplemental questionnaires, the numerous questions left unanswered, and the out right refusal to provide requested data, demonstrate Navneet's non-responsiveness.

We disagree with Navneet that its cost responses met the statutory standard of section 782(e) of the Act, and should have not been rejected in whole. Section 782(e) of the Act provides that the administering authority shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements, if 1) the information is submitted by the deadline established; 2) the information can be verified; 3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; 4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements; and 5) the information can be used without undue difficulties. We note that while all five criteria must be met, Navneet has not met any of the criteria.

In this case, as explained above, the proper cost reconciliation was never provided and explanations of how they derived the submitted costs remain unclear which renders the reported costs unverifiable and unusable. Also, we find that Navneet has not demonstrated that it acted to the best of its ability in providing the information and meeting the requirement. Specifically, in spite of numerous opportunities for Navneet to respond via supplemental questionnaires, Navneet failed to reconcile its reported costs to its normal books and records when the information necessary to do so was in its control. Furthermore, Navneet did not provide an explanation and supporting documentation for any of the reconciling items in the cost reconciliation schedule. Clearly, Navneet had control over the information of each reconciling item, but never explained why it did not or could not provide this information to the Department. Navneet also continued

to provide the contradictory statements for the product calculation methodology between the reported costs and the normal books and records when the information necessary to correct these contradictions were in its possession. As a result, the information in the responses is so incomplete that it cannot be used without undue difficulties. Thus, in this case, section 782(e) of the Act does not compel the Department to use Navneet's reported per-unit data. Therefore, we conclude that, pursuant to sections 776(a)(1) and (a)(2) of the Act, use of facts otherwise available is appropriate.

We disagree with Navneet's reliance on Mannesmannrohren-Werke to prove that it was cooperative. In the Mannesmannrohren-Werke case, the court pointed out that the Department needs to articulate why it concluded that party failed to act to the best of its ability, and explain why the absence of the information is of significance to the progress of its investigation. In this case, we have articulated how Navneet failed to act to the best of its ability (i.e., by not providing the requested information) and also explained why the absence of this information is of significance to the progress of our investigation.

Finally, section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794-96 (August 30, 2002); see also SAA at 870. Specifically, section 776(b) of the Act provides that, where the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority" the Department "may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." Navneet has the ability to respond to the Department's requests for information. Navneet is a large company with sizable financial and human resources at its disposal. Through numerous extensions, it was offered the time to comply with the Department's request. The Department gave Navneet clear requests for specific information in specific formats. The information requested, but not provided, in some instances are merely clear explanations of the records Navneet maintains and how they were used to answer the questionnaires. All of the information requested is of a type that Navneet would normally maintain, and in some instances has stated that it does maintain (i.e., job order costs for specific products). For its accounting systems, Navneet uses a sophisticated SAP® system, a computerized system that is used around the world and has been used by other respondents to respond successfully to the Department's requests for information. Despite these advantages, Navneet, after having been given numerous opportunities by the Department, failed to reconcile its reported costs to its normal books and records when the information necessary to do so was in its control. Navneet continued to provide contradictory statements as to the methodologies it uses in its records and what it used for reporting purposes when all of this information is under its control. Thus, we have determined that Navneet has not acted to the best of its ability to comply with our requests for information. Accordingly, consistent with section 776(b) of the Act, we have applied total AFA.

Aero:

As Aero has claimed proprietary treatment for much of its argument on this issue, and because most of the reasons regarding the application of AFA for Aero are considered business proprietary information, we have discussed this issue in a separate business proprietary memorandum. Please See the Memorandum from Sheikh Hannan, Senior Accountant, to Neal Halper, Director for the Office of Accounting, Re: Use of Adverse Facts Available for the Final Determination - Aero Exports, dated July 31, 2006.

