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

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

REGARDING: Antidumping Duty Investigation of Diamond Sawblades and Parts
Thereof from the Republic of Korea

SUBJECT: Issues and Decision Memorandum for the Final Determination

SUMMARY

We have analyzed the comments of the interested parties in the antidumping duty investigation of diamond sawblades and parts thereof (DSB) from the Republic of Korea (Korea). As a result, we have made changes to the margin calculations for the three participating respondents in this case, Ehwa Diamond Industrial Co., Ltd. (Ehwa), Shinhan Diamond Industrial Co., Ltd. (Shinhan), and Hyosung Diamond Industrial Co. (Hyosung). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On December 29, 2005, the Department of Commerce (the Department) published the preliminary determination in the less-than-fair-value (LTFV) investigation of DSB from Korea. See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Critical Circumstances Determination: Diamond Sawblades and Parts Thereof from the Republic of Korea, 70 FR 77135 (December 29, 2005) (Preliminary Determination). The product covered by this investigation is DSB. The petitioner

(*i.e.*, Diamond Sawblade Manufacturers' Coalition), Ehwa, Shinhan, and Hyosung requested a hearing, which was held at the main Department building on May 1, 2006. The period of investigation (POI) is April 1, 2004, through March 31, 2005.

We invited parties to comment on the Preliminary Determination. We received comments from the petitioner and the three respondents. Based on our analysis of the comments received, as well as our findings at verification, we have changed the weighted-average margins from those presented in the Preliminary Determination.

LIST OF THE ISSUES

Below is the complete list of issues in this investigation for which we received comments from interested parties:

I. General Issues

- Comment 1: Whether the Department Should Revise the Physical Characteristics and Model Match Criteria.
- Comment 2: Whether the Department Should Reaffirm Its Preliminary Scope Conclusions In the Final Determination And Include These Conclusions in Instructions to Customs.
- Comment 3: Whether the Department Should Treat the Location of Segment Manufacture As the Country of Origin for DSB.
- Comment 4: Whether U.S. Repacking Expenses, U.S. Warehousing Expenses, and U.S. Movement Expenses Should Be Treated as Selling Expenses for Purposes of Calculating CEP Profit.
- Comment 5: Whether Further Manufacturing Costs Should be Deducted from the Calculation of Net U.S. Price When Such Sales are Not Reported.
- Comment 6: Whether Further Manufacturing Costs and Revenues Should be Included in the Calculation of CEP Profit When Such Sales are Not Reported.
- Comment 7: Whether the Department Should Use the Adjustments to Respondents' Costs to Account for NME Inputs in the Calculation of CEP Profit.
- Comment 8: Whether the Department Should Correct VCOM and TCOM for any Changes it Makes to the Reported Costs.
- Comment 9: Whether the Department Should Reconsider its Preliminary Critical Circumstances Determination.
- Comment 10: Whether the Department Should Adjust Ehwa's and Shinhan's Purchases from Affiliated Suppliers.
- Comment 11: Whether the Department Should Provide Offsets to Dumping.
- Comment 12: Whether the Department Should Adjust the Reported Costs for Purchases from Unaffiliated NME Suppliers.

II. Company-Specific Issues

A. Ehwa Issues

- Comment 13: Whether the Department's Preliminary Decision to Collapse Ehwa and Shinhan was Contrary to Law and the Department's Longstanding and Consistent Past Practice.
- Comment 14: Whether the Department Should Treat Information Regarding a Particular Relationship Between Ehwa and Shinhan as Public Information.
- Comment 15: Whether the Department Should Collapse Ehwa with its Chinese Affiliates.
- Comment 16: Whether Ehwa's Other Discounts and Certain Billing Adjustments Should be Treated As Selling Expenses for Purposes of Calculating CEP Profit.
- Comment 17: Whether Ehwa Placed Conflicting Values Related to its Indirect Selling Expenses on the Record.
- Comment 18: Whether the Department Should Correct Formulas Used in Ehwa's Calculation of Indirect Selling Expenses.
- Comment 19: Whether the Department Should Disallow Ehwa's Allocation of Indirect Selling Expenses Between the Industrial and the Stone & Construction Divisions because Ehwa's Sales of 1A1R Merchandise are from the Industrial Division.
- Comment 20: Whether the Department Should Calculate the Indirect Selling Expense Ratio for Each of Ehwa's U.S. Affiliates.
- Comment 21: Whether Ehwa Properly Excluded its Sales of Refurbished Products from its HM Sales Database.
- Comment 22: Whether the Department Should Adjust Costs Related to the Allocation of Costs Between Indirect Selling and G&A Expenses.
- Comment 23: Whether Ehwa's Use of Surrogate Costs Was Appropriate.
- Comment 24: Whether the Department Should Adjust G&A Expenses to Account for the Over-Accrual of the Provision for Retirement Expenses.

B. Shinhan Issues

- Comment 25: Whether Shinhan Failed to Report COM for SHINUS04 and SHINHM04.
- Comment 26: Whether the Department Should Base Shinhan's Starting Price on INVNPRU Rather than GRSUPRU.
- Comment 27: Whether the Department Should Apply AFA to Shinhan's Inland Freight Expenses.
- Comment 28: Whether the Department Should Allocate Shinhan's Freight Revenue on the Same Basis as Inland Freight.
- Comment 29: Whether the Department Double-Counted Shinhan's Freight Revenue.
- Comment 30: Whether the Department Should Recalculate Shinhan's HM and International Movement Expenses.

- Comment 31: Whether the Department Should Exclude Shinhan's Sales of Refurbished DSB from Shinhan's HM Sales Database or Weight-Average the Sales and Costs Databases for Refurbished and Non-Refurbished DSB.
- Comment 32: Whether the Department Should Collapse Shinhan With Its Korean Affiliates.
- Comment 33: Whether the Department Should Collapse Shinhan with Its Chinese Affiliate.
- Comment 34: Whether the Department Should Make Symmetric Adjustments to Shinhan's Reported Sales and Cost Data.
- Comment 35: Whether the Department Should Ensure that Segments are not Compared with DSB in the Dumping Margin Calculations.
- Comment 36: Whether the Department Should Allow Shinhan's Residual Cost Variance Adjustment.
- Comment 37: Whether the Department Should Use SG&A Methodology Submitted During the Cost Verification.
- Comment 38: Whether the Department Should Adjust for Items in Shinhan's G&A Expense Rate Calculation.
- Comment 39: Whether the Department Should Correct Certain Minor Errors in Its Proposed Cost Adjustments.
- Comment 40: Whether the Department Should Use the Costs Based on Shinhan's Normal Accounting System.
- Comment 41: Whether the Department Should Adjust Shinhan's Costs for Certain CONNUMs.
- Comment 42: Whether the Department Should Reduce Shinhan's Materials Rebate Adjustment.
- Comment 43: Whether the Department Should Adjust the Production Quantities of CONNUMS not Produced in the POI.
- Comment 44: Whether the Department Should Base Shinhan's Financial Expense Rate on Facts Available.

C. Hyosung Issues

- Comment 45: Whether The Department Should Revise Certain Freight Expenses in Hyosung's U.S. Sales Database.
- Comment 46: Whether the Department Should Apply AFA to Hyosung's Reported HM Inland Freight.
- Comment 47: Whether the Department Should Revise the Indirect Selling Expense Ratio for Domestic and Export Sales.
- Comment 48: Whether Hyosung Fully and Accurately Reported all HM and U.S. Sales of Subject Merchandise.
- Comment 49: Whether the Department Should Allow a Duty Drawback Adjustment for Hyosung.
- Comment 50: Whether the Department Should Recalculate Credit Expense for the EP Sales with Revised Shipment Dates in the Final Determination.

- Comment 51: Whether the Department Should Use Hyosung's Originally Reported Costs of Production.
- Comment 52: Whether the Department Should Adjust Hyosung's Reported Costs for Unreconciled Differences.
- Comment 53: Whether the Department Should Exclude Hyosung's Prior Period Income Tax Payments From G&A Expenses.
- Comment 54: Whether the Department Should Allow the Short-Term Income Generated From Investment Securities as an Offset to Hyosung's Financial Expenses.
- Comment 55: Whether the Department Should Correct the Surrogate CONNUM for two Products on the COP Database.
- Comment 56: Whether the Department Should Ensure that the Products Purchased from Unaffiliated Suppliers Should be Assigned the Reported Costs of Production for Those Products.

D. Filing Requirements

- Comment 57: Whether the Department Should Reject the Petitioner's Case Brief for Failure To Comply With the Department's Regulations.

CHANGES IN THE MARGIN CALCULATIONS SINCE THE PRELIMINARY DETERMINATION

We calculated constructed export price (CEP), export price (EP), the cost of production (COP), and normal value (NV) using the same methodology stated in the Preliminary Determination, except as follows:

Ehwa

1. The Department collapsed Ehwa and Shinhan into a single entity for purposes of the Preliminary Determination. However, for the final determination, we did not collapse Ehwa and Shinhan into a single entity. Consequently, for the final determination, we calculated CEP, COP and NV based upon Ehwa as a single entity.
2. For both the home and U.S. markets, we revised the coding for the product characteristic "physical form" to better represent the relative differences between DSB, segments and cores.
3. We revised Ehwa's reported inventory carrying costs in Korea to more accurately calculate inventory carrying costs specific to subject merchandise, and assigned the new variables RINVCARH and RDINVCARU.
4. We treated U.S. repacking expenses as movement expenses, rather than as direct selling expenses.

5. We calculated U.S. indirect selling expenses for each of Ehwa's U.S. affiliates, rather than a consolidated ratio.
6. We recalculated home market and U.S. indirect selling expenses incurred in Korea to account for the Department's re-allocation of certain expenses from G&A, pursuant to verification findings.
7. We instructed Ehwa to update its HM sales database to include one unreported sale, pursuant to minor corrections presented at verification.
8. We instructed Ehwa to update its HM sales database to correct the date of shipment and date of invoice for two home market observations, pursuant to minor corrections presented at verification.
9. We instructed Ehwa to revise its HM packing costs to account for industrial 1A1R products and to use the POI weighted-average packing material cost, pursuant to minor corrections presented at verification.
10. We instructed Ehwa to revise its HM imputed credit expense using a revised weighted-average interest rate, pursuant to verification findings.
11. We instructed Ehwa to revise its U.S. foreign brokerage and handling costs to incorporate a revised ratio, pursuant to minor corrections presented at verification.
12. We instructed Ehwa to revise certain U.S. billing adjustments to account for minor corrections presented at verification.
13. We instructed Ehwa to revise its U.S. inland freight from the warehouse to the customer to account for the allocation error for sales with partial shipments, pursuant to minor corrections presented at verification.
14. We revised Ehwa's G&A expense ratio to reclassify the offset for the over-accrual of retirement expenses from G&A expenses to direct labor expenses. We also revised the G&A expense ratio by disallowing Ehwa's reallocation of certain G&A expense items.

Shinhan

1. The Department collapsed Shinhan and Ehwa into a single entity for purposes of the Preliminary Determination. However, for the final determination, we did not collapse Shinhan and Ehwa into a single entity. Consequently, for the final determination, we calculated CEP, COP and NV based upon Shinhan as a single entity.

2. We excluded Shinhan's HM sales of refurbished DSB from our analysis.
3. Pursuant to the Department's country of origin determination, we excluded certain sales made by Shinhan from our analysis.
4. We revised Shinhan's reported inventory carrying costs in Korea to more accurately calculate inventory carrying costs specific to subject merchandise, and assigned the new variables RINVCARH and RDINVCARU.
5. For both the home and U.S. markets, we revised the coding for the product characteristic "physical form" to better represent the relative differences between DSB, segments and cores.
6. We set Shinhan's gross unit price equal to the invoice price variable, INVUPRU.
7. We allocated freight revenue in order for it to be calculated on the same basis as its related expense, inland freight.
8. We treated U.S. repacking expenses as movement expenses, rather than as direct selling expenses.
9. We recalculated home market and U.S. indirect selling expenses incurred in Korea to account for the Department's re-allocation of certain expenses from G&A, pursuant to verification findings.
10. We instructed Shinhan to revise its HM imputed credit expense using a revised weighted-average interest rate, pursuant to verification findings.
11. We instructed Shinhan to revise its international freight, marine insurance, and duty drawback fields for Shinhan's EP sales, pursuant to minor corrections presented at verification.
12. Pursuant to minor corrections presented at verification, we instructed Shinhan to revise its international freight, marine insurance, billing adjustment, and U.S. inland freight warehouse to customer and to allocate these expenses on a per Kg basis, rather than a per piece basis, for U.S. sales of 1A1R Precision Products and crack chasers.
13. We instructed Shinhan to revise the U.S. rebate field to include the revised other discount field, pursuant to minor corrections presented at verification.
14. We instructed Shinhan to revise the U.S. repacking field to include the revised other discount field, pursuant to minor corrections presented at verification.

15. We instructed Shinhan to revise the date of payment field and imputed credit expenses and to calculate the date of payment on a weighed-average basis for sales that received partial payments.
16. Pursuant to minor corrections presented at verification, we instructed Shinhan to report three unreported sales to Puerto Rico and to include all associated expenses.
17. We instructed Shinhan to revise U.S. indirect selling expenses for its U.S. affiliates to include the cost of samples, pursuant to minor corrections presented at verification.
18. We instructed Shinhan to revise U.S. commissions to unaffiliated agents in order to correct the double-counting of commissions, pursuant to minor corrections presented at verification.
19. We disallowed Shinhan's residual cost variance adjustment.
20. We increased Shinhan's segment costs for certain control numbers.
21. We adjusted the transfer price for certain segments to reflect Shinhan's cost of producing the same segments.
22. We adjusted the material purchase rebate field to reflect the material purchase rebates received during the POI.
23. We adjusted the G&A expense rate calculation to rely on Shinhan's normal books and records and to allocate costs between selling and G&A expenses.
24. We adjusted Shinhan's reported interest expense to deduct gains on currency forward valuation and currency forward transactions.

Hyosung

1. We reallocated the freight expenses reported for INTNFRU for EP sales and INLFWCU on an invoice-specific basis using the theoretical weight of the products on the invoice.
2. We reallocated INTNFRU for CEP sales using the total international freight expenses verified by the Department for the U.S. sales, and the overall calculated theoretical weight of U.S. sales, to calculate a cost per kilogram for INTNFRU. We applied this allocated expense to each U.S. sale based upon the weight of each CONNUM.
3. We reallocated INLFTCH using the total inland freight expenses verified by the Department for all HM sales, and the overall calculated theoretical weight of HM sales, to calculate a cost per kilogram for INLFTCH. We applied this allocated expense to each HM sale based upon the weight of each CONNUM.

4. We revised Hyosung's imputed credit calculation for the EP sales pursuant to verification findings.
5. We revised Hyosung's reported inventory carrying costs in Korea to more accurately calculate inventory carrying costs specific to subject merchandise, and assigned the new variables RINVCARH and RDINVCARU.
6. We instructed Hyosung to revise its reported segment thickness variable, SEGTHKH, for all CONNUMs pursuant to minor corrections at verification.
7. We instructed Hyosung to revise the following variables pursuant to verification findings. In the HM sales database, Hyosung revised RCREDITH and RPACKH. In the U.S. sales database, Hyosung revised RPACKU, RUSBROKU, RINLFPWU, and RREPACKU.
8. We instructed Hyosung to revise its HM and U.S. market indirect selling expense ratios pursuant to verification findings.

DISCUSSION OF THE ISSUES

I. General Issues

Comment 1: Whether the Department Should Revise the Physical Characteristics and Model Match Criteria.

The petitioner argues that the Department should consider implementing certain changes to the physical characteristics and model match criteria for the final determination as well as for future reviews of any order resulting from this investigation. It claims that since the Department released the physical characteristics and model match hierarchy to parties in this investigation, the Department and interested parties have gained significant knowledge regarding how DSB are produced, marketed, and sold. Additionally, the petitioner argues that the current model match criteria have yielded an unexpectedly large number of control numbers, which it claims makes the databases unwieldy.

The petitioner first argues that in future administrative reviews the Department should require respondents to report both actual measurements and the appropriate basket code with respect to segment length, segment thickness, segment width, and core thickness. Also, the petitioner argues that the Department should require respondents to report the following additional physical characteristics: average bond density, diamond depth, actual diamond concentration, actual core diameter, and arbor diameter. It maintains that these added actual measurement fields would not be used for model match, but rather would be informational only. The petitioner claims that the addition of these new fields, along with the reporting of actual measurements for existing fields, will result in beneficial information, such as the ability to link sales, cost, and factors data in the response to information in the bill of materials and the ability to determine whether the basket designations are correct. The petitioner also maintains that by

using the actual measurements of the physical characteristics, the Department can derive other values (*e.g.*, diamond weight, powder weight, segment weight, steel weight) using SAS programming and that the resulting values can be used to determine whether the factors of production for steel, metal powders, or diamonds are properly reported. The petitioner claims that there is ample precedence for the Department to require actual measurement data in addition to the model match data.

As a second point, the petitioner argues that the field “Diamond Concentration” should be relabeled “Total Diamond Weight” because the data in this field capture the total diamond weight per blade or segment rather than the relative concentration. The petitioner also argues that, consistent with the treatment of other physical characteristics, the Department should group the total diamond weight into baskets. It claims that under the current model match, the Department requires respondents to report the total diamond weight in hundredths of a carat, which it maintains leads to a large number of control numbers. It notes that given the Department’s current surrogate value for diamonds at approximately \$.30 per carat, this methodology results in non-identical matches for models that differ by less than a third of a penny per blade. For purposes of the final determination, the petitioner proposes that the Department revise the model match and recalculate control numbers by rounding the data to a whole carat. If the investigation goes to order, the petitioner urges the Department to consider comments at the start of the first administrative review as to appropriate baskets for diamond weight.

In rebuttal, Ehwa argues that the product criteria used in the model match were extensively briefed throughout the investigation, offering ample opportunity to all parties, including the petitioner, to request timely modifications to the model match methodology. Ehwa urges the Department to reject the petitioner’s untimely request to provide additional information at such a late date. Specifically, Ehwa opposes the collection of actual measurements for all product characteristics as well as several other characteristics that are not part of the control number (CONNUM). Ehwa notes that the Department already considered and rejected the petitioner’s arguments and issued its model match decision in its August 5, 2005, memorandum. See Ehwa’s Rebuttal Brief at 5.

Additionally, Ehwa argues that the petitioner is not requesting that the respondents report the actual product measurements for the purpose of modifying CONNUMs. Rather, Ehwa claims that the petitioner is asking for the inclusion of these additional variables for “informational purposes” only. Id. Ehwa believes that the petitioner is attempting to impose additional burdens on the respondents that will have no impact on the margin calculations. Furthermore, Ehwa points to the Department’s verification report where, it claims, the issue of the product characteristics accuracy was not questioned. See Ehwa’s Rebuttal Brief at 6.

Ehwa also rejects another aspect of the petitioner’s request, which claims that the additional measurements could help determine whether the respondent “underreported factors of production for steel, metal powders, or diamonds.” Id. Ehwa argues that the factor-of-production issue is misplaced, as the current investigation involves a market economy where

respondents are not required to provide factors of production information. Further, Ehwa rejects the petitioner's claim that the actual measurements will "facilitate" the Department's review of the respondent's reported product characteristics. As mentioned above, Ehwa points to the Department's verification report where, it claims, no discrepancies were found regarding model match characteristics. Id.

Ehwa also considers the petitioner's claim that the additional information will not impose any additional burdens as disingenuous and incorrect. Ehwa asserts that the petitioner's requests for a new set of measurements, not originally requested by the Department, is burdensome. Ehwa argues that the new information request will distract resources that otherwise can be devoted to preparation of sales and cost data to be used in the final margin calculation. In sum, Ehwa urges the Department to dismiss the petitioner's request for actual measurements.

Furthermore, Ehwa asks the Department to reject the petitioner's request to group one of the product characteristics, *i.e.*, diamond concentration, into baskets by rounding them to the nearest whole carat and then open the record of the first administrative review for comments on the appropriate baskets for this product characteristic. See Ehwa's Rebuttal Brief at 7. Given that the petitioner itself proposed to use diamond concentration in hundredths of a carat, Ehwa is now questioning the petitioner's true intent, especially since the petitioner did not express the same concern with regard to the remainder of the product characteristics where the petitioner is asking for the actual measurements. According to Ehwa, the petitioner's assertion is unsupported and the petitioner failed to show how the current reporting of this characteristic distorts the model match comparisons in any way. Consequently, Ehwa requests that the Department continue to maintain the current reporting format of this characteristic in the ongoing investigation and in the subsequent administrative reviews.

In rebuttal, Shinhan claims that the petitioner's suggestions that the Department request new physical characteristics and modify certain model match criteria are moot at this point in the investigation. According to Shinhan, the petitioner's argument that the Department should obtain actual physical characteristics that will allow the Department to more easily verify the reported data and determine whether expenses have been underreported ignores the fact that verification is completed and no discrepancies in the product characteristics were found. To suggest, according to Shinhan, that respondents will provide certain data for "informational purposes" to be used in future administrative reviews is inapplicable to the present investigation and should be disregarded by the Department. See Shinhan's Rebuttal Brief at 6. Finally, Shinhan argues that the Department provided all parties with two rounds of comments pertaining to model match characteristics and issued numerous supplemental questionnaires pertinent to these issues. Therefore, the petitioner had ample opportunity to propose relevant arguments on this subject. Soliciting new information so late into the proceeding is, according to Shinhan, misplaced, untimely, and of little value. Id.

Department Position:

We agree with respondents that we should not make any changes to the product characteristics or model match criteria at this time. We find that the appropriate time to consider comments with respect to the physical characteristics and model match criteria is at the beginning of the proceeding. As noted by respondents, the Department solicited comments from all interested parties at the beginning of the investigation regarding the appropriate product characteristics and model match criteria. Specifically, on July 14, 2005, the Department issued a letter requesting comments from all parties on the appropriate product characteristics and model match criteria. The petitioner and respondents both submitted comments and rebuttal comments on this issue and the Department considered these comments in developing the final model match criteria, which were issued to all interested parties in a letter dated August 5, 2005. Having addressed the substantial comments on this issue at the beginning of the investigation, we do not find that it is appropriate to address the issue again at the end of the proceeding.

We disagree with the petitioner's first request to add additional product characteristics for informational purposes for any future reviews resulting from an antidumping order of this investigation. If the investigation goes to order and a review is requested, we will solicit comments from all interested parties on the appropriateness of any changes to the product characteristics and model match criteria at the beginning of that review, consistent with the Department's practice. See Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Certain Pasta From Italy, 68 FR 6882 (February 11, 2003) (Pasta from Italy 2000-2001) and See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan: Amended Final Results of Antidumping Duty Administrative Reviews, 70 FR 58185 (October 5, 2005) (Amended Final AFBs from Japan 1996-1997).

We also reject the petitioner's request to round the reported diamond weight to a whole carat for purposes of the final determination. As an initial matter, we note that respondents reported and the Department verified the diamond concentration weight to the nearest hundredth of a carat. Contrary to the petitioner's claims, the accuracy of the margin calculation would not be enhanced by altering the control number because rounding the diamond weight to a whole carat would decrease the precision of the control number (*i.e.*, using less specific information for diamond weight than what was reported and verified). Moreover, we note that it was based in part on the petitioner's request at the beginning of the proceeding (see July 22, 2005, letter) to report actual diamond concentration that the Department required actual diamond concentration. Finally, the petitioner's suggested change would require substantial changes by the Department to the U.S. and COP datasets in order to recode and then collapse these control numbers. Given the timing of the petitioner's request, even if we determined it to be appropriate to make changes to the product characteristics at the final determination, parties would not be afforded adequate time to consider the changes to the databases. Accordingly, we determine not to make any changes to the product characteristics and model match criteria for the final determination and will instead solicit comments on this issue at the beginning of the next proceeding if the investigation goes to order and a review is requested.

Comment 2: Whether the Department Should Reaffirm Its Preliminary Scope Conclusions In the Final Determination And Include These Conclusions in Instructions to Customs.

The petitioner notes that the Department preliminarily concluded that it is not necessary to clarify the scope of this investigation regarding specifications or end-use, because all products that meet the physical descriptions contained in the plain language of the scope are included, irrespective of their intended use. In addition, the petitioner notes that the Department preliminarily concluded that concave/convex cores and DSB produced from such cores are included in the scope of this investigation. Further, the petitioner notes that the Department also preliminarily concluded that granite contour DSB and grinding wheels that meet the physical description of the scope language are included in the scope of investigation. The petitioner asserts that all of these preliminary conclusions were correct and should be adopted by the Department for the final determination.

The petitioner also argues that the hardness exception in the scope definition applies only to cores, and not to finished DSB. Specifically, the petitioner notes that the Department issued a letter on May 23, 2005, clarifying that the Rockwell C hardness test for exclusion from the scope of investigation applies only to cores, and not to finished DSB. The petitioner notes that applying the exclusion to cores, as opposed to finished DSB, is consistent with industry standards for measuring hardness. The petitioner notes that counsel for Ehwa, a mandatory respondent in this investigation, has stated on the record of this investigation that “{w}hile producers typically know the Rockwell C hardness of the input core used to produce the finished sawblade, they may not know the Rockwell hardness of the core after it has been incorporated into the finished sawblade.” See the petitioner’s Case Brief at page 19. The petitioner argues that applying the Rockwell hardness test to both cores and finished DSB is impractical because the Rockwell hardness of a core can be affected by the incorporation process. In addition, the petitioner argues that given that “all finished circular sawblades...with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size” are within the scope of investigation, application of the Rockwell hardness requirement to the finished DSB would be contrary to the clear language of the scope of investigation. The petitioner urges the Department to continue to find that the Rockwell C hardness test for exclusion applies solely to cores and not to finished DSB.

In addition to urging the Department to reaffirm its preliminary scope determinations for the final determination, the petitioner also requests that in the final determination and in its instructions to U.S. Customs and Border Protection (CBP), the Department explicitly state that the following are within the scope of this investigation: (1) concave/convex cores, (2) DSB produced from such cores, (3) grinding wheels that meet the physical descriptions set forth in the scope language, (4) and DSB of any hardness. The petitioner asserts that the inclusion of such language in the final determination and in any instructions to CBP will reduce potential confusion and will assist in proper enforcement of a final antidumping duty order.

Ehwa states that if the Department chooses to reaffirm its preliminary scope conclusions and include clarifying language in the final determination and in its instructions to CBP, then it requests that the Department be as specific as possible and confirm that such products are only covered to the extent that they otherwise satisfy the plain meaning of the scope language. Specifically, Ehwa requests that the Department limit any clarifying language to specific products at issue. For example, Ehwa states that the Department's preliminary conclusion with respect to the inclusion of grinding wheels in the scope of investigation was limited to metal-bonded, diamond 1A1R grinding wheels, which otherwise meet the physical descriptions contained in the scope. See Ehwa's Rebuttal Brief at page 9. Ehwa states that the petitioner's suggested scope clarification language simply includes a general reference to "grinding wheels," as opposed to "metal-bonded, diamond 1A1R grinding wheels." Id. Ehwa contends that such general reference is not supported by the Department's preliminary scope determination and will only create ambiguity if adopted. In addition, Ehwa notes that, in its Preliminary Scope Memorandum, the Department expressed its intent to limit its preliminary scope conclusions to metal-bonded, diamond 1A1R grinding wheels. Id. Further, Ehwa states that, during verification, the Department confirmed that there were a number of "grinding wheels" that do not fall within the scope of this investigation. Id. Therefore, Ehwa argues that if the Department decides to reaffirm any of its preliminary scope conclusions and include clarifying language in the final determination and in CBP instructions, the Department should be as specific as possible and limit such language to the specific scope conclusions at issue.

Department Position:

The Department reaffirms its preliminary determination that: (1) concave/convex cores and DSB produced from such cores are covered by the scope of investigation; (2) granite contour DSB and grinding wheels that meet the physical description contained in the plain language of the scope are covered by the scope of investigation; and (3) the Rockwell C hardness exclusion test applies only to cores and does not apply to finished DSB produced from such cores. In particular, we reaffirm that metal-bonded, diamond 1A1R grinding wheels that meet the physical description contained in the plain language of the scope are covered by the scope of investigation since the physical characteristics of a DSB are defined by the 1A1R specification. See Preliminary Scope Determination Memorandum at page 11. In addition, we note that since the Department issued its preliminary determination scope conclusions, no party in this proceeding has submitted evidence or argument to suggest that the Department should revise its preliminary findings. Therefore, since no evidence has been submitted on the record of this investigation to demonstrate that the Department should revise its preliminary scope conclusions, the Department is re-affirming its preliminary determination scope conclusions for the final determination.

In addition, we will explicitly clarify these scope conclusions in our instructions to CBP. Specifically, in our instructions to CBP, we will clarify that the following items are covered by the scope of investigation: (1) concave/convex cores, (2) DSB produced from concave/convex cores, (3) metal-bonded, diamond 1A1R grinding wheels that meet the physical descriptions set forth in the scope language, and (4) that the hardness threshold applies to cores, not DSB.

Further, we will clarify that diamond segments must be attached to the outer periphery of the core.

Comment 3: Whether the Department Should Treat the Location of Segment Manufacture As the Country of Origin for DSB.

The petitioner contends that the Department's preliminary determination to determine country of origin based on the location where segments and cores are attached is inconsistent with the Department's typical practice in determining country of origin and raises significant circumvention concerns. Instead, the petitioner believes that the country of manufacture of the diamond segments used in the finished DSB should be treated as the finished DSB's country of origin. The petitioner notes that the Department's preliminary country of origin determination was based on the substantial transformation rule. The petitioner states that the following three factors are analyzed to determine whether substantial transformation has occurred: (1) whether the processed downstream product falls into a different class or kind of product when compared to the upstream product, (2) whether the essential component of the merchandise is substantially transformed in the country of exportation, and (3) the extent of processing. See the petitioner's Case Brief at pages 40-41. The petitioner contends that the application of these factors demonstrates that the country of manufacture of the diamond segments used in the finished DSB should be treated as the finished DSB's country of origin.

The petitioner states that in TTR from Korea, the Department noted that the most important element considered by the Department in determining whether the conversion of an upstream into a downstream product results in a "substantial transformation" for country of origin is whether the upstream and downstream products are of a different "class or kind." See the petitioner's Case Brief at page 41 (citing the Notice of Final Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea 69 FR 17645, 17647 (April 5, 2004) (TTR from Korea)). The petitioner contends that where this is the case, the Department generally has found that substantial transformation has occurred. Id. However, where this has not occurred, the petitioner states that the Department has almost invariably determined that substantial transformation has not occurred. Id. The petitioner argues that because the Department has determined that segments, cores and DSB are the same "class or kind" of merchandise, it should have determined that the country of origin is the location where the diamond segments are manufactured. Aside from citing the word "generally" in its preliminary country of origin determination, the petitioner argues that the Department has not explained why it deviated from its practice of "almost invariably" finding that substantial transformation has not occurred when the upstream and downstream products are determined to be the same "class or kind" of merchandise. Id. at 42.

The petitioner argues that the additional factors of the substantial transformation test also do not support the Department's preliminary country of origin analysis. The petitioner contends that because the presence of diamond segments is what makes DSB a unique article, the Department should consider segments to be the essential component of a finished DSB. When a diamond segment is joined to the core, and the finished sawblade is put into operation, the

petitioner argues that it is the diamond segment that performs the cutting/grinding function. The petitioner asserts that because the diamond segments are what makes a DSB a unique article, the Department should find that the location where the segments are manufactured should be the country of origin of the finished DSB.

Further, the petitioner contends that diamond segment manufacturing requires a substantial capital investment and significant technical expertise. Specifically, the petitioner asserts that a comparison of diamond segment manufacturing to the process of attaching cores to segments demonstrates that the former requires greater technical expertise, greater capital investment and typically accounts for a substantially larger percentage of the COP, than the latter. The petitioner states that diamond segments are produced through the insertion of industrial diamonds and metallic powders into a graphite mold or steel die. Together, the petitioner describes, the mold, powdered materials, and certain binding agents are loaded into an induction press where the powders are compressed into the shape of the diamond segment. The petitioner states that each segment is subsequently dressed and cleaned to ensure that the finished diamond segment is free of excess powder or burns. The petitioner maintains that segment manufacturing is a complex process that can only be accomplished by highly skilled technicians. By contrast, the petitioner states that the process of joining cores and segments is highly automated because a person operating a keyboard can essentially operate laser-welding equipment. The petitioner contends that other methods of joining segments to cores, such as silver soldering or sintering, are less sophisticated. Further, the petitioner states that segment manufacturing requires significant capital investment, while the capital investment for joining cores and segments is substantially smaller. In addition, the petitioner argues that diamond segments often constitute the largest cost component of a finished DSB, while the attachment process typically accounts for a much smaller portion. The petitioner states that the Department's preliminary country of origin analysis looked at laser-welding in isolation, rather than in comparison with segment processing. The petitioner argues that when the two processes are compared, the conclusion should be that segment manufacturing is a significantly more complex and important aspect of finished DSB manufacturing than attaching cores to segments.

Moreover, the petitioner argues that the Department's preliminary country of origin determination may lead to circumvention. Specifically, the petitioner states that it is concerned that Korean and Chinese manufacturers may move attachment operations to third countries in an attempt to avoid antidumping duties, particularly since many of these entities are multinational corporations that have substantial experience manufacturing across borders. The petitioner notes that a member of the petitioning coalition has stated that, “{b}ecause of the minimal capital investment required, short lead times, and the fact that no specialized employee training is required, Chinese and Korean producers of diamond sawblades and diamond sawblade components could quickly establish joining operations in other countries to assemble finished sawblades from Chinese and/or Korean components.” See the petitioner's Case Brief at page 47. Therefore, the petitioner urges the Department to revise its preliminary determination country of origin analysis for the final determination to find that the location of segment manufacture bestows country of origin.

In rebuttal, Ehwa urges the Department to continue to treat the location of where the DSB is manufactured from a core and segments as the country of origin in the final determination. Ehwa claims that the petitioner's request to find the country where the segments are manufactured as the country of origin contradicts the petitioner's own record. While the petitioner attempts to portray the final DSB assembly process as minor, Ehwa points to the petitioner's own record in the Petition where it refers to the final assembly as "a significant and extensive transformation process is required to turn the diamond core and the diamond sawblade segment into a finished diamond sawblade." See Ehwa's Rebuttal Brief at 14, citing the Petition at 10. With regard to the petitioner's claim that the process of joining segments to the cores requires "minimal capital investment," Ehwa first notes that the petitioner itself acknowledges that the laser welding process is "highly automated." However, Ehwa asserts that the petitioner failed to consider that a "highly automated" process necessarily involves substantial capital investments in machinery and equipment. Ehwa also points to its own supplemental questionnaire dated January 26, 2006, where the provided information indicates a significantly larger investment in the assembly-related equipment when compared to the segment production equipment. Ehwa also claims that its maintenance expenditures for the assembly equipment are substantially larger than the expenses for the segment production machinery. See Ehwa's Rebuttal Brief at 15.

Finally, the petitioner's reliance on TTR from Korea is, according to Ehwa, easily distinguishable from the present case. In that prior case, the Department determined that a substantial transformation did not occur when TTR produced in Korea in jumbo rolls (*i.e.*, unslit form) was slit in third countries because the slitting operation was neither complex nor required a major capital investment. Id. Thus, Ehwa argues, the Department did not, as the petitioner suggests, base its decision entirely on the categorization of jumbo and slit TTR within the same "class or kind" but, rather, on the lack of sophistication of the third-country processing and the little value added to the product. See Ehwa's Rebuttal Brief at 16.

In the present case, based on the petitioner's own statements, Ehwa maintains that the assembly process is "significant and extensive." Id. Unlike TTR from Korea, Ehwa claims that the assembly process requires significant investments in equipment and skilled labor, and adds significant value to the final product. Thus, according to Ehwa, the assembly process results in a substantial transformation of the cores and segments into a "new and different article," *i.e.*, a finished DSB. Id. Consequently, Ehwa urges the Department to confirm the country where the DSB is manufactured from a core and segments as the country of origin for purposes of this proceeding.

In rebuttal, Shinhan states that if the Department adopts the petitioner's suggestion that the location of segment manufacture is the country of origin for finished DSB, there would be minimal impact upon Shinhan's margin. Shinhan provides a brief business proprietary discussion of how the petitioner's methodology would affect its reported costs and HM sales. In conclusion, Shinhan states that the Department should take no action toward Shinhan's margin calculation because only a small number of HM sales would be affected and Shinhan cannot

track in its sales records which sales were of DSB incorporating Chinese produced inputs. See Shinhan's Rebuttal Brief at 22-23.

