

October 17, 2007

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

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

SUBJECT: Issues and Decision Memorandum for the Final Determination of  
the Less-Than-Fair-Value Investigation of Coated Free Sheet Paper  
from the Republic of Korea

### **Summary**

We have analyzed the case and rebuttal briefs submitted by the petitioner<sup>1</sup> and the Korean respondents<sup>2</sup> in this investigation. In the Preliminary Determination, we determined it appropriate to treat MPC, MSP, and MUSA as one entity for margin calculation purposes because they met the regulatory criteria for collapsing. No party objected to this preliminary determination. Therefore, we have continued to treat these affiliated companies as one entity in the final determination. See Coated Free Sheet Paper from the Republic of Korea: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 72 FR 30766 (June 4, 2007) (Preliminary Determination). As a result of our analysis, we have made changes in the margin calculation for the final determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments from the interested parties:

### **Background**

On June 4, 2007, the Department of Commerce (the Department) published the preliminary determination of the less-than-fair-value antidumping duty investigation of coated free sheet paper (CFS) from Korea. See Preliminary Determination. On September 10, 2007, the Department released its post-preliminary analysis on targeting. See Antidumping Duty

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<sup>1</sup> The petitioner in this investigation is NewPage Corporation.

<sup>2</sup> The Korean respondents include the following companies: Hansol Paper Co., Ltd. (Hansol); Hankuk Paper Mfg. Co., Ltd. (Hankuk); Moorim Paper Co., Ltd. (MPC), Moorim SP Co., Ltd. (MSP), and Moorim USA, Inc. (MUSA) (collectively Moorim); EN Paper Mfg. Co., Ltd. (EN Paper); and Kyesung Paper Co., Ltd. (Kyesung).

Investigation of Coated Free Sheet Paper from South Korea - Post-Preliminary Analysis on Targeting (September 10, 2007) (Post-Preliminary Determination). The products covered by this investigation are coated free sheet paper and paperboard of a kind used for writing, printing, or other graphic purposes. The period of investigation (POI) is October 1, 2005, through September 30, 2006. For a detailed discussion of the events which have occurred in this investigation since the Preliminary Determination, see the “Background” section of the Federal Register notice which this memorandum accompanies. We provided the petitioner and the Korean respondents with an opportunity to comment on our Post-Preliminary Determination and verification findings.

On August 20, August 28, and September 10, 2007, the petitioner requested that the Department clarify the scope of the antidumping and countervailing duty investigations of CFS paper from Indonesia, Korea, and the People’s Republic of China to include coated free sheet paper containing hardwood BCTMP. Because this request affected all six investigations, the Department set up a general issues file to handle this scope request. After considering the comments submitted by the parties to these investigations, we have determined not to adopt the scope clarification sought by the petitioner. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, entitled “Scope Clarification Request: NewPage Corporation” (Scope Memorandum), which is appended to the “Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Coated Free Sheet Paper from the People’s Republic of China.” All comments submitted by the parties to all six investigations are addressed in the Scope Memorandum.

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**A. General Comments**

Targeting

- Comment 1: Standard and Appropriate Statistical Techniques

The Korean respondents<sup>3</sup> state that the Department has consistently required that petitioners employ "standard and appropriate statistical techniques," as mandated by 19 C.F.R. § 351.414(f)(1)(i), when alleging that a pattern of significant differences exists among customers, regions, or time periods. They assert that because the petitioner failed to apply standard and appropriate statistical techniques, its targeting allegations should be rejected.

The petitioner asserts that in its targeting allegations, it employs "standard and appropriate statistical techniques" that are consistent with how the Department identifies patterns and significant price differences in all other contexts of the antidumping law. The petitioner presents what it calls its P/2 test. The test proposes that where the weighted-average net price to an

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<sup>3</sup> The respondents for targeting comments are Hansol, Moorim and Hankuk.

alleged targeted purchaser or region is more than 2 percent lower than the weighted-average net price to non-targeted purchasers or regions in control number (CONNUM)/month combinations representing a preponderance of the targeted quantity, a "pattern" of "significant" price differences should be found to exist.

The petitioner asserts that it does not believe that the law requires complex statistical modeling beyond something like the P/2 test it presented for these allegations. However, the petitioner claims that if it did, the petitioner has presented a "standard and appropriate statistical technique" by utilizing a "t-test" to demonstrate whether prices to the targeted and non-targeted regions fall within a single normal distribution with the same mean. Thus, the petitioner argues that the P/2 test and the accompanying t-test employ statistical techniques that are consistent with the statistical tests used by the Department in analogous areas of the law.

The Korean respondents argue that in the instant investigation, the Department has preliminarily accepted the petitioner's proposed targeted dumping allegation methodology without any analysis of whether that methodology met the minimum statutory and regulatory requirements. They contend that it is the domestic producers' burden to provide the Department with an appropriately detailed analysis of relevant market and customer information to justify an investigation of targeting dumping. Specifically, Hansol argues that the net prices that the petitioner calculated potentially reflect factors that are not indicative of targeting, such as differences in product mix, levels of trade, and terms and conditions of sale, which is exactly what the Department sought to avoid when it developed the Pasta Test.<sup>4</sup> As a result, according to Hansol, the Department's post-preliminary decision was based on an inherently flawed methodology.

The petitioner rebuts Hansol's complaints regarding net price calculations. The petitioner argues that the net prices are indicative of targeting and do take into account all relevant factors in the price-to-price comparisons. Moreover, the petitioner claims that although it separately calculated a single overall price difference between the targeted and non-targeted sales across all CONNUMs, it made a difference in merchandise (DIFMER) adjustment to avoid any distortion caused by product mix. Therefore, the petitioner concludes that Hansol's complaints regarding how the petitioner performed its price-to-price comparisons are without merit.

Both Moorim and Hankuk argue that the petitioner made an entirely arbitrary selection of customer groups without providing any statistical justification for this selection. They argue that only after these groups were segregated did the petitioner apply its proposed tests to show that the prices to the group of selected customers were lower than the prices to the other group. Therefore, Moorim and Hankuk contend that the results of these tests were predetermined by the initial composition of the different groups. Hansol argues that the petitioner has failed to provide any substantial evidence that regional markets exist in the United States. Thus, these Korean respondents argue that because the petitioner did not use standard and appropriate statistical

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<sup>4</sup> The parties have referred to the tests and statistical analysis performed in Certain Pasta from Italy, Redetermination on Remand (Pasta), (August 28, 1998) as the Pasta Test.)

techniques and failed to provide the necessary information to allow the Department to conduct a meaningful targeted dumping analysis, the Department should reject the petitioner's targeted dumping allegations in the final determination.

The petitioner counters that the statute does not specify how a pattern is to be identified, only that a pattern of significant price differences must be demonstrated. As this is what the petitioner has done, the petitioner argues that there is no basis, therefore, to reject the petitioner's allegation. The petitioner rebuts that its analysis was not predetermined by the initial composition of the different groups as argued by Moorim and Hankuk, but that clear patterns existed in the data submitted on the record by the respondents. The petitioner also explains that it did not gerrymander regions for purposes of its regional allegation of targeted dumping regarding Hansol. Instead, the petitioner explains, it defined regions based on U.S. Census Bureau definitions of regions in the United States. Further, the petitioner explains that the alleged targeted regions are significant markets in the CFS industry. Therefore, the regions are not based on an arbitrary and unreflective reality of the CFS market as argued by Hansol.

**Department's Position:**

We disagree with the Korean respondents that the analysis underlying this decision fails to meet the minimum regulatory requirements of employing "standard and appropriate statistical techniques." The phrase "standard and appropriate statistical techniques" is not defined by the statute or regulations and, as the Department's only other experience with analyzing targeted dumping was the case-specific analysis in the court remand that followed the antidumping investigation of Certain Pasta from Italy, the Pasta remand, (See, Borden, Inc., Gooch Foods, Inc., and Hershey Foods Corp. V. United States, Slip Op. 99-50, CIT, June 4, 1999), the Department has not defined what represents "standard and appropriate statistical techniques" for purposes of targeted dumping analyses. See Pasta. Moreover, there are a wide range of statistical tools and analyses that are "standard" and applied across a range of disciplines. Nevertheless, we recognize the desirability of developing a clearer definition of what test we would apply in targeted dumping situations.<sup>5</sup> We have determined that the analysis done in Pasta was case-specific and have determined not to apply that analysis towards these allegations of targeted pricing. Moreover, because the Pasta Test was reasonable for Pasta does not mean what the Department is doing in CFS is unreasonable.