Comment 15: Legality of Methodology and Adverse Rates Applied to Aero and Navneet

Respondents state that the Department's methodology and chosen adverse rates were unlawful. Aero and Navneet argue that the adverse rate applied in the Preliminary Determination is punitive rather than remedial, because they argue that the Department unlawfully assigned the highest calculated margin from Kejriwal's entire database. Aero and Navneet argue that the selected adverse rate is based on an aberrant observation that penalizes these two companies, as if they did not participate at all in this investigation. Aero and Navneet claim that the rate should be based on an observation that is more typical of Kejriwal's sales and should take into account the measure of their efforts in this investigation.

Aero and Navneet recommend different methods to obtain what they consider is a deserved neutral facts available rate for the final determination. Respondents argue that the Department could simply run Navneet's and Aero's cost and sales databases, as they were reported, to calculate a margin. Alternatively, respondents argue that the Department could use Kejriwal's cost data as partial facts available for both the Aero and Navneet costs. Respondents assert that none of the three respondents reported losses in their financial statements. Therefore, they argue that this would have been a more reasonable approach than shutting down the investigations of Aero and Navneet. Respondents argue that if the Department considers individual transactions, it should reject certain observations which they consider to be aberrant.

The petitioner states that the Department appropriately selected the adverse rate for Aero and Navneet. The petitioner states that Department practice is to select either the highest margin stated in the notice of initiation or the highest margin calculated for any respondent. The petitioner states that the Department examined the highest rate in the notice of initiation, 215.93 percent, however, found that it could not be corroborated. Therefore, the Department determined in the Preliminary Determination to use the highest calculated rate in the investigation, 110.43 percent. The petitioner states that the rate selected by the Department must be such that it discourages uncooperative responses from the companies in the future and, although it is not intended as punishment, the rate should not be similar to the rate of a cooperative respondent. Thus, the petitioner asserts that the Department was completely justified in applying a rate that neutralizes any benefits associated with uncooperative behavior and provides an incentive toward future compliance.

Department's Position:

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870. Consistent with the Department's decision in the Preliminary Determination, the Department finds that Aero and Navneet have failed to cooperate to the best of their ability because they continued to be non-responsive, despite repeated requests to provide critical data regarding their costs.

When the Department applies AFA because a respondent fails to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. See also 19 CFR 351.308(c); SAA at 829-832. In accordance with section 776(c) of the Act and to the extent practicable, for the Preliminary Determination, we examined record evidence in an effort to corroborate the margins in the CLPP India Initiation, i.e., to determine whether those margins have probative value. We found that the estimated margins set forth in the CLPP India Initiation do not have probative value. See Corroboration Memo.[47]

Respondents proposed that the Department only apply partial facts available and either use Aero's and Navneet's reported cost and sales data or incorporate Kejriwal's verified cost data with Aero's and Navneet's sales data. However, the Department rejects these options because we found in the Preliminary Determination that adverse inferences were warranted for both Aero and Navneet based on the reasons discussed in Comment 14 of this memorandum. Therefore, the Department has determined that the cost and sales information reported by Aero and Navneet are unreliable as a basis for calculating a dumping margin. It is the Department's practice to reject a respondent's submitted information in total when flawed and unreliable costs render price-to-price comparisons impossible. Furthermore, based on the fact that Aero's and Navneet's sales and cost data were rejected in the Preliminary Determination and that they were not subject to verification, we find that the data reported by Aero and Navneet are not suitable for calculating the antidumping duty margins.

The Court of Appeals for the Federal Circuit ("CAFC") has upheld the Department's application of the highest available dumping margin. See Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330 (Fed. Cir. 2002), where the dumping margin was corroborated by actual sales data. In the current case, we find that the highest calculated dumping margin is aberrational because it is from a single sale with a quantity that is less than two percent the size of the average

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[47] See Memorandum to the File from the Team entitled "Preliminary Determination in the Antidumping Duty Investigation of Certain Lined Paper Products from India: Selection of Total Adverse Facts-Available Rate," dated April 7, 2006 ("Corroboration Memo").

sales quantity. The CIT has stated that the Department cannot use as adverse facts available "punitive, aberrational or uncorroborated" margins. [48]

In selecting a facts-available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts-available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of the respondents' customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected the highest margin on an individual sale which fell within the mainstream of Kejriwal's transactions (i.e., transactions that reflect sales of products that are representative of the broader range of models used to determine NV). The Department has determined that the facts-available margin selected is sufficiently higher than the calculated rate of the cooperative respondent in this investigation to induce respondents to cooperate fully with the Department's requests for accurate, complete and timely data.