Department Position:

We agree with Ehwa that the country of origin should be determined by the location of where the segments are joined to the core. For the Preliminary Determination, the Department found that the country of origin should be determined by the location where diamond segments and cores are attached to create a finished DSB. See December 16, 2005, Country of Origin Memorandum, at page 5. The Department made this decision after analyzing whether the product, *e.g.*, segments and/or cores, is substantially transformed in the country where the attachment process occurs. While the petitioner is correct that, in certain cases, the Department has determined that substantial transformation does not occur when the upstream (cores and segments) and downstream (finished DSB) products remain within the same class or kind of merchandise, the Department's decisions reflect that this is not a controlling factor. Specifically, in Erasable Programmable Read Only Memories (EPROMs) From Japan; Final Determination of Sales at Less than Fair Value, 51 FR 39680 (October 30, 1986), the Department determined that even though the upstream and downstream products remained within the same class or kind of merchandise, substantial transformation still occurred. See also Final Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media Thereof From Japan, 54 FR 6433 (February 10, 1989) (Microdisks). In EPROMs and Microdisks, as in the instant investigation, the Department determined that the controlling factor in a substantial transformation determination is not whether there is a change in class or kind of merchandise; rather, the Department examined where the essential quality of the imported product was imparted, as well as the extent of manufacturing and processing in the exporting country and in the third country.

The petitioner argues that the Department's preliminary country of origin determination failed to explain why the Department departed from its practice of determining that substantial transformation does not occur when a product does not change class or kind of merchandise. However, as is the Department's practice in every antidumping investigation and administrative review, the Department examines the facts and issues in each proceeding on a case-by-case basis. The facts of this instant investigation are most similar to the facts of EPROMs and Microdisks, where the Department determined country of origin based upon an examination of essential qualities and the manufacturing process.

The petitioner argues that diamond segments are what give a DSB its essential character, and, therefore, the location of their manufacture should be used to determine the country of origin. However, in this case, when focusing on the essential qualities of the imported components, it appears that neither the cores nor the segments alone constitute the essential component of the product under investigation. A finished DSB is not functional until the segments are attached to the core. In the Petition, the petitioner stated the following: (1) diamond cores and diamond sawblade segments are not perceived to be part of the same market because they can only be used to produce a finished diamond sawblade; (2) the diamond core and the diamond sawblade segments are incorporated into the final product but, standing alone, lack

the functionality of the finished product; (3) diamond cores and diamond sawblade segments have significantly different prices than the finished diamond sawblade; and (4) a significant and extensive transformation process is required to turn the diamond core and the diamond sawblade segments into a finished sawblade.” See Petition, Volume I at page 10. Moreover, Ehwa stated that “the process of attaching the segments to the core actually creates the diamond sawblade,” and that “cores and segments cannot be used independently in the same application as diamond sawblades.” See Ehwa’s November 21, 2005, submission at pages 3- 4. It is apparent that even the petitioner recognizes the importance of the attachment process in imparting the essential quality of the finished product. Therefore, given the priority that both the petitioner and a respondent have placed on the importance of attaching cores and segments, the Department finds that the essential quality of the product is not imparted until the cores and segments are attached to create a finished DSB.

Next, the petitioner argues that a comparison of the segment manufacturing process to the attachment process demonstrates that the former requires greater technical expertise and capital investment. However, even though the Department acknowledges that a significant capital investment is associated with segment manufacture, the Department has also determined that a substantial capital investment and great technical expertise is required for the attachment process. Specifically, as noted above, the respondents and the petitioner in this investigation have stated that the manufacturing process to produce DSBs from cores and segments is essential to the performance of the finished DSB. See, e.g., Ehwa’s November 21, 2005, supplemental response at page 3; Petition at page 10. Given that DSBs are used to cut particularly hard materials (*e.g.*, concrete) and generate high levels of heat during operations, the type of attachment used to bind segments to cores is important. See, e.g., Ehwa’s November 21, 2005, supplemental response at page 4; Shinhan’s December 5, 2005, supplemental response at pages 7-8. Therefore, both Ehwa and Shinhan stated that they invested substantial capital in securing equipment and employees to properly attach cores and segments. See Country of Origin Memorandum at page 4. Further, both Ehwa and Shinhan stated that they use three major methods to attach segments to cores: (1) laser-welding, (2) silver soldering (or brazing), and (3) sintering. See Shinhan’s December 5, 2005, questionnaire response at page 7; see also, Ehwa’s November 21, 2005, supplemental questionnaire response, at Exhibit D-4. Ehwa stated that laser-welding “is among the most sophisticated types of welding” and that it requires “highly specialized equipment that is engineered to exacting specifications and is operated by specially trained personnel.” See Ehwa’s November 21, 2005, supplemental questionnaire response at page 3. Moreover, Ehwa stated that employees working in its welding, soldering, and sintering operations are at the highest skill level. See Ehwa’s Rebuttal Brief at page 15. Similarly, Shinhan stated that “{p}roduction of laser-welded diamond sawblades features high automation, greater stability requiring high temperatures and strong welding adhesion between the segment and the alloy steel core.” See Shinhan’s December 5, 2005, questionnaire response at page 8. Ehwa notes that “the correct placement and attachment of the segments to the cores is critical because of the safety risks associated with operating sawblades at very high speeds.” See Ehwa’s November 21, 2005, supplemental response at page 4. Specifically, Ehwa reported that it made substantial capital investments in machinery, equipment, and employees to properly weld, solder, and sinter segments to the core, in order to manufacture a finished DSB. See Ehwa’s January 26, 2006,

supplemental questionnaire response at Exhibit 3-A; Ehwa's Rebuttal Brief at page 15. Further, Ehwa notes that it has more employees involved in welding, soldering, and sintering segments to a core than employees involved in segment production and that it incurs substantially more maintenance costs for the former. See Ehwa's January 26, 2006, supplemental questionnaire response at Exhibit 3-B and 3-C.

Moreover, as discussed above, the Department has determined that it is the attachment of cores to segments that gives finished DSB their essential quality, not the manufacture of diamond segments. Even though there is a significant capital investment also associated with manufacturing diamond segments, given the fact that the attachment process imparts the essential quality of the DSB, coupled with the substantial capital investment and technical expertise that is required for the attachment process, we continue to find that the country of origin is determined by the location where segments and cores are attached to create finished DSB.

The petitioner argues that the minimal capital investment required for the attachment process poses circumvention concerns. However, as discussed above, the Department finds that the capital investment required for attaching segments to cores is substantial. In addition, country of origin determined by the location of segment manufacture would still pose circumvention concerns, as a producer of DSB could transfer aspects of segment manufacturing to third countries, *e.g.*, shipping pre-mixed bond powder and diamonds to third countries for pressing and baking into segments. In any event, the Department retains that statutory authority to address circumvention concerns as appropriate.

Comment 4: Whether U.S. Repacking Expenses, U.S. Warehousing Expenses, and U.S. Movement Expenses Should Be Treated as Selling Expenses for Purposes of Calculating CEP Profit.

The petitioner argues that the Department correctly included U.S. movement expenses, warehousing expenses, and repacking expenses in its calculation of CEP profit. According to the petitioner, Congress directly addressed the issue of whether U.S. movement, warehousing, and repacking expenses should be included in the calculation of CEP profit. The petitioner notes that the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session (1994) states:

{C}onstrued export price will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of the following expenses (and profit) associated with economic activity occurring in the United States: ... an allowance ... for profit allocable to the selling, distribution, and further manufacturing expenses incurred in the United States.

See SAA, at 823. Furthermore, the petitioner observes that the Joint Senate Committee Report regarding the Uruguay Round Agreement Act explained:

Revised section 772(d) requires Commerce to deduct from the price that is used to establish the constructed export price the amount of the following expenses and profit associated with selling the merchandise in the United States ... an allowance for profit allocable to the selling, distribution, and further manufacture and assembly activities in the United States.

See S. Rep. No. 103-412, at 64. The petitioner also contends that the Department has found in past reviews that distribution expenses must be included in the calculation of CEP profit pursuant to section 772(d)(3) of the Tariff Act of 1930, as amended (the Act). See, e.g., Industrial Nitrocellulose from the United Kingdom: Notice of Final Results of Antidumping Duty Administrative Review, 64 FR 6148, 6152 (February 8, 2000) (“Section 772(d)(3) of the Act provides that CEP shall be reduced by the profit allocable to selling, distribution, and further manufacturing activities in the United States”). According to the petitioner, Congress clearly indicated that distribution expenses are U.S. selling expenses, and should be included in the calculation of CEP profit. Because Congress has spoken to this issue, the Department must give effect to Congress’s expressed intent and include U.S. movement expenses and repacking expenses in its calculation of CEP profit.

Lastly, the petitioner argues that the CAFC stated, in NSK Ltd. v. United States, 390 F.3d 1352, 1355 (Fed Cir. 2004) (NSK), that the Department may classify repacking expenses as U.S. selling expenses under section 772(d)(2)(B) of the Act because such expenses may be considered an expense that “result{s} from, and bear{s} a direct relationship to, the sale to particular customers.” Further, the CAFC in this case held that repacking expenses should be classified consistently with movement and warehousing expenses. The petitioner concludes by arguing that since Congress intended distribution expenses to be included in the CEP profit calculation, and the CAFC has instructed the Department to classify repacking expenses in a manner consistent with distribution expenses, repacking expenses should also be included in the CEP profit calculation.

In rebuttal, Ehwa contends that the petitioner’s argument is without merit. Ehwa notes that the Department ruled on this issue in its Policy Bulletin 97.1 where it stated “{t}he total U.S. expense used to compute CEP profit excludes all movement charges.” Ehwa notes that this policy bulletin explains that section 772(f)(2)(B) of the Act provides that the term “total United States expenses” means the total expenses described under sections 772(d)(1) and (2) of the Act. Ehwa notes that movement charges do not appear under either of these subsections because they are, instead, described under section 772(c)(2)(A) of the Act. For this reason, Ehwa observes that Policy Bulletin 97.1 concludes that movement expenses should not be included in the total U.S. expenses for purposes of computing CEP profit.

Ehwa asserts that the Department has already determined that U.S. movement expenses (including warehousing and repacking expenses) are not to be included in the pool of expenses used to calculate CEP profit. Ehwa cites Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review, 69 FR 2566 (January 16, 2004), and accompanying Issues and Decision Memorandum, at Comment 4 (“It is not the

Department's normal practice to include such movement expenses within the calculation of selling expenses used to calculate CEP profit") as demonstrating that the Department has already rejected the argument made by the petitioner. Further, Ehwa notes that the CAFC held in NSK that U.S. warehousing, U.S. repacking, and U.S. shipping should be treated consistently, either as selling or movement expenses. Given that the statute indicates that movement expenses are not included in the CEP profit calculation, Ehwa claims that this court decision supports its position that repacking expenses are movement expenses that are properly excluded from CEP profit.

Lastly, Ehwa notes that the Department ruled in Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 70 FR 54711 (September 16, 2005) (Ball Bearings 2003-2004) that the Department's normal methodology is to exclude imputed expenses from the calculation of CEP profit. In the Preliminary Determination, Ehwa notes that the Department incorrectly included imputed expenses in the pool of CEP selling expenses. In accordance with its practice, Ehwa requests that the Department revise its CEP profit calculation to exclude imputed expenses.

In rebuttal, Shinhan argues that the Department should not include movement, warehousing, or repacking expenses in the U.S. selling expenses that are included in the calculation of CEP profit. Shinhan states that the statute is clear regarding which U.S. selling expenses should be included in the calculation of CEP profit. According to Shinhan, section 772(f)(2)(B) of the Act defines the term "total United States expenses" as those total expenses described in section 772(d)(1) and (2) of the Act, which do not include movement, warehousing, or repacking expenses. In contrast, Shinhan claims that movement and warehousing expenses are included in section 772(c)(2)(A). Since section 772(f)(2)(B) of the Act specifically identifies those expenses under subsection (d)(1) and (2), rather than subsection (c)(2)(A), Shinhan contends that it is clear and unambiguous that Congress did not intend movement expenses to be included in the term "total United States expenses."

Shinhan also argues that the Department has a longstanding practice not to include movement expenses in the U.S. selling expenses that are part of the CEP profit calculation. Shinhan cites footnote 7 of the Department's Policy Bulletin 97/1, "Calculation of Profit for Constructed Export Price Transactions," which states that "{t}he total U.S. expenses used to compute CEP profit excludes all movement charges."

With respect to the petitioner's argument that Congress intended for movement expenses to be included in U.S. selling expenses for purposes of the CEP profit calculation, Shinhan argues that this argument is based upon a faulty reliance on the word "distribution" in the SAA. Shinhan notes that the SAA states that U.S. price will be reduced by an allowance for "profit allocable to the selling, distribution, and further manufacturing expenses incurred in the United States." SAA at 823. Shinhan notes that the petitioner associates the term "distribution" with movement expenses. However, Shinhan contends that, in the business world, "distribution" refers to the marketing logistics of getting the merchandise from the producer to the customer, not to the actual transport. In support of its argument, Shinhan cites the business definition of

“distribution” by Wikipedia, available at [http://en.wikipedia.org/wiki/distribution_\(business\)](http://en.wikipedia.org/wiki/distribution_(business)). This definition states, in part, that “distribution is an aspect of marketing” and that “traditionally, distribution has been seen as dealing with logistics: how to get the product or service to the customer.” *Id.* Shinhan states that the Wikipedia definition clearly indicates that distributing is wholly different from transporting, as evidence by the fact that freight companies are not referred to as distribution companies. Shinhan concludes by stating that, consistent with the statute, the references to distribution costs in the legislative history do not refer to movement expenses, but rather to selling activities related to the logistics of getting the merchandise from the producer or warehouse to the customer.

Lastly, Shinhan rebuts the petitioner’s argument that the CAFC decision in NSK supports its position that movement, warehousing, and repacking expenses should be included in “total United States expenses.” Shinhan notes that the CAFC held in this case that repacking expenses should be classified on a consistent basis with movement and warehousing expenses. *See NSK*, 390 F.3d at 1357 (“{e}xpenses incurred for U.S. repacking, U.S. warehousing, and U.S. shipping are analogous. To be consistent, it would appear that Commerce should classify them as the same type of expenses.”). Shinhan concludes by stating that because the statute is clear that movement expenses are not included in U.S. selling expenses with respect to the CEP profit calculation, and because the CAFC directed the Department to treat packing consistently with movement and warehousing expenses, it follows that the Department should not include repacking expenses in U.S. selling expenses for the CEP profit calculation.

Department Position:

We disagree with the petitioner and for purposes of the final determination, we will reclassify the respondents’ repacking expenses as movement expenses and ensure that all movement expenses are excluded from U.S. selling expenses in the calculation of CEP profit. In the Preliminary Determination, the Department incorrectly calculated the preliminary dumping margin for the respondents by inadvertently including certain U.S. movement expenses in the CEP profit calculation and by improperly classifying certain repacking expenses as U.S. direct selling expenses. The Department’s practice and policy has been to exclude movement expenses from CEP selling expenses. Moreover, the Department has stated that movement expenses should not be included in the calculation of total U.S. expenses for purposes of computing CEP profit. *See* Import Administration Policy Bulletin: Calculation of Profit for Constructed Export Price Transactions (September 4, 1997). Further, it has been the Department’s established practice to exclude movement expenses from the calculation of CEP profit. *See Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review*, 69 FR 2566 (January 16, 2004), and accompanying Issues and Decision Memorandum, at Comment 4; Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherland, 66 FR 50408 (October 3, 2001), and accompanying Issues and Decision Memorandum, at Comment 10. Accordingly, we find that the respondents’ U.S. movement expenses should be excluded from the calculation of CEP profit. With respect to U.S. repacking expenses, we find that consistent

with AFBs from Japan, repacking expenses should be classified the same as U.S. movement expenses and should also be excluded from the calculation of CEP profit.

Comment 5: Whether Further Manufacturing Costs Should be Deducted from the Calculation of Net U.S. Price When Such Sales are not Reported.

The petitioner notes that the Department separately granted Ehwa and Shinhan permission to excluded from their U.S. sales database sales of further manufactured products sold in the United States. However, the petitioner contends that section 772(d)(2) of the Act states that the CEP shall be reduced by the cost of any further manufacture or assembly. According to the petitioner, there is no language in the statute that links the pool of expenses to be deducted to the pool of sales used to calculate the margin. Based on the plain meaning of the statute, the petitioner claims that the Department must make an adjustment for further manufacturing expenses incurred by a respondent even when such sales are not reported to the Department. More specifically, the petitioner asserts that, similar to indirect selling expenses deducted under section 772(d)(1)(D) of the Act, the statute does not limit the pool of further manufacturing expenses to those directly linked to the underlying sales. Rather, the petitioner argues that the plain language of the statute is not exclusionary, but inclusive, and requires the Department to account for all such expenses. The petitioner contends that, since there is no direct link between further manufacturing expenses and the reported sales, it recommends that the Department allocate the total further manufacturing expenses over total sales and applying this ratio to the gross unit price. This allocated amount should then be deducted from the gross unit price.

In rebuttal, Ehwa argues that since the Department granted Ehwa permission to exclude its further manufactured sales, it naturally follows that Ehwa was not required to report its further manufacturing expenses because such expenses were directly linked to those further manufactured sales. Contrary to the petitioner's assertion that there is no statutory language that links the pool of expenses to be deducted from the pool of sales used to calculate the margin, Ehwa contends that a fundamental principle of the U.S. antidumping methodology is that the Department only deducts direct selling expenses that are related to the sales actually under consideration. According to Ehwa, further manufacturing costs are clearly direct expenses. By exempting further manufactured sales from Ehwa's reporting requirements, Ehwa claims that the Department likewise determined that Ehwa was not required to report the direct expenses associated with those sales.

In rebuttal, Shinhan argues that the petitioner's claim to deduct further manufacturing costs from the U.S. price as part of indirect selling expenses is misplaced. According to Shinhan, the statute directs the Department to deduct further manufacturing costs only when the particular sale was further manufactured. Shinhan claims that the petitioner's reading of the statute would force the Department to deduct the cost of further manufacturing from "all sales" even when the Department includes both further manufactured and non-further manufactured sales. See Shinhan's Rebuttal Brief at 15.

According to Shinhan, the petitioner's real motive is to force Shinhan to report "all of the expenses incurred in the further manufacturing or assembly of the subject merchandise in the United States." See Shinhan's Rebuttal Brief at 16. Shinhan claims that the Department's decision to exclude sales with further manufacturing cost was correct and that the verification report supports the Department's decision, which stipulated that such sales indeed represented a small volume of Shinhan's total U.S. sales. *Id.* Shinhan concludes that even if it were appropriate to make certain adjustments for the revenue and expenses associated with such sales, the results would have little impact on the margin calculation. Consequently, given the short time before the final determination is due, Shinhan believes any requests for additional information pertaining to further manufactured sales, which the Department excused Shinhan from reporting, would represent a high burden on the company while the impact of the additional deductions on the margin would be insignificant.

Department Position:

We agree with Ehwa and Shinhan that the Department should not deduct further manufacturing costs from CEP in this investigation because the Department excused Ehwa and Shinhan from reporting their further manufactured sales. In doing so, the Department also excused Ehwa and Shinhan from reporting the direct selling expenses associated with those sales.

The petitioner contends that section 772(d) of the Act requires the Department to deduct further manufacturing expenses incurred in the United States regardless of whether those expenses were incurred with respect to the sales actually reported to the Department for the purpose of this investigation.

Section 772(d) of the Act states, "For the purposes of this section the price used to establish constructed export price shall also be reduced by . . . the cost of any further manufacture or assembly" Implicit in the text of section 772(d)(2) of the Act is that any further manufacturing costs to be deducted actually be incurred with respect to the particular transaction providing the basis for the CEP starting price. Accordingly, there is no basis under the statute to deduct from the CEP starting price further manufacturing costs incurred with respect to transactions that are not part of this investigation.

In this regard, the petitioner conflates section 772(d)(1) of the Act with section 772(d)(2). That is, while section 772(d)(1) addresses expenses to be deducted from the CEP starting price that are "generally incurred" in selling the subject merchandise, section 772(d)(2) does not. We therefore find the petitioner's analogy of the treatment of indirect selling expenses, which are addressed by section 772(d)(1)(D) of the Act, to the treatment of further manufactured sales, which are addressed by section 772(d)(2), unconvincing.

Comment 6: Whether Further Manufacturing Costs and Revenues Should be Included in the Calculation of CEP Profit When Such Sales are Not Reported.

The petitioner argues that the Department must include further manufacturing expenses in the calculation of the CEP profit even when further manufactured sales are not reported to the Department. Section 772(f) of the Act describes the manner in which the CEP profit should be calculated. The petitioner's argument is divided into three items. First, the petitioner contends that section 772(f)(2)(B) of the Act directs the Department to include in the calculation of total U.S. expenses those expenses described in section 772(d)(1) and (2) of the Act. Since section 772(d)(2) of the Act specifically identifies further manufacturing, the petitioner states that it is clear that further manufacturing expenses must be included in the calculation of total U.S. expenses. The petitioner notes that section 772(f)(2)(B) does not provide any limitation or exception to this requirement. Thus, the petitioner concludes that the statute directs the Department to include any further manufacturing expenses in the total U.S. expense calculation regardless of whether all U.S. sales are included in the margin program and regardless of whether the Department is actually reducing particular U.S. sales prices for further manufacturing expenses.

The petitioner also asserts that section 772(f) of the Act instructs the Department to calculate the CEP profit by multiplying the actual profit (earned from sales of subject merchandise and the foreign like product) by the ratio of U.S. expenses to total expenses (incurred from sales of subject merchandise and the foreign like product). The petitioner notes that the Department implements section 772(f) of the Act by multiplying the per-unit U.S. expenses by the ratio of total profit (earned from sales of subject merchandise and the foreign like product) to total expenses (incurred from sales of subject merchandise and the foreign like product). According to the petitioner, in the rare situations where the Department excludes U.S. sales in an investigation, the Department's method of calculating the CEP profit will fail to capture all of the CEP profit prescribed by the statute's methodology. The petitioner provides a hypothetical example to illustrate the difference between the Department's implementation of the statute and its interpretation of the statute.

Second, the petitioner argues that further manufacturing expenses should also be included in the calculation of total expenses, which is defined by section 772(f)(2)(C) of the Act as the total expenses incurred by the respondent and its U.S. affiliate for its sales of subject merchandise and the foreign like product. Even though the sales of further manufactured products are not reported, the petitioner argues that section 772(f)(2)(C) does not limit the pool of sales from which to obtain the expenses. In fact, the petitioner notes that the Department excludes sales that are below cost when calculating NV, but includes these unprofitable sales in the CEP profit calculation for this very reason. The petitioner concludes that no U.S. sale can be excluded when calculating total expenses under 772(f)(2)(C) of the Act. With respect to the disclaimer included in section 772(f)(2)(c)(i), that the Department is required to include only the expenses requested by the Department in calculating NV and U.S. price, the petitioner contends that the SAA states that "Commerce will request the information necessary to determine total expenses if Commerce is conducting a cost of production investigation." See SAA, at 825. Since the Department is conducting a COP investigation of the respondents, and the SAA uses the mandatory language "will", the Department is required to place all necessary information on the record in order to calculate "total expenses" including further manufacturing expenses.

Third, the petitioner argues that section 772(f)(2)(D) of the Act requires that the total profit be calculated on the basis of the same merchandise as “total expenses.” Thus, the petitioner contends that the Department must also include all revenue associated with further manufactured subject merchandise in calculating the total profit.

In rebuttal, Ehwa argues that since the Department exempted it from reporting its further manufactured sales, it was also exempted from reporting its further manufacturing expenses for the purpose of the CEP profit calculation. Ehwa notes that section 772(f)(2)(B) of the Act states that the expenses that will be included in the “total United States expenses” are those expenses identified in sections 772(d)(1) and (2) of the Act. Since the Department is not deducting further manufacturing expenses pursuant to section 772(d)(2) of the Act, the CEP profit ratio must be calculated exclusive of these expenses. Ehwa further notes that the “total expenses” required by 772(f)(2)(C)(i) include only those expenses that are “requested” by the Department for the purpose of establishing CEP. Ehwa contends that because the Department did not request further manufacturing expenses pursuant to the sales reporting exemption, these expenses are properly excluded from the pool of “total expenses” used in the denominator of the CEP profit ratio.

In rebuttal, Shinhan claims that the petitioner’s argument that all aspects of the CEP profit calculation must reflect further manufacturing expenses and revenues when such sales are not reported is misplaced. Shinhan disagrees with the petitioner’s contention that the exclusion of certain U.S. sales from reporting represents an unusual and rare circumstance. See Shinhan’s Rebuttal Brief at 17. Rather, Shinhan claims that the Department often excludes discrete categories of sales in investigations, especially further manufactured sales, if such sales represent less than five percent of the total U.S. quantity. Id. Shinhan notes that section 772(f)(2)(C)(i) of the Act and the SAA, at 824, both state that the total expenses to be included in the denominator of the CEP ratio are those expenses requested by the administering authority. See Shinhan’s Rebuttal Brief at 19. Shinhan further notes that the petitioner’s claim that only certain types of sales – such as below-cost sales and non-arm’s length affiliated-party sales – qualify for exclusion when calculating the CEP profit, always assumes that the starting point is all reported transactions. See Shinhan’s Rebuttal Brief at 18. Shinhan believes that nothing in the Departmental provisions requires the Department to collect information for the CEP profit calculation in connection with sales that the Department has excluded from the investigation.

Department Position:

Section 772(f)(1) of the Act provides that “{f} or the purposes of subsection (d)(3) of this section, profit shall be an amount determined by multiplying the total actual profit by the applicable percentage.” The “applicable percentage” is defined as “the percentage determined by dividing the total United States expenses by the total expenses.” See section 772(f)(2)(A) of the Act. The term “total United States expenses” means “the total expenses described in subsection (d)(1) and (2) of this section.” See section 772(f)(2)(B) of the Act.

As the Department stated above in Comment 5 above, implicit in section 772(d)(2) of the Act is that the further manufactured expenses have been incurred with respect to transactions actually used to form the basis of the CEP starting price. Because the Department excused the respondents from reporting the further manufactured sales, those transactions do not form the basis of any CEP starting price. Accordingly, further manufacturing expenses associated with those sales are not required to be deducted from the CEP starting price, nor are they required to be included in “total United States expenses.”

The petitioner contends that the further manufactured expenses should have been included in the calculation of the “total expenses” as well, citing section 772(f)(2)(C) of the Act. However, as the petitioner concedes, under the statutory hierarchy, the expenses included in “total expenses” include “expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product in the exporting country *if such expenses were requested by the administering authority for the purpose of establishing normal value and constructed export price.*” See section 772(f)(2)(C)(i) of the Act (emphasis added). The Department excused the respondents from reporting their further manufactured sales, and thus the expenses directly associated with those sales. Accordingly, these expenses were not requested by the Department for the purpose of establishing constructed value (CV). Indeed, as discussed in Comment 5, these further manufactured expenses are not required in this instance, where the Department has excused the respondents from reporting the relevant sales.

Finally, the petitioner contends that the Department failed to include the revenue for further manufactured sales in calculating the “total actual profit” under section 772(f)(2)(D) of the Act. That section defines “total actual profit” as “the total profit earned by the foreign producer, exporter, and affiliated parties described in subparagraph (C) with respect to the sale of the same merchandise for which total expenses are determined.” Thus, the sales used to determine “total actual profit” are linked by the statute to the sales used to determine “total expenses.” As demonstrated above, because the Department excused the respondents from reporting their further manufactured sales, those sales are not used to determine “total expenses.” Accordingly, those same sales are not used to determine “total actual profit.”

Comment 7: Whether the Department Should Use the Adjustments to Respondents’ Costs to Account for NME Inputs in the Calculation of CEP Profit.

The petitioner notes that the Department, for the final determination, may adjust the respondents’ costs for inputs sourced from non-market economy (NME) countries because those prices do not reflect market prices. According to the petitioner, adjustments to the respondents’ costs made under section 773(f) of the Act, for purposes of determining whether HM sales are made below cost, should not carry through to the calculation of “total expenses” and “total actual profit” under sections 772(f)(2)(C) and (D) of the Act, as these are different sections of the statute that are used for different purposes. In fact, the petitioner claims that any adjustment to the respondents’ costs that is not based on the respondents’ books and records cannot carry through to the CEP profit calculation. The petitioner claims that it would be a violation of both

the letter and the spirit of the law if the Department were to carry through any of these non-booked adjustments to the CEP calculation.

The petitioner notes that section 772(f)(2)(D) of the Act states that the term “total actual profit” is the profit actually “earned” by the respondent. According to the petitioner, the use of the word “earned” indicates that Congress intended the Department to include only profit as it is realized in the accounting records of the respondent. In other words, the petitioner claims that only actual revenues and expenses, as realized and identified in the accounting records of the respondents, can be captured under section 772(f)(2)(C) and (D).

The petitioner asserts that the Department and the courts have adopted this interpretation in past cases. For example, the petitioner contends that the Department, in Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews Pursuant to Final Court Decisions, 71 FR 13078 (March 14, 2006) (Amended Final Antifriction Bearings 1994-1995, 1995-1996), argued that it excluded imputed expenses from the CEP profit calculation because it is the Department’s practice is to use only actual profits. The petitioner, citing SNR Roulements v. United States, 402 F.3d 1358, 1363 (Fed. Cir. 2005) and FAG Italia S.p.A. V. United States, 402 F.3d 1356, 1357-1358 (Fed. Cir. 2005), notes that the CAFC held that imputed expenses cannot be included in the CEP profit calculation because the actual, booked interest expenses were already included. Thus, the petitioner contends that it would be inconsistent for the Department to reverse itself when it is imputing market economy costs.

According to the petitioner, the prohibition on carrying through adjustments not based on the respondents’ books and records covers more than just the proposed NME input adjustments. The petitioner argues that adjustments made under the major and minor input rules, and any adjustments made under section 773(f) of the Act, cannot carry through to the CEP profit calculation if such adjustments are not based on the respondents’ accounting records. The petitioner contends that the Department can ensure that adjustments not based on the respondents’ accounting records are not carried through to the CEP profit calculation with a simple change to the Department’s margin calculation program. The petitioner recommends that the Department calculate two costs of production: one cost for use in determining NV, and one cost used in the calculation of CEP profit.

In rebuttal, Ehwa notes that the Department often adjusts respondents’ reported costs for a number of reasons, most often because of the major and minor inputs rules. However, Ehwa claims that the petitioner has not cited a single instance in which the Department used the unadjusted costs to calculate the CEP profit ratio. On the contrary, Ehwa claims that the Department’s margin program is designed to ensure that the CEP profit ratio is calculated after all adjustments to costs have been made, reflecting the Department’s intent that it will use adjusted costs when determining CEP profit. According to Ehwa, the petitioner’s approach would result in an artificially high margin. Ehwa concludes by stating that the petitioners have not provided any basis for the Department to abandon its longstanding calculation methodology.

In rebuttal, Shinhan argues that if the Department adjusts reported costs for the inputs sourced from a NME country, these adjusted costs should be used in the CEP profit calculation. Shinhan states that the statute makes clear that the Department should use the adjusted costs for all parts of the margin calculation, and that the Department has done so in past cases. According to Shinhan, the petitioner's argument is based on a strained statutory interpretation. Citing 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 3 (“{t}o accurately reflect the amount of CEP profit Barilla would have earned, the Department should have included the cost of purchased pasta in the denominator of the CEP profit ratio calculation”) (emphasis added by Shinhan) (Pasta from Italy 2002-2003), Shinhan claims that the Department has made clear that it does not view the term “actual” in the context of CEP profit to mean the profit based on the actual accounting records of the respondent. Shinhan claims that the Department frequently adjusts reported production costs to account for non-arm's length input purchases from affiliated parties, and that its practice is to use the adjusted costs in the CEP profit calculation. For example, Shinhan cites Honey from Argentina: Final Results of Antidumping Administrative Review, 69 FR 30283 (June 10, 2004) (Honey from Argentina), where the Department stated that “HoneyMax states that while it understands (but does not agree with) the Department's decision to use beekeeper production costs as the basis of COP, HoneyMax suggests that use of acquisition costs to calculate the CEP profit ratio would lead to a more accurate result. We decline to mix and match methodologies.”

Shinhan further claims that the logic of petitioner's argument, that because there is no statutory connection between sections 772(f) (CEP profit) and 773(f) (COP) of the Act the Department cannot use adjusted costs in the CEP profit calculation, leads to absurd results. For example, following this logic would also prevent the Department from using adjusted costs for the DIFMER adjustment, since this adjustment is also found in a different part of the statute, section 773(a)(6) of the Act. Regarding Amended Final Antifriction Bearings 1994-1995, 1995-1996 cited by the petitioner, Shinhan states that this case is not relevant to the instant investigation because, in that case, the CAFC held that including imputed credit expenses in the calculation of total profit would result in double-counting since the actual, booked credit expenses were already included. Shinhan notes that there is no risk of double counting in the instant case. See SNR Roulements v. United States, 402 F.3d 1358, 1363 (Fed. Cir. 2005) and FAG Italia S.p.A. V. United States, 402 F.3d 1356, 1357-1358 (Fed. Cir. 2005).

Department Position:

We agree with the respondents. The Department routinely adjusts reported costs, usually because of the major and minor input rules. It is the Department's longstanding practice to include all adjustments to a respondent's costs, even if such adjustments do not originate from the respondent's books and records, in the calculation of “actual profit” pursuant to section 772(f)(D) of the Act. See, e.g., Honey from Argentina and Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 32492 (June 10, 2004), and accompanying Issues and Decision Memorandum, at Comment 6

(“Department used a single cost file ... in its margin analysis to calculate the COP, CV and in the CEP profit calculation.”).

The petitioner bases its argument on the assertion that there is no statutory requirement that the costs calculated under section 773(f) of the Act to determine NV must be used in the calculation of “total expenses” or “total actual profit” pursuant to section 772(f) of the Act. Although the petitioner is correct that the statute does not explicitly state that CEP profit is to be calculated using the costs adjusted pursuant to section 773(f) of the Act, to do otherwise would lead to nonsensical results. For example, as noted by Shinhan, the petitioner’s logic would force the Department not to include DIFMER adjustments in the costs that are used to calculate CEP profit. One of the underlying themes to the statute is that dumping margins should be calculated on a consistent, apples-to-apples basis. With respect to Amended Final Antifriction Bearings 1994-1995, 1995-1996 cited by petitioner, Shinhan is correct that the issue in that case was double-counting credit expenses. In the instant investigation, the petitioner has not alleged that the Department is double-counting any costs or expenses, and therefore it is not relevant. The Department’s approach is reasonable because it calculates CEP profit in a manner that is consistent with the underlying data.

Comment 8: Whether the Department Should Correct VCOM and TCOM for any Changes it Makes to the Reported Costs.

The petitioner notes that the Department used the VCOM and TCOM reported in the U.S. and HM sales databases as the basis for the DIFMER test in the Preliminary Determination. If the Department changes the respondents’ cost data to account for verification findings or other revisions, the petitioner recommends that the Department modify the programs to change the basis of the DIFMER test from the VCOM and TCOM reported in the sales databases to the revised costs calculated from the respondents’ COP data. In particular, the petitioner requests that the Department, where appropriate, revise the respondents’ variable costs of production, and let the revised variable costs flow into the TOTCOM, rather than directly adjusting the TOTCOM, so that the DIFMER test will include all changes to variable cost. In addition, the petitioner recommends that the Department ensure that all changes to the respondents’ COP are also made to the calculation of CV and that if the Department changes TOTCOM for NME inputs, then it should also change VCOM.

In rebuttal, Ehwa states that it agrees in principle with the petitioner that any adjustments to the cost made in the VCOM and TCOM reported in the U.S. and HM sales databases should be incorporated in the margin calculation. However, unlike the petitioner, Ehwa requests that the Department not incorporate adjusted general and administrative expenses (G&A) and INTEX variables in the DIFMER calculations as these may distort DIFMER results. See Ehwa’s Rebuttal Brief at 44.

In rebuttal, Shinhan rejects the petitioner’s claim that the Department’s SAS computer program uses incorrect VCOMH, VCOMU, and TCOMU variables, reported in the U.S. and HM sales database, to calculate the DIFMER. Shinhan claims that the petitioner is looking at the

wrong program (*i.e.*, the Margin Program) in making its argument. Shinhan notes that the programming in question from the Margin Program was used to assign the costs of the most similar CONNUM to those CONNUMs that had missing costs. According to Shinhan, the Department correctly used the reported section D costs in order to calculate the DIFMER in the All Macros Program. Regarding the petitioner's argument that G&A and INTEX variables should also be included in the DIFMER calculation, Shinhan claims that the Department's long-standing policy and case precedents warrant their exclusion from the DIFMER calculation. See Shinhan's Rebuttal Brief at 24. Finally, Shinhan notes that it provided a suggested computer code in its case brief to prohibit comparisons between segments and DSB. Shinhan asks the Department to make this change in the programming language in both the Margin Program as well as the All Macros Program.