The analysis in the petitioner's allegation is a simple comparison of monthly-average prices for identical products sold to targeted and non-targeted customers (or regions, as appropriate). These comparisons cover the preponderance of sales. This analysis shows a clear pattern of price differences between targeted and non-targeted customers (or regions, as appropriate). This pattern is displayed in graphs in Exhibits I and III of the petitioner's April 26, 2007, targeted dumping allegations. These graphs show that the targeted prices were consistently lower than the

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<sup>5</sup> Concurrent with this determination, the Department is requesting input from all interested parties in a notice in the Federal Register as to what appropriate tests and standards should be used in analyzing targeted dumping allegations.

non-targeted prices on a month-to-month basis, even though average prices fluctuated over the POI. Moreover, this pattern is consistent across products, months, and for individual transactions. See also Exhibits 5 through 8 of the petitioner's June 5, 2007, supplemental questionnaire response regarding its targeted dumping allegation.

The Department has taken into account factors such as product mix, levels of trade, and terms of sales that the Korean respondents claim can affect price comparisons unrelated to targeted dumping. First, the price-to-price comparisons are fully adjusted for all movement charges and selling expenses as they would be in our margin calculations; second, all the transactions are identical merchandise sold at the same level of trade. Most importantly, although we agree that we need to consider these factors, their existence alone does not preclude the possibility of targeting. In this case, the observed pattern is very clear, and there is no systematic explanation of why this pattern could be accounted for through those other factors. In addition, the statute does not require the Department to consider all the various reasons why targeting might occur, only the existence of targeting.

We also disagree with Hansol that the region in question is not adequately defined. The petitioner's regional definition is based on that used by the U.S. Census Bureau; moreover, the petitioner provided additional supporting documentation.

The most important aspect of utilizing standard statistical analysis is to ensure that any finding of the existence of a pattern of export prices that differs significantly among purchasers, regions, or time periods is not in error because of misrepresentation or data problems. In these allegations the observed pattern is very clear, and there is no evidence that this pattern is somehow invalid due to misrepresentation or distortion.

#### Comment 2: Validity of Certain Pasta from Italy

Moorim claims that the statistical methodology devised by the Department in Pasta was designed to test whether a petitioner's purchaser-specific targeted dumping allegation is sufficiently detailed and statistically rigorous to meet the requirements set forth in the targeted dumping provision of the antidumping statute and the Department's implementing regulations. However, Hansol states that even though the petitioner made customer-specific targeted dumping allegations in Pasta, this does not mean that the Department cannot apply the Pasta Test to regions. Both respondents argue that although certain aspects of the Pasta Test were tailored to the facts of that case, the statistical testing procedures developed were predominantly general in nature, mutually exclusive of the characteristics of the databases in Pasta, and could easily be applied to future cases, including the current one.

Hansol and Moorim claim that each step in the Department's statistical methodology to test for targeted dumping, as developed and set forth in Pasta, addresses each key element of the statutory definition of targeted dumping, as well as the authoritative interpretations of those provisions as reflected in the SAA and the Department's regulations. Thus, if a statistical methodology is to be upheld as lawful, it must contain provisions that encompass each of the

fundamental elements articulated in the Pasta Test. Therefore, Moorim argues that regardless of whether the Department wishes to adhere to the particular statistical standards and thresholds adopted in Pasta, any alternative methodology, such as the one proposed by the petitioner and adopted without analysis by the Department, is unlawful or unsupportable unless it operates to ensure that a targeted dumping allegation meets these fundamental statutory and regulatory requirements. Thus, the Korean respondents contend that because the methodology suggested by the petitioner and preliminarily adopted by the Department fails to meet these requirements, it may not lawfully be relied upon by the Department for purposes of the final determination.

Moorim contends that the Department cannot accept the petitioner's proposed methodology without independently justifying how that methodology satisfies the statutory and regulatory standards to determine whether there is a pattern of export prices that differ significantly among purchasers. Moorim claims that the Pasta Test fulfills these requirements, and that it has been approved by the Court of International Trade. Hansol states that even if the Department believes that the Pasta Test may no longer be appropriate, procedural fairness requires that the Department continue to apply it until such time as it has thoroughly considered and put into place a revised methodology. Hansol contends that in other contexts where the Department has considered revisions to existing practices, it has continued to apply that existing practice while it considers whether that practice remains appropriate.

The petitioner counters that the Department correctly determined that it is not required to apply the Pasta Test in this investigation. The petitioner contends that Hansol's argument that the method set forth in Pasta represents a longstanding and established agency practice and, as such, the Department may not depart from that practice without an explanation should be rejected. The petitioner argues that the methodology applied in Pasta does not establish a practice to which the Department becomes bound in future decisions. The petitioner points out that the "case-specific standard" employed in Pasta was not developed at the Department's own initiative, but in compliance with a remand order. The petitioner states that although the redetermination in Pasta was sustained by the Court, there has never been any suggestion that this is Department policy or that the statute requires such an approach.

According to the petitioner, there are a number of compelling reasons not to apply the Pasta Test in this investigation. First, the Pasta Test was inconsistent with the statute because it compared constructed export prices between targeted and non-targeted purchasers at an ex-importer level, without adjustment for international movement expenses. By not deducting international movement expenses, the Pasta Test failed to compare constructed export prices as required by the targeted dumping provision at section 777A(d)(1)(B) of the Tariff Act of 1930, as amended (the Act). Second, the Pasta Test is inconsistent with the statute because it fails to apply the targeted dumping methodology even where patterns of significant price differences exist. Third, the Pasta Test is complex and it fails to use "standard and appropriate statistical techniques" as required by the regulations.

The petitioner argues that since Pasta, there has been a dramatic change in the calculation of dumping margins that requires the Department to re-examine its methodology for identifying

targeted dumping. The petitioner points out that on December 27, 2006, the Department announced that it would begin permitting credits from non-dumped sales to offset margins for dumped sales in the average-to-average methodology. The petitioner also argues that the patterns of significant price differences that before made little or no difference in the dumping margins can now conceal dumping margins entirely. Thus, patterns of price differences that the Department might previously have deemed not "significant" under the Pasta Test can now have a large impact on the margin calculations.

### **Department's Position:**

We have determined that it is not appropriate to apply the Pasta Test in this investigation. That test was developed within the context of a specific case.<sup>6</sup> Moreover, in considering whether to apply the Pasta Test, as a general practice, we took note of the arguments raised by the parties in this investigation. In considering these arguments, we realized that there are a number of issues that would be better resolved with a more complete comment process. In the years since the Pasta Test was developed, the Department has had no further experience analyzing targeting and we are examining how the Pasta Test standards and thresholds could be modified in developing a standard practice for addressing targeting allegations. In view of the Department's uncertainty regarding the general applicability of the Pasta Test standards, the overall lack of case precedent on this matter, and the unique circumstances of this case, the Department accepts the petitioner's targeting allegation without endorsing the petitioner's test standards and procedures as a general practice.

We recognize the need to develop a standardized test for future cases. For this reason, the Department intends to issue a separate Federal Register notice inviting public comment on how a new, more standardized test could be developed and what it should include.

### **Comment 3: Statistical Significance Requirement**

The Korean respondents state that the statute at section 777A(d)(1)(B) of the Act and 19 C.F.R. § 351.414(f)(1) require that the U.S. prices for comparable merchandise differ "significantly." They also state that although these provisions do not define the term "significant," the petitioner's claims that anything above 2-percent is "significant" is arbitrary and not measured by reference to any standard statistical means. Furthermore, the Korean respondents contend that the petitioner's arbitrary 2-percent threshold bears no relationship to the specific pricing differences in this case, for these particular products as they are sold to the allegedly targeted customers or regions.

Hansol argues that the petitioner's reliance on defining significance at a 2-percent threshold based on the de minimis threshold in investigations is unwarranted because the term

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<sup>6</sup> The redetermination itself states that the targeted dumping methodology was "developed specifically for this case (i.e., for Delverde)," and that the Department reserve{s} the discretion to alter this methodology in future cases. Pasta at 15.



“significance” is never discussed in relation to the de minimis test. Hansol also argues that there is no basis for the petitioner to point to the arm’s-length test for a definition of significance. Instead, the arm’s-length test just provides that prices to affiliated customers are not considered “comparable” to prices to unaffiliated customers if they fall outside the 98 to 102 percent range.

Hansol and Moorim contend that in the context of ministerial errors, the Department’s regulations define “significant” as a difference of “not less than 25-percent.” They also claim that the Department established a 33-percent threshold as constituting a “significant” quantity for purposes of establishing when to use market economy input prices rather than surrogate values in establishing normal value. See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61717-18 (Oct. 19, 2006).