We find that the second highest margin is not aberrational because the calculated rate is within the mainstream of Kejriwal's transactions.[49] These are sales of notebooks, which account for the majority of the reported sales. Thus, we find that the rate of 23.17 percent has probative value, is not aberrant, and discourages uncooperative behavior in the future. See Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less Than Fair Value, 63 FR 8909, 8932 (February 32, 1998), where the Department "sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."

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[48] See F. Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027 (Fed. Cir. 2000), see also, Shandong Huarong Gen. Group Corp. v. United States, Court No. 01-00858, slip op. 04-117 at 14, 17 (CIT Sept. 2004).

[49] See Memorandum from Christopher Hargett through James Terpstra to the File, "Final Determination in the Antidumping Duty Investigation of Certain Lined Paper Products ("CLPP") from India: Selection of Total Adverse Facts-Available Rate," July 31, 2006.

Comment 16: Treatment of Negative Margins

Citing a recent WTO panel decision, respondents argue that the Department should not continue its practice of "zeroing" negative margins when calculating antidumping margins in the final determination of this investigation.[50] Respondents assert that the intent of the WTO panel's decision was to prohibit zeroing because it distorts representative margins. Therefore, respondents argue that the Department should consider negative margins in the weighted-average antidumping margins assigned to all three mandatory respondents.

The petitioner states that the Department is currently accepting comments regarding zeroing, has not indicated a final determination on the zeroing methodology, and has stated that the zeroing methodology will remain the same until then. The petitioner argues that the Department must use the zeroing methodology currently in effect.

Department's Position:

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price and constructed export price of the subject merchandise." The Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than EP or CEP. As no dumping margins exist with respect to sales where normal value is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute. See Timken Co. v. United States, 354 F. 3d 1334, 1342 (Fed. Cir.)("Timken"), cert. denied sub nom., Koyo Seiko Co. v. United States, 543 U.S. 976 (2004). See also Corus Staal BV v. Department of Commerce, 395 F. 3d 1343, 1347 (Fed. Cir. 2005)("Corus Staal"), cert. denied, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006).

We recognize that the Department has initiated a process under section 123 of the URAA to address the potential implementation of the WTO panel's recommendation regarding the calculation of the weighted-average dumping margin in antidumping investigations. See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation, 71 FR 11189 (March 6, 2006). To date, however, that implementation process has not run its course. See 19 U.S.C. § 3533(g). As such, it is premature to determine precisely how the United States will implement the panel recommendation. With respect to the recent Appellate Body Report in the same dispute, the United States has not yet gone through the statutorily mandated process of determining whether to implement the report. See 19 U.S.C. § 3533 and 3538.

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[50] See WT/DS294/1, United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") (Oct. 31, 2005).

As such, the WTO dispute settlement proceedings have no bearing on whether the Department's denial of offsets in this investigation is consistent with U.S. law. See Corus Staal, 395 F. 3d at 1347-49; Timken, 354 F. 3d at 1342. The Department has stated that any changes to the zeroing methodology will be implemented with regard to petitions received on or after the first day of the month following publication in the Federal Register of notice of any new weighted-average dumping margin calculation methodology. See Antidumping Proceedings: Calculation of the Weighed Average Dumping Margin During an Antidumping Duty Investigation, 71 FR 11189 (March 6, 2006). Accordingly, the Department will continue in this investigation to deny offsets to dumping based on export transactions that exceed normal value. See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006), accompanying Issues and Decision memorandum at Comment 7.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the Federal Register.

AGREE _____ DISAGREE _____

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David M. Spooner
Assistant Secretary
for Import Administration

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Date