Department Position:

In the Preliminary Determination margin calculation program, the Department used the VCOM and TCOM from Ehwa's sales database to assign costs to those control numbers that were reported with no cost data. See Ehwa/Shinhan preliminary determination calculation memorandum at pages 6, 7 and 15, dated December 20, 2005. However, for purposes of calculating DIFMER, the Department used the respondents' reported cost data. Id. at page 15. Accordingly, per our practice, the Department will continue to use the respondents' reported cost data, with appropriate adjustments, for the final determination.

Moreover, we agree with Shinhan and Ehwa that G&A and interest expenses should not be included in the calculation of DIFMER. The Department's practice is to limit the DIFMER test to variable manufacturing cost, which does not include G&A or interest expense. See Policy Bulletin, Number 92.2, Difmer 20% Rule, July 29, 1992. Accordingly, the Department will not include G&A and interest expenses in the calculation of DIFMER for the final determination. The Department will address Shinhan's argument regarding comparisons between segments and DSB in Comment 35 below.

Comment 9: Whether the Department Should Reconsider Its Preliminary Critical Circumstances Determination.

The petitioner notes that in the Preliminary Determination, the Department found that critical circumstances did not exist with regard to Korean imports. While the Department found that there had been a massive increase of imports from Ehwa, the petitioner observes that the Department found that none of the respondents' margins were high enough to impute knowledge of importer dumping. To the extent that the Department, in its final determination, calculates margins sufficient to impute importer knowledge of dumping, *i.e.*, margins 25 percent or more for EP sales and/or 15 percent or more for CEP sales, the petitioner requests that the Department reconsider its preliminary finding of negative critical circumstances.

Ehwa, in its case brief, argues that if the Department revisits its critical circumstances determination, it should make two changes to its analysis. First, Ehwa notes that the Department

compared the five-month base period before the filing of the petition to the five-month comparison period after the filing of the petition in order to determine whether imports were massive. Ehwa argues that the Department should change the duration of its base and comparison periods from five months to six months. Ehwa claims that the only reason the Department gave in the Preliminary Determination for using five-month base and comparison periods was because, at the time of the petitioner's critical circumstances allegation, the ITC had five months of import data available on its website. Ehwa, citing Color Televisions from the PRC, contends that the Department has noted in other cases that its "practice" is to use "the longest period for which information is available from the month that the petition was filed through the effective date of the preliminary determination." See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 68 FR 66800 (November, 28, 2003) (Color Televisions from the PRC). Accordingly, since the Department collected data from the respondents that allow for six-month base and comparison periods, and the ITC has now made available the sixth month of import data, Ehwa asserts that the Department should compare the six-month base period before the filing of the petition to the six-month comparison period after the filing of the petition in determining whether imports were massive.

Second, Ehwa argues that, in determining whether imports have been massive, the Department combined the quantity of imported finished DSB with the quantity of imported parts (cores and segments). Ehwa maintains that this approach is flawed because the unit of measure for the subject merchandise is pieces, and one segment is not equivalent to one finished DSB (which contains one core and numerous segments). Ehwa notes that the Department recognized this fact previously when it conducted its industry support analysis at the initiation stage of this investigation on the basis of value. Ehwa argues that treating parts as equivalent to finished products will distort the Department's analysis because parts constitute a larger percentage of Ehwa's imports by volume, but are much smaller percentage by value. Consequently, Ehwa argues that using quantity rather than value to measure imports attributed a significantly disproportionate amount to parts, which led the Department to find that imports had increased by more than 15 percent over the base period when, in fact, they had not. Ehwa provides two recommendations for correcting this distortion. First, Ehwa states that if the Department continues to use quantity as the basis of analyzing whether imports were massive, it should include in its analysis only the quantity of imported finished DSB for the six-month base and comparison periods. Ehwa's suggested approach results in a change of imports that is less than the required 15 percent to find that imports were massive. Alternatively, Ehwa asserts that the Department could use the combined value, rather than the combined quantity, of imports of finished DSB and parts. Ehwa notes that neither the statute nor the Department's regulations preclude the Department from using value in its critical circumstances analysis. Further, Ehwa claims that using value for the six-month base and comparison periods would be consistent with the Department's approach for determining industry support in the initiation stage. This alternative approach results in change of imports less than the required 15 percent to find that imports were massive.

The petitioner rebuts Ehwa's recommendation to (1) use a six-month period and (2) exclude parts thereof from the analysis by stating that Ehwa has provided no justification for its recommended changes beyond the fact that they lead to a beneficial outcome for Ehwa. In particular, the petitioner asserts that Ehwa has not provided the Department with any rationale that would permit the Department to entirely ignore certain categories of subject merchandise in performing its critical circumstances analysis. The petitioners note that the statute requires the Department to determine whether there have been massive imports of the subject merchandise over a relatively short period, which in this case includes parts thereof. The petitioner claims that it would be impossible for the Department to make this determination without considering all imports of subject merchandise, including parts, over the relative period. The petitioner recommends that the Department reject Ehwa's arguments.

Ehwa, in rebuttal, repeats the arguments made in its case brief. Specifically, Ehwa reiterates that the Department should (1) use a six-month base and comparison time periods instead of the five-month periods used in the Preliminary Determination, and (2) conduct the analysis only on imports of finished DSB, or alternatively, perform the analysis on a value basis instead of quantity basis.

In rebuttal, Shinhan claims that the petitioner's argument for revising its critical circumstances determination has no applicability to Shinhan because the Department found that Shinhan was not responsible for massive imports of subject merchandise during the relevant time period. Shinhan concludes that it deserves a negative critical circumstances finding regardless of the Department's final determination margin given that it did not have massive imports.

Department Position:

Section 735(a)(3) of the Act provides that the Department, upon receipt of a timely filed allegation of critical circumstances, shall determine whether:

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

With respect to section 735(a)(3)(A) of the Act, we received no comments regarding the basis of our preliminary analysis of whether there is a history of dumping and material injury, and whether the importer had knowledge that dumping was occurring.

For this final determination, we continue to find no history of dumping pursuant to 735(a)(3)(A)(i) of the Act. See Memorandum from Mark Manning, Acting Program Manager, to Thomas F. Futtner, Acting Office Director, “Final Determination of Critical Circumstances,” dated May 15, 2006 (Final Critical Circumstances Memorandum). Concerning section 735(a)(3)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for EP sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV. See, e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances, 67 FR 6224, 6225 (February 11, 2002). We calculated the margins for the respondents’ EP and CEP sales, and compared those margins to the 25 and 15 percent thresholds necessary to impute knowledge of sales at LTFV. For Ehwa, we found that the margin for its CEP sales is below the CEP threshold necessary for imputing knowledge of sales at LTFV. For Hyosung, we found that its EP and CEP margins are below the 25 and 15 percent thresholds, respectively, for imputing knowledge of sales at LTFV. For Shinhan, however, we found that its margin for CEP sales is above the 15 percent threshold for imputing knowledge of sales at LTFV, but the margin for its EP sales is below the 25 percent threshold for imputing knowledge of dumping. Furthermore, we found that the “all others” category of companies has a margin above the CEP threshold for imputing knowledge of sales at LTFV. See Final Critical Circumstances Memorandum, at page 6.

Based on the final dumping margins for Ehwa and Hyosung, the Department finds that there is no reasonable basis to believe or suspect that importers knew or should have known that exporters were selling the subject merchandise at LTFV. Since there is no evidence that importers should have known that Ehwa and Hyosung were selling subject merchandise at LTFV, we find that Ehwa and Hyosung do not satisfy section 735(a)(3)(A)(ii) of the Act. Shinhan, however, has a final dumping margin for CEP sales that is above the 15 percent threshold for imputing knowledge of dumping. Moreover, since CEP sales constitute the vast majority of Shinhan’s total U.S. sales by quantity, we find that it is appropriate to apply our finding of knowledge of dumping to all of Shinhan’s sales. Lastly, because the “all others” companies have a margin above the CEP threshold for imputing knowledge of dumping, we find that both Shinhan and the “all others” companies satisfy section 735(a)(3)(A)(ii) of the Act.

Regarding section 735(a)(3)(B) of the Act, Ehwa argues that the Department should revise its base and comparison periods from five to six month periods, pursuant to its normal practice. Ehwa is correct that it is the Department’s normal practice to examine the longest period for which information is available up to the date of the preliminary determination, which frequently consists of six month base and comparison periods. See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil, 71 FR 2183 (January 13, 2006); Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum, at Comment 3; and Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68 FR 6885 (February 11, 2003). Pursuant to our normal practice

of using six-month base and comparison periods, we analyzed whether there existed massive imports by Ehwa, Shinhan, and Hyosung through calculating the change in imports from the six-month base period (November 2004 through April 2005) to the six-month comparison period (May 2005 through October 2005).

Ehwa also argues that the Department's preliminary determination of whether there were massive imports was distorted because, in basing our analysis on the total pieces of parts and finished DSB imported, we gave equal weight to a single part as we did to a single finished DSB. We agree with Ehwa that giving equal weight to a single segment or core, which are considerably less valuable than a finished DSB, was distortive. For the final determination, we have changed our analysis of whether imports were massive from a piece-based, to value-based, analysis. Using value, rather than pieces, will allow our analysis to provide the appropriate weight to parts (segments and cores) imported by the respondents.¹ In addition, using value has an added benefit in that it will account in our analysis for the wide range of per-unit values found in this industry. Section 735(a)(3)(B) of the Act does not direct the Department in how to analyze whether imports were massive. However, 19 C.F.R. § 351.206(h)(1)(i) states that, in determining whether imports of the subject merchandise have been massive under section 735(a)(3)(B) of the Act, the Department will normally examine "the volume and value of the imports." Thus, this regulation provides the Department with the ability to examine value as the basis of determining whether imports were massive.

After incorporating the six-month base and comparison periods, and changing the basis of our analysis to value, we compared the companies' shipment data during the base period with the comparison period, and found the following: the value of shipments of DSB from Ehwa increased by less than 15 percent over the base period; the value of shipments from Shinhan increased by more than 15 percent over the base period; and the value of shipments from Hyosung increased by less than 15 percent over the base period. Since the threshold for determining that imports were massive is 15 percent, we find that Shinhan had massive imports while Ehwa and Hyosung did not. See Final Critical Circumstances Memorandum, at Attachment 1.

In order to examine whether the "all others" category experienced massive imports, we followed our normal practice and based our analysis of whether there were massive imports for the companies covered by the "all others" rate based on the experience of the investigated companies. As noted above, two out of the three investigated companies did not have massive imports between the base period and comparison period. However, we compared the total shipments made by the three companies during the base and comparison periods and found that the total shipments for all three of the investigated companies increased by more than 15 percent,

¹ We note that this issue was not raised in the companion investigation of DSB from the People's Republic of China because those respondents do not have further manufacturing facilities located in the United States. Therefore, these respondents imported negligible, if any, parts into the United States.

which is the threshold necessary to find that imports were massive. See Final Critical Circumstances Memorandum at Attachment I. For this reason, we determine that there have been massive imports of DSB from the “all others” category. See Final Critical Circumstances Memorandum, at pages 5-7.

Based on the above analysis, we find that critical circumstances do not exist with respect to Ehwa and Hyosung, and do exist with respect to Shinhan and the companies within the “all others” category.

Comment 10: Whether the Department Should Adjust Ehwa’s and Shinhan’s Purchases from Affiliated Suppliers.

The petitioner argues that Ehwa and Shinhan purchased certain major inputs from affiliated suppliers at prices that were below the affiliated suppliers’ COP. The petitioner contends that the inputs purchased from the affiliated suppliers constitute major inputs in the production of saw blades. The petitioner argues that if the Department, in accordance with section 773(f)(3) of the Act, “has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input,” it may then determine the value of the major input based upon the COP for the product. The petitioner states that its Major Input Allegations submitted on December 12, 2005, establish the fact that Ehwa and Shinhan purchased major inputs from affiliated suppliers at prices below their affiliate’s COP and thus were not at arm’s length prices.

The petitioner argues that both Ehwa’s and Shinhan’s submissions demonstrate that the prices they paid to affiliates for inputs were not negotiated on an arm’s length basis. The petitioner argues that under section 773(f)(2) of the Act (*i.e.*, the transactions disregarded rule), the Department must at a minimum revalue the cost of inputs purchased from these affiliates to the higher of transfer price or market price.

Furthermore, the petitioner argues that the inputs are in fact major because the inputs’ total cost relative to each respondent’s respective total COP is significant, when the full market value of the inputs is used rather than the transfer price. The petitioner also argues that the nature of the inputs relative to DSB make the inputs major. Thus, the petitioner argues that factors of production should be obtained for the inputs so that the Department can consider the cost of the product against the market price under the major input rule. However, because of the time constraints in the current case, the petitioner suggests that the Department use the highest of either the market price, transfer price or self-produced cost to revalue these inputs for the final determination.

The petitioner points out that section 773(c) of the Act requires the Department to use the factors of production methodology to determine normal value when the subject merchandise is exported from a NME. The petitioner states that there is no provision of the statute that bars the Department from using a factors approach in other scenarios. As such, they argue that the Department is able to use factors of production in this instance to determine an input’s COP. As

an example of an instance where the Department has asserted its authority to use a factors methodology in cases other than where the home market is a NME, the petitioner cites to the Department's Policy Bulletin 94.1. Policy Bulletin 94.1 notes that if a third country reseller purchases the product from a NME producer, "the only available method to measure costs accurately is the surrogate method of 773 (c)..."

Shinhan argues that the inputs that it purchases from affiliated suppliers constitute an insignificant percentage of its total COM and therefore are not major inputs under section 773(f)(3) of the Act. Shinhan contends that the petitioner failed to show that these inputs were a significant percentage of the total cost of manufacturing. Shinhan cites Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38756, 38789 (July 19, 1999) (Comment 49) ("In other words, if an understatement in the value of an input would have a significant impact on the reported cost of the subject merchandise, the law allows the Department to insure that the transfer price or market price is not below cost.").

Furthermore, Shinhan asserts that the Department examined these inputs at verification and determined that it purchased these goods and services at prices well above its suppliers' COP. Shinhan argues that pursuant to the Department's preliminary determination with regard to country of origin, its inputs purchased from Qingdao do not constitute merchandise subject to this investigation. Shinhan points out that in the Department Memorandum, "Proposed Adjustments to the Cost of Production and Constructed Value Data" for Shinhan, February 23, 2006 ("Proposed Adjustments Memorandum") the Department has already determined to replace Shinhan's purchase price for certain inputs with market prices. Shinhan asserts that the Department has verified the market prices of those inputs and that Shinhan's own manufacturing costs for those inputs were lower than the reported transfer price or market price.

Ehwa argues that the Department should disregard any adjustment for inputs purchased from NME affiliates because the adjustments are so small they would have no discernible impact on the cost analysis. See section 777A(a)(2) of the Act and Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom, 69 FR 55574 (September 15, 2004) and accompanying Issues and Decision Memorandum, at Comment 27. Ehwa contends that inputs obtained from affiliated NME producers are not major inputs in the production of DSBs. Ehwa points out that the Department bases its major inputs determinations on several factors such as, the nature of the input, the product under investigation, and the nature of the transactions and operations between the respondent and its affiliated supplier. See Antidumping Duties; Final Rule, 62 FR 27295, 27362 (May 19, 1997) (Final Rule). Ehwa also cites Certain Steel Concrete Reinforcing Bars from Turkey, 69 FR 64731 (November 8, 2004) and accompanying Issues and Decision Memorandum, at Comment 3, (Turkish Rebar) where the Department noted that one input was the only major input in the production of subject merchandise. Ehwa claims that the Department's position in Turkish Rebar is applicable here, because in the current case, the only major inputs in the production of subject merchandise are steel coils, diamonds and metal powder. Therefore, according to Ehwa, the inputs Ehwa receives from its affiliates do not qualify as major inputs.

Ehwa contends that there is no precedent for the Department to determine that significant quantities alone, without significant values, are a sufficient basis for concluding that an input is major. Ehwa points out that by looking at quantities alone disregards the value of other materials used in production. Ehwa argues the petitioner failed to demonstrate that it purchased inputs and services from its affiliated suppliers at less than the supplier's COP. Furthermore, Ehwa contends that the statute provides that a factors of production analysis shall only be used to determine the normal value of subject merchandise that is exported from a NME. See section 773(c) of the Act. Ehwa states that the statute does not provide for the use of factors of production in any other context. Ehwa contends that the language of the statute prohibits the application of the NME methodology to market economy producers for two reasons. First, Ehwa points out that the term "subject merchandise" refers to both the type of product that is exported to the U.S. market and the country of origin. Ehwa states that the inputs are not subject to this investigation and do not qualify for the NME methodology. Second, Ehwa asserts that the finished product must be exported from a NME country. In the current case, because the finished product is exported from Korea, section 773(c) of the Act does not apply. Ehwa argues that the Department's Policy Bulletin 94.1 does not apply because the bulletin explicitly addresses the Department's calculation of normal value, not inputs. Finally, Ehwa cites the CIT decision in Al Tech, 651 F. Supp. at 1428 where the Court noted, "{i}t is not clear why the practices governing the selection of surrogate economies should control the COP under section 773(b)." Therefore, Ehwa states that based on these arguments, the petitioner's argument should be rejected.

Department Position:

We agree with the petitioner in part and have adjusted the respondents' purchases from affiliated suppliers to the higher of the reported transfer price or market value. Section 773(f)(3) of the Act allows the Department to test whether, for transactions between affiliated parties involving a major input, the value of the major input is less than the affiliated supplier's COP where there is reasonable cause to believe or suspect the price of the input is below COP. In other words, if an understatement in the value of an input would have a significant impact on the reported cost of the subject merchandise, the law allows the Department to ensure that the higher of the transfer price or market price is not below cost. We consider the initiation of a sales-below-cost investigation reasonable grounds to believe or suspect that major inputs to the foreign like product may also have been sold at prices below the COP within the meaning of section 773(f)(3) of the Act. See Cold-Rolled Flat-Rolled Carbon-Steel Products from Brazil, 65 FR 5554, 5580 (February 4, 2000) (Comment 20). Therefore, contrary to the petitioner's repeated assertions, it was not necessary for the petitioner to file a major input allegation or is it necessary for the Department to file a formal response to such allegation.

In determining whether an input is "major" in accordance with section 773(f)(3) of the Act, among other factors, we normally consider both the percentage of an individual input purchased from affiliated parties and the percentage each individual input represents in relation to the product's total cost of manufacturing. See Final Results of the Fifth Administrative Review of the Antidumping Duty Order on Stainless Steel Plate in Coils (SSPC) from Belgium, 70 FR 72789 (December 7, 2005) and accompanying Issues and Decision Memorandum, at

Comment 1 (SSPC from Belgium), and Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador, 69 FR 76913 (December 23, 2004) and accompanying Issues and Decisions Memorandum, at Comment 28. In the current case we looked at the percentage of inputs both Ehwa and Shinhan received from affiliated parties and the percentage of those input costs to each company's total cost of manufacturing. We took into account the fact that the transfer prices between the respondents and their affiliates could be unreasonably low due to their affiliation. As such, we used market prices for the affiliated inputs in analyzing the significance of the transactions with the affiliates. Based on our analysis of all of the information on the record, we continue to determine that inputs purchased by Ehwa and Shinhan from affiliates are not significant in relation to the total costs incurred to produce subject merchandise and accordingly, are not major inputs in accordance with section 773(f)(3) of the Act.

However, section 773(f)(2) of the Act (*i.e.*, the transactions disregarded rule) is applicable in this case. It is appropriate for the Department to adjust the inputs' cost to account for instances where transfer prices for affiliated-party inputs were lower than the market prices. Therefore, we have disregarded the prices paid to affiliated parties that were less than fair value prices. See SSPC from Belgium. For some inputs we found no comparative unaffiliated sales to use as a market price for comparison to the transfer price. In those instances, we used the respondents' cost of producing the input or service as a surrogate for a market price. See Low Enriched Uranium from France, 66 FR 65877 (December 13, 2001) and accompanying Issues and Decision Memorandum, at Comment 8.

Comment 11: Whether the Department Should Provide Offsets to Dumping.

Ehwa, Shinhan, and Hyosung (collectively, the respondents) argue that the Department should discontinue its practice of "zeroing" out positive differences between U.S. price and NV in the calculation of the percentage margin. The respondents note that the WTO has recently held in decisions by the Appellate Body and subsequent WTO Panel that the Department's practice of zeroing is inconsistent with the WTO Antidumping Agreement when calculating weighted-average dumping margins under the Department's average-to-average comparison method. Given the invalidation of the Department's zeroing methodology, and the Department's stated intention of complying with the WTO decision, the respondents argue that the Department must provide offsets for non-dumped comparisons in any case where it makes average-to-average comparisons so that its practice is consistent with its obligations under the WTO Antidumping Agreement. Accordingly, the respondents request that the Department not employ zeroing when calculating the final dumping margins in this investigation.

In rebuttal, the petitioner rejects the respondents' arguments that, in light of the recently published WTO decision on the "zeroing" methodology, the Department must modify its long-standing practice of not offsetting positive dumping margins with calculated negative margins. The petitioner notes that the practice of "zeroing" has been held to be fully consistent with U.S. antidumping duty law by both the CIT and CAFC. While acknowledging that the Department recently announced its intention to eventually abandon this practice to conform to WTO rulings,

the petitioner claims that the Department is still considering public comments regarding alternative price-comparison methodologies and has explicitly stated that it will continue to use zeroing in pending investigations. The petitioner believes that respondents' request that the Department short circuit this administrative process is clearly prohibited by statute and must be rejected. See Petitioner's Rebuttal Brief at 19.

Further, the petitioner argues that, according to 19 USC 3533(g)(1), the current zeroing methodology cannot be amended, rescinded, or otherwise modified until the following actions have been completed: the appropriate congressional committees have been consulted; the Trade Representative has sought advice regarding the modification from relevant private sector advisory committees; the Secretary of Commerce provides an opportunity for public comment by publishing in the Federal Register the proposed modification and the explanation for the modification; the Trade Representative has submitted to the appropriate congressional committees a report describing the proposed modification, the reasons for the modification, and a summary of the advice obtained from the private sector; the Trade Representative and the Secretary of Commerce have consulted with the appropriate congressional committees on the proposed contents of the final rule or other modification; and the final rule or other modification has been published in the Federal Register. See Petitioner's Rebuttal Brief at 20.

The petitioner notes that the Department is currently in the midst of this process with respect to the panel decision regarding zeroing. Furthermore, the petitioner claims that the Department explicitly stated in its request for public comments that “{a}ny changes in methodology will be applied in all investigations initiated on the basis of petitions received on or after the first day of the month following the date of publication of the Department's final notice of the new weighted average dumping margin calculation methodology.” Id. Consequently, according to the petitioner, the Department must continue to utilize its traditional zeroing methodology in this investigation.

In its rebuttal brief, Ehwa refers to Shinhan's case brief arguments on this issue and again urges the Department to refrain from employing its zeroing methodology in the current investigation. Additionally, Ehwa cites to the recent WTO Appellate Body decision (United States-Laws, Regulations and Methodology for Calculating Dumping Margins (“Zeroing”), WT/DS294/AB/R (April 18, 2006)) where the use of zeroing in administrative reviews was invalidated. While Ehwa acknowledges that the above decision refers to administrative reviews, nevertheless Ehwa believes that this decision confirms that zeroing is inconsistent with the United States' international obligations.

Department 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.” (Emphasis added). Commerce interprets this statutory definition to mean that a dumping margin exists only when NV is greater than EP or CEP. As no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, Commerce will not permit these non-dumped

sales to offset the amount of dumping found with respect to other sales. The U.S. Court of Appeals for the Federal Circuit (CAFC) has held that this is a reasonable interpretation of the statute. Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir.), 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), cert. denied, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006).

Ehwa and Shinhan have both cited to two WTO dispute settlement proceedings concerning the Department's denial of offsets: *US – Softwood Lumber* and *US – Zeroing (EC Complainant)*. With respect to *US – Softwood Lumber*, consistent with section 129 of the URAA, the United States' implementation of that WTO report affected only the specific administrative determination that was the subject of the WTO dispute: the antidumping duty investigation of softwood lumber from Canada. See 19 U.S.C. 3538.

With respect to *US – Zeroing (EC Complainant)*, 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.

As such, the WTO dispute settlement proceedings cited by Ehwa and Shinhan 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. Accordingly, the Department will continue in this investigation to deny offsets to dumping based on export transactions that exceed NV.

Comment 12: Whether the Department Should Adjust the Reported Costs for Purchases from Unaffiliated NME Suppliers

Ehwa and Hyosung argue that no authority exists for the Department's proposed adjustments to Ehwa and Hyosung's reported costs related to the cost of inputs acquired from unaffiliated suppliers from a NME country (see Memorandum from LaVonne Clark to Neal Halper, Proposed Adjustments to the Cost of Production and Constructed Value Data (February 23, 2006) and Memorandum from James Balog to Neal Halper, Proposed Adjustments to the Cost of Production and Constructed Value Data (February 23, 2006)). Ehwa contends that such an adjustment would set a precedent that would create a large burden for both the Department and respondents. In addition, Ehwa and Shinhan assert that if the Department determines to adjust the reported costs to account for these NME sourced inputs, the Department's proposed methodology would result in significant distortions to the reported costs.

Ehwa contends that because it is a market economy producer, the NV of Ehwa's exports must be determined according to the statutory provisions that apply to market economy countries (see, e.g., section 773(a) and section 773(c) of the Act). Ehwa claims that the Act requires that costs shall be calculated based on the records of the exporter or producer of the merchandise if the respondent's accounting system is based on the home country's Generally Accepted Accounting Principles (GAAP) and the records reasonably reflect the cost of producing the subject merchandise (see, e.g., 773(f)(1)(a) of the Act). Hyosung reiterates this claim and argues that in the instant case the costs it paid for these inputs accurately and properly reflect Korean GAAP. Ehwa and Hyosung contend that neither the statute nor the regulations permit the Department to disregard a respondent's cost of acquiring inputs from unaffiliated suppliers, and the only possible exception for disregarding a respondent's actual cost would be in valuing inputs from affiliated parties.

Ehwa cites several examples in which it claims the Department consistently rejected arguments to adjust respondents' costs for any reason other than purchases of inputs from affiliated parties including: Tool Steel from the Federal Republic of Germany; Correction of Early Determination of Antidumping Duty, 51 FR 10071 (March 24, 1986): "the petitioner urged the Department to adjust the producer's costs to account for subsidies received from the German government and the Department rejected the argument saying that the costs should be based on the company's books and records"; and, Al Tech Specialty Steel Corp v. United States, 651 F. Supp. 1421 (CIT 1986) (Al Tech): "the court held that constructed value should be based on the actual cost incurred without any adjustments proposed by the plaintiff". Department precedent, notes Hyosung, that has been upheld by the courts shows that the Department seeks to capture those expenses that reasonably and accurately reflect a respondent's actual production costs (see, e.g., Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order in Part, 65 FR 35886 (June 6, 2000) citing Micron Technology v. United States, CIT Slip Op. 99-51 (June 16, 1999)). The Department, according to Hyosung, has previously found no reason to reject reported costs for product inputs (see, e.g., Final Determination of Sales at Less Than Fair Value: Certain Color Television Receivers from Malaysia, 69FR 20592 (April 16, 2004) and accompanying Issues and Decision Memorandum, at Comment 20; and IPSCO, Inc. v. United States, 965 F.2d 1056, 1059 (Fed. Cir. 1992) ("By its terms, the statute expressly covers actual production costs"))).

Ehwa and Hyosung assert that sections 773(f)(2) and section 773(f)(3) of the Act, which allow the Department to disregard costs of inputs where those inputs are purchased from an affiliated party, do not apply in the instant case as the purchases in question were made from unaffiliated NME suppliers. Ehwa alleges that even though respondents have sourced inputs from NME countries in the past, the Department has never applied an adjustment to an input sourced from an unaffiliated supplier in its sales below cost analysis for market economy producers. See, e.g., Certain Color Television Receivers from Malaysia: Final Determination of Sales at Less Than Fair Value, 69 FR 20592 (April 16, 2004) and accompanying Issues and Decision Memorandum, at Comments 19 and 20. Ehwa claims that the Department has rejected the proposition that the costs of inputs should not be used even when the inputs were purportedly

negotiated at non-market price and cites as support Certain Pasta from Italy: Final Results of New Shipper Review of the Antidumping Duty Order, 69 FR 18869 (April 9, 2004) and accompanying Issues and Decision Memorandum, at Comment 2: “the Department rejected the argument that it should disregard ‘non-market’ costs and instead affirmed that the costs should normally be calculated based on the records of the exporter or producer.” Ehwa claims that, in this decision, the Department explained that sections 773(f)(2) and 773(f)(3) of the Act, which address disregarded transactions and the major input rule, specifically deal with transactions between affiliated parties and because the suppliers were not affiliated with the respondent, these sections of the Act did not apply. Ehwa also claims that the CIT in Al Tech, 651 F. Supp. 1421, 1429, did not accept the plaintiff’s argument that the NME methodology permits the Department to look behind a market economy producer’s actual costs and upheld the Department’s reliance on the respondent’s books and records.

Hyosung further argues that even if the Department had a legal basis for adjusting the prices in question, the Department verified that the inputs purchased from the NME suppliers were lower in quality, grade, and/or purity from the inputs purchased from market economy suppliers. Hyosung concludes that these differences, as well as differences in delivery costs, result in the price differences between the NME suppliers and the market economy suppliers.

Ehwa and Shinhan both argue that if the Department determines to apply an adjustment then it should correct flaws in its proposed methodology. Shinhan argues that it properly reported its purchases of grinding stones from both non-market and market economy suppliers. Shinhan contends that the petitioner is comparing only one model of grinding stone with a small quantity purchased during the POI. Ehwa asserts that the proposed calculation does not account for the actual consumption of the inputs in question. Ehwa then submits a proposed adjustment factor based on its own calculations. Shinhan argues that in the program to adjust the purchase price of inputs from unaffiliated NME suppliers the Department double counted the market price adjustment. Shinhan also contends that the Department used the wrong figures when making the adjustment for its Gains on Currency Forward Valuation and Gains on Currency Forward Transactions.

The petitioner contends that the Department has both the legal authority and the factual basis to adjust the value of the cost of inputs purchased from non-affiliated NME suppliers. The petitioner agrees with Ehwa that section 773(f)(1)(a) of the Act is applicable in this case but emphasizes that the cite notes that the company’s normal records must “reasonably reflect” the cost incurred for the production and sale of the subject merchandise. The petitioner alleges that pursuant to sections 773(b)(1) and section 773(f)(2) of the Act, the Department may disregard sales and transactions if the Department finds that those sales or transactions do not fairly reflect the amount usually reflected in the sales of subject merchandise.

The petitioner asserts that the Department may disregard the costs of inputs even when those inputs are purchased from an unaffiliated NME supplier and cites the SAA at 834 as support. The petitioner contends that the cost of goods and transfer costs of inputs produced by NME suppliers will be distorted due to the state control in NMEs and because production and

pricing decisions are not directed by market forces. The petitioner cites to the Memorandum from James Balog to the File, Verification of the Cost Response of Ehwa Diamond Industrial Co., Ltd. in the Antidumping Investigation of Diamond Sawblades and Parts Thereof from Korea (April 7, 2006) at page 26 and the Memorandum from LaVonne Clark to Neal M. Halper, Verification Report on the Cost of Production and Constructed Value Data Submitted by Hyosung Diamond Industrial Co., Ltd and its affiliate Western Diamond Tools Inc. (March 28, 2006) at page 25 and claims that the Department found that the respondents' NME sourced inputs have characteristics that are not ordinary as compared to sales or transactions in the same market. The petitioner contends that the Department has the appropriate authority to adjust the respondent's cost of inputs purchased from NME suppliers because the record evidence shows that the reported transfer costs do not represent transactions generally made in the same market, *i.e.*, Korea.

The petitioner notes that in its case brief Ehwa claims that the Department has repeatedly refused to adjust respondents' costs solely based on the fact that inputs were purchased from NME suppliers. The petitioner claims that the cases Ehwa cites in support of its argument were based on the respondents' receipts of government subsidies and that the issue of government subsidies is distinct from the transfer costs incurred from purchasing inputs from NME suppliers. Therefore, the petitioner argues, the issues should not be addressed in the same manner.

The petitioner alleges that Ehwa's claim that applying an adjustment to the costs of inputs from an NME supplier would create a dangerous precedent and burden to the Department is inaccurate and contends that the Department's proposed adjustments would lead to a more accurate NV and, therefore, would allow for a more accurate calculation of the dumping margin. Accordingly, for the Final Determination, the petitioner maintains that the Department should disregard prices paid to NME suppliers and instead rely on arms length prices for the same inputs.

Department's Position:

After careful consideration of all of the facts and arguments on the record of this proceeding, we have determined not to make an adjustment to the respondents' reported costs for inputs received from their unaffiliated NME-based suppliers. As the Department stated in Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value, 70 FR 9041, 9043 (February 24, 2005) (Magnesium Metal), pursuant to section 773(f)(1) of the Act, "normally" the Department will use the costs as recorded in the respondent's books and records in calculating the COP if: (1) those records are kept in accordance with the respondent's home country's GAAP, and (2) those recorded costs reasonably reflect the costs associated with the production and sale of the subject merchandise. However, the statute's explicit use of the word "normally" indicates that there may be circumstances where the Department could reasonably determine that the use of the respondent's recorded costs is inappropriate. In such cases, the Department has the discretion to calculate the costs of production by some other reasonable means. *Id.* In this case, however, we find that the inputs in

question are minor and that any distortion they may create as percentage of the respondents' total COP is negligible.

We note that the Act generally assumes that prices for goods produced in NMEs cannot be relied upon for purposes of a price-based analysis. Section 773(c) of the Act states that if the subject merchandise is exported from an NME country, and the administering authority finds that available information does not permit the normal value of the subject merchandise to be determined on the basis of prices and costs of that merchandise, then normal value shall be determined using a factors of production methodology. Thus, the Department does not use a price-based methodology under section 773(a) of the Act when the producer is located in an NME country, unless the record evidence demonstrates that a market oriented industry exists. See 19 C.F.R. 351.408. It is also the long-standing practice of the Department in intermediate market cases to examine third country prices of a producer or exporter located in an NME country. Thus, if the intermediate market country provision applies (section 773(a)(3) of the Act) and the like product sold in the intermediate country is produced in a NME, then the Department will initiate a sales below cost inquiry because, as stated in Import Administration Policy Bulletin, Number 94.1 (March 25, 1994), “{i}n the view of the economic distortion created by state control in NMEs, and in the absence of market directed decisions on price and output, it is unrealistic to expect the prices on NME produced goods sold to third countries resellers to be unaffected by that distortion. Because the price from a NME producer to a third country reseller is not based on market-determined factors, neither can we expect that the resale price by that reseller will be.”

However, while the use of the word “normally” in section 773(f) of the Act indicates that there may be circumstances where the Department can reasonably determine that the use of the prices recorded by a respondent is inappropriate, the Department has determined not to adjust the respondents' reported costs here. In this case each of the respondents purchased a certain limited number of inputs to the merchandise under consideration from unaffiliated producers who operate in NME countries. We have reviewed the relative percentages that these inputs represent of the respondent's COP and compared the NME prices to either market based prices or the cost of producing the input. We have determined that the use of such prices does not result in an unreasonable reflection of the cost associated with the production and sale of the merchandise. Thus, while we may consider this issue in future cases, for the final determination in this case we have not restated the prices recorded by respondents for inputs purchased from NME suppliers.

II. Company-Specific Issues

A. Ehwa Issues

Comment 13: Whether the Department's Preliminary Decision to Collapse Ehwa and Shinhan was Contrary to Law and the Department's Longstanding and Consistent Past Practice.

Ehwa argues that the Department, in the Preliminary Determination, inappropriately collapsed Ehwa with Shinhan pursuant to 19 C.F.R. § 351.401(f), which states that the Department can collapse two affiliated producers if the producers have production facilities that would not require “substantial retooling” in order to restructure manufacturing priorities and if there is a “significant potential for the manipulation of price or production.” See 19 C.F.R. § 351.401(f)(1). Ehwa notes that in identifying whether there is a significant potential for the manipulation of price or production, the Department considers: (i) the level common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. See 19 C.F.R. § 351.401(f)(2).