Hansol claims that its July 2, 2007, targeted dumping analysis demonstrated that when using the Department’s established statistical testing procedures, no “pattern” of “significant” price differences existed for any of the customer states to which Hansol sold merchandise during the POI. Therefore, Hansol did not target the region that the petitioner alleged. Hansol argues that the Department failed to consider this result in its Post-Preliminary Determination, but must do so in the final determination.

Hankuk contends that the Department’s Post-Preliminary Determination does not contain any independent analysis of the alleged price differentials for Hankuk’s sales to different customers. Hankuk argues that the Department’s Post-Preliminary Determination fails to address the difference in the nature of the business [sic]. Hankuk suggests that the Department determine whether sales to certain customers were targeted by comparing sales at the same level of trade in the U.S. distribution system.

The petitioner asserts that in all other contexts where the Department compares prices in antidumping investigations, such as in calculating the overall weighted-average dumping margin or in applying the arm's-length test, a difference is deemed "significant" where it exceeds 2-percent. Thus, the petitioner argues that to conclude that price differences exceeding 2-percent between targeted and non-targeted purchasers or regions reflect distortions caused by targeting, rather than mere random differences, and are thus "significant." Furthermore, the petitioner suggests that a 2-percent "bright-line" standard for significance is reasonable. The petitioner contends that its proposed P/2 test methodology, which can be used to identify targeted dumping in this and in future cases, demonstrates patterns of significant price differences between the targeted and non-targeted regions in the case of Hansol, and between targeted and non-targeted customers in the case of Moorim, and Hankuk, that exceed even the 2-percent significant-difference threshold employed in the P/2 test. Thus, the petitioner contends that whether or not the Department ultimately adopts that 2-percent standard, it must still find targeted dumping in this case.

**Department's Position:**

We agree with the petitioner that the observed price differences are significant. We have determined that these observed price differences between monthly-average prices to alleged targeted regions/customers and monthly-average prices to alleged non-targeted regions/customers are great enough to be considered significant in this case. Our finding is based, in part, on the fact that CFS is a commodity product sold in a competitive market; as such, a small price difference can be enough to sway a sale. According to the International Trade Commission (ITC), “both petitioner and respondent importers characterize CFS paper as a commodity product.”<sup>7</sup> We note that the Statement of Administrative Action for the Uruguay Round Agreements Act, See Statement of Administrative Action (SAA), H. R., Doc. No. 103-316, Vol. 1 (1994), provides direction to the Department as to how we should analyze significant differences in prices. The SAA states that “the Administration intends that in determining whether a pattern of significant price differences exist, Commerce will proceed on a case-by-case basis, because small differences may be significant for one industry or one type of product, but not for another.”

As a general matter, the Department has not adopted any specific percentages suggested by parties in their contentions regarding the definition of significance. The percentages cited by both parties that were applied in other areas of our practice are specific to those circumstances and were developed over time. An appropriate percentage applicable to targeting is one of the factors we will ask parties to comment on as we go forward and attempt to develop more standardized rules.

**Comment 4: Whether the Average-to-Average Method Can Account for Targeted Dumping**

Hansol asserts that its data demonstrates that significant price differences do not exist among different U.S. regions. Therefore, there can be no concerns that using the average-to-average method will mask targeted dumping. However, even if the Department finds that significant price differences exist between the region designated by the petitioner and the rest of the country, the petitioner has still failed to articulate why the average-to-average method cannot account for such differences. Thus, they argue that the petitioner fails to satisfy the statutory and regulatory requirements.

Both Hansol and Moorim claim that the Department stated in its Post-Preliminary Determination, without any analysis or justification, that the average-to-average method cannot take the price differences into account because averaging the high prices with the low prices has the effect of masking the extent of sales at less than fair value. Specifically, Hansol claims that the Department did not sufficiently explain why the average-to-average method could not be used to take into account the minor differences between the alleged targeted and non-targeted regions. Hansol contends that the Department, however, overlooked 19 C.F.R. § 351.414(d)(2), which

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<sup>7</sup> (See Coated Free Sheet Paper from China, Indonesia, and Korea, Inv. Nos. 701-TA-444-446 (Preliminary) and 731-TA-1107, USITC Pub. 3900, Dec. 2006, at II-6.)

provides that the averaging groups created for purposes of making average-to-average comparisons will take into account, where appropriate, the region of the United States in which the merchandise is sold. Thus, Hansol argues that this provision expressly authorizes the Department to segregate U.S. sales according to regional distinctions, in addition to CONNUM and level of trade distinctions, when identifying the U.S. sales to be included in each averaging group. According to Hansol, even if the Department were to continue to find a pattern of export prices that differ significantly between regions, because the Department can take into account any price differences between the targeted and non-targeted regions through the average-to-average comparison method, there is no basis for the Department to apply the average-to-transaction method to U.S. sales made in the alleged targeted region in the final determination. Therefore, the Department should include region in the averaging groups if it continues to accept the petitioner's claim that prices of U.S. sales differ by region.

The petitioner counters that 19 C.F.R. § 351.414(d)(2) was not intended to address targeted dumping. The petitioner argues that now that the Department has eliminated all offsets under the average-to-average method, it is entirely irrelevant how the averaging groups are determined. According to the petitioner, as long as the average-to-average methodology permits all negative values to offset all positive values, it cannot take into account, in the margin calculations, patterns of significant price differences between targeted and non-targeted sales. Thus, the average-to-average methodology, with offsets, conceals targeted dumping, and there is nothing in 19 C.F.R. § 351.414(d)(2) that would ameliorate this masking problem. Consequently, Hansol's argument must be rejected.

Moorim argues that even if a significant pattern of price differences exists, the record does not support a finding that such a pattern cannot be taken into account using the statutorily preferred average-to-average methodology. Moorim and Hansol claim that case precedent shows that the Department has dismissed arguments similar to the petitioner's unsubstantiated targeted dumping claims, and should do likewise in this instant investigation. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes From Mexico, 61 FR 56608, 56610 (November 1, 1996).

According to Moorim, if the Department were to calculate dumping margins separately, by customer, the Department would find that the dumping margin on Moorim's sales to its single largest customer, and the principal customer identified by the petitioner, is not significant. Moorim asserts that the pattern of price differences alleged by the petitioner with regard to Moorim could be taken into account using the average-to-average method, by applying that methodology to the allegedly targeted customers on a customer-specific basis, thus eliminating the potential for negative margins on non-targeted sales to mask dumping on sales to allegedly targeted customers. Finally, Moorim suggests that if the Department continues to find in the final determination that Moorim engaged in targeted pricing, the Department should use the average-to-average comparison methodology in calculating Moorim's dumping margin for these transactions.

**Department's Position:**

As outlined in the statute and regulations, when it is shown that there is a pattern of prices that differ significantly by customer, region, or time period, the Department must determine if the preferred methodology, in this case average-to-average comparison, will account for any possible targeted dumping. See section 777A(d)(1)(B) of the Act; 19 C.F.R. § 351.414. If the Department were to average prices to the non-targeted customers or regions with the prices to targeted customers or regions, those lower prices would be concealed because they would be offset by prices to the non-targeted group. Any pattern of low prices to a targeted group would be covered by averaging the higher prices of the non-targeted group with the lower prices. If that average of the targeted and non-targeted sales were then compared to an average of Korean home market prices, the significant differences that exist between the targeted and non-targeted U.S. prices could not be taken into account. Therefore, we have determined in this case that the average-to-average methodology does not account for targeting.

We disagree with the Korean respondents that modifying the averaging groups as they suggest can account for targeting. As the petitioner pointed out, 19 C.F.R. § 351.414(d)(2) was not intended to address the pattern of significant price differences. By contrast, section 777A(d)(1)(B) of the Act was specifically set up to address targeting and overrides the normal methodology when targeting is found. Moreover, we have never modified our calculations in the manner proposed by the Korean respondents and are unaware of other implications this could possibly have on the calculations. Finally, we note that the Korean respondents have not provided any case precedent to support their proposition.

**Comment 5: Statutory Application of Transaction-to-Transaction Methodology**

The petitioner contends that the Department should use the transaction-to-transaction methodology to calculate dumping margins for Hansol, Moorim, and Hankuk because the statute requires it, and it takes into account the patterns of significant price differences, whereas the average-to-average method does not. The petitioner points out that in accordance with section 777A(d)(1)(B) of the Act, where, as here, there exists a pattern of significant price differences, the Department may use the average-to-transaction method only when it can demonstrate that neither the average-to-average method nor the transaction-to-transaction method can take such patterns into account in the margin calculations.