Ehwa argues that the Department’s collapsing analysis in its Preliminary Determination is contrary to law and the Department’s longstanding practice for four reasons. First, Ehwa asserts that the Department has consistently determined that a significant potential for manipulation does not exist when the third factor of 19 C.F.R. § 351.401(f)(2) (*i.e.*, intertwined operations) is absent in its entirety. Ehwa cites several past cases in which the Department did not collapse affiliated companies possessing common ownership or overlapping board or managerial positions due to the absence of intertwined operations. For example, Ehwa cites Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 63 FR 55578 (October 16, 1998) (Welded Carbon Steel Pipes and Tubes from Thailand) in which the Department did not find a significant potential for manipulation despite substantial overlap in ownership, board membership, and management positions of the three companies by various members of one family because “the level of control and the absence of evidence of intertwined operations {led the Department} to conclude the collapsing is not warranted. . . .” *Id.*, 63 FR at 55582-83. Ehwa notes that the Court of International Trade affirmed this decision in Allied Tube and Conduit Corp. v. United States, 127 F. Supp. 2d 207 (CIT 2000) (Allied Tube). Similarly, Ehwa argues, in Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 69 FR 5960 (February 9, 2004) (Stainless Steel Sheet and Strip in Coils from Taiwan) and accompanying Issues and Decision Memorandum, at Comment 7, the Department did not collapse two affiliated companies despite a common level of ownership and overlapping board members because the operations of the two companies were not intertwined.

Ehwa also notes that the Department, in its Preliminary Determination, based its decision to collapse Ehwa and Shinhan on a certain fact pattern that is business proprietary information. Ehwa, citing Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Final Determination of Sales Less Than Fair Value, 69 FR 53675 (September 2, 2004) (Light-Walled Rectangular Pipe and Tube from Turkey) and accompanying Issues and Decision Memorandum, at Comment 10, and Steel Concrete Reinforcing Bar from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 19399 (April 13, 2004) (Steel Concrete Reinforcing Bar from the Republic of Korea) and accompanying Issues and Decision Memorandum, at Comment 2, argues that in prior Department decisions that have a similar fact

pattern, the Department has collapsed companies only in conjunction with evidence of intertwined operations. See Ehwa's April 17, 2006, Case Brief at page 10. In Light-Walled Rectangular Pipe and Tube from Turkey, there existed cross-company sales, swapping of inputs, and cross-company use of trucks for transportation of inputs and sales. Similarly, in Steel Concrete Reinforcing Bar from the Republic of Korea, the Department found the existence of cross-company sales, use of common affiliated transportation companies, and recent transfers of senior managers between the companies. Ehwa concludes that the instant case is distinguishable from these two cases because there is a total absence of intertwined operations between Ehwa and Shinhan, despite the existence of the business proprietary fact pattern. For a discussion of the business proprietary information of Ehwa's argument, please see Memorandum from Thomas F. Futtner, Acting Office Director, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, "Collapsing Memorandum for the Final Determination," dated May 15, 2006 (Final Determination Collapsing Memorandum).

Second, Ehwa argues that the Department failed to consider the totality of the circumstances in determining that Ehwa and Shinhan should be collapsed. See Ehwa's April 17, 2006, Case Brief at page 12 (citing Notice of Final Determination of Sales Less Than Fair Value: Stainless Steel Wire Rod from Sweden, 63 FR 40449, 40453 (July 29, 1998) ("Based on a totality of circumstances, the Department will collapse affiliated producers and treat them as a single entity where the criteria of 19 C.F.R. § 351.401(f) are met.") (Stainless Steel Wire Rod from Sweden)). Ehwa claims that the Department, in the instant case, failed to consider the totality of circumstances because it did not consider the lack of any intertwined operations between Ehwa and Shinhan in its collapsing analysis. Specifically, Ehwa argues that the Department did not consider the following record evidence: Ehwa and Shinhan have not had any business dealings with each other in 18 years, the two companies have consistently refrained from cooperating with each other, and Ehwa and Shinhan have no intention of cooperating in the future.

Ehwa argues that the Department failed to consider facts presented on the record that Ehwa and Shinhan have not had any business dealings with each other in over 18 years. Ehwa notes that the Department failed to consider the following information: (1) Ehwa does not share any employees, facilities, transportation services, or have any common sales agreements with customers or purchasing agreements with suppliers (see Ehwa's August 26, 2005, section A response, at A-11; and Ehwa's September 29, 2005, supplemental section A response, at SA-10); (2) Ehwa and Shinhan have no common involvement or cooperation in production, pricing, or business or investment decisions, do not share any strategic information pertaining to research and development, patents, market research (see Ehwa's September 29, 2005, supplemental section A response, at SA-10); (3) neither Ehwa nor Shinhan have extended loans to each other (see Ehwa's August 26, 2005, section A response, at A-12); and (4) there have been no transfers of employees between Ehwa and Shinhan (see Ehwa's September 29, 2005, supplemental section A response, at SA-10). Ehwa also notes that the Department examined VAT purchase and sales reports during its verification, confirming the absence of any purchases or sales to Shinhan between 1996 and 2005. See Sales Verification Report at 5 and Verification Exhibits 4 and 4B.

Ehwa states that the Department also failed to consider information on the record that Ehwa and Shinhan have consistently refrained from cooperating with one another, even though cooperation would have yielded significant benefits to both companies. Ehwa provides several examples of how the companies could have benefitted had they cooperated with one another and coordinated their operations and production. Despite many incentives to cooperate, however, Ehwa argues that Ehwa and Shinhan did not coordinate pricing, production, or any business related decisions, and has no intention to cooperate in the future. See Ehwa's April 17, 2006, Case Brief at page 16.

Ehwa further argues that the Department failed to consider information on the record that demonstrates that neither Ehwa nor Shinhan has any intention or incentive to cooperate at any time in the future. Ehwa argues that, not only are Ehwa and Shinhan fierce competitors, but, as described in the legal opinion memorandum submitted to the Department (see Ehwa's final factual submission, at Exhibit 4), Ehwa notes that Ehwa and Shinhan are prevented by Korea's antitrust laws to coordinate pricing and production. Ehwa argues that, in Circular Welded Carbon Steel Pipes and Tubes from Thailand, supra, the Department declined to collapse based on similar facts – in that case, the respondent's corporate policy prohibited the company or its directors from engaging in transactions with the affiliate companies. Thus, Ehwa argues, as in this case, the respondent company and its affiliates conducted themselves as competitors. See Ehwa's April 17, 2006, Case Brief at page 18.

Ehwa's third argument pertains to certain business proprietary information, which is discussed in the Final Determination Collapsing Memorandum.

Fourth, Ehwa argues that the Department treated the shareholders of Ehwa and Shinhan in an improper manner for purposes of its collapsing analysis. According to Ehwa, the following flaws exist in the Department's analysis of the shareholders: (1) the Department should not have applied a past CIT decision to its collapsing analysis; (2) the regulations contemplate a different type of analysis than that performed by the Department; (3) a collapsing analysis should focus on the affiliated companies themselves; (4) only minimal common ownership actually exists between Ehwa and Shinhan; and (5) Ehwa and Shinhan do not have any common officers, directors, or managers. See Ehwa's April 17, 2006, Case Brief at page 20-34. As Ehwa's business proprietary information is central to the discussion of these arguments, please see the Final Determination Collapsing Memorandum.

In rebuttal, the petitioner asserts that the Department should reject Ehwa's argument that the Department should reverse its Preliminary Determination to collapse Ehwa and Shinhan into a single entity. The petitioner asserts the following: first, the Department's regulations do not require a finding of intertwined operations in order to support and justify a determination to collapse; second, the Department's determination is consistent with past practice; and third, the Department's reliance on a particular CIT case is consistent with past practice and law. See the petitioner's Rebuttal Brief at 22.

First, the petitioner argues that, under the language of the regulations, the Department is not required to find the existence of intertwined operations in order to collapse two companies. The petitioner notes that Ehwa argues in its case brief that the Department has consistently determined that a significant potential for the manipulation of price production under 19 C.F.R. § 351.401(f) does not exist in the absence of intertwined operations between affiliated companies. See Ehwa's Case Brief at 8. According to the petitioner, the language of the regulation does not support Ehwa's position because 19 C.F.R. § 351.401(f)(2) states that the Department "may" examine the level of common ownership, the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and whether operations are intertwined. See the petitioner's Rebuttal Brief at 24, citing 19 C.F.R. § 351.401(f)(2). The petitioner argues that the regulations do not mandate the Department to engage in any particular analysis of this criteria in evaluating the potential for manipulation. Id.

Second, the petitioner argues that the Department's determination to collapse Ehwa and Shinhan is in accordance with its past practice. Citing several previous determinations made by the Department, the petitioner states that the Department has consistently held that there is no requirement that each of the subfactors of 19 C.F.R. § 351.401(f)(2) be met in making a determination of significant potential for manipulation. See the petitioner's Rebuttal Brief at 25 (citing Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan, 62 FR 51427 (October 1, 1997) (Collated Roofing Nails from Taiwan); Certain Welded Carbon Steel Pipes and Tubes from India; Final Results of New Shippers Antidumping Duty Administrative Review, 62 FR 47632 (September 10, 1997) (Welded Carbon Steel Pipes and Tubes from India); Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833 (August 19, 1996) (Fresh Cut Flowers From Colombia)). Further, petitioner notes that the Department has previously collapsed two companies that had no intertwined operations because common control and overlapping boards supported a finding that the two companies had potential to function as a single entity. See the petitioner's Rebuttal Brief at 25, citing Welded Carbon Steel Pipes and Tubes from India at 47639. Petitioner also presents a rebuttal to Ehwa's contention that the Department has never made a determination to collapse affiliated companies in the absence of intertwined operations, when the affiliation is by reason of particular proprietary facts relied upon by the Department. See the petitioner's Rebuttal Brief at 25. For a discussion of the business proprietary information contained in the petitioner's argument see Final Determination Collapsing Memorandum. Moreover, despite Ehwa's allegations to the contrary, the petitioner states that the Department did not fail to consider the totality of circumstances in making its collapsing determination. Id. at 26. The petitioner argues that the Department "duly noted the lack of intertwined operations, and explained why it had found a significant potential for manipulation" in its preliminary determination to collapse. Id. The petitioner argues that the Department's memorandum properly examined the "totality" of the circumstances – the Department explained its determination, referenced past determinations that upheld its determination, and considered all the record evidence and arguments made by Ehwa. Id. at 27.

Third, the petitioner argues that the Department's reliance on a past CIT case, which Ehwa disputes, is consistent with past practice and law. Id. The petitioner argues that the

Department correctly applied this CIT case and that the Department's interpretation of the regulations is supported by past precedent. Id. For a discussion of the business proprietary information central to petitioner's argument, and the CIT case relied upon by the Department, see the Final Determination Collapsing Memorandum.

The petitioner concludes that the facts surrounding the affiliation and collapse of Ehwa and Shinhan have remained unchanged in the investigation. The petitioner summarizes both the circumstances under which the Department found Shinhan and Ehwa to be affiliated in the Preliminary Determination and the Department's findings pursuant to the requirements of 19 C.F.R. § 351.401(f). Id. at 32-34. The petitioner argues that the Department should find a significant potential for the manipulation of price or production between Ehwa and Shinhan because of the common level of ownership in both companies, and also because there is a history of price manipulation. For a discussion of the business proprietary information contained in petitioner's conclusion to this argument, see Final Determination Collapsing Memorandum.

Department Position:

We agree with Ehwa that the evidence on the record does not support a determination that Ehwa and Shinhan should be collapsed into a single entity for the purposes of this investigation. Section 771(33) of the Act defines when two or more parties will be considered affiliated for purposes of an antidumping analysis. See section 771(33) of the Act. In this investigation, the parties do not dispute that Ehwa and Shinhan are affiliated under sections 771(33)(B), (E), and (F) of the Act. In addition, the parties do not dispute that Ehwa and Shinhan are also affiliated through an additional avenue that concerns business proprietary information. See Memorandum from Thomas F. Futtner, Acting Office Director, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, "Petitioner's Allegation Regarding the Business Relationship Between Two Respondents," dated December 20, 2005. Since no party has challenged our decision or analysis concerning affiliation, our decision that Ehwa and Shinhan are affiliated remains unchanged from the Preliminary Determination.

Section 351.401(f) of the Department's regulations states that the Department will treat two or more affiliated producers as a single entity where: (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (2) where there is a significant potential for the manipulation of price or production. We note that while affiliation and similar production facilities are necessary conditions for collapsing affiliated producers, they are insufficient on their own to collapse affiliated producers. See Allied Tube. In identifying a significant potential for the manipulation of price or production, the factors that the Department may consider include: (A) the level of common ownership; (B) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (C) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between affiliated producers. See 19 C.F.R. § 351.401(f)(2). Each of these factors need not be met in a particular case, but rather serve as a reliable basis on which the

Department may judge whether the affiliated producers are sufficiently related to create the potential for price or production manipulation. See Collated Roofing Nails From Taiwan (citing Welded Carbon Steel Pipes and Tubes From India).

In this investigation, it is undisputed the Ehwa and Shinhan have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities. Instead, the sole issue facing the Department is whether there exists a significant potential for the manipulation of price or production. The Department reviewed the information placed on the record by the parties throughout the course of this investigation, and obtained by the Department during verification, regarding the three factors identified above. Since the key elements to our analysis regarding the significant potential for manipulation of price or production are business proprietary information, a detailed public summary in this notice is not possible. See Final Determination Collapsing Memorandum. Based upon our analysis, we find that the level of common ownership between Ehwa and Shinhan is substantial. Furthermore, we find that Ehwa and Shinhan do not jointly employ or share any persons as managers, executives, or members of the board; nor is there any evidence on the record that there have been any shared individuals during the last 18 years. Lastly, we find that there are no intertwined operations between the two companies. For a discussion of our analysis, see Final Determination Collapsing Memorandum. This leads us to conclude that the record evidence is not sufficient to warrant collapsing. The Court has held that “the evidence required to justify a collapsing determination ‘goes beyond that which is necessary to find common control.’” See Allied Tube (quoting Welded Carbon Steel Pipes and Tubes from Thailand).

Based on these findings, and our analysis of the business proprietary information, we conclude that the significant potential for manipulation of price or production does not exist in this case. Therefore, for the final determination, we have treated Ehwa and Shinhan separately, and calculated margins specific to each company.

Comment 14: Whether the Department Should Treat Information Regarding a Particular Relationship Between Ehwa and Shinhan as Public Information.

The petitioner argues that the Department’s decision to treat a particular relationship between Ehwa and Shinhan, as well as citations to certain sections of the Act and citations to past Departmental, CIT, and CAFC decisions regarding this particular type of relationship, as business proprietary information is incorrect. The petitioner states that while the exact nature of this relationship should not be deemed public information, the general knowledge of the existence of this relationship between Ehwa and Shinhan should be treated as public information. Further, the petitioner contends that citations to federal statutes, and judicial and Departmental opinions regarding this particular type of relationship should not be treated as business proprietary information.

The petitioner states that it submitted affidavits on the record of this investigation to demonstrate that a particular relationship between Ehwa and Shinhan is well known in the DSB industry. The petitioner notes that the Department did not weigh these affidavits in its determination to designate a particular relationship between Ehwa and Shinhan as business proprietary. By not considering these affidavits, the petitioner argues that the Department misunderstood the probative value of the affidavits in that the affidavits need not prove that a specific relationship exists between Ehwa and Shinhan. Rather, the petitioner argues, the affidavits need only establish that there is general knowledge that such a relationship exists. Moreover, the petitioner asserts that the affiants should not be required to prove how they specifically became aware of the specific relationship between Ehwa and Shinhan. Rather, the petitioner maintains that it is enough that the affiants do in fact know and have sworn that it is common industry information. Further, the petitioner notes that there is a public press release that indicates that Mr. Shin Kyung Kim, the President of Shinhan, founded both Ehwa and Shinhan and served as the CEO of both companies at some point. In addition, the petitioner notes that Mr. Shin Kyung Kim owns 18.32 percent of Ehwa. Moreover, the petitioner argues that although Ehwa has claimed that public treatment of its particular relationship with Shinhan would cause it substantial harm, Ehwa has presented no evidence to support this specific claim.

The petitioner argues that the Department's decision to designate certain citations to public and legal documents as business proprietary is erroneous because public and legal documents are not the appropriate subject of an APO. The petitioner contends that it has never argued that specific information submitted under APO should be released to the public. Moreover, the petitioner notes that, in its decision to classify a particular relationship between Ehwa and Shinhan as business proprietary, the Department also stated that it is "bound by a statutory obligation to make public the legal bases of its antidumping determinations." See the petitioner's Case Brief at page 62. The petitioner argues that Ehwa has taken the extreme position that legal arguments and citations to legal documents deserve to be protected under the APO. The petitioner asserts that if Ehwa's position is accepted, then it will prevent public disclosure of the mere allegation of a particular type of relationship, and citations to the relevant law. Therefore, the petitioner urges that Department to treat information regarding a particular relationship between Ehwa and Shinhan, as well as relevant citations to past Departmental, CIT and CAFC decisions, as public information.

In rebuttal, Ehwa supports the Department's decision that a particular relationship between Ehwa and Shinhan should be treated as business proprietary information. Ehwa contends that the petitioner has presented no new arguments to compel a contrary determination. Rather, Ehwa states that the petitioner refers back to submitted affidavits as evidence that knowledge of the relationship exists in the public realm. However, Ehwa notes that, in its decision to treat the particular relationship between Ehwa and Shinhan as business proprietary, the Department stated that the affidavits submitted by the petitioner were "somewhat vague" and that these affidavits did not demonstrate that the relationship was "a matter of public record." See Ehwa's Rebuttal Brief at page 45. In addition, Ehwa faults the petitioner's argument that proprietary treatment of this information would bar it from making allegations regarding this relationship. Ehwa states that under APO, the petitioner has full access to Ehwa's proprietary

information and can use it in the context of the investigation as long as it is protected from public disclosure. Further, Ehwa states that the petitioner's claim that Ehwa did not demonstrate that the public release of this information would cause it substantive competitive harm is false because it provided a detailed letter to the Department justifying the need for proprietary treatment of this information. Therefore, Ehwa urges the Department to continue to find that this relationship (as well as any relevant references to federal statutes and judicial and Departmental case cites) is entitled to proprietary treatment.

Department Position:

We have determined that it is appropriate to treat certain information submitted by the respondents as business proprietary. While citations to federal statutes, judicial decisions, and Department determinations are not in and of themselves proprietary information, there are exceptional circumstances in which it may be necessary for the Department to bracket such citations in order to adequately ensure the protection of properly-designated business proprietary information. The nature of the relationship between Ehwa and Shinhan presents such a situation. Accordingly, we are continuing to craft our discussion of any issues regarding this information carefully, so as not to divulge any business proprietary information.

Comment 15: Whether the Department Should Collapse Ehwa with its Chinese Affiliates.

The petitioner argues that the Department should collapse Ehwa with its two Chinese affiliates because these affiliates provided Ehwa with components for finished DSB. The petitioner contends that Ehwa's relationship with its Chinese affiliates meets all the requirements for collapse under the Act and under the Department's regulations. First, the petitioner notes that 19 C.F.R. § 351.401(f) states that the Department will collapse companies where (1) they are affiliated pursuant to section 771(33) of the Act; (2) they produce similar merchandise on similar machines; and (3) there is a significant potential for the manipulation of price or production in the absence of collapse. The petitioner notes that Ehwa and its Chinese affiliates are affiliated pursuant to section 771(33)(F) and (G) of the Act because Ehwa has common control of its affiliates. Second, the petitioner asserts that Ehwa and its Chinese affiliates have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities. Third, the petitioner contends that there is a significant potential for the manipulation of prices and/or production among Ehwa and its Chinese affiliates because Ehwa exercises common control of its Chinese affiliates and because Ehwa and its affiliates have intertwined operations. The specific details provided by the petitioner of these intertwined operations are not suitable for public summary. See the petitioner's Case Brief at pages 65-66. Accordingly, the petitioner argues that Ehwa and its Chinese affiliates should be collapsed pursuant to 19 C.F.R. § 351.401(f).

In addition, the petitioner argues that the Act is drafted in such a way as to place no bar on such cross-border collapses. The petitioner notes that neither section 771(33) of the Act nor 19 C.F.R. § 351.401(f) makes any reference to the geographical locations of the entities to be

collapsed. In fact, the petitioner argues that the Act and the Department's regulations permit such treatment. As regards the Department's regulations, the petitioner notes that 19 C.F.R. § 351.102(b) states that the Department will not collapse affiliates unless their relationship "has the potential to impact decisions concerning the production, pricing, or costs of the subject merchandise or foreign like product." The petitioner argues that given that the services provided by Ehwa's affiliates have the potential to impact decisions regarding DSB pricing, production or costs in Korea, there appears to be no bar to collapse. Further, the petitioner contends that the statute identifies at least one instance in which cross-border analysis is expressly required. Specifically, the petitioner notes that the special rule for certain multinational corporations, section 773(d) of the Act, requires the Department, where certain requirements are met, to determine NV by reference to the value at which the foreign like product is sold from one or more facilities outside of the exporting country. The petitioner contends that this provision is one instance where Congress expressly describes when the Department would be required to look beyond the exporting country for value information. Accordingly, the petitioner argues that there is no statutory bar on cross-border analysis in a dumping investigation. Therefore, the petitioner urges the Department to collapse Ehwa with its Chinese affiliates.

In rebuttal, Ehwa states that while it does not dispute the fact that it is affiliated with Weihai and Fujian, located in China, 19 C.F.R. § 401(f)(1) requires that the Department find that the affiliated producers in question all produce subject merchandise. Ehwa contends that Weihai and Fujian do not produce subject merchandise from the perspective of the Korean investigation because all of their manufacturing activities take place in China. Rather, Ehwa contends that its Chinese affiliates manufacture inputs used in the production of subject merchandise in Korea.

Moreover, citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Italy, 67 FR 3155 (January 23, 2002) and accompanying Issues and Decision Memorandum, at Comment 8 (SSB from Italy), Ehwa states that the Department has previously considered and rejected the argument that it can collapse two producers located in different countries. See Ehwa's Rebuttal Brief at page 41. Thus, contrary to the petitioner's contention, Ehwa asserts that the Department has already confirmed that the Act bars cross-border collapsing of affiliated parties.

Finally, Ehwa states that the petitioner's reference to the multinational corporation provision is inapposite because it pertains to situations where NV is determined based, in part, on sales in a third country. Ehwa contends that because the NV is based on HM sales in the present case, this provision of the Act does not apply.

Department Position:

We agree with Ehwa that it should not be collapsed with its Chinese affiliates. Because an antidumping proceeding involves merchandise from one country, the Department does not collapse across country lines. See Slater Steels Corp., Fort Wayne Speciality Alloys Division; Carpenter Technology Corp., Crucible Specialty Metals Division, Crucible Materials Corp.; Electralloy Corp.; and United Steel Workers of America, AFL-CIO/CLC, Plaintiffs, v. United

States, 297 F. Supp. 2d 1362, (CIT 2003). Specifically, as detailed in SSB from Italy, in an antidumping duty proceeding, the Department compares the NV of the “foreign like product” to the EP or CEP of the subject merchandise. See section 773(a) of the Act. See also section 773(e)(2)(A) (selling, general, and administrative expenses (SG&A) determined in connection with “the production and sale of a foreign like product”).

Section 771(16) of the Act gives a number of alternative definitions of “foreign like product.” In all of the alternative definitions, the foreign like product must be produced in the “same country” as the subject merchandise. The term ‘country’ means a foreign country, a political subdivision, dependent territory, or possession of a foreign country, and, except for the purpose of antidumping proceedings, may include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States. See section 771(3) of the Act. Therefore, in an antidumping investigation, NV can only be calculated by examining the subject merchandise in one country.

The Department’s regulations set forth the rules for collapsing two companies into a single entity. The regulations begin by stating that, “{i}n an *antidumping proceeding* under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price and production.” See 19 C.F.R. § 351.401(f) (*emphasis added*). Thus, the regulations make clear that collapsing can only occur within “an antidumping proceeding.” Because an antidumping proceeding only involves the subject merchandise of one country, this means that the Department cannot collapse producers across country lines under 19 C.F.R. § 351.401(f).

While the Department has used the information from two companies to calculate a single weighted-average margin for those companies when it determined collapsing was appropriate, the Department has done so only within the confines of a single proceeding, which involved a single country. See, e.g., Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review, 66 FR 14889, 14889 (March 14, 2001). Therefore, for the final determination, the Department will not collapse Ehwa with its Chinese affiliates.

Comment 16: Whether Ehwa’s Other Discounts and Certain Billing Adjustments Should be Treated as Selling Expenses for Purposes of Calculating CEP Profit.

The petitioner notes that Ehwa reported adjustments for quality claims as billing adjustments because Ehwa stated that it could not distinguish between expenses related to quality claims and those related to billing adjustments without manually reviewing thousands of credit notes. See the petitioner’s Case Brief at page 68. The petitioner states that, at verification, the Department confirmed that credit notes for billing adjustments were mixed together with credit notes for warranty claims. Id. In addition, the petitioner notes that the Department stated that there was no consistent practice of accurately labeling warranty claims in all cases because there

were additional warranty expenses mixed in that were not labeled as such. *Id.* The petitioner argues that Ehwa has inappropriately reduced its CEP profit deduction, and ultimately its dumping margin, by reporting warranty expenses as billing adjustments.

If the Department accepts Ehwa's reporting of quality claims as a billing adjustment, the petitioner argues that the Department will establish a precedent of allowing a respondent to shield its U.S. selling expenses from CEP profit by keeping inaccurate records or by not undertaking the effort to report accurate data. The petitioner contends that Congress has mandated that the Department distinguish direct expenses, such as warranty expenses, under section 772(d)(1)(B) of the Act in order to properly calculate CEP profit under section 772(f) of the Act and to apply that profit under section 772(d)(3) of the Act. The petitioner contends that Ehwa was afforded an opportunity to accurately report its data and failed to do so. Instead, the petitioner asserts that Ehwa simply argued that the quality claims at issue related to "poor product performance" and, as such, were not warranty expenses. *See* the petitioner's Case Brief at page 70. The petitioner argues that this is the very nature of a warranty expense.

Therefore, the petitioner argues that because Ehwa failed to differentiate warranty expenses from other types of credit notes, the Department should, as mandated by the Act, remove certain billing adjustment fields from the GUPADJU calculation and add these fields to the USDIREXPU calculation for the final determination.

In rebuttal, Ehwa argues that section 772(f)(2)(B) of the Act establishes that the only expenses that should be included in the CEP profit calculation are those expenses identified in sections 772(d)(1) and (2) of the Act. Ehwa notes that billing adjustments are not included in these subsections. Ehwa explains that customers in this industry often attempt to negotiate post-sale price discounts through making "quality claims" about past purchases. According to Ehwa, these are not warranty claims, because Ehwa does not repair or replace products at no additional cost to the buyer. Instead, Ehwa argues that these "quality claims" are an attempt by the customer to obtain a price reduction. In addition, Ehwa notes that the Department verified that its accounting system does not distinguish between credit notes issued as a result of "quality concerns" from other credit notes issued for other reasons. Lastly, Ehwa notes that the Department has a history of treating credit notes issued for "quality claims" as price adjustments. Ehwa cites Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Live Swine From Canada, 69 FR 61639, 61643 (October 20, 2004) (billing adjustment included adjustments for "product quality"); Notice of Preliminary Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada, 66 FR 51010, 51012 (October 5, 2001) (describing billing adjustments as "adjustments for damage, quality, or condition claims"). Ehwa concludes by claiming that there is no basis for the Department to include its billing adjustments and other discounts in the pool of CEP selling expenses used to calculation CEP profit.

Department Position:

We agree with Ehwa in part. The Department verified that Ehwa issues a large number of credit notes for a variety of reasons, one of which is “quality concerns” made by U.S. customers. Although Ehwa portrays this subset of credit notes as attempts by customers to obtain price reductions, and are not truly reflective of the quality of the product, we note that Ehwa indicated in its own internal credit memos that the reason for the requested price adjustments are quality concerns. See Ehwa’s CEP Verification Report at Exhibit 18, page 15. While it is possible Ehwa’s personnel were only recording the reason as provided by the customer, the fact that Ehwa’s own internal documents indicate the reason for the credit memos are quality concerns does raise the question as to whether these price adjustments should be considered warranty claims. Even though Ehwa characterizes warranty expenses in a formal manner, where a contract between the buyer and seller stipulates the conditions under which the seller will repair or replace products at no additional cost to the buyer, the Department’s questionnaire does not restrict warranty expenses to such formal circumstances. See section C of the Department’s antidumping questionnaire. Situations where sellers provide price reductions to buyers in response to buyers claiming that specific products had quality problems could reasonably be construed as warranty expenses. We also note that Ehwa mischaracterizes the Department’s verification report when it states that the Department “verified that the billing adjustments in question were not ‘warranty’ claims.” See Ehwa’s Rebuttal Brief at 20. The Department did not provide in its report a judgement as to whether these claims should be considered warranty claims or not. Rather, the verification report states that the Department verified that Ehwa does not maintain a separate accounting code for “warranty” expenses, Ehwa cannot electronically or systematically distinguish in its accounting system credit memos for quality concerns from credit memos for other reasons, and that Ehwa’s claim of issuing “thousands” of credit notes during the POI is a reasonable estimate. See Ehwa’s CEP Verification Report at 22. However, in light of the verified difficulties Ehwa faced in identifying credit memos issued for quality concerns, and that the record is unclear as to whether these credit memos are truly warranty expenses, we determine not to include billing adjustments in the calculation of CEP profit for the final determination. In the event there is an antidumping duty order issued on DSB from Korea, we will review Ehwa’s classification of credit memos for quality concerns as billing adjustments, rather than warranty expenses, if an administrative review is requested.

Comment 17: Whether Ehwa Placed Conflicting Values Related to its Indirect Selling Expenses on the Record.

The petitioner argues that Ehwa placed differing values related to its indirect selling expense calculations on the record of this investigation in its submission of U.S. verification exhibits. See the petitioner’s Case Brief at page 71. The petitioner provides examples of these inconsistencies in its case brief, however the specific values are not suitable for public summary. Id. In addition, the petitioner contends that within the calculations provided in Exhibit 34 of Ehwa’s CEP Verification Report, Ehwa used inconsistent formulas. The petitioner provides examples of these inconsistent formulas, however the specific values in these formulas are not suitable for public summary. Id. at page 72. The petitioner states that since the Department found no discrepancies at verification, the Department should determine why these values and

formulas are inconsistent. The petitioner asserts that the Department should use the correct values for the final determination.

In rebuttal, Ehwa contends that there were no conflicting values in its CEP verification exhibits. Rather, Ehwa states that the figures that appear in Exhibit CEP-34 were the original figures that Ehwa submitted in its questionnaire response, whereas the figures that appeared in Exhibit CEP-1 had been revised to correct minor clerical errors in the calculation. See Ehwa's Rebuttal Brief at page 26. Ehwa states that the Department should rely upon the data contained in Exhibit CEP-1. In addition, Ehwa states that the petitioner is incorrect in its claim that Ehwa used an inconsistent formula in the indirect selling expense calculation. Ehwa states that differing values were used for each affiliate which resulted in different calculations for each affiliate in the calculation of indirect selling expenses. Id.

Department Position:

We agree with Ehwa that the values in the CEP verification exhibit were not in conflict. Exhibit 1 of Ehwa's CEP Verification Report contains minor error corrections that were presented on the first day of Ehwa's CEP sales verification. See Ehwa's CEP Verification Report at page 3. Specifically, Ehwa, as a part of minor corrections, explained that it discovered that it had inadvertently excluded certain expenses from its calculation of indirect selling expenses. Id. Therefore, Ehwa presented a revised indirect selling expense calculation, which resulted in values that differed from those presented in its questionnaire responses.

In Exhibit 34, in order for the Department to verify the information previously placed on the record of the investigation, Ehwa presented a calculation of indirect selling expenses that was consistent with that presented in its questionnaire responses. See Ehwa's CEP Verification Report at Exhibit 34. However, at verification, the Department noted that "the calculation chart in Exhibit 34 (indirect selling expenses) did not include Ehwa's revision to include freight for {certain sales}. As part of Ehwa's minor corrections for indirect selling expenses, Ehwa revised indirect selling expense to include freight for {certain sales}. See Ehwa's CEP Verification Report at page 16. Accordingly, the Department finds that the inconsistencies noted by the petitioner were, in fact, due to minor corrections presented on the first day of verification. The Department will revise Ehwa's indirect selling expenses for the final determination to reflect the minor corrections presented by Ehwa on the first day of its CEP sales verification.

Moreover, the Department finds that the formulas presented in Exhibit 34 of Ehwa's CEP sales verification do not demonstrate an inconsistency. In Exhibit 34, Ehwa provides a calculation of indirect selling expenses for each affiliate. As a result, due to the differing business practices of each affiliate, Ehwa accounted for certain expenses differently for each affiliate. Therefore, the Department finds that no inconsistency exists.

Comment 18: Whether the Department Should Correct Formulas Used in Ehwa's Calculation of Indirect Selling Expenses.

The petitioner contends that Ehwa placed differing sums related to its indirect selling expense calculations on the record of this investigation in its submission of U.S. verification exhibits. See the petitioner's Case Brief at page 73. The petitioner provides examples of these differing sums in its case brief, however the specific values are not suitable for public summary. Id. The petitioner asserts that the Department should use the correct values for the final determination.

In rebuttal, Ehwa states that it agrees with the petitioner that it incorrectly accounted for a certain value in the calculation of net sales value. Id. at page 27. However, Ehwa asserts that correcting this error results in a difference that is too small to have any discernable impact on the Department's calculations and should be disregarded for the final determination.

Department Position:

As discussed above and below, we are re-calculating Ehwa's indirect selling expenses for the final determination. Therefore, we will correct this matter for the final determination. See Final Determination Calculation Memorandum, dated May 15, 2006.

Comment 19: Whether the Department Should Disallow Ehwa's Allocation of Indirect Selling Expenses Between the Industrial and the Stone & Construction Divisions because Ehwa's Sales of 1A1R Merchandise are from the Industrial Division.

The petitioner asserts that the Department learned for the first time, at verification, that Ehwa allocated its total indirect selling expenses between its Stone & Construction division and its Industrial Division before completing its calculations. The petitioner contends that the record of this investigation, including the verification report, contains no justification or explanation for this step. For this reason alone, the petitioner argues that the Department should deny Ehwa's allocation. However, assuming that Ehwa's attempted explanation is that the Industrial Division does not sell subject merchandise, the petitioner contends that Ehwa's allocation is still incorrect because the Industrial Division does, in fact, sell subject merchandise.

Given that the values have not changed since Ehwa first reported its ratios, the petitioner asserts that the Department can see that Ehwa's allocation methodology came about at a time when it was arguing that 1A1R products were not covered by the scope of this investigation. However, the petitioner notes that the Department has determined that 1A1R products are within the scope of the investigation. Id. at page 74. In addition, the petitioner notes that both the HM and the U.S. sales verifications demonstrate that Ehwa also concedes that 1A1R products are within the scope of the investigation. Id. Further, the petitioner asserts that 1A1R products are sold in the Industrial Division. Id. Therefore, the petitioner maintains that Ehwa should have voluntarily revised its indirect selling expense calculation to include expenses from the Industrial Division. However, since Ehwa has not taken this step, the petitioner asserts that the Department should correct this matter for the final determination. The petitioner states that the information

necessary to make this adjustment is located on the record in Verification Exhibit 34 of Ehwa's CEP verification report. Id.

In rebuttal, Ehwa states that the petitioner's claim that Ehwa notified the Department of its allocation methodology for the first time at verification is untrue. Ehwa notes that, in its December 2, 2005, supplemental questionnaire response, it informed the Department that it calculated indirect selling expenses by segregating income statements into the construction and Industrial Division. See Ehwa's Rebuttal Brief at page 27. Second, citing Certain Polyester Staple Fiber from Korea, Ehwa argues that the recalculations proposed by the petitioner are unwarranted because the Department has a practice of permitting the calculation of divisional indirect selling expense ratios. Id. at 28; see also Certain Polyester Staple Fiber From Korea: Final Results of Antidumping Duty Administrative Review and Final Determination To Revoke the Order in Part, 69 FR 61341 (October 18, 2004) and accompanying Issues and Decision Memorandum, at Comment 1.

Department Position:

We agree, in principle, with the petitioner that Ehwa's calculation of indirect selling expenses should include those expenses attributable to 1A1R products from Ehwa's Industrial Division. Ehwa calculated indirect selling expenses based upon merchandise sold solely from the Stone & Construction division. See Ehwa's CEP Sales Verification Report at page 16. However, its home market and U.S. market sales databases included sales of 1A1R products from its Industrial Division. See Ehwa's December 2, 2005, questionnaire response at page SC-31. Nevertheless, even though we agree with the petitioner in principle, given the negligible impact such an adjustment would have on the calculation, we will not update Ehwa's indirect selling expenses to include expenses from its Industrial Division for the final determination. See, e.g., Brass Sheet and Strip From Canada: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part, 64 FR 46344, 46346 (August 25, 1999) (where the Department did not adjust warranty expenses noting that doing so would have a *de minimis* effect on the calculations). Ehwa's sales of 1A1R products accounted for an insignificant percentage (by quantity or value) of its home market and U.S. market sales. See Ehwa's April 14, 2006, home market and U.S. market sales databases. Accordingly, the Department will not adjust Ehwa's indirect selling expenses to include expenses from its Industrial Division for the final determination.

Comment 20: Whether the Department Should Calculate the Indirect Selling Expense Ratio for Each of Ehwa's U.S. Affiliates.

The petitioner states that Ehwa originally reported an indirect selling expense ratio based on the combined expenses and revenues of all four of its U.S. affiliates. See the petitioner's Case Brief at page 75. The petitioner notes that the Department directed Ehwa to report a separate ratio for each company, consistent with the Department's boilerplate questionnaire instructions. Id. However, the petitioner contends that in the Department's April 11, 2006, letter to Ehwa, the Department was unclear in instructing Ehwa to correct its indirect selling expense ratios.

Consequently, instead of reporting indirect selling expense values based on an affiliate-specific basis, the petitioner asserts that Ehwa reported this field based on a combined ratio. Id.

The petitioner states that it is the Department's practice to separately calculate an amount for indirect selling expenses for each affiliate involved in the sales process and to include each amount in the margin program. For example, in Beams from Korea, the petitioner states that three entities were involved in making the sale: the producer, Dongkuk Steel Mill (DSM), an affiliated Korean reseller (DKI), and an affiliated U.S. reseller (DKA). Id.; see also Structural Steel Beams From the Republic of Korea; Final Results of Antidumping Duty Administrative Review (Beams from Korea), 69 FR 7200 (February 13, 2004) and accompanying Issues and Decision Memorandum, at Comments 3 and 4. The petitioner states that the respondent in Beams from Korea separately reported selling expenses for each entity. The petitioner asserts that in Beams from Korea, the Department was not concerned with whether it should calculate an amount for each company (versus a combined ratio). Rather, the petitioner asserts that the Department was concerned with making an apples-to-apples application of the ratio. The petitioner maintains that in Beams from Korea, the Department correctly agreed with both parties that, since it was using DKI's selling expenses and dividing that by DKI's total sales to arrive at a ratio, it should apply that ratio to DKI's transfer price to DKA rather than applying DKI's ratio to DKA's price to the final customer. Thus, the petitioner states that Beams from Korea set a logical precedent: if a sale involves multiple affiliated parties, each party will incur expenses in selling the merchandise, and the Department will calculate an appropriate ratio for each entity for use in the margin calculation. Moreover, the petitioner contends that in order to apply each company's ratio, the Department uses the matching transfer price.

In this case, the petitioner asserts that Ehwa established a sales process whereby its U.S. sales are made by four affiliates: General Tool (General Tool), Dia-Tech (DT), Maverick (MV), and DVI. However, the petitioner asserts that sales made by these entities are not equal. Specifically, the petitioner states that all U.S. sales are first made from Ehwa to GT. The petitioner notes that GT can either sell to an unaffiliated customer or sell to DT. The petitioner states that DT can, likewise, sell to an unaffiliated customer, DT, MV, or DVI. Thus, for sales made by DT, the petitioner contends that the Department must account for GT's selling expenses in addition to DT's selling expenses. Likewise, for MV or DVI, the petitioner argues that the Department must account for GT's selling expenses, DT's selling expenses, and either MV or DVI's selling expenses, as the case may be. The petitioner contends that because a sale made by GT to an unaffiliated customer did not incur the same amount of selling expenses as a sale made by DVI to an unaffiliated customer, it would be a distortion to treat them equally, as Ehwa proposes, in the margin calculations.

The petitioner contends that this argument makes perfect sense in terms of business reality. The petitioner explains that as the sale moves from one party to the next, each party incurs expenses related to the sale. Even if the merchandise is not physically handled by each party, there are accounts payable/receivable personnel that handle payment and invoicing, accounting staff that book the transactions, and office equipment that is used to handle the underlying emails, faxes, phone calls, *etc.* So as the sale progresses through one, two, or three

affiliates, the petitioner states that each entity typically incurs additional expenses attributable to the sale. However, the petitioner contends that because not all of Ehwa's U.S. sales pass through each of its affiliates, each sale does not incur an equal number of expenses. Because of this layering effect, the petitioner states that it would be inappropriate to use Ehwa's "combined" ratio, which Ehwa applies equally to all sales. The petitioner asserts that the Department, by accepting Ehwa's combined ratio, would create a known and avoidable distortion by over-applying selling expenses to those sales made by GT (because GT's sales in fact did not incur the additional layers). Likewise, the petitioner asserts that Ehwa's approach would under-apply selling expenses to sales made by DT, MV, and DVI. Given the Department's directive to calculate margins on as accurate a basis as is possible, the petitioner asserts that it would be impermissible for the Department to ignore this distortion.

The petitioner proposes the following as a means to calculate and apply an indirect selling expense ratio for each company based on information on the record. First, the petitioner states that the Department can calculate a company-specific indirect selling expense numerator by using information in CEP Sales Verification Exhibits 1 and 34. Second, the petitioner states that the denominator should be total sales for that company, not the net value Ehwa calculates by subtracting out the inter-company sales. The petitioner asserts that it is appropriate to use the total price, including the transfer price, rather than the net sales because the Department will be applying the ratio to the transfer price for each sale, just as it did in Beams from Korea. Third, the petitioner states that the Department will calculate the ratio for each company by dividing the numerator into the denominator. The petitioner states that the Department can then proceed with its margin calculations. However, the petitioner contends that the Department must still account for transfer price. The petitioner states that record of this investigation already contains this information. The petitioner states that the sales traces show that the transfer prices are all equal to the final sales price. See the petitioner's Case Brief at pages 78-79. Therefore, the petitioner maintains that the Department can apply the ratio to the net price for all legs of the transaction.

In its case brief, Ehwa observes that it reported consolidated U.S. indirect selling expenses for its four affiliated entities involved in U.S. sales in its original section B response. Ehwa notes that the Department instructed it to recalculate U.S. indirect selling expenses by applying separate indirect selling expense ratios for each company. Ehwa urges the Department to use the consolidated indirect selling expense ratio in the final determination. Ehwa argues that splitting the indirect selling expenses among the various Ehwa U.S. affiliates is arbitrary because these companies effectively function as a single sales entity. Ehwa provided examples of ways in which these companies function as a single sales entity, however the details of these examples are not suitable for public summary. See Ehwa's Case Brief at pages 43-44. Ehwa notes that the Department has used a collapsed expense ratio in previous cases where dictated by the totality of the circumstances. For example, in Certain Color Television Receivers from Malaysia, Ehwa states that the Department revised the respondent's reported G&A expenses based on the company-wide G&A expenses of the parent company. See Ehwa's Case Brief at page 45 (citing Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers From Malaysia, 69 FR 20592 (April 16, 2004) (Color Television Receivers from Malaysia)). Ehwa argues that in Color Television Receivers from Malaysia, the Department

found that the parent company was intimately involved in the day-to-day operations of its subsidiaries and thus, the affiliates functioned as a division of the parent company rather than independently operated subsidiaries. Therefore, Ehwa argues that the Department should treat its four U.S. affiliates as a single entity for purposes of calculating the U.S. indirect selling expenses.

In rebuttal to Ehwa's argument, the petitioner states that contrary to Ehwa's assertion, the Department's practice is to separately calculate an amount for indirect selling expenses for each affiliate involved in the sales process and to include each amount in the margin program. The petitioner states that the totality of the circumstances demonstrates that sales made by Ehwa's U.S. affiliates are not equal, and, therefore, it would be inappropriate to use a consolidated indirect selling expense ratio.

In rebuttal to the petitioner's argument, Ehwa argues that the Department should use a consolidated indirect selling expense ratio in the final determination. Ehwa contends that unlike other cases in which the Department has calculated separate indirect selling expense ratios for companies involved in selling subject merchandise, the facts of this case are unique in that the four affiliated companies effectively function as a single entity. Moreover, Ehwa states that the Department has calculated combined U.S. indirect selling expense ratios in prior cases. See Ehwa's Rebuttal Brief at page 29; see also Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From the People's Republic of China, 62 FR1708, 1710 (January 13, 1997). However, Ehwa argues that if the Department agrees that company-specific indirect selling expenses should be used, it should reject the calculation methodology suggested by the petitioner to implement this change. Ehwa contends that the petitioner's proposed methodology represents a deliberate attempt to inflate Ehwa's dumping margin in a way that does not reflect a reasonable assessment of any price discrimination. Rather, Ehwa states that the Department should use the company-specific ratios calculated in Ehwa's December 2, 2005, supplemental questionnaire response, as adjusted for corrections presented at verification. Ehwa states that its calculation reflects the business reality that indirect selling expenses are incurred as a result of activities for selling to external customers, which is why Ehwa states that it excluded inter-company sales revenue from the denominator of the company ratios. Conversely, Ehwa contends that the petitioner's suggested methodology is based on the assumption that the same ratios apply to both internal and external transactions, which Ehwa asserts is incorrect.

Department Position:

We agree with the petitioner, in part. First, the Department's antidumping questionnaire instructed Ehwa to report indirect selling expenses for each affiliated reseller in the United States. See the Department's July 20, 2005, antidumping questionnaire at page C-28. However, in its October 3, 2005, section C response, Ehwa did not comply with this instruction. Rather, Ehwa reported a consolidated indirect selling expense ratio for its affiliated resellers located in the United States. See Ehwa's October 3, 2005, questionnaire response at C-31. In response, the Department instructed Ehwa to comply with its original instructions and report separate indirect

selling expenses for each affiliated reseller located in the United States. See the Department's October 28, 2005, supplemental questionnaire at page 14. Ehwa submitted its response to this questionnaire on December 2, 2005, and reported separate indirect selling expenses for each affiliated U.S. reseller. See Ehwa's December 2, 2005, supplemental response at page SC-28. The Department then verified Ehwa's indirect selling expenses, as reported in Ehwa's December 2, 2005, questionnaire response, for each affiliated U.S. reseller located in the United States. See Ehwa's CEP Sales Verification Report at page 40. On April 11, 2006, the Department instructed Ehwa to submit revised home market and U.S. market sales databases to reflect the minor corrections presented at verification. See April 11, 2006, letter. Specifically, the Department instructed Ehwa to update its U.S. indirect selling expenses to reflect the minor corrections related to Ehwa having inadvertently excluding certain expenses from its calculation. Id. at 2. However, the Department did not instruct Ehwa to revise its indirect selling expenses to be based on a consolidated ratio.

Moreover, we disagree with Ehwa that a consolidated ratio it is warranted for its U.S. indirect selling expenses. In calculating indirect selling expenses, the Department's practice is to base these expenses, as closely as possible, on the experience of the companies which actually made the sales of subject merchandise. See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Spain, 67 FR 35482 (May 20, 2002) and accompanying Issues and Decision Memorandum, at Comment 12. In this case, GT, DT, DVI and MV are Ehwa's four affiliated resellers that actually made sales of subject merchandise during the POI. See Ehwa's October 3, 2005, questionnaire response at page C-12. Moreover, when calculating U.S. indirect selling expenses, the Department's practice is to calculate separate indirect selling expenses for each U.S. affiliate. See Structural Steel Beams From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 7200 (February 13, 2004) and accompanying Issues and Decision Memorandum, at Comment 4. Although Ehwa argues that its U.S. affiliates function as a single entity, we note that each entity performs different functions. For example, Ehwa stated that all U.S. sales are made through its U.S. affiliate General Tool. See Ehwa's August 26, 2005, response at page A-14. General Tool may repackage the products prior to shipment. Id. General Tool, in turn, then sells subject merchandise either to unaffiliated customers or to Ehwa's second U.S. affiliate, DT. Id. DT, in turn, makes sales to two affiliated resellers, DVI and Maverick. Therefore, given the Department's preference for basing indirect selling expenses, as closely as possible, on the experience of the companies which actually make the sales of subject merchandise, the Department finds that it is appropriate to calculate separate indirect selling expenses for each of Ehwa's U.S. affiliates for the final determination.

The Department will base this calculation on Ehwa's verified data, as opposed to the methodology suggested by the petitioner. The petitioner suggests that the Department calculate indirect selling expenses for each of Ehwa's U.S. affiliates by including expenses associated with inter-company transfers of subject merchandise from affiliate to affiliate. In a sense, the petitioner proposes that the Department stack expenses associated with transferring merchandise from one affiliate to the next in addition to the expense that each affiliate experiences when preparing to sell to external customers. However, we disagree with the petitioners that these inter-company expenses should be included in the calculation of U.S. indirect selling expenses

because selling expenses are incurred when selling to external customers, not for transfers between affiliates.

Comment 21: Whether Ehwa Properly Excluded its Sales of Refurbished Products from its HM Sales Database.

Ehwa observes that the Department, in its verification report, stated that “Ehwa did not report its HM sales of refurbished products because Ehwa considers these transactions to be a service it provides to certain HM customers, and that this issue may require further consideration by the Department.” See Ehwa’s Case Brief at page 50. Ehwa argues that this issue does not warrant further consideration because it is appropriate that sales of refurbished products should not be reported. Ehwa states that it notified the Department in its original section B questionnaire response that it was not reporting its sales of refurbished products because such transactions are not sales, but are instead a service provided to its customers. *Id.* Ehwa notes that the Department, in its supplemental questionnaires, did not question its decision to not report these transactions. Lastly, Ehwa cites to past Department decisions where the Department stated that sales of refurbished products should not be reported. See Antifriction Bearings (Other Than tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom, 66 FR 36551 (July 12, 2001), and accompanying Issues and Decision Memorandum, at Comment 7 (Antifriction Bearings 1999-2000); and Color Television Receivers from Malaysia, at Comment 2. Finally, Ehwa argues, the CAFC has specifically confirmed that “the antidumping duty statute unambiguously applies to the sale of goods and not services.” See Ehwa’s Case Brief at page 51 (citing Eurodif S.A. v. United States, 423 F. 3d 1275, 1278 (Fed. Cir. 2005)).

In rebuttal, the petitioner agrees with Ehwa that its sales of refurbished DSB represent sales of a service, and that it is the Department’s practice to exclude such sales from its dumping analysis. Although the petitioner states that Ehwa appropriately did not report such sales, if the Department determines to include Shinhan’s sales of refurbished products, the petitioner claims that the Department must obtain Ehwa’s sales of refurbished products in order to treat each respondent equally.

Department Position:

We agree with Ehwa that its sales of refurbished DSB should be excluded from the dumping analysis. Ehwa stated that its HM customers occasionally request that Ehwa refurbish DSB that the customers previously purchased from Ehwa. See Ehwa’s October 3, 2005, questionnaire response at page B-30. Ehwa stated that refurbishing consist of re-working the core, replacing the segments, and finishing the sawblade. *Id.* The Department’s practice regarding this type of merchandise was set forth in TVs from Japan. See Television Receivers, Monochrome and Color, from Japan, Final Results of Antidumping Duty Administrative Review, 56 FR 34180, 34185 (July 26, 1991) (TVs from Japan). In TVs from Japan, the Department stated that sales of refurbished merchandise “should be excluded from the analysis. The original sales of merchandise which is returned, refurbished, and resold are included on the U.S. sales

database. Accordingly, the Department will not review two different sales of the same merchandise.” Id.

In this case, the Department verified that “Ehwa Tools will refurbish (*i.e.*, attach new segments to a used core) diamond sawblades for certain HM customers for a service fee.” See Sales Verification Report at page 20. It is evident from this description of Ehwa’s treatment of refurbished DSBs that the original sale of the merchandise was either included in Ehwa’s HM sales database or was accounted for prior to the POI. If the original sale of the merchandise was already included in Ehwa’s HM sales database, then, as stated in TVs from Japan, it would be improper for the Department to review two different sales of the same merchandise. See TVs from Japan, 56 FR at 34185. Conversely, if the original sale of the merchandise was made prior to the POI, then excluding the sale of the refurbished merchandise from Ehwa’s sales database is proper because the sale was not made during the POI. The Department faced a similar fact pattern in Color Television Receivers from Malaysia. See Color Television Receivers from Malaysia, at Comment 8. Specifically, in Color Television Receivers from Malaysia, the Department determined that the respondent properly excluded subsequent sales of refurbished merchandise from its sales listing because the sales listing contained the original sale of the merchandise. For these reasons, the Department will continue to exclude Ehwa’s sales of refurbished merchandise from its final determination margin calculations.

Comment 22: Whether the Department Should Adjust Costs Related to the Allocation of Costs Between Indirect Selling and G&A Expenses.

The petitioner argues that for the allocation of certain costs between G&A and indirect selling expenses for purposes of calculating the G&A expense ratio, the company’s normal books and records should be used rather than the methodology employed by Ehwa for the dumping analysis.

The petitioner asserts that there was no reason for Ehwa to depart from its normal books and records by allocating a portion of its G&A expenses to indirect selling expenses based on the employee head count in each area because Ehwa already assigned SG&A expenses between selling and administrative cost centers in its normal accounting system. Further, the petitioner alleges that nothing has been submitted that would justify disregarding those normal books and records in favor of an additional allocation methodology created for the dumping analysis. The petitioner claims that, according to section 773(f)(1)(A) of the Act, the Department must rely on a company’s normal books and records if such records are in accordance with home country GAAP and they reasonably reflect the costs associated with production of the merchandise.

Ehwa argues that its allocation of certain G&A expenses to selling functions was reasonable and in accordance with longstanding Department practice, and therefore the Department should not adjust Ehwa’s reported indirect selling and G&A expenses in the final determination.

Ehwa explains that the costs of certain activities (*i.e.*, accounting, computer, and personnel) that support selling departments were recorded as general expenses in its normal accounting. Therefore, the company re-allocated these costs to indirect selling expenses based on relative number of personnel. Ehwa cites 19 C.F.R. § 351.401(g) in support of its contention that neither the statute nor the Department's regulations requires a respondent to use one specific methodology for reporting expenses to the Department. Further, Ehwa cites several cases in support of its claim that the Department has reviewed and accepted many different types of allocation methodologies for reporting selling expenses including: Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of the Tenth Administrative Review and New Shipper Review, 70 FR 12443 (March 14, 2005) and accompanying Issues and Decision Memorandum, at Comment 27 (Corrosion-Resistant Steel Products from Korea); and Certain Stainless Steel Wire Rods from India: Final Results and Partial Recision of Antidumping Duty Review, 68 FR 26288 (May 15, 2003) and accompanying Issues and Decision Memorandum, at Comment 15.

Department Position:

Section 773(f)(1)(A) of the Act requires the Department to rely on the records of the exporter or producer of the merchandise if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. In this instance, Ehwa maintains separate cost centers for, and separately classifies costs as, either G&A and selling expenses in its normal books and records. As such, the issue at hand is how reasonable is its classification of such costs in its normal books and records. For certain expenses, we agree with Ehwa that its normal classification of such costs as G&A appears inappropriate. Specifically, inland travel, overseas travel, advertising, freight, and commissions and fees more appropriately relate to selling. Accordingly, we reclassified these expenses from G&A to selling.

We disagree, however, that it is appropriate to reallocate certain other G&A expenses to selling activities. G&A activities typically support the general production activities of the company as a whole. As such, the Department normally allocates G&A costs over the merchandise produced and sold by the company as opposed to other administrative activities of the company, such as selling functions. See Color Television Receivers From Malaysia, at Comment 22.

While, in a few instances, the Department has allowed companies to allocate G&A expenses to selling activities when they were shown to directly support the selling functions, the allocation method must bear a direct relationship to the particular expense and the selling activity. We disagree with Ehwa's reliance on Corrosion-Resistant Steel Products from Korea and Stainless Steel Sheet and Strip from the Republic of Korea: Final Results and Partial Recision of Antidumping Duty Administrative Review, 66FR 64950 (December 17, 2001) and accompanying Issues and Decision Memorandum, at Comment 15. In both cases, the respondent's normal accounting system reported total SG&A expenses and did not allocate any expenses between selling and administrative expenses. Furthermore, in both cases, as well as

Circular welded Non-Alloy Steel Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 57 FR 42942 (September 17, 1992), the respondent allocated expenses based on the underlying activity of the expenses. In the instant case, the G&A expenses at issue, (e.g., communication, maintenance, and depreciation) do not fluctuate in direct proportion to headcount.

For the final determination we have allowed the reclassification of inland travel, overseas travel, advertising, freight, and commissions and fees, but have denied the claimed headcount allocation for the other G&A costs at issue.

Comment 23: Whether Ehwa's use of Surrogate Costs was Appropriate.

The petitioner noted that in some instances in the cost file "ehwacop03_bystage.ss7dat" Ehwa reported two sets of different costs for the same CONNUM. The petitioner cites to page 13 of the January 17, 2006, supplemental D response where Ehwa explains that it reported surrogate costs for 1A1R grinding wheels that it sold but did not produce during the POI, and that these surrogate costs were based on the costs of the most similar CONNUM. The petitioner contends that because there was actual production of merchandise with the identical CONNUM during the POI there was no need for Ehwa to determine the cost based on that of a similar CONNUM. The petitioner also points out that the Department's section D questionnaire at page D-1 states that there should be a single weighted-average cost for each CONNUM as defined by the Department's product characteristics. The petitioner also points out that in the sales databases Ehwa reported two different VCOMs and TCOMs for identical CONNUMs.

The petitioner argues that, therefore, for the final determination the Department should disregard the surrogate costs for the CONNUMs that were reported with two different sets of costs and instead rely only on the actual costs of production for merchandise in the same CONNUM. The petitioner also asserts that the VCOM and TCOMs reported in the sales databases should be reset accordingly.

Ehwa contends that its methodology for reporting surrogate costs was reasonable. Ehwa points out that the Department's section D questionnaire at page D-2 instructs respondents to report weighted-average costs for the POI for all products reported on the sales file. Ehwa contends that in some instances a respondent may sell products that it did not manufacture during the relevant period, and therefore the company must develop a methodology for reporting surrogate costs for such products. Ehwa alleges that the Department's questionnaire does not specify a particular reporting methodology for these situations.

Ehwa asserts that the Department verified (see, e.g., Memorandum from James Balog to the File, "Verification of the Cost Response of Ehwa Diamond Industrial Co., Ltd. in the Antidumping Investigation of Diamond Sawblades and Parts Thereof from Korea," dated April 7, 2006, at Exhibit 3) that 1A1R industrial grinding wheels were manufactured in separate facilities and that the production process differs from DSB which then logically results in different costs for the grinding wheels. Ehwa argues that in this situation Ehwa reasonably

reported the cost of the most similar product, (*i.e.*, the cost of the most similar DSB or industrial grinding wheel) using the Department's CONNUM characteristics as a guide.

Ehwa argues that the Department has frequently accepted the cost of the most similar product as a suitable surrogate for reporting purposes, and to support its argument Ehwa cites Stainless Steel Bar from Germany: Final Determination of Sales at Not Less Than Fair Value, 67 FR 3159 (January 23, 2002) and accompanying Issues and Decision Memorandum, at Comment 9, and Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review, 62 FR 18404, 18428-29 (April 15, 1997) at Comment 17.

Ehwa offers that if the Department determines that another methodology is preferable (*i.e.*, disregarding whether the product type is DSB or industrial grinding wheel) then the Department has the necessary information to develop it. Ehwa notes that the Department has done so in Stainless Steel Bar from Taiwan: Final Determination of Sales at Not Less Than Fair Value, 67 FR 3152 (January 23, 2002) and accompanying Issues and Decision Memorandum, at Comment 3 and in the Preliminary Determination in this case (*see, e.g.*, Memorandum to the File from Maisha Cryor, International Trade Compliance Analyst, "Calculation Memorandum for the Preliminary Determination," December 20, 2005, at pages 6-7).

Department Position:

During the POI, Ehwa sold but did not produce certain products. In the cost file for these products, Ehwa reported a surrogate cost which was determined first by separating the products between 1A1R grinding wheels and DSB, and then by determining the most similar CONNUM, within these broad product groups, for which there was actual production during the POI. For several of the products for which this was done, the unique CONNUM into which the product fell had other products that were produced during the period. Thus, there was a cost reported for that CONNUM. We agree with the petitioner that the per-unit costs of the CONNUMs under which the products at issue fell should be used for the dumping analysis rather than the costs of surrogate CONNUMs as reported by Ehwa.

In the beginning of an antidumping proceeding the Department determines certain physical characteristics of the merchandise being considered to be important for the dumping analysis and develops a control number under which products with varying characteristics would fall. Products are then assigned control numbers based on their own unique physical characteristics. Because the Department has previously determined which characteristics are important for distinguishing costs among products in the case, if a product falls within a particular control number, then there is no need to go outside that control number in order to find a surrogate cost.

Therefore, for the products at issue which were sold but not produced during the POI that fell within CONNUMs for which a unique weighted-average per-unit cost has been determined, these CONNUM costs should be used for the dumping analysis.

Comment 24: Whether the Department Should Adjust G&A Expenses to Account for the Over-Accrual of the Provision for Retirement Expenses.

The petitioner argues that an adjustment Ehwa made for the over-accrual of the provision for retirement expenses when calculating its G&A expense ratio was inappropriate, and that the Department should disallow the adjustment for the final determination. The petitioner argues that the adjustment is not appropriate because the G&A expense ratio was calculated based on amounts from the FY 2004 audited unconsolidated income statement, which already included appropriate accruals, and since the 2005 over-accrual did not enter into the calculation, it should not be deducted.

Ehwa argues that the adjustment represents a simplified method to eliminate a distortion in the COM resulting from the over-accrual of the provision for retirement expenses, and that the adjustment is consistent with the Department's longstanding practice. Ehwa explains that it recorded a significant year-end adjustment in December 2005 to correct for over-accruals throughout the fiscal year for retirement provisions. Ehwa asserts that the manufacturing costs in the last part of the POI (*i.e.*, the first quarter of 2005) were significantly overstated due to the excessive accrual for retirement provision. Ehwa contends that failure to account for the differences in the year-end adjustments would result in a significant distortion to the reported costs. Therefore, Ehwa argues that the Department should not adjust the reported G&A ratio to eliminate the over-accrual. Ehwa cites several cases in support of its assertion that the Department has incorporated adjustments where necessary when the reported costs were not based on the company's fiscal reporting period, including Extruded Rubber Thread from Malaysia: Final Results of Antidumping Administrative Review, 64 FR 12967, 12976 (March 15, 1999).

Department Position:

In the normal course of business Ehwa accrues for retirement expenses. When preparing its income statement at year-end, Ehwa then adjusts the estimated retirement expenses that were accrued to an actual amount. When calculating its G&A expense ratio, Ehwa offset G&A expenses by an amount it claimed was an over-accrual of the provision for retirement expenses related to the first quarter of fiscal year 2005, which is the last three months of the POI. Ehwa's reported manufacturing costs included the accounting entry that adjusted FY 2004 accrued retirement expenses to an actual amount. Because the POI did not include the first quarter of FY 2004, this year end entry related, in part, to a period outside the POI. Conversely, the adjustment to retirement expenses that was made at the end of FY 2005, which was not reflected in the reported costs related, in part, to the first quarter of FY 2005 which is within the POI.

At verification Ehwa provided documentation that showed that the reported cost of manufacturing included a significant over-accrual of the provision for retirement expenses for the first quarter of 2005 (*i.e.*, the last quarter of the POI). The Department's practice has been to consider year end accounting adjustments when calculating POI costs. See, e.g., Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of

Antidumping Duty Administrative Review, 62 FR 18404, 18438 (April 15, 1997) and Extruded Rubber Thread from Malaysia: Final Results of Antidumping Administrative Review, 64 FR 12967, 12976 (March 15, 1999).

Instead of applying the adjustment for the over-accrual to the cost of manufacturing, Ehwa applied the adjustment to the G&A expense ratio. The G&A expense ratio should be based on the respondent's fiscal year audited unconsolidated income statement that most closely matches the POI. In this case the G&A expense ratio was calculated based on amounts from Ehwa's FY 2004 audited unconsolidated income statement which included all appropriate accruals and year end adjustments for that fiscal year. The adjustment for retirement expenses related to the POI over-accrual, however, is a part of the cost of manufacturing and not G&A expenses. Thus, because the retirement expense adjustment in question relates to the cost of manufacturing and not G&A expenses, and the Department considers year end adjustments that relate to the POI when calculating costs, we included in the over-accrual of retirement expenses adjustment in Ehwa's cost of manufacturing.

B. Shinhan Issues

Comment 25: Whether Shinhan Failed to Report COM for SHINUS04 and SHINHM04.

The petitioner asserts that Shinhan failed to report variable cost and total COM information for a significant number of sales for certain CONNUMs in both the U.S. and HM databases. In addition, the petitioner contends that for the U.S. sales within those CONNUMs where TCOMU has been reported, the same value was assigned to VCOMU, indicating that Shinhan failed to include fixed overhead costs in the TCOMU reported for those sales. The petitioner argues that failure to correct these errors will skew the DIFMER and model match results for the final determination.

In rebuttal, Shinhan states that the petitioner's comments regarding VCOM/TCOM errors in Shinhan's SHINUS04 and SHINHM04 sales databases are misguided. Specifically, Shinhan states that databases SHINUS04 and SHINHM04 have been superseded by revised sales databases. Shinhan notes that its final sales databases are contained in files SHINUS07 and SHINHM07. Therefore, Shinhan contends that the Department should ignore the petitioner's discussion of alleged errors in the VCOM/TCOM of Shinhan's SHINUS04 and SHINHM04 sales databases. Moreover, Shinhan asserts that the Department's computer program does not use the VCOM/TCOM variables reported on the sales databases for DIFMER and concordance purposes. Rather, the Department's computer program uses cost database VCOM/TCOMs to which the Department has made adjustments.

Department Position:

The petitioner's arguments regarding SHINUS04 and SHINHM04 are moot because the final sales databases are contained in SHINUS07 and SHINHM07. In the Preliminary

Determination, the Department used Shinhan's sales databases entitled "SHINHM03" and "SHINUS03" as the basis of our preliminary determination antidumping margin calculations. See Preliminary Determination Calculation Memorandum at page 2, dated December 20, 2005. However, in response to post-Preliminary Determination requests for information from the Department, Shinhan submitted the following sales databases: (1) SHINUS04 and SHINHM04 sales databases (January 17, 2006). See Shinhan's January 17, 2006, supplemental questionnaire response at Exhibit 85; (2) SHINUS05 and SHINHM05 sales databases (January 30, 2006). See Shinhan's January 30, 2006, supplemental questionnaire response at Exhibit 93; and (3) SHINUS06 and SHINHM06 (February 14, 2006). See Shinhan's February 14, 2006, supplemental questionnaire response at Exhibit 115.

Moreover, the Department publicly confirmed that sales databases SHINUS04 and SHINHM04 would not form the basis of the final determination dumping calculations when we verified the data reported in Shinhan's SHINUS06 and SHINHM06 sales databases. See Memorandum to the File, Regarding "Verification of the U.S. Constructed Export Price (CEP) Sales Response of Shinhan Diamond Industrial Co., Ltd.," dated April 10, 2006, at 8; Memorandum to the File, Regarding "Verification of the Home Market and U.S. Export Price (EP) Sales Response of Shinhan Diamond Industrial Co., Ltd.," dated April 10, 2006, at 11. Further, the Department requested that Shinhan submit revised HM and U.S. market sales databases to incorporate changes pursuant to verification findings. See Letter to Mr. Raymond Paretzky, Regarding "Antidumping Investigation of Diamond Sawblades and Parts Thereof from the Republic of Korea," dated April 11, 2004. Therefore, because the petitioner has not indicated that the requested revisions should be made to Shinhan's most recently submitted sales databases, SHINUS07 and SHINHM07, the Department will not make revisions to sales databases SHINUS04 and SHINHM04 because they will not be used in the Department's final determination margin calculations.

Comment 26: Whether the Department Should Base Shinhan's Starting Price on INVNPRU Rather than GRSUPRU.

The petitioner notes that Shinhan's gross unit price is comprised of the invoice price, freight revenue, and a miscellaneous adjustment revenue. The petitioner further notes that in the Preliminary Determination, the Department set the U.S. gross unit price equal to Shinhan's reported gross unit price. The petitioner argues that it is the Department's practice to use the price that appears on the invoice as the starting price to which all adjustments are applied. The petitioner contends that the Department should revise the program to utilize the invoice price as the gross unit price and then apply appropriate adjustments to this price.

In rebuttal, Shinhan states that the Department properly used the variable GRSUPRU in the Preliminary Determination. As the petitioner noted, Shinhan states that the variable GRSUPRU reflects the invoice price plus certain adjustments. However, Shinhan asserts that whether the Department uses the variable GRSUPRU or the variable INVUPRU, (with the appropriate adjustments) will have no impact on the margin calculation.

Department Position:

We agree with the petitioner. We note that, for gross unit price, the Department's antidumping questionnaire instructed Shinhan to "report the unit price recorded on the invoice for sales shipped and invoiced in whole or in part." See the Department's original antidumping questionnaire at page C-12, dated July 20, 2005. However, in its questionnaire response, Shinhan stated that invoice unit price (variable INVUPRU), rather than gross unit price, is "the unit price for Shinhan's U.S. sales as shown on the invoice..." See Shinhan's October 3, 2005, section C questionnaire response at page C-19. Moreover, Shinhan stated that gross unit price (variable GRSUPRU) is the sum of invoice price, freight revenue, and miscellaneous revenue. *Id.* at 20. Although we note that no net difference will result in the margin calculation from utilizing the invoice price as the gross unit price, the Department will revise its margin calculations for the final determination to be consistent with the instructions in its antidumping questionnaire. Accordingly, the Department will use invoice unit price as gross unit price in the calculation of Shinhan's final determination dumping margin. The Department will then apply appropriate price adjustments to this invoice price.

Comment 27: Whether the Department Should Apply AFA to Shinhan's Inland Freight Expenses.

The petitioner contends that the Department should apply AFA to Shinhan's calculated inland freight expenses because Shinhan failed to comply with the Department's request to provide this information on a transaction-specific basis. Specifically, the petitioner states that in its questionnaire responses, Shinhan stated that it "does not maintain transaction-specific records on inland freight." See the petitioner's Case Brief at page 90. However, at verification, the petitioner asserts that Shinhan stated that "it was theoretically possible to calculate freight on a transaction-specific" basis. *Id.* at 91. The petitioner states that 19 C.F.R. § 351.401(g) requires a respondent to use transaction-specific reporting methodology. Further, the petitioner states that 19 C.F.R. § 351.401(g) states that only if transaction-specific reporting is not feasible may a respondent use a surrogate that is less specific, provided the respondent can demonstrate that the allocation method does not cause inaccuracies or distortions. The petitioner argues that Shinhan's admission at verification that transaction-specific reporting was possible demonstrates a disregard for the Department's regulations. The petitioner asserts that while it may have been difficult and time consuming to report this expense on a transaction-specific basis, the respondent acknowledged that it was possible. The petitioner claims that the Department's acceptance of Shinhan's allocation would essentially reward the company for failing to perform a "difficult" task which is required by the Department's regulations. The petitioner contends that it is the Department's responsibility to decide whether it is too burdensome or if it is not feasible for a respondent to comply with the Department's requests. The petitioner asserts that Shinhan's repeated failures to comply with the Department's request for transaction-specific reporting warrants the application of AFA because Shinhan's failure to comply with the Department's requests demonstrates a failure to cooperate to the best of its ability. As AFA, the petitioner suggests that the Department increase inland freight by a uniform percentage or use the highest

percentage ratio of HM inland freight to gross unit price of the other respondents in this investigation.

In rebuttal, Shinhan contends that the petitioner's argument ignores that the Department verified that it is not feasible for Shinhan to report U.S. inland freight on a transaction-specific basis because Shinhan lacked electronic records that linked freight invoices with specific shipments. Shinhan argues that the Department, in its CEP verification report, noted that "{sales} invoices are not linked electronically to the carrier's shipping information, and so this process would have to be done manually for each of Shinhan's U.S. sales," and that "Shinhan requested UPS for the reference summaries electronically for the POI {but} UPS refused to give it." See Shinhan's CEP Verification Report at 19-20. Thus, Shinhan concludes that the Department, in fact, verified that it is not reasonably possible for Shinhan to report transaction-specific U.S. inland freight costs.