The petitioner states that the structure of section 777A(d)(1)(B) of the Act sets forth in paragraph (A) the "general" margin calculation methods to be used in investigations, and sets forth in paragraph (B) the "exceptional" method. The petitioner claims that the Korean respondents have previously noted that, although there is no statutory preference between the two "general" methods, there has been a regulatory preference for the average-to-average over the transaction-to-transaction method in most situations. However, the petitioner argues that there is neither a statutory nor a regulatory preference for the "exceptional" average-to-transaction method over the "general" transaction-to-transaction method. The petitioner argues that by placing the average-to-transaction method within the "exception" paragraph (B), and by placing the transaction-to-

transaction method within the "general" paragraph (A), the statute expresses a clear preference for the transaction-to-transaction method over the average-to-transaction method, at least where the former can account for pricing differences. The petitioner also argues that in this instant case, there is targeted dumping, and the transaction-to-transaction method, but not the average-to-average method, will take account of such patterns of price differences. Therefore, the Department must reject the average-to-average method, but may not resort to the exceptional average-to-transaction method. Thus, the transaction-to-transaction method is the only permissible method.

The petitioner also states that assuming the Department correctly interprets section 777A(d)(1)(B) of the Act as requiring the Department to explain why neither the average-to-average nor transaction-to-transaction method will take account of targeted dumping before it may resort to the average-to-transaction method, there is no need to address the question of which general method (i.e., average-to-average or transaction-to-transaction) is the "preferred" methodology. However, if the Department accepts Hansol's argument that the statute requires it to explain why only one of the two general methods, i.e., the "preferred" general method, would not account for targeted dumping, then the Department must determine whether average-to-average or transaction-to-transaction should be considered the "preferred" method in this case.

Moorim rebuts that neither the statute nor the Department's regulations contemplate the use of the transaction-to-transaction method in response to alleged targeted dumping. Moorim claims that the explicit statutory remedy when "targeted dumping" is found is to depart from the normal comparison methodology described in section 777A(d)(1)(A) of the Act and, instead, to apply the "exceptional" methodology of comparing weighted-average normal values to export prices of individual transactions. Thus, the statute and regulations, read in context, clearly provide for a preference for average-to-average price comparisons, and in certain unusual situations transaction-to-transaction comparisons may be used, if the Department finds (i) that targeted dumping is occurring, and (ii) that it cannot be taken into account using average-to-average comparisons. Furthermore, Moorim claims that the SAA and the Department's regulations also state a clear preference for the use of the average-to-average methodology over the transaction-to-transaction methodology. Thus, Moorim argues that use of the transaction-to-transaction comparison methodology is neither permitted nor appropriate in this case. Therefore, the Department should continue to reject the petitioner's request in the final determination.

#### **Department's Position:**

For the reasons detailed below, we have not adopted the petitioner's proposed interpretation of the statute. Section 777A(d)(1)(A) of the Act sets forth the general rule that the weighted average-to-average methodology or the transaction-to-transaction methodology normally will be employed in antidumping duty investigations to calculate antidumping duty margins. Section 777A(d)(1)(B) of the Act sets forth the exception to this general rule. Rather than employing the weighted average-to-average methodology or the transaction-to-transaction methodology to calculate dumping margins, section 777A(d)(1)(B) of the Act establishes that the Department may employ the average-to-transaction methodology in an investigation if: there is a pattern of

export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and, the agency explains why such differences cannot be taken into account using the weighted average-to-average methodology or transaction-to-transaction methodology. See section 777A(d)(1)(A) and (B).

Petitioner, in sum, asserts that the Department may resort to the average-to-transaction methodology if the agency explains why neither the weighted average-to-average nor the transaction-to-transaction methodology can account for the targeting. In contrast, Moorim argues that the average-to-transaction methodology is the statutory remedy provided under the exceptional provision if the comparison methodology selected under 19 U.S.C. § 1677f-1(d)(1)(A) cannot account for the targeting. Both petitioner and Moorim have presented two plausible interpretations of the statute.

The Department interprets the statute as requiring the agency to explain why the targeting cannot be taken into account using the preferred comparison methodology employed in the particular investigation. However, the statute does not preclude the Department from considering use of the transaction-to-transaction methodology as an appropriate methodology in some circumstances involving targeting. See section 777A(d)(1)(B) of the Act. In this case, the Department employed the weighted average-to-average methodology in the Preliminary Determination. Accordingly, the Department need only explain why the weighted average-to-average methodology cannot account for the targeting (as explained below, the Department does not consider use of the transaction-to-transaction methodology appropriate in this case). Thus, the statute contemplates that the Department will employ the average-to-transaction methodology in this case. See section 777A(d)(1)(B) of the Act. We note that nothing provided in the statute or otherwise would preclude this approach.

As explained below, the Department's interpretation is reasonable in view of the express terms of the provision at issue, the objectives of the provision, and the objectives of the antidumping duty scheme as a whole. This interpretation, therefore, is entitled to judicial deference. In considering the express terms of the statute, the objectives of the statute, and the objectives of the antidumping duty scheme, we find instructive the SAA, the Preamble<sup>8</sup> to the Department's regulations, the regulations themselves, and the Department's previous experience using the transaction-to-transaction methodology in Softwood Lumber. See Notice of Final Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products from Canada, 70 FR 22636 (May 2, 2005) (Softwood Lumber). The SAA explains that the Department will employ the transaction-to-transaction methodology "far less frequently" than the weighted average-to-average methodology given the agency's "past experience with this methodology" and the "difficulty in selecting appropriate comparison transactions." SAA at 842-43. The SAA further elaborates that the transaction-to-transaction methodology would be appropriate where "there are very few sales and the merchandise sold in each market is identical or very similar or is custom made." Id. at 842.

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<sup>8</sup> See Antidumping Duties and Countervailing Duties, 62 FR 27296 (May 19, 1997) (Preamble).

The Preamble to the regulations similarly provides that, “Congress did not contemplate broad application of the transaction-to-transaction method.” Preamble, 62 FR at 27374. It then reiterates the points articulated in the SAA and concludes that, “we continue to maintain that the transaction-to-transaction methodology should only be applied in unusual situations.” Id. at 27373-74. The regulations at 19 CFR 351.414(c)(1) likewise explain that the transaction-to-transaction methodology only will be employed in unusual situations.

Each of these sources makes clear that Congress intended that the Department would employ the transaction-to-transaction methodology in limited situations. In this case, use of the transaction-to-transaction methodology is inappropriate because none of the unusual situations identified by Congress that warrant use of this methodology are present here (i.e., there are a large number of sales, the product is not “custom made,” and so forth).

In addition, the unique factual circumstances in Softwood Lumber that warranted use of the transaction-to-transaction methodology are not present here. Specifically, in Softwood Lumber, the Department determined that use of the transaction-to-transaction methodology was appropriate because, “among other things, the volatility of prices of subject merchandise and of the product sold in Canada during the POI distinguishes this case from the norm.” Softwood Lumber, 70 FR at 22639. The predominant reason set forth in Softwood Lumber that warranted use of the transaction-to-transaction methodology—volatility of prices—is not applicable to the instant proceeding. See Softwood Lumber, 70 FR at 22639. Thus, Softwood Lumber and the investigation at hand are factually distinguishable.

As Congress did not intend for broad application of the transaction-to-transaction methodology, it is a reasonable interpretation that the statute requires the Department to have already determined under section 777A(d)(1)(B) of the Act whether the specific facts of the case warrant use of the transaction-to-transaction methodology before reaching a targeting analysis. Thus, given that the agency already has selected a comparison methodology to employ in a given case (section 777A(d)(1)(B)) of the Act, the Department need only explain why that preferred methodology cannot account for the targeting. This is evidenced by the statute’s use of the disjunctive term “or” in section 777A(d)(1)(B) of the Act, which signifies that the Department need only explain why one of the listed options (i.e., the weighted average-to-average methodology or the transaction-to-transaction methodology) cannot account for the targeting.

An interpretation requiring the Department to explain why neither the average-to-average nor the transaction-to-transaction methodology can account for the targeting would not only read into the statute express terms that are not present (i.e., “neither” and “nor”), but also could require the Department to employ the transaction-to-transaction methodology regardless of whether the conditions for applying this method have been satisfied. See SAA at 842-43. In other words, contrary to the intent of Congress, the petitioner’s proposed interpretation could lead to use of the transaction-to-transaction methodology where there are a high number of sales, the merchandise sold in each market is not identical or very similar, or the product is not custom made. For these reasons, we have determined not to adopt the petitioner’s proposed interpretation of the statute.

Comment 6: Discretionary Application of Transaction-to-Transaction Methodology

The petitioner argues that even if the statute did not require the use of the transaction-to-transaction method, the Department should exercise its discretion to apply the transaction-to-transaction method in this investigation. The petitioner contends that the statute expresses no preference between the average-to-average and transaction-to-transaction methods. Thus, even if the Department were required to find that only one of these two methods will not take account of targeted dumping, the statute certainly does not specify which method to evaluate. The petitioner also contends that the Department's average-to-average methodology in its Preliminary Determination, which allowed all negative margins to offset positive margins, resulted in a margin for Moorim's targeted sales that were masked by sales to non-targeted customers. According to the petitioner, the average-to-average method conceals patterns of significant price differences within each CONNUM between the targeted and non-targeted sales of the same CONNUM. The petitioner argues that by averaging low-priced sales of the CONNUM to the targeted customers with high-priced sales of the same CONNUM to non-targeted customers, the prices offset one another, thereby eliminating dumping margins for the CONNUM as a whole, and thus failing to take account of the pattern of price differences in the margin calculation. The petitioner asserts that, by contrast, the transaction-to-transaction method, without permitting offsets, takes full account of the pricing differences between the targeted and non-targeted sales in this case. The transaction-to-transaction method calculates an individual margin for every sale. Because the prices are not averaged together, and because individual negative margins do not offset individual positive margins, dumping is not concealed.

The petitioner states that Hansol and Moorim assume, based upon language in the SAA and regulations, that the Department should treat average-to-average as the preferred method, and ignore the transaction-to-transaction method. However, the petitioner suggests that the Department has recognized that the historic preference for average-to-average over transaction-to-transaction is no longer valid. In Softwood Lumber, the Department discussed three reasons why "the language of the SAA and the regulations does not prohibit the application of the transaction-to-transaction analysis in this case." First, "there are no statutory or regulatory hierarchical criteria which govern the selection of the comparison methodology. The preferences expressed in the SAA and regulations merely indicate that in 'normal' cases, weighted-average comparisons will be applied." Second, the preference for the average-to-average method had been premised upon the fact that, at the time the regulations were issued, the Department's computer resources had been insufficient to run transaction-to-transaction programs using large databases. Third, and most importantly, when the URAA was negotiated, the Department did not apply an offset for non-dumped sales in antidumping investigations. Consequently, when Congress expressed a preference for weighted-average comparisons and when the Department adopted its regulations, it did so in the context of the Department's longstanding approach of not applying such an offset when making such comparisons. Because the Department is precluded in this instance from not offsetting non-dumped sales after making weighted average-to-weighted-average comparisons, it is not clear that the stated preferences at the time of the SAA and regulations should continue to apply.



The petitioner states that in Softwood Lumber, the Department switched from the average-to-average method to the transaction-to-transaction method. The petitioner claims that the Department has, pursuant to section 123 of the URAA, announced a new policy that permits offsets under the average-to-average method, but not under the transaction-to-transaction method in all investigations. Therefore, the preference should now be in favor of using the transaction-to-transaction methodology in this investigation.

The Korean respondents counter the petitioner's claim by stating that the historic preference for the average-to-average comparison methodology over the transaction-to-transaction methodology is not a policy or practice that the Department can revisit without a rulemaking. The Department's regulations, in accordance with the SAA, codify this preference; thus, changing it would require the Department, at a minimum, to alter its regulations.

Hansol argues that the petitioner relies on Softwood Lumber, but overlooks the fact that this decision was not based on any allegation of targeted dumping. Rather, the Department premised its use of the transaction-to-transaction methodology on an extremely unusual situation involving price volatility in the U.S. and Canadian lumber markets. Hansol contends that evidence on the record of this investigation confirms that none of the unusual circumstances or other bases upon which the Department has used the transaction-to-transaction method in past cases exists in this case. Thus, even if the Department found that targeting dumping occurred, nothing in the statute, regulations, SAA, or the Department's practice suggests that targeted dumping constitutes the type of unusual situation that calls for the use of transaction-to-transaction comparisons. Accordingly, Hansol argues that the Department should dismiss the petitioner's arguments that transaction-to-transaction comparisons are warranted in the present case.

### **Department's Position:**

We disagree with the petitioner. There is no information on the record of this case that warrants use of the transaction-to-transaction methodology. The Department has factors that it considers in determining whether the transaction-to-transaction methodology is appropriate (e.g. limited number of sales, identical products). None of these factors are present in this case, nor did the petitioner cite their existence. The petitioner instead cites the Department's findings in Softwood Lumber as the basis for its argument. However, there is a fundamental flaw in the petitioner's argument. In Softwood Lumber, the Department cited price volatility as important in using the transaction-to-transaction methodology; in this case, as the petitioner admits, there is no volatility in CFS pricing. Finally, the petitioner has not identified any other aspects of the distribution, pricing, or other commercial practices of this product that would cause us to consider the transaction-to-transaction method appropriate.

### **Comment 7: Margin Calculation of Targeted and Non-Targeted Sales**

The Korean respondents assert that for purposes of calculating the overall weighted-average margin, the Department's decision to employ zeroing when aggregating the dumping margins calculated for U.S. sales to the targeted region or customers, and then again when aggregating the

margins for targeted and non-targeted U.S. sales, is contrary to law and the Department's stated policy because it denies the full benefit of the offset for non-dumped comparisons.

Furthermore, the Korean respondents argue that the Department cannot avoid its obligation to provide offsets for non-dumped comparisons. Accordingly, if the Department continues to make average-to-transaction comparisons for the targeted U.S. sales in the final determination, it should revise its methodology by incorporating the negative dumping margins from the non-targeted region or customer sales when aggregating the margins in the calculation of the overall weighted-average margin. The Korean respondents claim that this modification is reasonable and consistent with the Department's stated policy that it "will no longer make average-to-average comparisons in investigations without providing offsets for non-dumped comparisons."

Hansol contends that even if the Department were to rely on the transaction-to-transaction method in this case, it should still provide offsets for non-dumped comparisons in order to be consistent with its international obligations. Moreover, a decision not to employ zeroing under the transaction-to-transaction comparison method is consistent with the statute and regulations, which both the Department and the courts recognize do not mandate the use of zeroing when calculating weighted-average dumping margins. Hansol suggests that if zeroing is discretionary, then by definition its use is not required in order to calculate accurate dumping margins under any of the three comparison methods.

The petitioner argues that the statute requires application of the transaction-to-transaction method, without offsets, to all sales, whether or not targeted. The petitioner asserts that there is no legal basis under the statute, regulations, or any other source of law that permits the Department to limit application of the transaction-to-transaction method to any subset of U.S. sales. The petitioner also points out that, as discussed in the Preamble, there may be situations in which targeting by a firm is so pervasive that the average-to-transaction method becomes the best benchmark for gauging the fairness of that firm's pricing practices. The petitioner argues that in this instant case, targeting was widespread and pervasive. Therefore, if the Department continues to make average-to-transaction comparisons in the final determination, it should apply that methodology to all U.S. sales, and not just to the sales in the targeted regions or customers. The petitioner claims that application of the methodology to all sales is in line with Congressional intent to avoid the masking of dumping margins. Consequently, there is no reason to reach the issue of how to combine margin results calculated using different methodologies for targeted and non-targeted sales.

Hansol counters that the Department's regulations expressly limit the use of the average-to-transaction method to only those sales considered targeted. Hansol claims that the Department recognized that it would be unreasonable and unduly punitive to apply the average-to-transaction method to all comparisons if only some transactions constituted targeted dumping. See Preamble, 62 FR 27375. Thus, if the Department affirms its preliminary targeted dumping finding, which it should not do, it must continue to limit the use of the average-to-transaction method to only those sales in the targeted region, and use the average-to-average method for all other sales.

Hansol contends that the petitioner's argument fails because the Department made no finding of widespread targeting. On the contrary, record evidence confirms that Hansol did not engage in any dumping, much less widespread and pervasive dumping. Hansol contends that the Department calculated an overall weighted-average dumping margin on sales in the targeted region, which is barely above de minimis and can hardly be characterized as evidence of widespread and pervasive targeting. Hansol argues that to the extent that the Department continues to make average-to-transaction comparisons in the final determination, the Department should limit its application to only those sales in the targeted region as it did in the Post-Preliminary Determination.

### **Department's Position:**

As specified in the Preamble to the regulations, the Department will apply the average-to-transaction methodology solely to address the practice of targeting. See Preamble, 62 FR 27296, 27375. In the Preamble to the regulations, the Department indicated that where the targeting is so widespread that it is administratively impractical to segregate targeted sales prices from normal pricing behavior of the company, it may be necessary to apply the average-to-transaction method to all sales of a particular respondent. Id. In this case, however, we are able to segregate the targeted sales prices, by region or customer as appropriate, from the normal pricing behavior of the company and, therefore, as respondents have argued, we have limited our application of the average-to-transaction methodology to the sales to the targeted group.