Shinhan asserts that just because something is "theoretically possible" does not mean that it is feasible as a practical matter. Shinhan argues that, contrary to the petitioner's characterization of non-cooperation, it did answer all the Department's information requests and replied to all questions in a full and frank manner. In sum, Shinhan contends that the record provides no basis for using AFA in place of Shinhan's reported U.S. inland freight expense.

Department Position:

We agree with Shinhan that there is no basis for applying AFA to its inland freight expense. The Department may consider allocated expenses when transaction-specific reporting is not feasible, if the Department considers that the allocation method used does not cause inaccuracies or distortion. See 19 C.F.R. §351.401(g)(1). According to Shinhan, tracing specific freight charges to individual transactions is not practicable. In its section C response, Shinhan stated that it does not maintain freight costs on a transaction-specific basis. See Shinhan's section C response at page 30. Further, in its supplemental section C response, Shinhan stated that it does "not maintain records that would enable it to link specific payments to its freight forwarder with specific payments from {Shinhan}." See Shinhan's November 14, 2005, section C supplemental response at page 33.

The Department has an established practice of permitting the allocation of inland freight expenses where transaction-specific reporting is not feasible and where the allocation methodology is not shown to cause inaccuracies or distortion. See Top-of-the-Stove Stainless Steel Cooking Ware From the Republic of Korea: Final Results and Rescission, in Part, of Antidumping Duty Administrative Review, 66 FR 45664 (August 29, 2001) and accompanying Issues and Decision Memorandum, at Comment 3. In this case, Shinhan's inland freight expense calculation methodology was examined during the Department's sales verification. See Shinhan's CEP Sales Verification Report at page 13, dated April 10, 2006. Although Shinhan stated that it is theoretically possible for it to calculate inland freight on a transaction-specific

basis,² the Department's regulations only look to whether such reporting is feasible. See 19 C.F.R. § 351.401(g)(1). The Department verified that reporting inland freight on a transaction-specific basis was not feasible for Shinhan because "invoices are not linked electronically to the carrier's shipping information, and so this process would have to be done manually for each of Shinhan's U.S. sales." See Shinhan's CEP Verification Report at pages 19-20. Given the quantity of Shinhan's U.S. sales during the POI, the Department determines that it would not have been feasible for Shinhan to undertake such an activity. Therefore, because it provided a reasonable allocation methodology that related proportionately to its reported sales, we find that the application of AFA is unwarranted for Shinhan's inland freight expenses. Accordingly, we will accept Shinhan's inland freight expenses as reported for the final determination.

However, if the Department issues an antidumping duty order in this case, and a review is requested, we expect to re-examine this issue during the first administrative review conducted in this proceeding if inland freight expenses are reported under these same conditions.

Comment 28: Whether the Department Should Allocate Shinhan's Freight Revenue on the Same Basis as Inland Freight.

The petitioner notes that inland freight is reported on an allocated basis, while freight revenue is reported on a transaction-specific basis. The petitioner asserts that this is an inconsistency which results in a mismatch of a related expense and revenue. To remedy this inconsistency, the petitioner contends that the Department should either assign AFA to Shinhan's inland freight or allocate freight revenue on the same basis as inland freight. However, the petitioner notes that it does not believe freight revenue is a necessary adjustment because it is already incorporated into the calculation of inland freight to customer.

In rebuttal, Shinhan states that the Department may reallocate freight revenue to make it consistent with the allocation of inland freight expenses. Shinhan suggests that if the Department does choose to recalculate freight revenue, it should do so by dividing total freight revenue from the sales database for each channel by the total weight from the sales database for each channel. Next, Shinhan states that the Department should apply the appropriate rate, by channel of distribution, to the weight of each transaction to calculate a new freight revenue variable. Shinhan notes that once the Department creates a new freight revenue variable, it should add it to GRSUPRU only after deducting the old freight revenue variable, since gross unit price was reported inclusive of freight revenue.

Department Position:

While we agree with petitioner that the allocation for freight revenue and inland freight should be on the same basis, we disagree that the application of AFA to Shinhan's inland freight is appropriate. Instead, it is appropriate to allocate freight revenue on the same basis as inland

²See Shinhan's CEP Sales Verification Report at page 19.

freight. See Comment 34 below. Therefore, we have allocated Shinhan's freight revenue on the same basis as the related inland freight expense for the final determination. See Final Determination Calculation Memorandum, dated May 15, 2006.

Comment 29: Whether the Department Double-Counted Shinhan's Freight Revenue.

The petitioner states that Shinhan accounted for freight revenue in its calculation of inland freight to the customer. Therefore, the petitioner argues that including this revenue as a separate line item or using the variable GRSUPRU (which includes freight revenue) results in double-counting.

In rebuttal, Shinhan argues that the Department did not double count freight revenue and notes that this allegation by the petitioner was specifically considered and rejected by the Department at verification. See Shinhan's Case Brief at page 29. Shinhan states that the petitioner completely ignored the Department's verification findings in its case brief and asserts that the petitioner has not provided any basis for the Department to reconsider this issue.

Department Position:

We disagree with the petitioner that Shinhan double-counted its reported freight revenue. Shinhan separately invoiced its customers for freight charges on a portion of U.S. market transactions. See Shinhan's October 3, 2005, questionnaire response at page 19. Shinhan reported these freight charges as freight revenue. Id. However, when calculating its inland freight expenses, Shinhan did not offset these expenses by an amount for freight revenue; rather, Shinhan included its gross freight expenses in its inland freight calculation. See Shinhan's CEP Sales Verification Report at page 21. Therefore, in order to account for the amount of revenue earned from its freight charges, Shinhan included freight revenue in its reported gross unit price. See Shinhan's October 3, 2005, questionnaire response at page 20. The Department has in past cases permitted the starting invoice price to be adjusted for freight revenue, among other price adjustments, pursuant to 19 C.F.R. § 351.401(c). See, e.g., Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France, 70 FR 45668 (August 8, 2005) (no change in final results); Stainless Steel Bar from France: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 17411, 17413 (April 6, 2005) (no change in the final results). Accordingly, we will continue to recognize freight revenue as an adjustment to Shinhan's starting invoice price for the final determination.

Comment 30: Whether the Department Should Recalculate Shinhan's HM and International Movement Expenses.

The petitioner states that Shinhan calculated its average HM and international movement expenses for only the Stone & Construction Division. However, the petitioner states that these calculations do not include the metal bonded 1A1R products that are sold through Shinhan's Precision Products Division. Instead, the petitioner asserts that Shinhan applied the freight/kg

rate calculated for the Stone & Construction Division to HM sales of 1A1R products. However, the petitioner notes that the Department has determined that 1A1R products are within the scope of the investigation. Therefore, the petitioner argues that Shinhan should update its calculation methodologies to incorporate the actual costs for these products which are sold through a different division and which, according to the petitioner, will affect Shinhan's HM inland freight, U.S. international freight, and U.S. marine insurance expenses.

Shinhan disagrees with the petitioner. First, Shinhan notes that the factual information deadline has passed and verification has been completed. Therefore, Shinhan notes that it is not free to update its calculation methodologies even if there was a reason to do so. In addition, Shinhan states that the Department does not have the time to issue new questionnaires and verify responses to such questionnaires. Moreover, Shinhan contends that 1A1R grinding wheels account for such an insignificant portion of Shinhan's total HM sales of subject merchandise during the POI that re-calculation is unwarranted. Shinhan contends that the Department did not declare that 1A1R grinding wheels were subject merchandise until the Preliminary Determination. Therefore, Shinhan contends that it was reasonable for it to rely on its already calculated Construction & Stone Division movement expenses rather than recalculate these averages for what, until the Preliminary Determination, it had considered to be non-subject merchandise.

Department Position:

We agree, in principle, with the petitioner that Shinhan's calculation of home market and international movement expenses should include those expenses attributable to 1A1R products from Shinhan's Precision Division. Shinhan calculated home market and international movement expenses by allocating expenses for subject merchandise sold from the Construction & Stone divisions. See Shinhan's Sales Verification Report at page 2. On December 20, 2005, the Department issued its Preliminary Determination Scope Memorandum, where the Department stated that it preliminarily determined that 1A1R grinding wheels are included in the scope of investigation. See Scope Memorandum at page 11. In response to this determination by the Department, Shinhan submitted revised home market and U.S. market sales databases to include sales of 1A1R grinding wheels. See Shinhan's January 17, 2006, questionnaire response at page 5. Although Shinhan stated that 1A1R grinding wheels were from its Precision Division, Shinhan did not notify the Department that its home market and international movement expenses should be updated to include expenses attributable to sales of subject merchandise from the Precision Division. Shinhan argues that because the Department did not declare that 1A1R products were covered by the scope of investigation until the Preliminary Determination, it was reasonable for it to rely on its calculated movement expenses based upon sales from its Construction & Stone division. However, we note that Shinhan submitted three revised sales databases between the date of the Preliminary Determination and the beginning of verification. See Shinhan's January 17, 2006, supplemental questionnaire response at Exhibit 85; Shinhan's January 30, 2006, supplemental questionnaire response at Exhibit 93; Shinhan's February 14, 2006, supplemental questionnaire response at Exhibit 115. Given that Shinhan was in the process of submitting new sales databases, it did have an opportunity to notify the Department

that its movement expenses should be updated to properly attribute expenses to its Precision Division.

However, even though we agree with the petitioner in principle, given the negligible impact such an adjustment would have on the calculation, we will not update Shinhan's home market and international movement expenses for the final determination. See, e.g., Brass Sheet and Strip From Canada: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part, 64 FR 46344, 46346 (August 25, 1999) (where the Department did not adjust warranty expenses noting that doing so would have a *de minimis* effect on the calculations). As noted by Shinhan, its sales of 1A1R products accounted for an insignificant percentage (by quantity or value) of its home market and U.S. market sales. See Shinhan's Rebuttal Brief at page 30. Accordingly, the Department will not adjust Shinhan's movement expenses for the final determination.

Comment 31: Whether the Department Should Exclude Shinhan's Sales of Refurbished DSB from Shinhan's HM Sales Database or Weight-Average the Sales and Costs Databases for Refurbished and Non-Refurbished DSB.

The petitioner argues that the Department should remove Shinhan's sales of refurbished DSB from Shinhan's HM sales database because these sales represent a sale of a service rather than a sale of merchandise. The petitioner contends that it is the Department's practice to exclude sales of services from the margin calculation. The petitioner states that Shinhan reported that it charges the same sales price for products regardless of whether the products are new or refurbished. See the petitioner's Case Brief at page 95. However, the petitioner notes that Shinhan stated that the sale prices of refurbished DSB are below the COP. Id. The petitioner notes that Shinhan stated that it is its hope that it will regain the loss on these sales below the COP from refurbishing the original core several times. Id. In addition, the petitioner notes that Shinhan had no sales of refurbished DSB in the U.S. market. Moreover, the petitioner states that Ehwa declined to report sales of refurbished DSB because it considered these items to be a sale of a service rather than a sale of merchandise. The petitioner asserts that the Department cannot treat the same factual scenario differently for respondents in the same investigation. Therefore, the petitioner urges the Department to remove Shinhan's sales of refurbished DSB from Shinhan's HM database for the final determination.

In its case brief, Shinhan argues that, for the final determination, the Department should weight-average Shinhan's reported sales and cost data for each control number that contains both refurbished and non-refurbished DSB. Shinhan contends that the Department verified that Shinhan's sales prices do not reflect a distinction between sales of refurbished and non-refurbished DSB, and that this singular price is purposely set below the products' COP (because Shinhan intends to earn additional revenue through refurbishing the same core multiple times). Shinhan notes that refurbished DSB are not sold in the United States.

Shinhan argues that non-refurbished and refurbished DSB share identical control numbers. Therefore, Shinhan asserts that artificial dumping margins could be created if the Department were to consider otherwise identical refurbished and non-refurbished DSB as separate products, and exclude the sales and cost of refurbished products from the analysis. According to Shinhan, the artificial margin would be created because U.S. sales would be compared to non-refurbished HM sales, and these HM sales prices will be found to be below cost when the costs of only non-refurbished DSB are considered. Conversely, Shinhan maintains that if the Department weight-averages the prices and costs of otherwise identical refurbished and non-refurbished DSB, then HM sales would be disregarded as below cost only if Shinhan's prices were too low to allow for recovery of costs when the production costs and sales prices of identical refurbished and non-refurbished DSB are considered as a unit. Shinhan notes that the Department's computer program automatically weight-averages all reported sales and costs for the POI by control number, so Shinhan maintains that no extra programming is needed to weight-average the sales and cost data of refurbished and non-refurbished DSB that share the same control number. For this reason, Shinhan urges the Department to make no further changes to its computer program with regard to this issue. Rather, Shinhan urges the Department to allow the program to weight-average Shinhan's reported sales and cost data for refurbished and non-refurbished DSB that share the same control number.

In rebuttal to Shinhan's case brief, the petitioner continues to recommend that the Department exclude Shinhan's sales refurbished DSB from the HM sales database. According to the petitioner, Shinhan has acknowledged that it sells new products at a price below the products' COP in order to promote its subsequent sales of profitable refurbishing services. In other words, the petitioner claims that Shinhan uses sales of new DSB as a loss leader to make profitable sales of its refurbishing services. The petitioner notes that Shinhan sells new product and refurbishing services in the HM. Since HM sales of the new product are below the COP, the petitioner asserts that Shinhan inappropriately wants the Department to combine its sales of refurbishing services with its HM sales of new product for comparison to U.S. sales of purely new product.

The petitioner argues that established Department practice is to exclude sales of refurbished products. The petitioner argues that the Department has found in previous determinations that sales which reflect revenue earned on services should not be included in making a dumping determination. See the petitioner's Rebuttal Brief at 44 (citing Antifriction Bearings 1999-2000, at Comment 7). The petitioner further states that just because Shinhan has assigned the same CONNUM to sales of new and refurbished sawblades does not mean that the Department should treat them identically. Citing to the Shinhan Sales Verification Report, the petitioner notes that the Department verified that sales of refurbished sawblades are distinguishable from sales of new product in Shinhan's own sales and production records. See the petitioner's Rebuttal Brief at 44 (citing Shinhan Sales Verification Report at 26). Lastly, the petitioner argues that Ehwa, the largest Korean respondent, has appropriately not reported sales of refurbished sawblades because "Ehwa considers these transactions to be a service it provides to certain home market customers." See the petitioner's Rebuttal Brief at 45 (citing Ehwa's Case Brief at 50). Finally, the petitioner reiterates its argument above that the Department should treat Shinhan and Ehwa consistently with regards to the reporting of refurbished DSB.

In rebuttal to the petitioner's case brief, Shinhan continues to argue that it considers sales of refurbished sawblades in the HM as actual sales. Citing the Department's verification report, Shinhan notes that it charges customers the same price for both new product and refurbished DSB. See Shinhan's Rebuttal Brief at 31 (citing the Department's Sales Verification Report at 26 and Exhibit 50). Shinhan explains that the sales price of a new product is below the product's COP because Shinhan hopes to earn additional revenue from refurbishing an original core several times. Moreover, Shinhan argues, the Department verified that Shinhan treats sales of refurbished goods as ordinary sales, complete with invoices, sales ledger entries, and separate product codes and bills of materials. Id. In addition, Shinhan contends that the petitioner's methodology of excluding the sales of refurbished products would result in the artificial creation of dumping margins because the sales of non-refurbished products will fall below cost due to Shinhan's pricing strategy. Thus, Shinhan states, the Department should weight average Shinhan's reported sales and costs for refurbished and non-refurbished sawblades that share the same control number.

Department Position:

We agree with the petitioner that we should exclude sales of refurbished DSB from the HM database. Shinhan has reported that it sold refurbished DSB in the HM during the POI. See Shinhan's January 11, 2006, supplemental section D response. Specifically, Shinhan stated that when "the segments on a DSB wear out, the customer may return the worn-out DSB to {Shinhan}, and {Shinhan} removes the old segments from the core and then attaches new segments to the same core. SDC would then resell the refurbished DSB to the customer. Id. The Department's practice regarding this type of merchandise was set forth in TVs from Japan. In TVs from Japan, the Department stated that sales of refurbished merchandise "should be excluded from the analysis. The original sales of merchandise which is returned, refurbished, and resold are included on the U.S. sales database. Accordingly, the Department will not review two different sales of the same merchandise." Id.

In this case, the Department verified that "the refurbishing was only done in the HM and it was only cost effective to refurbish the large diameter sawblades. {Shinhan} explained that a sawblade could be refurbished up to 7 times. {Shinhan} stated that a refurbished sawblade was resold to the same customer that turned it in, and generally the sales prices between refurbished and non-refurbished sawblades were similar." See Cost Verification Report at page 20. It is evident from this description of Shinhan's treatment of refurbished DSB that the original sale of the merchandise was either included in Shinhan's HM sales database or was accounted for prior to the POI. If the original sale of the merchandise has already been included in Shinhan's HM sales database, then, as stated in TVs from Japan, it would be improper for the Department to review two different sales of the same merchandise. See 56 FR at 34185. Conversely, if the original sale of the merchandise was made prior to the POI, then excluding the sale of the refurbished merchandise from Shinhan's sales database is proper because the sale was not made during the POI. The Department also faced a similar fact pattern in Color Television Receivers from Malaysia, at Comment 8. Specifically, in Color Television Receivers from Malaysia, the

Department determined that the respondent properly excluded subsequent sales of refurbished merchandise from its sales listing because the sales listing contained the original sale of the merchandise. *Id.* For these reasons, the Department will exclude Shinhan's sales of refurbished merchandise from its HM and COP databases.

With respect to the cost of the CONNUMs that have sales of refurbished products, the Department has excluded Shinhan's sales of refurbished merchandise from the margin calculation. Therefore, because the Department has excluded these sales from Shinhan's sales and cost databases, this matter is moot.

Comment 32: Whether the Department Should Collapse Shinhan With its Korean Affiliates.

The petitioner states that Shinhan reported that it is affiliated with a number of Korean firms that are involved in the production and sale of subject merchandise. *See* the petitioner's Case Brief at page 103. These firms are Technoplus Co., Ltd. (TPC), Namdong Tools and INCOM. *Id.* The petitioner states that under 19 C.F.R. § 351.401(f), the Department will collapse companies where (1) they are affiliated pursuant to section 771(33) of the Act; (2) they produce similar merchandise on similar machines; and (3) there is a significant potential for the manipulation of price or production in the absence of collapse. We cannot address certain aspects of the petitioner's argument without referencing business proprietary information. Therefore, we have addressed this argument in a separate proprietary memorandum. *See* Memorandum from Thomas F. Futtner, Acting Office Director, to Stephen J. Claey's, Deputy Assistant Secretary for Import Administration, "Collapsing Shinhan Diamond Industrial Co., Ltd. (Shinhan) with Its Korean Affiliates," dated May 15, 2006 (Shinhan Collapsing Memorandum).

Department Position:

We find that Shinhan should not be collapsed with its Korean affiliates. For further details, *see* Shinhan Collapsing Memorandum.

Comment 33: Whether the Department Should Collapse Shinhan With its Chinese Affiliate.

The petitioner argues that the Department should collapse Shinhan with its Chinese affiliate because the affiliate provides Shinhan with components for finished DSB. The petitioner contends that Shinhan's relationship with its Chinese affiliate meets all of the requirements for collapse under the Act and under the Department's regulations. First, the petitioner notes that 19 C.F.R. § 351.401(f) states that the Department will collapse companies where (1) they are affiliated pursuant to section 1677(33) of the Act; (2) they produce similar merchandise on similar machines; and (3) there is a significant potential for the manipulation of price or production in the absence of collapse. The petitioner notes that Shinhan and its Chinese affiliate are affiliated pursuant to section 771(33)(F) and (G) of the Act because Shinhan is in a position to control its affiliate and because both companies are under the common control of the

same entity. The petitioner provides one further basis for affiliation, the details of which are proprietary. See the petitioner's Case Brief at pages 108-109.

Second, the petitioner asserts that Shinhan and its Chinese affiliate have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities because Shinhan produces finished DSB and its Chinese affiliate produces DSB components. Third, the petitioner contends that there is a significant potential for the manipulation of prices and/or production among Shinhan and its Chinese affiliate because Shinhan is in a position to control its Chinese affiliate. Moreover, the petitioner notes that Shinhan and its affiliates have intertwined operations. Id. at page 110. Accordingly, the petitioner argues that Shinhan and its Chinese affiliates should be collapsed pursuant to 19 C.F.R. § 351.401(f).

In addition, the petitioner argues that the Act is drafted in such a way as to place no bar on such cross-border collapses. The petitioner notes that neither section 771(33) of the Act nor 19 C.F.R. § 351.401(f) make any reference to the geographical locations of the entities to be collapsed. In fact, the petitioner argues that the Act and the Department's regulations permit such treatment. As regards the Department's regulations, the petitioner notes that section 19 C.F.R. § 351.102(b) notes that the Department will not collapse affiliates unless their relationship "has the potential to impact decisions concerning the production, pricing, or costs of the subject merchandise or foreign like product." The petitioner argues that given that the services provided by Shinhan's Chinese affiliate have the potential to impact decisions regarding DSB pricing, production or costs in Korea, there appears to be no bar to collapse. Further, the petitioner contends that the statute identifies at least one instance in which cross-border analysis is expressly required. Specifically, the petitioner notes that the special rule for certain multinational corporations, section 1677b(d) of the Act, requires the Department, where certain requirements are met, to determine NV by reference to the value at which the foreign like product is sold from one or more facilities outside of the exporting country. The petitioner contends that this provision is one instance where Congress expressly describes when the Department would be required to look beyond the exporting country for value information. Accordingly, the petitioner argues that there is no statutory bar on cross-border analysis in a dumping investigation. Therefore, the petitioner urges the Department to collapse Shinhan with its Chinese affiliate.

In rebuttal, Shinhan argues that the petitioner's request for the Department to collapse it with its Chinese affiliate ignores the plain language of the Act as has been interpreted by the Department in prior proceedings. Specifically, Shinhan states that in Stainless Steel Bar from Italy, the Department considered whether affiliated companies in separate countries may be collapsed and determined that collapsing entities in different countries is contrary to the Act. See Shinhan's Rebuttal Brief at pages 37-38, see also Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Italy, 67 FR 3155 (January 23, 2002) and Issues and Decision Memorandum, at Comment 8. Shinhan states that the petitioner has not demonstrated any way in which the Act has been recently amended to make lawful what the Department previously found to be unlawful. Therefore, Shinhan urges the Department to reject the petitioner's request to collapse it with its Chinese affiliate.

Department Position:

We agree with Shinhan that it should not be collapsed with its Chinese affiliate because an antidumping proceeding involves merchandise from one country, and the Department does not collapse across country lines. See Comment 15 above.

Comment 34: Whether the Department Should Make Symmetric Adjustments to Shinhan's Reported Sales and Cost Data.

Shinhan notes that language in the Department's verification reports suggests that the Department may reallocate certain selling expenses and include these expenses in the calculation of G&A expense. See the petitioner's Case Brief at page 13. Shinhan asserts that if the Department does make these adjustments, then the Department should ensure that these expenses are excluded from the calculation of the indirect selling expense ratio in the sales database. In addition, Shinhan notes that the Department's cost verifiers proposed several additions to Shinhan's reported COM. Id. at 14. Shinhan contends that any increase to the reported COM would constitute a deviation from its normal books and records, which it notes ties to its financial statements. Therefore, Shinhan argues that any such increases to the reported COM should also be added to the COGS figure used in the denominator of the G&A and interest expense calculations because the reported COGS is also based on Shinhan's normal books and records.

In rebuttal, the petitioner notes that Shinhan cites to no precedent or authority for its request for the Department to make symmetrical adjustments to the COGS used in the denominator of G&A and interest expense if the Department makes adjustments to Shinhan's reported COM and G&A. The petitioner argues that such an adjustment would be contrary to the Department's well established practice and procedures. For example, citing 19 C.F.R. § 1677b(f)(2) and (3), the petitioner states that the Department frequently adjusts respondents' reported costs under the major and minor input rules. The petitioner contends that the G&A ratio should not be adjusted because it is applied irrespective of the absolute amount of the COM. The petitioner states that it is not the Department's practice to make an adjustment to the G&A ratio when the COM change. The petitioner asserts that Shinhan has provided no compelling reason for the Department to deviate from its established practice and urges the Department not to do so.

Department Position:

We agree with Shinhan that certain expenses should be excluded from indirect selling expenses and included in the calculation of G&A. The Department has determined that certain expenses were improperly allocated by Shinhan to indirect selling expenses. See Comment 37 below. Therefore, for the final determination, the Department will exclude these expenses from indirect selling expenses and include them in G&A expenses. See Final Determination Calculation Memorandum, dated May 15, 2006.

Regarding COM adjustments, it is the Department's normal practice to adjust its G&A expense ratio calculation to ensure that the denominator for the calculation and the amount to

which it is applied (*i.e.*, the reported costs) are on the same basis. Therefore, any increase to the reported COM will be added to the COGS figure used in the denominator of the G&A and interest expense calculations. See Stainless Steel Sheet and Strip in Coils from Mexico: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 73444 (December 12, 2005), and accompanying Issues and Decision Memorandum, at Comment 7.

Comment 35: Whether the Department Should Ensure that Segments are not Compared with DSB in the Dumping Margin Calculations.

Shinhan contends that the Department's Preliminary Determination computer program allowed for a U.S. sale of DSB to be compared with the NV of segments if the comparison did not fail the DIFMER adjustment. Shinhan asserts that such a comparison is distortive and not in accordance with the Act or the Department's practice. Shinhan argues that section 773(a)(1) of the Act directs the Department to compare U.S. price to NV based on the price at which the "foreign like product" is sold. Thus, Shinhan argues that when identical comparison merchandise is unavailable, the Act directs the Department to select merchandise which is similar to the merchandise in the United States in both component material and in the purposes for which it is used. Shinhan asserts that segments are not comparable to DSB in the purpose for which they are used and, thus, should not be used in the final determination for comparison to finished DSB.

Further, citing Top-of the Stove Stainless Steel Cooking Ware, Shinhan argues that the Department has previously prohibited comparisons between vastly different products. See Top-of the Stove Stainless Steel Cooking Ware From the Republic of Korea: Final Results and Rescission, in Part, of Antidumping Duty Administrative Review (Top-of the Stove Stainless Steel Cooking Ware), 66 FR 45664 (August 29, 2001) and accompanying Issues and Decision Memorandum, at Comment 1. Specifically, in Top-of-the-Stove Stainless Steel Cooking Ware, Shinhan argues that the Department determined that complete cooking pots and components of pots were not similar merchandise and, thus, the Department did not make comparisons between these items in its dumping calculation. See Shinhan's Case Brief at page 15. In this case, Shinhan argues that DSB and parts of DSB (cores and segments) are vastly different products whose prices should not be compared in the Department's dumping analysis.³

In rebuttal, the petitioner states that while Shinhan's response may appear reasonable at first glance, in reality, Shinhan is proposing that the Department determine that there are two classes or kinds of subject merchandise. In essence, the petitioner contends that Shinhan is proposing that the Department create an entirely new model match. The petitioner states that it opposes any such change at this point in the proceeding. The petitioner states that there is only once class or kind of merchandise in this investigation. The petitioner notes that the Department's model match hierarchy does attempt to match DSB to DSB and segments to

³Shinhan provides suggested computer programming language for the Department to use to ensure that segments are not compared to finished DSB in the final determination.

segments where possible. Thus, the petitioner states that the Department's current model match hierarchy does not result in an unreasonable comparison of "vastly difference products." Instead, the petitioner contends that it appropriately compares U.S. and HM sales of the most similar subject merchandise.

Department Position:

In selecting the product characteristics for this investigation, the Department selected physical form (FORMH/U) to indicate whether the merchandise was a finished DSB, a diamond segment, or a core. This product characteristic was, in part, selected due to input from the petitioner and the respondents who wanted to ensure that the "fundamental distinction among the types of products that are subject to investigation" is recognized. See, e.g., the Petitioner's Comments on Physical Characteristics and Model Match Criteria at page 3, dated July 22, 2005. Although, as correctly noted by the petitioner, DSB, segments, and cores are considered to be one class or kind of merchandise for purposes of this investigation, we find that the coding used in the preliminary determination for "physical form" may not have been the best representation of the relative differences between DSB, diamond segments, and cores. Therefore, for the final determination, in order to ensure correct matching, the Department has revised the coding for the product characteristic entitled "physical form" to better reflect the "fundamental distinction" between DSB, segments, and cores. See Final Determination Calculation Memorandum, dated May 15, 2006.

Comment 36: Whether the Department Should Allow Shinhan's Residual Cost Variance Adjustment.

Shinhan argues that the Department should allow the residual cost variance adjustment which adjusted the total costs from the production orders to the total COP reflected in Shinhan's financial accounting system. Shinhan states that the production orders sometimes covered more than one month and, as a result, some of the production orders were in process at the beginning of the POI and the end of the POI. Shinhan contends that under its production order methodology, cost variances were allocated to the production orders after the production orders were complete. Shinhan explains that for those production orders that were not complete at the end of the POI, the prices of certain raw materials were recorded at standard costs and had not yet been adjusted to reflect the actual costs at the end of the POI. Shinhan contends that because the prices of key raw materials were declining during the POI, the standard costs of those raw materials would be higher than the actual costs of those raw materials and the costs on the production orders would be overstated. Shinhan points out that evidence on the record shows that diamond prices decreased during the POI. Furthermore, Shinhan states that because it bought diamonds from the United States, and the Korean won strengthened considerably against the U.S. dollar during the POI, the exchange rate fluctuation contributed to the actual costs of the raw materials at the end of the POI being lower than the standard costs of raw materials. Finally, Shinhan points out that because the costs from the audited financial statements were verified, the costs from the production orders should be adjusted to Shinhan's financial accounting system.

The petitioner argues that the Department should deny the residual cost variance adjustment because Shinhan failed to provide evidence to support the adjustment. The petitioner asserts that in its case brief, Shinhan failed to cite to any production orders to support its argument that open orders remain at standard cost at the beginning and ending of the accounting period. The petitioner contends that due to the lack of such evidence, it is necessary for the Department to deny the requested adjustment. The petitioner points out that according to Shinhan the residual cost variance occurred because of an overstatement of costs in the production orders that were open at the end of the POI. The petitioner argues that there should have been a relatively small group of production orders open at the end of the POI and it should have been possible for Shinhan to reconcile those production orders to the residual cost variance. The petitioner claims that it is the Department's practice to deny a claim for an adjustment if the respondent failed to provide supporting evidence. See Polyvinyl Alcohol From Taiwan, 63 FR 32810, 32819 (June 18, 1998). Furthermore, the petitioner argues that if the Department allows the residual cost variance, the adjustment should only be made to the production orders that were open at the end of the POI. The petitioner points out that Shinhan failed to explain why it would be proper to reduce the cost of every production order by the residual cost variance instead of only those production orders open at the end of the POI.

Department Position:

We agree with the petitioner and have denied Shinhan's residual cost variance adjustment for the final determination. The Department has a long-standing practice of denying a claim for an adjustment where the Department could not verify the claimed adjustment, because the respondent fails to provide supporting evidence. See Polyvinyl Alcohol From Taiwan, 63 FR 32810, 32819 (June 18, 1998) (Comment 7). Shinhan was unable to provide supporting documentation of the timing differences and the application of variances relating to specific production orders that were still open at the end of the POI. The examples Shinhan provided at verification and in the case briefs were examples of production orders that were open and completed within the POI; therefore, they were not impacted by the end of the POI timing difference claimed by Shinhan. In previous cases the Department has stated that the burden of proof to substantiate the legitimacy of a claimed adjustment falls on the respondent party making that claim. See Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 71 FR 7517 (February 13, 2006) and accompanying Issues and Decision Memorandum, at Comment 4. In the current case Shinhan did not meet its burden of proof for the residual cost variance; therefore, we have denied the adjustment.

Comment 37: Whether the Department Should use SG&A Methodology Submitted During the Cost Verification.

Shinhan argues that the revised SG&A calculation methodology submitted during the cost verification is reasonable and should be accepted by the Department. Shinhan contends that following the classifications of SG&A within normal books and records would lead to results that are distortive and contrary to the Department's policy. Shinhan points out that under its new

methodology, it appropriately allocated all of the travel, advertising, freight, bad debts and overseas marketing expenses from administrative expenses to selling expenses.

Shinhan states that its new methodology reasonably allocates a portion of administrative costs to selling expenses because the company's salesmen receive support from the company's administrative activities. Shinhan asserts that using employee headcount as the allocation basis is reasonable because each of its employees receives an equal benefit from its administrative services. Shinhan argues that using the allocation between selling and administrative expenses from its books and records would overstate G&A expenses allocated to products and would result in certain expenses, such as bad debt expense being allocated to G&A expenses. Shinhan cites two cases where the Department allowed an allocation of G&A expenses between G&A and selling expenses based on the head count in the respective Departments. See Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 70 FR 12443, (March 14, 2005) and accompanying Issues and Decision Memorandum, at Comment 27, (Carbon Steel Flat Products from Korea); Stainless Steel Sheet and Strip from Korea, 66 FR 64950 (December 17, 2001) and accompanying Issues and Decision Memorandum, at Comment 15 (Stainless Steel Sheet and Strip from Korea).

The petitioner argues that the Department should allocate the G&A expenses between selling expenses and administrative expenses applied to products based on Shinhan's normal books and records and not use either the salary or headcount allocation methodologies proposed by Shinhan. The petitioner agrees that certain expenses such as travel, advertising, bad debts, freight and overseas marketing expenses relate entirely to selling expenses and should be directly accounted for as a selling expense. However, the petitioner points out that Shinhan was unable to explain why it was necessary to depart from its normal books and records to allocate the remainder of the administrative expenses. Therefore, the petitioner agrees that for the remaining administrative expenses, the Department should rely on Shinhan's books and records. The petitioner argues that there is nothing on the record that would justify disregarding the allocation methodology in the normal books and records in favor of an allocation methodology created for purposes of this investigation. The petitioner asserts that section 773(f)(1)(A) of the Act requires the Department to rely on a company's normal books and records if such records are in accordance with the country's generally accepted accounting principles and reasonably reflect costs associated with production of the merchandise. The petitioner contends that in this case Shinhan has not demonstrated why the allocation of administrative costs in its books and records is not reasonable and therefore, the Department should reject Shinhan's allocation methodology.

Department Position:

Section 773(f)(1)(A) of the Act requires the Department to rely on the records of the exporter or producer of the merchandise if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. In this instance, Shinhan maintains separate cost centers for, and separately classifies costs as, G&A and selling expenses in its normal books and records. As such, the issue at hand is how reasonable is Shinhan's

classification of such costs in its normal books and records. For certain expenses, we agree with Shinhan that their normal classification of such costs as G&A appears inappropriate. Specifically, travel, advertising, bad debts, freight and overseas marketing expenses more appropriately relate to selling. Accordingly, we relied upon Shinhan's reclassification of these expenses from G&A to selling.

We disagree, however, that it is appropriate to reallocate certain other G&A expenses to selling activities. G&A activities typically support the general production activities of the company as a whole. As such, the Department normally allocates G&A costs over the merchandise produced and sold by the company as opposed to other administrative activities of the company, such as selling functions. See Color Television Receivers From Malaysia, at Comment 22.

While, in a few instances, the Department has allowed companies to allocate G&A expenses to selling activities when they were shown to directly support the selling functions, the allocation method must bear a direct relationship to the particular expense and the selling activity. Shinhan's reliance on Carbon Steel Flat Products from Korea and Stainless Steel Sheet and Strip from Korea is misleading. In both cases, the respondent's normal accounting system reported total SG&A expenses and did not allocate any expenses between selling and administrative expenses. Furthermore, in both of those cases, the respondent allocated expenses based on the underlying activity of the expenses. In this case, the G&A expenses at issue, (*i.e.*, audit fees, electricity, depreciation, *etc.*) do not clearly fluctuate in direct proportion to headcount.

For the final determination, we have allowed the reclassification of travel, advertising, bad debts, freight, and overseas marketing costs to selling expense, but have denied the claimed headcount allocation for the other G&A costs at issue.

Comment 38: Whether the Department Should Adjust for Items in Shinhan's G&A Expense Rate Calculation.

Shinhan argues that the Department should deduct dividend income and the net gain on disposal of marketable securities from its G&A expenses because both were earned on short-term investments and should be used as an offset to G&A expenses. Shinhan contends that the Department criteria for inclusion in the G&A expense rate calculation focuses on the nature of the income or expense item, not on the item's formal classification in the financial statements. See Carbon and Certain Alloy Steel Wire Rod from Mexico, 67 FR 55800 (August 30, 2002) and accompanying Issues and Decision Memorandum, at Comment 15 (Wire Rod from Mexico). Shinhan asserts in that in that case the Department ignored the company's formal treatment of the expense at issue and treated it as a non-operating expense properly included in G&A expenses.