Thus, when we performed the average-to-average calculations in this case, we allowed offsets for non-dumped sales. It is only when we combined the margin calculated for the targeted sales using the average-to-transaction methodology with the margin calculated for the non-targeted sales using the average-to-average methodology that we did we not allow any offsets. This is consistent with the Department's commitment to provide offsets in average-to-average calculations.

The Department did not offset the targeted groups' margins with the non-targeted groups' margins as doing so would be essentially the same as using the average-to-average methodology for all sales to all customers. It would mask the targeted groups' margins by offsetting them with non-dumped sales to the non-targeted group, and as a result would not account for the targeted pricing. This would be contrary to the purpose of the statute and regulations.

### **Comment 8: Proposed Transaction-to-Transaction Margin Program**

The petitioner contends that it provided a proposed transaction-to-transaction margin program which is functional, simple, and straightforward to implement, and consistent with the Department's practice in Softwood Lumber. The petitioner claims that its program, unlike the complex Softwood Lumber program, does not include secondary "tiebreakers," such as movement expenses, which have no clear connection to pricing. Therefore, the petitioner claims that there is no reason why the Department should not employ the petitioner's suggested methodology.

Hansol and Moorim argue that the petitioner's transaction-to-transaction margin program is fundamentally flawed and must not be used. Hansol says that the Department's post-preliminary finding that the transaction-to-transaction method is not appropriate in this case was correct, and the fact that the petitioner submitted a transaction-to-transaction margin program is irrelevant. Hansol points out that in the Post-Preliminary Determination, the Department states that selecting appropriate individual transactions to compare with one another requires considering matching criteria beyond those normally considered by the Department when matching to weighted-average normal values. Hansol contends that the Department has not solicited comments from interested parties as to what additional matching criteria would be appropriate in this case. Thus, without first soliciting comments on an appropriate transaction-to-transaction matching methodology, the Department cannot reasonably make transaction-to-transaction comparisons in the final determination.

Hansol states that the petitioner claims its transaction-to-transaction method in this case is based on Softwood Lumber; the only instance in which the Department made transaction-to-transaction comparisons for a large-volume product. However, Hansol argues that the petitioner used an arbitrary method of selecting comparisons since it selects the match based on how the database was sorted and not based on any factor that affects pricing.

Moorim claims that the Department should not use the petitioner's programming in the final determination because it is complex, cumbersome, and unworkable. Moorim argues that the petitioner contends that the program allows sales to match at any point during the POI, but in fact, the program matches every single U.S. transaction throughout the POI to the single earliest home market transaction of the comparison product during the POI. Thus, this arbitrary and distortive approach has no lawful or logical basis. Moorim contends that the errors it found in the programming is evidence that the petitioner has been unable to create a margin calculation program that will accurately perform transaction-to-transaction margin comparisons in this investigation. Therefore, Moorim argues that the petitioner's margin program is impossible to implement.

**Department's Position:**

This issue is moot because we have not applied the transaction-to-transaction methodology in this investigation. Therefore, the petitioner's program is irrelevant.

Cost of Production

Comment 9: Application of Partial Facts Available to Hansol, Moorim, and Hankuk's Total Cost of Manufacture

The petitioner argues that the Department should apply partial facts available to Hansol, Hankuk, and Moorim's cost of manufacture because of the problems with their cost data. The petitioner asserts that it asked the Department to issue a supplemental questionnaire regarding each company's operating profits, because of the significant difference between the profit shown on

each company's financial statements and the profit calculated from its questionnaire response. The petitioner claims that the Department declined to issue another supplemental questionnaire so close to the time of verification, and hoped that the Department would reconcile the operating profit for each company as shown on their financial statements with the operating profit in the responses at verification. However, according to the petitioner, that reconciliation was not performed. The petitioner argues that the profit difference remains wide and unexplained, and underscores how difficult it is, using the Department's traditional cost verification methods, to verify a company with a modern SAP accounting system. Thus, the petitioner argues that the Department should apply partial facts available to Hansol, Hankuk, and Moorim's cost of manufacture for the final determination.

The Korean respondents argue that a comparison of the operating profit recorded on each company's financial statements with the profit calculated from the questionnaire response is meaningless. The Korean respondents contend that there are several reasons why such a comparison is unrealistic. First, the financial statements cover calendar year 2006 while the questionnaire response data covers the POI (i.e., October 2005 through September 2006); therefore, there are timing differences. Second, the profit calculated in the financial statements is related to all products produced and sold in all markets, while the petitioner's calculation covered only home market sales of subject merchandise. The Korean respondents argue that it is unreasonable to expect the operating profit to be the same for all subject and non-subject products, and across all markets and across all time periods. The Korean respondents argue that the Department reconciled both the reported sales and manufacturing costs of both subject and non-subject products to each company's audited financial statements and did not report any discrepancies. Therefore, there is no basis for the petitioner's allegation.

**Department's Position:**

We disagree with the petitioner that the Department should apply partial facts available because the profit per the financial statements is different from the profit reported for some products sold in the home market. Such a simplified comparison is meaningless and does not result in an apples-to-apples comparison. There are several reasons why such a comparison does not make sense. As noted by the Korean respondents, the financial statements cover calendar year 2006 while the questionnaire response data covers the POI which was from October 2005 through September 2006. In addition, the profit calculated from the financial statements is related to all products produced and sold in all markets, while the profit calculated from the questionnaire responses was limited to home market sales of subject merchandise. Further, to accomplish what the petitioner want the Department to do is equivalent to requiring the Korean respondents to submit detailed sales and cost information for all products and all sales to all markets for the same period. As this investigation is limited to only one of the many products produced by the Korean respondents, and only two of the many markets in which they do business (i.e., the U.S. and home markets), it is not reasonable to expect a respondent to provide detailed cost and sales information for all products it produces and sells. This would in effect equate to expanding our investigation to all products including those not subject to this proceeding.

There is no basis for the petitioner's allegation that the respondents' costs were somehow not verified. The Department believes that in this case the detailed test work it performed and reviewed of the respondents' reported costs support the conclusions of the Department in this final determination. Specifically, the Department performed two verifications where the teams reconciled both the reported costs and the reported sales to each company's audited financial statements. Further, each verification team reviewed and performed detailed test work on the sales and reported costs of both subject and non-subject merchandise and did not note any discrepancies in the reconciliations. The Court in Torrington stated "it will not supercede Commerce's conclusions so long as it applies a reasonable standard to verify material submitted and the verification is supported by such relevant evidence as a reasonable mind might accept."<sup>9</sup> The record demonstrates that the verification procedures performed ensure that the proper sales and costs were reported, and costs reported were allocated properly to all products produced. As such, there is no basis for the petitioner's allegation that the respondents' costs were somehow not verified.

Comment 10: Differences In Merchandise Were Not Verified

The petitioner argues that Hansol, Hankuk, and Moorim failed to adequately document or explain the differences in costs reported for CONNUMs with similar characteristics, *i.e.*, the DIFMER section of the verification agenda. Consequently, the petitioner claims that the DIFMER data was not verified and the Department should apply partial facts available for the final determination.

For Hansol, the petitioner contends that the company failed to provide supporting documentation for a number of assertions in the DIFMER section of the verification. Specifically, the petitioner questions Hansol's explanation of the cost difference between two products as being due to the addition of an extra raw material input used to enhance the opacity of the product with the lower basis weight. First, the petitioner inquires why this input is needed, when Hansol claims in its May 21, 2007, submission that changes in basis weight result in similar changes to opacity and the cost impact is largely the same. The petitioner also wonders why this input was reported as an "other material" in the FOTHMAT field rather than as a chemical in the FCHEM field. Finally, and most critically, the petitioner believes that Hansol's assertion was not verified since the input that was supposedly added could not be found on the product-specific manufacturing statements provided to the Department at verification.

Next, the petitioner challenges Hansol's explanation for the cost differences between two CONNUMs that were produced at two different mills, *i.e.*, the Janghang and Cheonan mills. According to the petitioner, Hansol's explanation merely consists of noting that the higher cost CONNUM was produced at the Cheonan mill, a mill that focuses on specialty products and tends to run smaller batches of products, and, as a result, experiences higher costs. The petitioner acknowledges that Hansol then showed the Department the cost of manufacturing (COM)

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<sup>9</sup> See Torrington Co. V. United States, 146 F. Supp. 2d 845, 897-98 (Ct. Int'l Trade 2001) (Torrington).

statement for each of the products within these CONNUMs. However, the petitioner argues that a review of a COM statement does not constitute verification. Instead, the petitioner contends that Hansol should have shown the Department the costs per hour for machine time and the number of machine hours required to produce the CONNUMs in question.