Shinhan argues that its donation expense should be excluded because it was unrelated to the business activities of the company and it asserts that the Department has no grounds for including such a donation in the G&A expenses of the company.

The petitioner asserts that any of Shinhan's investment income offsets that relate to financing expenses should be used as an offset to financial expenses not G&A expenses. Furthermore, the petitioner argues that the Department should include the donation expense in the G&A expense rate calculation because it was a deduction on Shinhan's tax return. The petitioner points out that the nature of the recipient of the donation does not provide a basis for excluding such expenses from the company's G&A expense calculation. Finally, the petitioner argues that because Shinhan deducted the prior year's inventory adjustment from its reported costs, this adjustment should be deducted from the cost of goods sold used in the denominator of the G&A expense rate calculation.

Department Position:

We agree with the petitioner. We have included Shinhan's donation expense in the numerator of the G&A expense rate calculation and have excluded the prior year's inventory adjustment from the cost of goods sold used in the denominator of the G&A expense rate calculation. Furthermore, we agree that Shinhan's income relating to financial expenses (*i.e.*, unrealized gain on currency forward valuation and currency forward transactions) should be used as an offset to financial expenses. However, the Department considers dividend income and the net gain on marketable securities as investment income and has excluded these offsets from both the G&A and the financial expense rate computations for the final determination.

In its normal books and records, Shinhan reported the donations as expenses. Section 773(f)(1)(A) of the Act requires the Department to rely on the records of the exporter or producer of the merchandise if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. Shinhan has not provided any compelling reasons as to why the donation expenses do not support Shinhan's general operations. Companies routinely give donations to causes to promote their standing in the community. In prior cases the Department has found that donations should be included in the calculation of G&A expense because these expenses are a part of a company's overall administrative expenses attributable to all production, including production of subject merchandise. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from France, 64 FR 30820 (June 8, 1999) (Comment 22).

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

The Department normally does not consider dividend income, net gains on marketable securities, gains on currency forward valuations, or gains on currency forward transactions to be G&A items. Dividend income and net gains in marketable securities are investment activities which do not relate to the general production operations of the company. See Ball Bearings and

Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 67 FR 55780 (August 30, 2002), and accompanying Issues and Decision Memorandum, at Comment 40 (Ball Bearings 2000-2001). Gains or losses on foreign currency transactions are financing activities which are more appropriately treated as part of the financial expense rate computation. See Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 11045, 11048 (March 7, 2003) (unchanged in the final results). Interest income that is earned on a company's working capital accounts (*i.e.*, short-term interest bearing assets) are also more appropriately treated as part of the financial expense rate computation. See Timken v. United States, 852 F. Supp. 1040, 1048 (CIT 1994). Lastly, we do not consider it appropriate to include income earned from investing activities as an offset to the financial expense rate computation (*e.g.*, long-term interest income, capital gains, dividend income) because the resulting gains or losses relate to a separate profit making activity. See Ball Bearings 2000-2001, at Comment 40. Therefore, for the final determination, we have excluded the offsets for dividend income and net gain on marketable securities because they are related to Shinhan's investment activities and have reclassified the gains of currency forward valuations, and gains on currency forward transactions from offsets to G&A expenses to offsets to financial expenses.

Comment 39: Whether the Department Should Correct Certain Minor Errors in its Proposed Cost Adjustments.

Shinhan argues that in the program to adjust the purchase price of inputs from unaffiliated Chinese suppliers the Department made an error in calculating the market price adjustment. Shinhan contends that the Department made an error by increasing the adjustment variable by the total cost of manufacturing plus the adjustment amount instead of just for the adjustment amount. Shinhan also contends that the Department used the wrong figures when making the adjustment for its gains on currency forward valuation and gains on currency forward transactions.

The petitioner did not comment on this issue.

Department Position:

We agree with the respondent and will adjust the programming language for the final determination to eliminate the double counting of the total cost of manufacturing and to correct the adjustment for the gains on currency forward valuation and gains on currency forward transactions.

Comment 40: Whether the Department Should use the Costs Based on Shinhan's Normal Accounting System.

The petitioner argues that the Department should use Shinhan's cost database that is based on its normal accounting system. The petitioner points out that section 773(f)(1)(A) of the Act requires the Department to rely on a company's normal books and records if such records are in accordance with the country's generally accepted accounting principles and reasonably reflect

costs associated with the production of the merchandise. See Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil, 70 FR 60282 (October 17, 2005) and accompanying Issues and Decision Memorandum, at Comment 4 (Line Pipe from Brazil).

The petitioners assert that Shinhan's original cost database, SHIPCP04A, was based on a methodology created for this proceeding, whereas, the costs in the revised database, SHINCP06, were taken directly from the production orders in Shinhan's books and records and standard costs were adjusted to actual costs. The petitioner states that Shinhan did not present any evidence which showed that its normal accounting system distorts costs. Furthermore, the petitioner contends that the Department was unable to completely reconcile the original cost database to Shinhan's accounting system, therefore the Department should use Shinhan's revised database that was based on its normal books and records.

The respondent did not comment on this issue.

Department Position:

We agree with the petitioner and for the final determination, we used Shinhan's cost database that was based on Shinhan's normal books and records. Section 773(f)(1)(A) of the Act requires the Department to rely on the records of the exporter or producer of the merchandise if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. See Line Pipe from Brazil. Furthermore, the SAA states that the Department will consider whether the producer historically used its submitted cost allocation methods to compute the cost of the subject merchandise prior to the investigation, or review, and in the normal course of business. See SAA, at 834.

Shinhan provided two versions of its cost database. The first version was based on a methodology where costs were calculated at a product-family level. This methodology is not used in Shinhan's normal books and records, but developed specifically for reporting purposes. The second version was based on Shinhan's normal books and records where costs and variances are tracked and applied on a product-specific basis. In this proceeding, Shinhan asked the Department to reject its normal variance allocation methodology in favor of the methodology developed specifically for this investigation. In considering whether Shinhan's normal accounting practices (*i.e.*, product-specific cost and variance allocation methodology) were reasonable, the Department examined the documents on the record (*e.g.*, cost build-ups, financial and cost accounting reports, the cost database, *etc.*). Based on our review of record evidence, the Department found that Shinhan historically tracked costs on a detailed product level in its accounting system that allowed the company to provide detailed product-specific costs for each CONNUM. We found no reason to believe that its normal cost allocation methods used in the ordinary course of business unreasonably allocated costs to merchandise. Thus, there is no need to go outside its normal books and records for reporting purposes. Therefore, for the final

determination, the Department used the cost database that was prepared using Shinhan's normal books and records (*i.e.*, second version, product-specific cost and variance allocation methodology).

Comment 41: Whether the Department Should Adjust Shinhan's Costs for Certain CONNUMs.

The petitioner argues that the Department should adjust the material cost of a CONNUM to correct a timing difference error which resulted in the CONNUM having a negative per-unit direct material cost.

The respondent did not comment on this issue.

Department Position:

We agree with the petitioner and for the final determination have adjusted the reported direct materials costs of the specific CONNUM for the timing error.

Comment 42: Whether the Department Should Reduce Shinhan's Materials Rebate Adjustment.

The petitioner argues that the Department should adjust Shinhan's reported rebate adjustment so it is calculated over the same time period as the POI.

Shinhan argues that even though the reported material rebate was calculated for the incorrect period, the change proposed by the petitioner would be insignificant to Shinhan's total cost and should not be made by the Department. Shinhan points out that the antidumping statute provides that the Department may disregard "adjustments which are insignificant in relation to the price or value of the merchandise," *see* section 777A(a)(2) of the Act. Shinhan states that, like has done in other cases, the Department should make no adjustment to Shinhan's COM for the insignificant difference in rebate amounts between the POI and the calendar year. *See Certain Cut-to-Length Carbon-Quality Steel Plate Products from Korea*, 64 FR 73196, 73209 (December 29, 1999).

Department Position:

We agree with the petitioner and have adjusted Shinhan's reported material rebates to correspond to the POI. Even though in the current period this was a small adjustment, we made this adjustment for the final determination so that for any future proceedings the timing of the material rebates will correspond with the timing of the proceeding.

Comment 43: Whether the Department Should Adjust the Production Quantities of CONNUMS not Produced in the POI.

The petitioner argues that when Shinhan's and Ehwa's cost databases are collapsed, the cost of CONNUMs that were sold, but not produced by one of the companies during the POI was disproportionately weight-averaged together with the per-unit of the same CONNUM that was produced during the POI by the other company. The petitioner states that this occurs because the company that produced the CONNUM during the POI reported actual costs and actual production quantities. However, the company that had sales, but no production of the CONNUM during the POI reported a surrogate production cost and a production quantity of one. The petitioner contends that the Department should use the production quantity of the surrogate CONNUM in order to weight average the costs from Shinhan's and Ehwa's databases.

Shinhan argues that the Department's weight-averaging calculation is correct. Shinhan points out that in the example give by the petitioner, Ehwa produced the CONNUM during the POI but Shinhan did not. Therefore, Shinhan contends that Ehwa's costs to produce that CONNUM should be proportional to the amount of production that was produced by Ehwa. Shinhan asserts that it would be incorrect for the Department to substitute the production quantities of a surrogate CONNUM in the weight averaging calculation when collapsing companies.

Furthermore, Shinhan argues that it properly reported costs for all CONNUMs. Shinhan suggests that the petitioner may have incorrectly looked for the wrong CONNUM in the cost database, or, they may have looked for the CONNUM that was revised to conform to Ehwa's CONNUM format. Shinhan asserts that the CONNUM the petitioner stated was not reported in the cost database, was not produced during the POI, but was correctly reported using the costs of a surrogate CONNUM.

Department Position:

The Department has decided not to collapse Shinhan and Ehwa into a single entity for the final determination. See Comment 13. Therefore, there is no need for weight averaging CONNUMs sold but not produced during the POI. Thus, this issue is moot.

Comment 44: Whether the Department Should Base Shinhan's Financial Expense Rate on Facts Available.

The petitioner argues that the Department should base Shinhan's financial expense rate on adverse facts available. The petitioner states that Shinhan failed to inform the Department prior to verification that Shinhan's parent company, TPC, prepared consolidated financial statements. The petitioner asserts that the Department should reject Shinhan's submission of TPC's consolidated financial statements and base Shinhan's financial expense rate on adverse facts available. The petitioner claims that because of the late filing, they were deprived of any meaningful opportunity to analyze and comment upon the financial statements. The petitioner points out that the statute states that if a respondent fails to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, the administering authority, in reaching the applicable under section 776(b) of the Act, may use an

inference that is adverse to the interest of that party in selecting from among the facts otherwise available. See section 776(b) of the Act. The petitioner contends that Shinhan failed to act to the best of its ability therefore, the Department should use adverse inferences in determining facts available.

Shinhan did not comment on this issue because the petitioner incorrectly raised it for the first time in its rebuttal briefs.

Department Position:

We disagree with the petitioner. The Department requested that Shinhan put the consolidated financial statements of its parent company (TPC) on the record. The regulations at 351.301(b)(1) state that “factual information requested by the verifying officials from a person normally will be due no later than seven days after the date on which the verification of that person is completed.” Therefore, the Department had the authority to request and accept TPC’s consolidated financial statements at verification. During the verification, the Department analyzed TPC’s consolidated financial statements and compared them to TPC’s unconsolidated financial statements. In the section D questionnaire, the Department instructed Shinhan to calculate its financial expense based on the consolidated audited fiscal year financial statements of the highest consolidation level available. While we agree with the petitioner that Shinhan should have provided these financial statements when initially asked, we do not believe Shinhan intentionally failed to do so in an effort to impede the investigation. Accordingly, we do not deem it appropriate to resort to facts available with regard to calculating the interest expense rate for Shinhan.

C. Hyosung Issues

Comment 45: Whether the Department Should Revise Certain Freight Expenses in Hyosung’s U.S. Sales Database.

The petitioner contends that Hyosung has incorrectly reported freight costs for sales to the U.S. market by allocating international freight costs (INTNFRU) and U.S. inland freight costs (INLFWCU) from Western Diamond Tools, Inc. (WDT) to the unaffiliated customer on the basis of value. In regard to INTNFRU for EP sales and INLFWCU for both EP and CEP sales, the petitioner contends that Hyosung reported these expenses on a transaction-specific basis, whereby the transaction freight cost was allocated to different line items on the invoice by value. The petitioner states that, at verification, the Department recognized that Hyosung’s value-based allocation methodology did not conform with the Department’s practice of allocating freight by weight, and tested the reasonableness of Hyosung’s methodology. The petitioner notes that the Department used the specific gravity (or average weight) of steel to calculate the weight of each model, and compared the recalculated freight charges, allocated by weight, for several selected invoices to the reported value-based freight allocation for the same invoices. The petitioner contends that the Department found that the two allocation methodologies yield divergent results, and that the variances between the value-based and weight-based allocation methodologies were

substantial. Given that the variances were substantial, the petitioner requests that the Department reallocate these freight expenses on a weight basis by summing the freight per invoice, and reallocate the total freight cost based on the weight of each product. The petitioner notes that this will not account for the weight of any non-subject merchandise that may have been on the same invoice, but contends that the adjustment will result in a more accurate allocation of the freight expenses than the expenses submitted by Hyosung in its database.

With respect to INTNFRU for CEP sales, the petitioner notes that Hyosung allocated total international freight costs for U.S. sales to resales made by WDT based on sales value, since it cannot link international freight costs to downstream resales by WDT. The petitioner argues that, since it is the Department's practice to allocate freight based on the weight of the product, the Department should reallocate the total international freight reported for CEP sales to each CEP sales observation based on weight. The petitioner notes that this will not address the fact that the total amount of international freight reported for CEP sales was, in itself, derived on a value-based allocation methodology. Nonetheless, the petitioner states that its proposed adjustment will result in a more accurate allocation of the freight expenses than those submitted by Hyosung in its database. The petitioner also suggests that, as an alternative, the Department could assign to CEP sales the average international freight expense for EP sales with the same/similar product code, after the international freight for EP sales has been adjusted.

In rebuttal, Hyosung states that the petitioner fails to recognize that the Department verified the completeness and accuracy of Hyosung's reported freight costs. Hyosung claims that the Department concluded that re-allocating Hyosung's freight costs on the basis of estimated weights resulted in some higher and some lower unit adjustments than the reported value-based allocation methodology. According to Hyosung, this demonstrates that its value-based allocation methodology objectively neither favored nor disfavored Hyosung. Hyosung further contends that the Department established that the estimated weights determined for Hyosung's products on the basis of average specific gravities of the metal used in the cores of the products, did not accurately reflect the actual shipping weights when compared with actual weights shown on freight invoices. Hyosung finally contends, in rebuttal, that both the Department and the petitioner recognize that no means other than sales value was available or reasonable for segregating subject from non-subject merchandise in computing freight costs in commingled shipments of subject and non-subject products, which were a majority of its shipments. According to Hyosung, the Department verified that Hyosung does not maintain, nor could it obtain, actual weights for its products. Hyosung submits that its value-based allocations remain the most accurate and reasonable means for allocating its fully verified freight costs to unit sales.

In response to the petitioner's argument that the Department should sum the freight per invoice and reallocate it based on the weight of each product, even though this reallocation will not account for the weight of any non-subject merchandise that may have been on the same invoice, Hyosung argues that the Department verified that Hyosung does not maintain weights for its products, and the estimated weights derived at verification based on the average specific gravity of the metal used in the cores of the subject merchandise were verified to be unreliable and inaccurate. According to Hyosung, reallocating expenses on the basis of the inaccurate

weights will result in inaccurate unit adjustment values – notably, some too high and some too low. Hyosung asserts that the Department verified that the vast majority of shipments by Hyosung contained both subject and non-subject merchandise. Hyosung states that a reallocation of total freight expenses for shipping subject and non-subject merchandise combined over only subject merchandise would not result in a more accurate allocation of the freight expenses, but rather would over-allocate freight expenses. Hyosung notes that the petitioner’s argument for reallocations and the Department’s allocation tests necessarily accept as a foundation the “first cut” apportionment of total freight to subject merchandise shipments from Hyosung to WDT using the merchandise value.

Hyosung states that, due only to the petitioner’s pre-verification arguments concerning Hyosung’s reported INTNFRU, the Department compared Hyosung’s value based unit freight costs with those allocated on the basis of the estimated product weights. Although the Department’s test resulted in higher unit freight costs on average when derived on the basis of the weight allocation versus the value based allocation, Hyosung states that this result is significantly skewed in two ways. First, Hyosung states that the Department did not compare the weight-based inland freight with Hyosung’s actual reported inland freight, but rather with an inland freight that the Department itself has calculated. Specifically the Department compared (1) the allocated actual freight expense associated with a shipment from HDP to WDT among products shipped on that invoice based on each product’s estimated weight (“Freight Per Piece By Weight”), with, (2) the allocated freight expense of that shipment among the products based on the transfer price of each product between HDP and its affiliate WDT (“Reported INTNFRU”). Thus, Hyosung contends, the figures in the “Reported INTNFRU” column are not Hyosung’s reported freight expense, but rather per-unit freight expenses calculated by the Department. According to Hyosung, the Department compares unreported weight-based freight costs with unreported value-based freight costs, and that this is a meaningless analysis as it does not use Hyosung’s reported freight costs. Second, Hyosung states that the Department’s results are significantly skewed in the next step of its analysis by the fact that 12 of the 14 CEP transactions sampled by the Department for testing the freight allocation happened to be air shipments, while many shipments from Hyosung to WDT during the POI were ocean shipments, and ocean shipments generally contained much larger volumes than air shipments. Hyosung notes the difference in cost per kilogram between air and ocean shipments. Thus, according to Hyosung, allocating individual freight invoice amounts from the 14 selected transactions over the product weights for these transactions necessarily results in a significantly inflated unit freight rate compared to the average reported freight by CONNUM based on a value allocation.

Hyosung argues that if the Department insists on testing the accuracy of Hyosung’s value-based allocation against a weight-based allocation, a more appropriate “apples-to-apples” test could be conducted by first allocating total freight for CEP sales during the POI over total weight of CEP sales to derive a per kilogram rate, and then applying this per kilogram rate to the estimated weights computed for the subject merchandise in each transaction. According to Hyosung, when this more realistic measurement is compared with Hyosung’s value-based freight allocation, the results are seen to be quite similar. The petitioner’s approach, assigning to CEP sales the average international freight expense for EP sales, would result in a highly inflated

result that bears no relation to actual freight costs, imposing on Hyosung an artificially punitive price adjustment. Hyosung states that a significant proportion of shipments from Hyosung to WDT are made by ocean freight at relatively low rates, while all EP sales are shipped by air freight at very high rates.

In direct commentary, Hyosung argues that, due to the petitioner's concerns about its reported freight expenses, the Department tested at verification Hyosung's movement expenses on its U.S. sales, and established that Hyosung fully accounted for all relevant movement expenses in its questionnaire responses. For CEP sales, Hyosung contends that it cannot report transaction-specific international freight costs because its U.S. shipments contained both subject and non-subject merchandise and it cannot trace its intra-company shipments from Hyosung to WDT through to sales by WDT to its unaffiliated U.S. customers. For these reasons, Hyosung asserts that it had to allocate its movement expenses rather than report transaction-specific amounts. Hyosung states that, because it does not keep the weights of its products in the ordinary course of business, a fact verified by the Department, Hyosung allocated its movement expenses on a value basis in the U.S. market (INTNFRU and INLFWCU).

Hyosung states that the Department attempted to test its allocation methodologies at verification by requesting that Hyosung calculate theoretical weights for each CONNUM, based on average specific gravity of the metal used in the cores of its products and the size of the cores. The Department then selected several freight invoices and compared the freight amounts based upon Hyosung's methodology to the freight expense derived from a weight-based methodology. Hyosung contends that the Department's verification report confirms that the theoretical weights for Hyosung's products exceeded the actual export packing weights shown on selected shipping documents by a significant amount. Citing the Department's verification report, Hyosung states that one possible reason for this difference between the theoretical weight and the export packing weight might be the use of averages, such as the average specific gravity, and the average core and segment dimensions, to calculate the theoretical weight. Hyosung contends that the Department's reasonableness test produced flawed results because the theoretical weights themselves are not reasonable. Not surprisingly, states Hyosung, the Department found that its allocations resulted in partly higher and partly lower unit costs than the weight-based allocations because of the inherent inaccuracies of the estimated weights. The "test" thereby showed that Hyosung's value-based allocations neither uniformly favored nor disfavored Hyosung. In sum, Hyosung asserts that value-based allocations are the most accurate, reasonable, and non-distortive available.

Hyosung argues that the antidumping regulations expressly provide that the Department will accept allocations of expenses where transaction-specific reporting is not feasible and where the allocation is calculated as specifically as possible, citing 19 C.F.R. § 351.401(g). According to Hyosung, the regulations direct the Department to take into account the records maintained by the party in question in the ordinary course of its business. Citing Ball Bearings 2000-2001, at Comment 42, Hyosung contends that the Department has followed this regulatory directive and accepted value-based allocations of movement expenses in cases where respondent does not maintain product weights and where allocating by value is not distortive. Hyosung claims that

the use of sales value as the basis for allocating its movement expenses satisfies these standards because larger DSB command higher sales prices, and therefore sales prices provide a more reasonable and accurate measure of relative size and weight than the estimated theoretical weight and, correspondingly, provides a valid basis for allocating movement expenses. Hyosung acknowledges that the Department has recently implemented policy preference to avoid use of value-based freight expense allocations, citing Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews, 71 FR 12170, 12173 (March 9, 2006) (Ball Bearings 2004-2005), but contends that it has shown that its value-based allocations are accurate and non-distortive, while the Department's test has not proved to be a more reliable allocation basis.

In response to Hyosung's argument that, because it does not keep the weights of its products in the normal course of business, it has appropriately used alternative methodologies to report all of its movement expenses for HM and U.S. sales, the petitioner reiterates that it is the Department's practice to allocate freight expenses based on the weight of the product. The petitioner states that, at verification, the Department recognized that Hyosung's allocation methodology did not conform with the Department's practice, and tested the allocation methodology for international freight expenses and inland freight expenses against a weight-based allocation methodology which utilizes an average weight based on the specific gravity of steel.

In response to Hyosung's argument that the estimated weights for the models calculated at verification are flawed, and in fact failed the reasonableness test, the petitioner contends that, although the Department did state that there was a difference between the theoretical weight of the shipment and the packing weight of the invoice, it never stated that the estimated weights failed the reasonableness tests. According to the petitioner, the Department did state that, when it recalculated freight charges on a weight basis for select invoices, it found that the two allocation methodologies yielded divergent results, and that the variances were substantial. If this is the case, the petitioner argues that the Department should reallocate the freight expense for U.S. sales on a weight basis, and that this adjustment will result in a more accurate allocation of the freight expenses than the expenses submitted by Hyosung in its database.

Department Position:

We agree with the petitioner in part. In the Department's sales verification reports, Memorandum from Tom Martin to Tom Futtner, "Verification of the Home Market and Export Price Sales Response of Hyosung D & P Co., Ltd. and Western Diamond Tools Inc.," dated April 10, 2006, (Hyosung Verification Report) at Appendix IV, and Memorandum from Mark Manning to Tom Futtner, "Verification of the U.S. Sales Response of Hyosung D & P Co., Ltd. and Western Diamond Tools Inc.," dated April 7, 2006, (WDT Report) at Appendix III, the Department tested INTNFRU for EP sales and INLFWCU for both EP and CEP sales. Hyosung reported these two variables on an invoice-specific basis, allocating the freight expenses to each invoice item on the basis of line-item invoice value, in relation to the total invoice value. Hyosung reported INTNFRU for CEP sales based upon an overall POI freight expense for

subject merchandise shipped to the United States, allocated to overall POI invoice value for subject merchandise shipped to the U.S. market.

The Department's approach to testing the invoice-value allocation methodology employed by Hyosung for INTNFRU and INLFWCU, was to test the rationality of value allocation against allocation by weight. In performing these tests, the Department measured reallocated invoice-specific freight expense calculations using product weight, against invoice-specific freight expense calculations using invoice values, whether or not the sales in question had invoice-specific freight expenses reported. For INTNFRU for EP sales and INLFWCU for both EP and CEP sales, the Department verifiers could test the reported freighted expenses directly, since the reported freight expense calculations were invoice specific. However testing INTNFRU for CEP sales was somewhat more difficult because, as Hyosung states, WDT cannot link its purchases from Hyosung with its downstream sales from inventory. Nevertheless, the Department's focus at verification was not just to test the reported freight expenses, but to test the rationality of allocating freight expenses on the basis of invoice value in the DSB context. As the petitioner notes, the Department prefers that expenses be allocated on the same basis in which they are incurred by a respondent, and freight expenses are typically incurred on the basis of weight. This is also true for Hyosung. By comparing these two methodologies, the Department could test whether Hyosung's methodology had a distortive impact on the reported freight expenses on a sale-by-sale basis.

To perform these tests, the first necessary step was to obtain product weights. The Department verified that Hyosung does not take note of product weight in the ordinary course of business. Nonetheless, using product volume and the average-specific gravity of steel, Hyosung was able to calculate theoretical product weights for verification. Contrary to Hyosung's characterizations, the results did not prove to be unreasonably inaccurate when the Department compared overall theoretical invoice weight to the weight shown on the invoice packing lists. Regardless, for the purposes of allocating freight expenses, it does not matter if the theoretical weights calculated are perfectly accurate. Since all of the theoretical weights were calculated using the same formula, the proportionality of each theoretical product weight in relation to the theoretical weight of the entire shipment is an accurate ratio. Hyosung has made no argument that the theoretical product weights calculated for verification are not correct in proportion to each other.

The Department measured Hyosung's reported invoice-specific freight expenses for INTNFRU for EP sales and INLFWCU against these reallocated invoice-specific amounts, and found, as Hyosung states, some observations that had over-reported freight expenses, and some that had under-reported freight expenses. Hyosung's conclusion that this proves that its allocation is acceptable since it does not uniformly favor or disfavor Hyosung, misses the mark. If Hyosung's allocation based upon value does not correspond at all to an allocation based upon weight, it is distortive. Per 19 C.F.R. § 351.401(g)(1) and (2), Hyosung's allocation methodology may not be inaccurate or distortive, and Hyosung has the burden of proving this. Whether or not the allocation favors or disfavors Hyosung is not relevant.

For INTNFRU for CEP sales, as stated above, WDT cannot link its purchases from Hyosung with its downstream U.S. sales from inventory, and therefore Hyosung could only report INTNFRU for CEP sales based upon an overall POI freight expense for subject merchandise shipped to the United States, allocated to overall POI invoice value for subject merchandise shipped to the U.S. market. For testing this methodology, the Department could only rely upon two indirect bases of comparison: (1) requesting sample sales invoices between Hyosung and WDT, and the corresponding freight invoices for these sales, and comparing the results of value-based freight expense allocations with a weight-based allocations for these sample invoices (as if they had been EP sales), and (2) comparing the weight-based allocations for these same sample invoices to WDT's reported INTNFRU for the same products as those found on the sample invoices. As stated above, the focus of the Department's verification was to test the rationality of applying an invoice value-based allocation methodology, and the Department verifiers considered these indirect methods of testing Hyosung's reported INTNFRU for CEP transactions to be most appropriate methods. In conducting the first test, the Department found that some of the requested invoices did not involve multiple products, and therefore no allocation was required. Therefore, these invoices were not useful for the Department's testing purposes. For the second test, the Department found that, in some instances, there were no downstream sales by WDT during the POI of the selected shipped products on the sample invoices. Therefore, these products could not be used as a basis for a test. However, the end result of the Department's tests demonstrated that an invoice-value based allocation methodology for Hyosung's INTNFRU is distortive, when compared to a weight-based method.

Furthermore, Hyosung provides no argument supporting why a freight expense allocation based upon value is even theoretically rational. Hyosung argues that the larger, more costly products to ship tend to be the higher value products, but this rule of thumb, which is completely unsupported, is highly doubtful since the invoice-value based allocations based upon this assumption do not correspond well to a freight allocation based upon the theoretical weight of the products. Even if it is true that the calculated theoretical weights obtained at verification are not perfectly accurate, there is no reason to believe that a rule of thumb such as "costlier products tend to be larger" is more accurate. What is clear is that allocating freight expenses on the basis of value will result in a freight expense deduction from the gross unit price for each sale that rises and falls with the gross unit price of the sale. This does not correspond to economic reality.

Hyosung's argument that the Department's sample is skewed because most of the invoices used in the Department's analysis of INTNFRU were air shipments, when Hyosung's international freight expenses were mostly incurred on ocean shipments, is not compelling. First, Hyosung admits in its argument that a greater percentage of POI shipments were air shipments rather than ocean shipments. Second, Hyosung's statement that ocean shipments generally contain greater volume is plainly true in most circumstances, but it is not plainly true in this instance. The verification exhibit cited by Hyosung provides no indication that Hyosung's ocean shipments were higher volume. See Hyosung Verification Report at Exhibit 40a. For at least some of its sales to WDT, Hyosung apparently elects to make small ocean shipments by booking space in consolidated containers. Finally, for CEP transactions, Hyosung's sales were made with

items sold out of WDT's inventory. As many of these items may have entered into WDT's inventory well before the POI, there is no information on the record that indicates how the merchandise was transported to the United States. Therefore, Hyosung's statement that most of the merchandise at issue was shipped by ocean is not supported by the record.

We agree, however, with Hyosung's proposed methodology for reallocating INTNFRU and INLFWCU. Hyosung's proposed methodology involves reallocating freight expense totals that have been verified, and which therefore can be relied upon, and simply reallocating the totals on a sale-by-sale basis by weight rather than by invoice value. For INTNFRU for EP sales and INLFWCU, we have reallocated the reported freight for each invoice on the basis of the theoretical weight of the products on the invoice. For INTNFRU for CEP sales, we have applied the overall freight expenses verified by the Department for the U.S. sales, and the overall calculated theoretical weight of U.S. sales, and have used these to calculate a cost per kilogram for INTNFRU to be applied to each U.S. sale based upon the weight of each CONNUM. We note that the petitioner is correct that the overall division of the reported freight expenses between subject and non-subject merchandise for CEP sales was also based upon invoice value (*i.e.* "the first cut"). Given the difficulty of obtaining product weights for non-subject merchandise, the Department will focus the accuracy of the weight-based allocation on the reported overall freight expenses for the U.S. sales of subject merchandise.

Comment 46: Whether the Department Should Apply AFA To Hyosung's Reported HM Inland Freight.

The petitioner states that, under 19 C.F.R. § 351.401(g), respondents are required to use a transaction-specific reporting methodology, and that if this is not feasible, a respondent may use a surrogate that is less specific, provided the respondent can demonstrate that the allocation method used does not cause inaccuracies or distortions. In regard to HM inland freight – plant/warehouse to the customer (INLFTCH) – the petitioner states that Hyosung allocated total inland freight for all merchandise sold in the HM over total sales in the HM, to calculate a single HM inland freight expense that was reported for all HM sales. According to the petitioner, this methodology created skewed, unusable results. The petitioner cites the range of HM inland freight costs reported by Ehwa and Shinhan, arguing that the range of freight expenses reported by these companies indicates that a uniform rate across all sales is inappropriate and does not reflect the actual freight expense incurred by the respondent. The petitioner contends that, even if Hyosung does not maintain transaction-specific records on inland freight, the respondent could have attempted to allocate inland freight in a more meaningful manner.

The petitioner also states that Hyosung's methodology is further flawed because the total HM inland freight was allocated by total pieces sold, as opposed to the total weight of merchandise sold. According to the petitioner, allocating inland freight on the basis of pieces results in the shifting of costs from heavier non-subject merchandise to lighter subject merchandise. The petitioner states that there is not sufficient evidence on the record to determine what portion of the total inland freight was incurred for shipments of subject merchandise and what portion was associated with shipments of non-subject merchandise. The petitioner argues

that, unlike the U.S. freight expenses, reported INLFTCH was clearly erroneous in the database, as it was the same for every observation, and that it is clear that Hyosung's allocation methodology cannot be used in the final results of this investigation. Since, according to the petitioner, there is no information on the record that would allow the Department to reallocate this expense by weight or between non-subject and subject merchandise, the Department should apply AFA to Hyosung's INLFTCH.

The petitioner further states that, when a respondent fails to respond to or fully comply with requests for information two or more times, demonstrating a failure to cooperate to the best of its ability with the Department's requests for information, the Department applies AFA. According to the petitioner, the Department gave Hyosung at least two opportunities, prior to verification, to report its INLFTCH expenses and to demonstrate that its allocation method did not cause inaccuracies or distortions. The petitioner cites (1) the Department's October 18, 2005, sections B and C questionnaire; and (2) the Department's supplemental section B questionnaire, which requested that Hyosung explain a discrepancy regarding the reported number of pieces sold, and directed Hyosung to recalculate INLFTCH. The petitioner states that, rather than complying with the Department's requests to report INLFTCH using a reliable and acceptable method, Hyosung continued to use an allocation method that produces inaccurate and distorted results. The petitioner states that the Department found at verification that the allocation methodology used by Hyosung yielded a divergent result from a weight-based allocation methodology. Thus, the petitioner contends that Hyosung's INLFTCH merits the application of AFA. As AFA, the petitioner requests that the Department use the highest percentage of inland freight to gross unit price reported by the other respondents participating in the investigation.

In response to the petitioner's argument that the Department to apply AFA for Hyosung's INLFTCH due to Hyosung's failure to report the adjustment on a transaction-specific basis, Hyosung argues that the Department should reject this argument and rely on Hyosung's reported INLFTCH based on the verified record. According to Hyosung, the Department verified the accuracy and completeness of the total domestic inland freight costs borne by Hyosung for delivering its sales to domestic customers. Hyosung states that it cannot allocate HM inland freight on a transaction-specific basis, that it does not maintain the weights of its products, and that a high percentage of its domestic shipments are delivered by Hyosung employees with no consideration to the weight of each product. Hyosung states that it allocated the total delivery expenses (including third party charges, and costs relating to vehicle rental, operation and maintenance) on a per-piece basis for each sale. Hyosung notes that the AFA approach advocated by the petitioner is premised on a value-based allocation, contradicting its own stated view that freight costs should not be allocated on the basis of sales value. Contrary to the petitioner's assertion that the Department repeatedly requested that Hyosung justify its HM inland freight allocation, Hyosung contends that in neither instance cited by the petitioner did the Department ever raise questions with respect to Hyosung's allocation methodology.

In response to the petitioner's assertion that Hyosung's INLFTCH is "clearly erroneous in the database," Hyosung states that the Department compared Hyosung's reported HM inland freight expenses calculated on a per-piece basis to an inland freight expense calculated on a

weight basis, and only found “divergent results” using an analysis that Hyosung deems to be circular. In its verification report, the Department calculated the weight-based inland freight expense based on Hyosung’s reported per unit freight expenses for each sample sales invoice, and then reallocated the total reported freight amount for that sales invoice based on the weight of the products sold on that sales invoice. As the Department’s weight-based freight expenses are derived from the very adjustment that the Department is trying to evaluate, Hyosung states that the purported differences between the two freight amounts calculated are meaningless, as they are not based on Hyosung’s actual freight costs. Hyosung states that the Department’s analysis is further distorted by the theoretical, derived weight estimates that Hyosung claims failed the Department’s reasonableness test. Hyosung contends that the Department’s analysis proves nothing more than the fact that the products on each sales invoice have different weights, and speaks nothing of the reasonableness of Hyosung’s methodology based on the information available to it. Because most of Hyosung’s HM freight expenses are incurred without consideration to weight, Hyosung contends that a piece-based allocation is the most reasonable methodology for allocating Hyosung’s freight expense. Hyosung contends that the Department did not question this methodology, and its analysis in the verification report did not demonstrate that the allocation is distortive. Hyosung accordingly contends that there is no basis to adopt petitioner’s argument, and no reason for the Department to adjust Hyosung’s reported HM freight costs.

In direct commentary, Hyosung argues that, due to the petitioner’s concerns about its reported INLFTCH, the Department tested at verification Hyosung’s movement expenses on its HM sales, and established that Hyosung fully accounted for all relevant movement expenses in its questionnaire responses. Hyosung states that it was unable to report its INLFTCH on a transaction-specific basis because its shipments contained both subject and non-subject merchandise. Hyosung states that, because it does not keep the weights of its products in the ordinary course of business, a fact verified by the Department, Hyosung allocated its movement expenses on a per-piece basis in the HM market. Hyosung applies the same supporting rationale for its reported INLFTCH as with INTNFRU and INLFWCU. Specifically, that the Department’s tests at verification were flawed because the calculation of the theoretical weight of its products is itself flawed, and even if flawed, showed that Hyosung’s piece-based allocations neither uniformly favored nor disfavored Hyosung. In sum, Hyosung asserts that its piece-based allocations are the most accurate, reasonable, and non-distortive available.

Hyosung also states that if the Department accepts Hyosung’s reported INLFTCH in the final determination, the Department should use the corrected freight expenses submitted as minor corrections at verification. Hyosung notes that the Department did not request that Hyosung incorporate this change into its post-verification data request dated April 11, 2006.

In regard to INLFTCH, the petitioner states in rebuttal that allocating the freight on the basis of pieces was not the only problem with Hyosung’s methodology. The petitioner contends that Hyosung’s methodology calculating inland freight costs by allocating its total freight costs to total pieces sold in the HM creates skewed, unusable results. The petitioner argues that a sale made to a customer 100 miles away, for example, should incur more inland freight expenses than

that of sale to a customer only five miles away, but using Hyosung's allocation methodology, the inland freight expense would be the same for these two sales. The petitioner further notes the range of INLFTCH expenses reported by other respondents in this case, indicating, according to the petitioner, that a uniform allocation across all sales is inappropriate, and does not reflect the actual freight expense incurred by the respondent. The petitioner argues that if it is in fact the case that Hyosung does not maintain transaction specific records on inland freight, Hyosung must maintain records on the location (and distance) of its customers, and could have attempted to allocate inland freight in a more meaningful manner. The petitioner contrasts the reported U.S. freight expenses with HM inland freight, contending that the reported INLFTCH is clearly erroneous in the database as it was the same for every observation, and that it cannot be used in the final determination. As there is also no information on the record that would allow the Department to reallocate this expense by weight or between non-subject and subject merchandise, the petitioner contends that the Department should apply AFA.

Department Position:

We agree with the petitioner in part and Hyosung in part. Although we agree with the petitioner that Hyosung's reported INLFTCH is based upon an allocation methodology that is distortive, the Department at no time during the investigation requested that Hyosung change its allocation methodology. Therefore, there is no basis or justification for AFA in accordance with section 776(a)(2)(B) of the Act. The petitioner is entirely correct in its hypothetical argument, when it states that Hyosung should incur more freight expenses for a customer that is 100 miles away than it does for one that is five miles away. The Department verifiers did obtain freight distances for HM customers at verification. See Hyosung Verification Report at Exhibit 36. However, Hyosung also showed at verification that a high percentage of its HM sales were to customers located a relatively short distance away from Hyosung. Since most HM sales were local deliveries by sales personnel in the course of their normal sales calls, the actual kilometer distance is not as significant. The distance to Hyosung's customers is not significant to a salesperson if it is a matter of a few kilometers, particularly if the employee is traveling a given route for other purposes, such as for making a sales call. In order to ensure consistency of analysis, we tested INLFTCH using a similar methodology to that which we used for INTNFRU for EP sales, and INLFWCU. Specifically, we selected sales invoices that contained a sampling of subject merchandise sales, and reallocated the total reported INLFTCH for the invoice based upon the theoretical weight of the products. Based upon the percentage difference between the reported INLFTCH, and the weight-based allocation, the Department verifiers found that the reported INLFTCH is distortive.

Regarding Hyosung's argument that the Department's test is circular, and only shows that Hyosung's products have different weights, Hyosung is correct in part. The Department's test merely redistributes the same amount of freight expense reported for a given set of sales on the basis of weight. In doing so, the Department is not employing circular reasoning, but rather is only reallocating a pool of freight expenses that it considers to be verified. With respect to the total expenditures by Hyosung on third party carriers in Korea, and on vehicle rental, maintenance and insurance expenses, the Department found no discrepancies at verification. See

Hyosung Verification Report at 15-16. As is necessarily the case if all of the freight expense reported are reallocated over the same sales using a different methodology, some sales will have higher allocated freight expenses, and some lower. Hyosung's statement that this proves that its piece-based allocation neither uniformly favored nor disfavored Hyosung, again is off the mark. Under 19 C.F.R. § 351.401(g)(1) and (2), Hyosung's allocation methodology may not be inaccurate or distortive, and Hyosung has the burden of proving this. Whether or not the allocation favors or disfavors Hyosung is not relevant. The Department's analysis only attempts to demonstrate the distortive impact of Hyosung's methodology. In regard to Hyosung's argument that the Department's analysis proves nothing more than the fact that the products on each sales invoice have different weights, we agree with this statement generally. Since the products on each sales invoice have different weights, the Department should reallocate INLFTCH on the basis of weight, in conformance with our practice, to increase the accuracy of INLFTCH.

In order to make Hyosung's HM inland freight expenses (INLFTCH) more accurate, we have calculated the reported overall INLFTCH for all of the HM sales, and the overall weight of HM sales, and have used these to calculate a cost per kilogram for INLFTCH to be applied to each HM sale based upon the weight of each CONNUM. We note that the petitioner is correct that "the first cut" dividing the reported freight expenses between subject and non-subject merchandise for HM sales was also based upon the percentage of subject merchandise pieces to all pieces sold in the HM. Therefore, the Department will revise "the first cut," dividing subject from non-subject merchandise INLFTCH on the basis of the percentage value of subject merchandise of total merchandise, from Hyosung's HM sales reconciliation. In this way, "the first cut" will be made with the same methodology as that used for INTNFRU. For the final determination, the Department will focus the accuracy of the weight-based allocation on the reported overall freight expenses for the HM sales of subject merchandise. Regarding Hyosung's minor correction to INLFTCH from verification, the correction has become moot now that the Department has applied a different allocation methodology that is not based upon the number of pieces that Hyosung sold in the HM.

Comment 47: Whether the Department Should Revise the Indirect Selling Expense Ratio for Domestic and Export Sales.

The petitioner states that the Department found at verification that the sales figures used to calculate the indirect selling expense ratios were different than those included in the sales reconciliation. The petitioner recommends that the Department revise the indirect selling expense ratios for Hyosung to include the sales amounts identified in the sales reconciliation. According to the petitioner, these revised ratios should be used to recalculate Hyosung's indirect selling expenses.

Hyosung did not rebut this comment.

Department Position:

We agree with the petitioner that the indirect selling expense ratios for Hyosung should be revised. This change has already been implemented in the final data set submitted to the Department on April 14, 2006. See Hyosung's April 14, 2006, submission. We will use in our calculations the revised indirect selling expenses reported in this submission.

Comment 48: Whether Hyosung Fully and Accurately Reported All HM and U.S. Sales of Subject Merchandise.

Hyosung states that the petitioner alleged in its pre-verification comments that Hyosung failed to report sales of all products that fall within the scope of the investigation, in particular, ring saws, concave or convex blades, saws with large arbors, saws with industrial end-uses, crack chasers and turbo blades, and metal-bonded 1A1R grinding wheels. Hyosung contends that the Department verified that the petitioner's allegations were unsupported, and that Hyosung proved at verification that it fully and accurately reported sales of all subject merchandise. According to Hyosung, the Department verifiers conducted several tests to ensure that Hyosung reported all sales of merchandise within the scope of the investigation, and specifically reviewed the facts relating to products questioned by the petitioner. Hyosung states that the Department verified that Hyosung properly reported all relevant sales of subject merchandise.

The petitioner did not rebut this comment.

Department Position:

We agree with Hyosung that it correctly reported all subject merchandise.

Comment 49: Whether the Department Should Allow a Duty Drawback Adjustment for Hyosung.

Hyosung states that, in the Preliminary Determination, the Department found that Hyosung did not provide sufficient documentation to satisfy the first prong of the Department's duty drawback test, demonstrating that the import duties paid and the amount of duty rebated are directly linked. For this reason, Hyosung notes that the Department refused to grant Hyosung an adjustment for duty drawback received under the Korean duty drawback fixed rate system. Hyosung states that the Department has previously granted the adjustment to respondents under the Korean fixed-rate system, where respondents have shown a linkage between duties paid and duties rebated, citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Korea, 67 FR 3149 (January 23, 2002) (Stainless Steel Bar from Korea). Hyosung notes that, at verification, it demonstrated to the Department that it utilizes the duty drawback rate of 0.8%, which is derived by the Korean government for industrial companies of a similar size to Hyosung. Hyosung states that, although it showed at verification that its duty drawback applications to and receipts from the Korean government correlated with the value of its imports, the Department's verification report itself inaccurately reflects the amounts at issue and specifically reviewed at verification. Hyosung states that it complied with all of the Department's information requests in this investigation and specifically documented that it

individually met the Department's criteria. Consequently, Hyosung argues that the Department should grant Hyosung an adjustment for duty drawback received under the Korean fixed-rate system.

In response to Hyosung's argument that at verification it demonstrated that the duty drawback received correlated to the value of imports, the petitioner points out that there is a difference between a correlation and a direct link. The petitioner states that, in its verification report, the Department stated that it confirmed that the amount of duty drawback received by Hyosung is determined by the yield rate established by the Korean government, which is not based upon or dependent upon Hyosung's own production experience. For this reason, the petitioner argues that the Department should continue to deny Hyosung an adjustment for duty drawback in the final determination.

Department Position:

We agree with the petitioner that Hyosung is not entitled to a duty drawback adjustment. Section 772(c)(1)(B) of the Act provides that EP or CEP shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." The Department determines that an adjustment to U.S. price for claimed duty drawback is appropriate when a company can demonstrate that (1) the rebate and import duties are dependent upon one another, or in the context of an exemption from import duties, if the exemption is linked to the exportation of the subject merchandise; and (2) the respondent has demonstrated that there are sufficient imports of the raw material to account for the duty drawback on the exports of the subject merchandise (the so-called "two prong test"). See, Rajinder Pipes, Ltd. v. United States, 70 F. Supp. 2d 1350, 1358 (CIT 1999).

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

We note that there have been cases where specific respondents have been able, on their own, to demonstrate an entitlement to an upward adjustment to U.S. price for duty drawback under the fixed-rate scheme. See, e.g., Stainless Steel Bar From Korea. However, the Department has found that the fixed-rate system, by itself, does not meet the Department's two-prong test. See, e.g., Polyester Staple Fiber from Korea; Final Results of Antidumping Duty Administrative Review, 67 FR 63616 (October 15, 2002), and accompanying Issues and Decision Memorandum, at Comment 2.

The fixed-rate scheme in which Hyosung participates fails to meet the first prong of the Department's two-prong test on its own merits because the amount of rebate upon export is based upon the average experience of companies using the individual-rate scheme, as determined by Korean Customs Service. See, e.g., Top-of-the-Stove Stainless Steel Cooking Ware From the Republic of Korea: Final Results and Rescission, in Part, of Antidumping Duty Administrative Review, 67 FR 40274 (June 12, 2002), and accompanying Issues and Decision Memorandum, at Comment 5 (Cooking Ware from Korea); and Steel Wire Rope From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 61 FR 55965, 55968 (October 30, 1996). In other words, the amount of rebate a company receives under the fixed-rate scheme is not based on that company's own experience and, therefore, may be more, less, or equal to the amount of the actual duties it paid on the inputs.

Indeed, there have been instances where the Department has found rebates under the fixed-rate scheme to be in excess of duties paid on inputs. See, e.g., Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded non-Alloy Steel Pipe From the Republic of Korea, 62 FR 55574, 55577 (October 27, 1997); and Cooking Ware from Korea. Given the possibility of excess rebates under the fix-rate system, it is incumbent upon respondents receiving rebates under this system to demonstrate that they meet the second criterion of our test, *i.e.*, that there were sufficient imports to account for the duty drawback received for the export of the manufactured product.

As we stated in Preliminary Determination, the information submitted by Hyosung demonstrates that the amount of duty rebated is based upon a fixed percentage of the export invoice value, where the percent is determined by the Korean Customs Service. Hyosung reported that its own yield rates are not used in calculating the amount of duty drawback received from the Korean Government. Furthermore, there is no evidence on the record that the amount of duty rebated and received by Hyosung is directly linked to, or dependent upon, import duties on raw materials imported by Hyosung. See Preliminary Determination, 70 FR at 77140. We confirmed these facts at verification, and for this reason, we find that Hyosung has not satisfied the first prong.

Regarding Hyosung's statement that its duty drawback applications to and receipts from the Korean government correlated with the value of its imports, we do not agree. Hyosung suggests that the Department should add together its calculated total duties paid for the POI from a worksheet prepared for verification, with the POI total for duties paid on raw materials from Hyosung's accounting records. However, to add these two totals together would necessarily double-count Hyosung's duties paid. Secondly, even if Hyosung's calculation, as stated in its case brief, is accurate, Hyosung's total drawback refund still exceed's the import duties paid. This is not the type of "correlation" that would otherwise qualify a respondent for a duty drawback adjustment. For these reasons, we find that Hyosung has not satisfied the second prong of our test, in that Hyosung did not import enough inputs to account for the duty drawback it received. Therefore, since Hyosung has not satisfied either prong of our test, we continue to deny Hyosung's request for a duty drawback adjustment.

Comment 50: Whether the Department Should Recalculate Credit Expense for the EP Sales with Revised Shipment Dates in the Final Determination.

Hyosung states that, in its post-verification data request dated April 11, 2006, the Department requested Hyosung make the minor corrections submitted at verification to the dates of sale for certain EP sales, affecting SALINDTU, SALEDATU, and SHIPDATU. However, Hyosung notes that the Department did not request that Hyosung revise its reported credit expense to reflect the corrected shipment dates for these sales. Hyosung requests that the Department make a corresponding change to the imputed credit expense for these sales in the final determination.

The petitioner did not rebut this comment.

Department Position:

We agree with Hyosung and will revise the imputed credit calculation for the EP sales in question for the final determination.

Comment 51: Whether the Department Should use Hyosung's Originally Reported Costs of Production.

Hyosung asserts that, for purposes of this final determination, the Department should rely on the COP/CV data reported in the "HYOSCP06" database that is based on an actual cost allocation methodology used in Hyosung's normal books and records prior to and subsequent to FY 2004 (*i.e.* Hyosung's original reporting methodology). In calculating this COP/CV data, Hyosung stated that it relied on the actual cost allocation methodology reflected in its normal books and records for the period January 1 to March 31, 2005, rather than the standard cost allocation methodology reflected in its books and records for the period April 1 to December 31, 2004. According to Hyosung, the actual cost allocation methodology is based on each specific product's metal powder consumption quantities and as such, reflects each product's specific cost that would not be accurately captured using the standard cost allocation methodology.

Hyosung points to section 773(f)(1)(A) of the Act, and the SAA, at 834-35, where the Department is required to rely on a producer's normal books and records provided that those costs reasonably reflect the costs associated with the production and sale of the merchandise. Further, according to Hyosung, the Department is required to consider all available evidence on the proper allocation of costs including if such costs have been historically used by the exporter or producer. The Department's precedent, argues Hyosung, provides further evidence that respondents are permitted to allocate costs to a more detailed product-specific level than their normal cost accounting methodology in order to report costs on a CONNUM specific basis provided that the methodology used is reasonable. See, e.g., Notice of Final Determination of Sales at Not Less Than Fair Value: Wax and Wax /Resin Thermal Transfer Ribbon from the Republic of Korea, 69 FR 17645 (April 5, 2004) (Ribbon from Korea) and accompanying Issues and Decision Memorandum, at Comment 2 ("respondents can allocate costs to a more detailed

product-specific level than their normal cost accounting methodology in order to report costs on a control-number basis, as required by the Department, provided that the methodology is reasonable”); Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170 (March 18, 1998) (CR Steel from Korea) and accompanying Issues and Decision Memorandum, at Comment 38 (“the apparent inability of POCOS to distinguish costs on the basis of quality...the Department’s use of POSCO data to adjust the costs of POCOS production for quality is reasonable”). Hyosung further notes that the Department’s section D questionnaire instructs respondents to calculate appropriate cost differences using a reasonable method based on available company records for any physical characteristic identified by the Department but not tracked in the company’s normal cost accounting system.

In the instant case, Hyosung argues that its original cost reporting methodology meets these requirements in that it more accurately reflects product-specific costs and is based on the company’s current and historical books and records. Hyosung asserts that the actual cost methodology, based on each product’s metal powder consumption quantities, was verified by the Department as accurate and reasonable in capturing individual product-specific manufacturing costs. Specifically, Hyosung refers to the Memorandum from LaVonne Clark to Neal Halper, “Verification Report on the Cost of Production and Constructed Value Data Submitted by Hyosung Diamond Industrial Co., Ltd and its affiliate Western Diamond Tools Inc.,” dated March 28, 2006 (Hyosung Cost Verification Report) where the Department observed that Hyosung tracks each specific product’s metal powder consumption quantities in its production records. Hyosung notes that the COP reported in “HYOSCP06” database reflects material costs based on each product’s metal powder consumption quantities. In addition, the labor costs reported in this database reflect process-specific labor costs, and overhead costs specific to each product’s labor costs and metal powder consumption quantities. Hyosung asserts that metal powder quantities are the most appropriate cost driver because the heavier segments, that require more labor hours and machine hours, are allocated greater finishing costs. Hyosung contends that the use of metal powder consumption quantities in the allocation of costs results in calculated production costs that are specific to each product’s particular production path. Further, in the absence of machine times or labor hours information which are not tracked by the company’s production system, Hyosung concludes that metal powder quantities provide the most accurate method of allocating product-specific costs. Hyosung also notes that the Department verified that the COP reflected in “HYOSCP06” database tied to the company’s normal books and records.

Hyosung claims that the Department verified that the standard cost allocation methodology used by Hyosung in FY 2004 did not provide a product-specific cost but rather based the cost of each product on the standard cost of a representative product and then applied a division-wide variance for differences between standard and actual materials, consumables, labor, and overhead costs. Hyosung contends that this standard cost allocation, used to report COP in the cost database “HYOSCP07”, does not account for differences in the specific production processes for each individual product because the standards reflect the processes used for the representative product rather than each specific product. According to Hyosung, the

Department noted in the Hyosung Cost Verification Report that the standard cost allocation methodology results in distortions and lack of precision in the COP information provided in the “HYOSCP07” database. Hyosung states, as an example, that the Department examined the COP of a continuous rim sawblade calculated using the standard cost allocation methodology, and noted that even though the product did not require segment assembly, segment assembly costs were assigned to the product based on the representative product. Further, according to Hyosung, the Department noted that fixed overhead costs reported in the “HYOSCP07” database were calculated using a single standard fixed overhead ratio and that this ratio was applied to all products manufactured by the Diamond Tools Division. For this reason and those aforementioned, Hyosung concludes that the Department should use the COP/CV data reported in the “HYOSCP06” database for purposes of the final determination.

To the contrary, the petitioner argues that the Department should use Hyosung’s “HYOSCP07” database that relies on Hyosung’s normal cost accounting system during FY 2004 for this final determination. The petitioner contends that the standard cost accounting system used by Hyosung during the first nine months of the POI, the basis for the costs reported in this database, was in accordance with Korean GAAP and that the inventory values based on these standards were reflected in Hyosung’s FY 2004 financial statements. The petitioner concludes that because nine of the twelve months of the POI occurred during FY 2004, the Department should rely on the costs based on the standard cost accounting system because these costs best reflect the manner in which costs were accounted for during the majority of the POI. In addition to using the “HYOSCP07” database, the petitioner asserts that the Department should adjust the COP reported in this database for the revised standard by the actual cost variance ratio presented at verification (see Hyosung Cost Verification Report at 2).

Department Position:

We agree with Hyosung and have relied upon Hyosung’s originally reported COP database for purposes of this final determination. As noted by Hyosung, section 773(f)(1)(A) of the Act states that costs shall normally be calculated based on records of the exporter or producer of the merchandise if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the subject merchandise. The statute also directs the Department to consider all evidence on the proper allocation of costs if such allocations have been historically used by the exporter or producer. The SAA adds that the Department will consider production cost information available to the producer and whether such information could reasonably be used to compute a representative measure of the materials, labor and other costs incurred to produce the subject merchandise. See SAA, at 835. Further, the SAA states that the Department will consider whether the producer historically used its submitted cost allocation methods to compute the cost of the subject merchandise prior to the investigation, or review, and in the normal course of business. Id.

In the instant case, we find that Hyosung’s original reporting methodology reflected in the “HYOSCP06” database meets the requirements set forth by the law and is consistent with Department precedent. See, e.g., Ribbon from Korea, and accompanying Issues and Decision

Memorandum, at Comment 2. The original reporting methodology was based on Hyosung's normal books and records that were kept in accordance with the GAAP of Korea. The "HYOSCP06" database was based on the actual cost allocation methodology, which was used historically by Hyosung. Hyosung Cost Verification Report, at page 12.

Hyosung adopted a different cost allocation methodology at the end of FY 2004, the standard cost methodology. The Department requested that Hyosung report its costs using this methodology, as Hyosung used the standard methodology to record its costs in its own books and records during FY 2004, which formed part of the POI. This was the basis of the "HYOSCP07" database. However, Hyosung abandoned the standard cost methodology subsequent to FY 2004, returning to the actual cost methodology to value the FY 2005 ending inventory. Hyosung Cost Verification Report, at page 13.

Although the COP reported in database "HYOSCP07" reflects the standard cost allocation methodology used by Hyosung to value its FY 2004 ending inventory, we find that the standard cost methodology does not provide for a reasonable allocation of costs associated with manufacturing each product. The standard cost allocation methodology assigns the standard costs of a representative product within a product group to all of the products falling within the broad definition of that product group. Hyosung Cost Verification Report, at page 13. As a result, the standard costs assigned to the representative product group reflect the manufacturing processes of the representative product but do not reflect the manufacturing processes used to manufacture the other products within the product group. For example, as noted by Hyosung, at verification we examined the COP of a continuous rim DSB that included costs related to the assembly process (*i.e.* the process of attaching the segment(s) to the DSB). See Hyosung Cost Verification Report, at page 30. Although a continuous rim DSB does not require segment assembly costs, these costs were assigned to that product because the representative product of the product group that included the continuous rim DSB required segment assembly. Because the standard cost allocation methodology does not differentiate costs among products based on the processing route of each product, we find that the standard cost allocation methodology does not reasonably reflect the costs of manufacturing the subject merchandise.

By contrast, Hyosung's original reporting methodology (database "HYOSCP06") reasonably reflects the costs associated with the production of the subject merchandise. The basis used by Hyosung to allocate costs under this methodology was metal powder consumption quantities. In accordance with the SAA, this production information was available to Hyosung and was used to compute the actual measure of material costs, and a representative measure of labor and other costs incurred to produce the subject merchandise. Metal powder consumption quantities are normally tracked in Hyosung's production information system. Hyosung Cost Verification Report, at page 13. Material costs, under the original reporting methodology, reflect the costs of actual metal powder consumption quantities (*i.e.*, quantity of the major raw material input) specific to each product. Metal powder consumption quantities (*i.e.*, the weight of the DSB segments) were also used to allocate labor and overhead costs. We agree with Hyosung that the metal powder consumption quantities are a cost driver and a reasonable basis for allocating labor and overhead costs. Further, we find that the actual cost allocation methodology

reasonably reflects the costs associated with the manufacture of each product because it assigns to each product only those costs of the production processes through which that product passes. See Hyosung Cost Verification Report, at page 30.

Because we are not relying on the database “HYOSCP07” for this final determination, we do not find it necessary to address the petitioner’s argument regarding the standard to actual cost variance.

Comment 52: Whether the Department Should Adjust Hyosung’s Reported Costs for Unreconciled Differences.

Hyosung contends that the Department has no basis to characterize differences between Hyosung’s reported costs and its cost accounting system reports (*i.e.*, COM statements) as unreconciled differences. Hyosung alleges that during verification, Hyosung fully quantified and explained the reasons for these differences. As such, Hyosung argues that the Department has no basis to make any adjustment to Hyosung’s reported costs for these differences.

Hyosung also argues that the Department made two errors in its calculation of the reconciliation of Hyosung’s “HYOSCP06” database in the Hyosung Cost Verification Report. According to Hyosung, the Department used an incorrect figure in the calculation for subject merchandise sold only in third country markets and the Department failed to include an adjustment for packing costs.

Finally, Hyosung holds that if the Department determines that an adjustment to Hyosung’s reported costs for these differences is warranted, the Department should limit the adjustment to the rate of scrap generated during the POI by the company and the adjustment should only be applied to material costs, not TOTCOM. Hyosung states that during verification, the company explained as part of its reconciliation that a portion of the unreconciled difference related to scrap and yield losses. Further, Hyosung contends that any adjustment made to its reported costs for scrap should not be double-counted with any other upward adjustment that the Department may determine necessary for the aforementioned differences. As such, Hyosung asserts that any adjustment for general unreconciled differences should be offset by any scrap adjustment that is made.

The petitioner contends that the Department should increase the costs reported in “HYOSCP07” database (*i.e.* Hyosung’s reported costs based on the standard cost allocation methodology) for unreconciled differences between Hyosung’s reported costs and its COM statements. While Hyosung may have shown to what the differences are attributable, the petitioner asserts that Hyosung has failed to show that these costs were included in the reported costs. In regard to Hyosung’s argument concerning yield and scrap losses, the petitioner notes that these losses do not account for the total unreconciled differences. Therefore, the petitioner asserts that the Department should increase the reported costs in database HYOSCP07 for the entire value of the unreconciled differences. Because these differences relate to materials, labor,

and overhead, and packing costs, the petitioner claims that the Department should adjust TOTCOM rather than just direct materials as suggested by Hyosung.

Department Position:

We agree with the petitioner, in part, and have increased Hyosung's reported costs (*i.e.* TOTCOM) for a portion of the unreconciled differences presented in the Hyosung Cost Verification Report. Because we have based Hyosung's costs on the database "HYOSCP06A," we have increased Hyosung's reported costs for a portion of the difference between the COM statements and the "HYOSCP06" database, as reflected in the Hyosung Cost Verification Report, rather than the difference between the COM statements and the "HYOSCP07" database as suggested by the petitioner.

As noted in the Hyosung Cost Verification Report, at page 21, we tied all the values shown in the reconciliation to supporting records with the exception of the value noted as the "unreconciled difference." At verification, Hyosung officials provided a worksheet that identified and quantified amounts within the unreconciled difference. See Exhibit 5 of the Hyosung Cost Verification Report. However, after discussions with Hyosung officials about this worksheet, we noted additional explanations for the unreconciled difference such as costs associated with differences between material consumption costs and the average purchase prices used to allocate material costs, yield losses incurred during the POI, and scrap costs. See Hyosung Cost Verification Report, at page 21. The worksheet provided by Hyosung identified and quantified only the packing, labor, and overhead items. See Exhibit 5 of the Hyosung Verification Report. As such, Hyosung had not fully quantified and explained each reconciling item.

Further, we disagree with Hyosung's argument that the unreconciled difference identified on page 21 of the Hyosung Cost Verification Report was fully quantified and explained and therefore should be excluded from Hyosung's reported costs. Identifying and quantifying differences between a respondent's normal books and records (*i.e.* the COM statements of the Diamond Tools Division in the instant case) and its reported costs does not, on its face, necessarily determine whether those costs should or should not be included in the reported costs. Moreover, as noted above, the identified and quantified differences reflected in the worksheet presented by Hyosung did not account for the total value of the unreconciled difference. Further discussion with company officials at verification clarified that the unreconciled difference resulted from additional items identified above.

In regard to Hyosung's assertion that the Department's reconciliation failed to include an adjustment for packing, we note that the figure used in the Department's report for subject merchandise sold only in third countries ties directly to the sum of the TOTCOM of products not sold in both markets, as shown on the revised cost reconciliation worksheet for database "HYOSCP06," and the packing costs for products not sold in both markets, as shown on the original cost reconciliation worksheet for database "HYOSCP06." See Exhibit 5 of the Hyosung Cost Verification Report for both worksheets. However, we agree with Hyosung that those

packing costs related to the reported subject merchandise were erroneously omitted from the Department's reconciliation.

As a result, we have adjusted Hyosung's reported costs for the total unreconciled difference as reflected in the Hyosung Cost Verification Report less an amount for packing costs related to the reported subject merchandise. See Exhibit 5 of the Hyosung Cost Verification Report. Because the items included in the remaining unreconciled difference related to material, labor, and overhead costs, we have increased the TOTCOM reported in "HYOSCP06A" to account for these differences rather than adjusting the reported material costs as suggested by Hyosung. Further, to avoid any double-counting, we have not separately adjusted Hyosung's material costs for scrap because these costs are included in the adjustment for the remaining unreconciled difference.

Comment 53: Whether the Department Should Exclude Hyosung's Prior Period Income tax Payments From G&A Expenses.

Hyosung claims that during verification the Department confirmed that prior period tax payments were included in the G&A expenses reflected on Hyosung's FY 2004 financial statements. Because the Department has never increased a company's G&A expenses for income tax payments, and the tax payments relate to years prior to the POI, Hyosung contends that the Department should exclude these payments from the total net G&A expenses used in calculating Hyosung's COP.

The petitioner did not comment on this issue.

Department Position:

We agree with Hyosung. Income taxes are not considered a component of COP and are specifically excluded from the antidumping duty analysis. See section 773(a)(6)(B)(iii) of the Act. Therefore, for purposes of this final determination, we have excluded the value of the tax payments from Hyosung's reported G&A expenses.

Comment 54: Whether the Department Should Allow the Short-Term Income Generated From Investment Securities as an Offset to Hyosung's Financial Expenses.

Hyosung argues that the Department should allow the short-term income generated from investment securities as an offset to Hyosung's reported financial expenses because these securities were short-term in nature. See, e.g., the Department's section D questionnaire at D-15.

The petitioner did not comment on this issue.

Department Position:

_____ We agree with Hyosung. The Department's practice reflects the fact that it is reasonable to allow a respondent to offset financial expenses for income generated by short-term interest bearing assets. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France, 70 FR 54359 (September 14, 2005) and accompanying Issues and Decision Memorandum, at Comment 10 ("The Department's practice is to calculate the financial expense rate offset with only short-term interest income"). In the instant case, the asset that earned the interest income in question was held by Hyosung for less than a month. Because of the short-term nature of this asset (*i.e.*, the asset was held for less than a year), we have allowed Hyosung to offset its reported financial expenses with the interest earned by this asset.

Comment 55: Whether the Department Should Correct the Surrogate CONNUM for two Products on the COP Database.

Hyosung states that Cost Verification Exhibit (CVE) 1 contains a clerical error involving one of Hyosung's surrogate CONNUMs. According to Hyosung, this product is in fact a 4.5 inch diameter DSB and the first digits of the CONNUM should have been coded 01045, not 01450. The erroneous CONNUM means that it is incorrectly coded as a 45-inch blade. Hyosung contends that, although this CONNUM is a product that is sold only in third-country markets, this error will potentially distort the Department's matching and DIFMER adjustment if the relevant HM products with this surrogate are used in model matching.

The petitioner states in rebuttal that, while this CONNUM is only sold in third country markets, it will affect the cost database because two home market/U.S. CONNUMs match to this CONNUM for surrogate purposes. The petitioner states that this minor correction involves the revision of segment thickness, not diameter. The petitioner claims that the Department verified only the accuracy of the reported thickness, and did not verify the accuracy of the diameter of the CONNUMs. Since Hyosung's contention that a clerical error exists is coming only after verification has been completed, it is too late to ascertain the accuracy of the claim. Therefore, the petitioner contends that it is inappropriate for the Department to make the requested change to the surrogate costs for the two related CONNUMs.

Department Position:

We have reviewed the record evidence and agree with Hyosung that it did, in fact, incorrectly code the CONNUM in question. Specifically, we examined information on the record related to the range of costs for producing a 45-inch DSB versus a 4.5-inch DSB. The record evidence shows radical cost differences for the 45-inch range DSB versus the 4.5-inch range DSB. The cost reported for CONNUM that Hyosung claims is incorrectly coded is vastly less than the cost of other 45-inch range DSBs. Therefore, we consider it reasonable to conclude that this DSB was incorrectly coded, and that it should not be used in determining the cost for similar 45-inch DSBs that were sold but not produced during the POI.

Comment 56: Whether the Department Should Ensure that the Products Purchased from Unaffiliated Suppliers Should be Assigned the Reported Costs of Production for Those Products.

Hyosung states that, in the Preliminary Determination, the Department's computer program failed to assign cost data to certain U.S. CONNUMs, and the Department's calculation memorandum erroneously states that Hyosung "did not report a cost for these CONNUMs." According to Hyosung, the costs of production of these products were properly reported in Hyosung's COP database used in the Preliminary Determination. However, because these products were purchased from an unaffiliated supplier, Hyosung states that the sales of these products on the U.S. sales lists were properly coded under a different manufacturer code (MFRU). As the Department's Comparison Market Computer Program assigned the manufacturer code "HDP" to all observations in the cost database, and then assigned costs by CONNUM and manufacturer code, the sales of these products were not assigned the reported costs for these products because the manufacturer codes did not match, according to Hyosung. Hyosung states that the Department instead assigned the average costs for all products to the sales of these products. Hyosung requests that the Department should correct this error in the final determination by assigning the appropriate manufacturer code to these products in the COP database.

The petitioner did not rebut this comment.

Department Position:

We have not included the acquisition costs of third party DSB resold by Hyosung in its respective costs of production for the final determination. While the Department has on occasion obtained a third party producer's COP when there was no transformation of the merchandise outside the scope of the order to merchandise within the scope of the order by the respondent,⁴ we determined that in the instant case this approach was not warranted. The significance of the quantity of finished DSB purchased and resold by Hyosung was negligible. Therefore, we recalculated the average cost for these CONNUMs using the reported costs for those Hyosung self-produced CONNUMs with identical physical characteristics for all characteristics that were specifically identified by Hyosung.

D. Filing Requirements

Comment 57: Whether the Department Should Reject the Petitioner's Case Brief for Failure to Comply With the Department's Regulations.

⁴ See Fresh and Chilled Atlantic Salmon from Norway, Final Results of Antidumping Duty Administrative Review, 61 FR 65522, 65523 (December 13, 1996) and accompanying Issues and Decision Memorandum, at Comment 1.

In its rebuttal brief, Shinhan alleges that the petitioner has failed to comply with the Department's regulations and urges the Department to reject the petitioner's case brief, and require the petitioner to withdraw it from the record. Citing to 19 C.F.R. § 351.306(c)(1), Shinhan claims that the petitioner failed to identify the source associated with the BPI cited in the petitioner's case brief. Shinhan claims that the omission of the source of BPI is in direct violation of 19 C.F.R. § 351.306 (c)(1) and that similar violations took place throughout the duration of this investigation. Additionally, Shinhan notes that, during the course of the investigation, the Department has requested that the petitioner withdraw and refile certain submissions which failed to comply with the above-cited regulation.

According to Shinhan, the petitioner's lack of adherence to the regulations hindered Shinhan's ability to correctly identify the source of each item of BPI. Shinhan claims that, on certain occasions, its counsel was forced to provide it with only public versions of the petitioner's submissions, even if those submissions contained a significant amount of Shinhan's own data. On other occasions, according to Shinhan, its counsel was forced to provide it with BPI versions of submissions only when its counsel was absolutely certain that the BPI information was Shinhan's own data. Shinhan claims that this task became even more complex and burdensome because the petitioner's case brief contains unidentified and intermingled Ehwa and Shinhan data in both the common issues section and in Shinhan's issues section. See Shinhan's Rebuttal Brief at 3-4.

Shinhan claims that 19 C.F.R. § 351.306 (c)(1) was specifically designed to allow counsel to provide the party they represent with "intelligible versions of submissions that include data submitted by that party." Id. Being denied the benefits of this regulation, Shinhan claims that it was "materially" hindered in its ability to respond to the petitioner's arguments throughout the course of this investigation. In particular, Shinhan argues that this violation was particularly "harmful" in the context of the petitioner's case brief because its counsel had little time to prepare the rebuttal arguments and required assistance from Shinhan's personnel to review the petitioner's potentially inaccurate or misleading factual assertions. Thus, Shinhan is urging the Department to reject the petitioner's case brief and require the petitioner to withdraw the case brief from the record. See Shinhan's Rebuttal Brief at 5.

Department Position:

We disagree with Shinhan that the petitioner's case brief should be rejected from the record investigation. After reviewing the petitioner's case brief, the Department did find a small number of instances where the petitioner did not identify the source of the submitted BPI. On May 4, 2006, the Department issued a letter to the petitioner instructing it to identify the source of the BPI for those instances where it failed to do so, and resubmit its revised case brief. On May 8, 2006, the petitioner complied with this request.

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 investigation and the final weighted-average dumping margins in the Federal Register.

Agree _____ Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

Date