Continuing, the petitioner again questions Hansol's explanation for the cost differences between two CONNUMs produced at the two different mills. While acknowledging that Hansol was able to substantiate the differing pulp consumption between the two products, the petitioner notes that both CONNUMs were produced in low volumes, thus leaving unexplained the disparity in non-pulp costs. Finally, the petitioner selected and compared the costs of two CONNUMs that were both produced at the Cheonan mill. In its comparison, the petitioner questions why two CONNUMs produced at the same high cost mill would experience such a variance in fixed costs. As a result, the petitioner concludes that the Department did not verify Hansol's DIFMER data, and that partial facts available must be applied for the final determination. For partial facts available, the petitioner recommends that the Department divide total costs by total production quantities and apply the resultant average cost to all CONNUMs.

For Moorim, the petitioner claims that a significant number of home market CONNUMs were reported with aberrationally high costs. According to the petitioner, none of these CONNUMs were sold in the United States, nor were they used as matches to products sold in the United States. The petitioner claims that despite the potential for shifting costs to these products, the Department failed to review any of these CONNUMs during its DIFMER comparisons at the cost verification. Furthermore, the petitioner questions the product comparisons that were performed by the Department, stating that simply discussing why costs are different and reviewing summary worksheets does not support Moorim's assertions. As a result, the petitioner concludes that the Department did not verify Moorim's DIFMER data, and that partial facts available must be applied for the final determination. For partial facts available, the petitioner recommends that the Department divide total costs by total production quantities and apply the resultant average cost to all CONNUMs.

For Hankuk, the petitioner believes that the company's explanations for the wide variations in costs between products simply make no sense. The petitioner claims that Hankuk's standard cost system determines that a product with a given product code requires a certain amount of time per ton produced to go through the process, and any variances should be reflected in the end-of-month variances rather than in the standard cost itself. Therefore, based on Hankuk's description of its standard cost accounting system, the petitioner maintains that any difference between two given products would be reflected in the products' machine running times, and, as a result, one would expect that the labor, variable overhead, and fixed overhead costs would have similar ratios of increase (e.g., if one product took twice as long to produce as another product, one would expect to see double the labor, variable overhead, and fixed overhead costs for that one product versus the other product). However, based on the petitioner's analysis of the CONNUMs reviewed by the Department in the DIFMER section of the verification, the products examined show inconsistent variations in their labor, variable overhead, and fixed overhead costs (e.g., continuing with the example above, rather than one product showing twice the labor,

variable overhead, and fixed overhead costs of the other product, the product may show twice the labor, ten times the variable overhead, and seven times the fixed overhead costs of the other product).

The petitioner argues that Hankuk was unable to explain such anomalies at verification because it does not have documentation from the POI. The petitioner claims that Hankuk only showed “standard cost tables,” as if the bottom-line cost numbers constituted verification. Furthermore, the petitioner believes that Hankuk manipulated its SAP system to not only generate the standard costs that Hankuk reported, but also to provide supporting documentation for these standard costs. Therefore, the petitioner is convinced that the reported costs bear no relation to reality. Thus, for the final determination, the petitioner encourages the Department to apply partial facts available to Hankuk by assigning to each CONNUM the highest reported cost for all CONNUMs sharing the first three product characteristics.

Hansol dismisses the petitioner’s allegation that the Department failed to adequately verify the company’s DIFMER data as baseless. Instead, Hansol believes that the cost verification report and exhibits attest to the Department’s detailed review of Hansol’s reported costs, and, in particular, of the DIFMER data. Hansol argues that the petitioner attempts to discredit the verified cost data by simply referring to three DIFMER examples out of all of Hansol’s reported data. However, Hansol believes that the petitioner has made critical errors in its analyses.

Regarding the first DIFMER comparison critiqued by the petitioner, Hansol responds that the other input questioned by the petitioner was actually added during the coating process. According to Hansol, the Department verifiers reviewed cost documents confirming the additional cost of this input in the coating process. Because the input was added during the coating process, it would not be found as an input in the base paper process. Also, Hansol contends that the input was included in the FOTHMAT field as opposed to the FCHEM field based on the Department’s questionnaire instructions.

Next, Hansol addresses the petitioner’s questions regarding the variation in fixed costs for CONNUMs produced at the Janghang and Cheonan mills. Hansol maintains that the higher fixed costs for the Cheonan product are attributable to the fact that it is much smaller than Janghang and it runs smaller batches of product, which, necessarily, results in higher per-unit fixed costs. Hansol proffers that the relative production quantities of the two mills were verified by the Department and attest to the reasonableness of the fixed cost differences between the two products. Due to the nature of fixed costs, meaning that in total they remain constant regardless of production level, Hansol notes that a higher level of production results in lower per-unit costs, while a lower level of production results in higher per-unit costs.

According to Hansol, the petitioner dismisses this clear and, from an accounting perspective, sound explanation of the fixed cost differences between the two products, and instead, moves on to contrast the fixed cost of the Cheonan product with the fixed cost of another Cheonan product in an effort to support its contention that the DIFMER data was not verified. However, Hansol argues, the petitioner mistakenly believes that the fixed costs for the two Cheonan products



should be the same. In countering the petitioner's claims, Hansol prepared a table identifying the production quantities and per-unit fixed costs for the three CONNUMs referenced by the petitioner. Hansol notes that the appropriate production quantity to be considered is the CONNUM level exclusive of sheet size, since costs were calculated at this level. Consistent with Hansol's statements regarding the nature of fixed costs, the CONNUMs with lower production quantities have higher per-unit costs, while the CONNUMs with higher production quantities have lower per-unit costs. In particular, Hansol contends that for the two Cheonan mill products singled out by the petitioner, the product with roughly double the production quantity of the other, has approximately half the per-unit fixed costs.

In the final example, Hansol notes that the petitioner questions the cost differences between two products that, while produced at separate mills, were both manufactured in small quantities. Hansol argues that the petitioner has based its comparison on the wrong production figures. Rather than looking at the CONNUM-specific production quantities, the petitioner should have considered the production quantities at the CONNUM level exclusive of sheet size, since costs were calculated at that level. According to Hansol, once the comparisons of cost are performed at this level, it is evident that the production quantity for one product was five times that of the other product. Thus, Hansol contends that the costs are reasonable and fully in line with the company's explanations. Therefore, Hansol concludes that the petitioner's claims are wholly unsupported and, in fact, the petitioner's analyses contain numerous flaws that render them unreliable as a basis for rejecting Hansol's reported costs.

Moorim refutes the petitioner's allegations regarding DIFMER data as lacking any substantive argument. Citing to the DIFMER section of the verification report, Moorim contends that the detailed verification record demonstrates that the Department carefully reviewed the company's DIFMER data, and in particular, the differences in costs between the company's two factories, and found that the reported costs were accurately calculated based on Moorim's books and records. Consequently, Moorim argues that the petitioner's claims are sheer speculation and attempts to second guess the Department that do not withstand scrutiny. In fact, citing to Torrington, 146 F. Supp. 2d 845, 897-98 (Ct. Int'l Trade 2001), Moorim points out that the Court has stated that a petitioner "may not usurp Commerce's role as fact finder and substitute their analysis of the data for the result reached by Commerce." Thus, according to Moorim, the Department has broad discretion in selecting the specific items that it wishes to verify and in how it conducts the verification in general. Moorim maintains that the petitioner has failed to provide any valid reason for the Department to disavow its verification findings. Therefore, the Department should continue to rely on Moorim's reported costs for the final determination.

Hankuk likewise contests the petitioner's allegations that the DIFMER data failed verification because the company was unable to provide actual POI documentation to explain the numerous cost anomalies between products. Instead, Hankuk maintains that not only were the reported costs for each product fully verified, but the reasons for differences in costs between products were also confirmed. In fact, Hankuk contends that the Department conducted an exhaustive review of the company's detailed standard costs, which contrary to the petitioner's claims, included an examination of the underlying POI documentation which was available in the

company's work-in-process module. As a result, Hankuk submits that the petitioner's complaints bear no relationship to the actual verification that was conducted in this case. Therefore, Hankuk concludes that the Department should reject the petitioner's arguments and instead continue to rely on Hankuk's reported costs for the final determination.

**Department's Position:**

We agree with Hansol, Hankuk, and Moorim, that the companies' respective DIFMER data were subject to the Department's detailed review at verification. Based on (1) the results of that test work and (2) the Department's analysis of the petitioner's comments in its brief, we find that there is no support for the application of partial facts available to the companies' reported costs. Therefore, for the final determination, we have not applied partial facts available, and have instead relied upon the costs reported by Hansol, Hankuk, and Moorim, as adjusted by the Department in the company-specific final calculation memoranda.<sup>10</sup>

Initially, the Department points out that, as affirmed by the Court in Torrington, a verification is not intended to be an exhaustive examination of a respondent's information. In fact, the sheer volume of information that forms the basis of a respondent's cost and sales files precludes the Department from adopting such an approach in the limited time span allowed for a verification. Instead, similar to an independent CPA's audit of a company's financial statements, a verification involves planning and performing a limited number of procedures, the results of which are intended to provide the verifier with assurance that the overall response has been properly reported and is not materially misstated. In doing so, the Department is attentive to the concerns of the petitioning parties; however, some concerns may not be approached in the manner anticipated by those parties. Nevertheless, the Department believes that in the current case the detailed test work and review of the Korean respondents' reported costs, and in particular, the examination of the companies' DIFMER data undertaken at the cost verifications of Hansol, Moorim, and Hankuk, support the conclusions of the Department in this final determination.

Regarding the Department's conclusions, the Court in Torrington has also stated that "it will not supercede Commerce's conclusions so long as it applies a reasonable standard to verify material submitted and the verification is supported by such relevant evidence as a reasonable mind might accept." The Department finds that the detailed verification record attests to the fact that such a standard has been met in the current case. Furthermore, we find that the petitioner's analysis of the DIFMER data examined in the cost verification reports and exhibits fails in its attempt to

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<sup>10</sup> See Memorandum to Neal M. Halper "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Hansol Paper Co., Ltd.," dated October 17, 2006 (Hansol Final Cost Calculation Memorandum); Memorandum to Neal M. Halper "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Moorim Paper Co., Ltd. and Moorim SP Co., Ltd.," dated October 17, 2007 (Moorim Final Cost Calculation Memorandum); and Memorandum to Neal M. Halper "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Hankuk," dated October 17, 2007 (Hankuk Final Cost Calculation Memorandum).

show that the companies' information was not appropriately verified. In the following, we specifically address each of the petitioner's concerns regarding the company-specific DIFMER data reviewed by the Department at the Hansol, Moorim, and Hankuk cost verifications.

For Hansol, the petitioner first alleges that an input supposedly responsible for the disparity in costs between two products cannot be found on the product costing documents, was inexplicably reported to the Department as another material rather than as a chemical, and enhances and adds to the cost of a characteristic that, based on Hansol's previous statements, should have no impact on cost. First, we note that the COM statements, or product costing documents, referenced by the petitioner are for the base paper-making process; however, the raw material in question is an input in the paper coating process. Therefore, the material logically would not be found as an input in the base paper-making process.

Next, we find that the petitioner's challenge regarding the placement of this input as one specific type of raw material versus another in the cost database fields provides no meaningful support for the petitioner's argument that the company did not pass verification. While it may be debated whether this particular input should be considered another material or a chemical, the fact remains that the input was appropriately reported as a raw material consumed in the coating and finishing stages of production. Any further subdivisions of raw materials into types of raw materials have no bearing on the cost test or margin calculations because the cost test and margin calculations only require the total variable cost and the total cost of production.

Regarding the petitioner's contention that Hansol has contradicted itself by stating in its May 21 response that the effect on costs of the opacity characteristic correlates with the product's basis weight, while then stating at the cost verification that a certain input and its additional cost is needed to improve the opacity of a product, we again find the petitioner's argument unpersuasive as proof that the company failed verification. The May 21 statement by Hansol was in response to the Departmental question requiring the company to explain the general impact of certain characteristics on cost. The Department's question was not intended to address every possible scenario or production run, but was posed instead to gain a general understanding of the impact on costs of changes in product characteristics. The fact that an additional input was added in certain cases to improve, and thereby increase the cost of the opacity characteristic, does not render invalid the company's statements regarding how costs are generally impacted by changes in the Department's product characteristics.

In the next DIFMER comparison, the petitioner challenges as unexplained and unverified the differences in fixed costs reported for two CONNUMs produced at the Cheonan mill and one product produced at the Janghang mill. In the DIFMER section of the verification, Hansol explained the fixed cost differences between products produced at the two different mills were due to the fact that the Cheonan mill has a lower capacity than the Janghang mill. Furthermore, the Cheonan mill typically runs smaller batches of specialty products, and as a result, incurs

higher per-unit fixed costs than the Janghang mill.<sup>11</sup> As alluded to by Hansol in its rebuttal brief, the nature of fixed costs is that they do not change in total as production levels vary. However, on a per-unit level, fixed costs exhibit a converse relationship to production levels, that is, per-unit fixed costs decrease as production levels increase and increase as production levels decrease. Obtaining an understanding of the nature of fixed costs, therefore, aids in explaining how the two mills could experience such varying costs for similar products. Furthermore, this phenomenon is also at play for the products produced within the same mill. Because Hansol calculates product-specific costs on a monthly basis, the per-unit machine time costs will vary based on the quantity of product that was processed in each cost center. Thus, at question is whether the production levels of these mills were verified. At verification, as part of the Department's overall reconciliation of Hansol's total financial statement costs to total reported costs, we confirmed both the total production quantities and the total POI costs for each of Hansol's mills that produced the merchandise under consideration.<sup>12</sup> Thus, we disagree with the petitioner that Hansol's DIFMER assertions regarding the variation in costs between these products were not verified. Based on the procedures performed throughout the verification, in addition to a review of the product costing statements for the products within these CONNUMs, the Department found Hansol's assertions to be a plausible explanation for the differences noted between the costs for these CONNUMs.

We also disagree with the petitioner's implication that the Department failed to review critical production and cost accounting data during Hansol's cost verification. We point out that the information requested by the petitioner, *i.e.*, the per-unit machine time costs and the product-specific machine times, can be found on the product costing statements that were reviewed by the Department throughout the verification and which the petitioner dismisses as not adequate for constituting verification.<sup>13</sup> In response, we state that our overall review and reconciliation of the company's financial and cost accounting systems and the detailed test work performed on these systems provided the Department with confidence in the company's systems. Based on this test work, the Department concluded that the product costing statements could be relied upon for purposes of confirming the costs that were allocated to products in the company's normal books and records. Thus, we find unpersuasive the petitioner's allegations that the company's differences in costs between products with similar characteristics were unsupported and unverified. For the final determination, we have continued to rely on the costs as reported by Hansol.

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<sup>11</sup> See Memorandum to Neal M. Halper "Verification of the Cost Response of Hansol Paper Co., Ltd. in the Antidumping Investigation of Coated Free Sheet Paper from the Republic of Korea," dated August 28, 2007 (Hansol Cost Verification Report), at 24-25.

<sup>12</sup> See Hansol Cost Verification Report at 9-13 and Cost Verification Exhibit (CVE) 6 at 1, 56-58, 60-61, and 65-90.

<sup>13</sup> See e.g., Hansol CVE 16 at 32, 34, and 36.

We disagree with the petitioner's allegations with respect to Moorim. The reported CONNUM-specific costs are the result of product-specific cost allocations as maintained in Moorim's normal books and records. As Moorim produces hundreds of different products at its two different production facilities, it is imperative that the Department attempt to rely on its normal accounting system in determining product-specific costs. As such, a primary goal leading up to and during the verification has been to understand and test the company's normal cost and financial accounting systems in order to gain comfort in the integrity and reliability of such systems. At verification we discussed in detail with company officials the company's normal accounting system, performed extensive testing of such system, and reconciled its normal cost and financial accounting records to its audited financial statements. In addition, we tied its cost accounting system product-specific costs to the reported cost database. Furthermore, for six preselected products, covering both subject and non-subject products, we obtained, reviewed, and tested detailed cost build-ups which tied to both Moorim's normal accounting system and to the reported product-specific costs.<sup>14</sup> In the end, we found no reason to conclude that its normal accounting system was unreliable or unreasonably allocated costs. The DIFMER data which the petitioner claims was not verified, is a subset of the reported CONNUM-specific costs, as derived from Moorim's normal cost accounting system. As we verified in detail Moorim's reported CONNUM-specific costs, the DIFMER data was also verified.

With regard to the DIFMER analysis performed at verification, we note that the Department selected four sets of two products that differed by only one or two physical characteristics, as requested by the the petitioner,<sup>15</sup> in order to examine the cost variations associated with the differing physical characteristics. As documented in the cost verification report, we obtained from company officials explanations about differences in cost associated with differing physical characteristics, and reviewed supporting data to substantiate their explanations where deemed necessary.<sup>16</sup> As all explanations provided by Moorim regarding its reported cost differences for products having different physical characteristics were reasonable, we find no reason not to rely on its reported cost information.

In addressing the petitioner's assertions that the Department failed to verify certain products with aberrationally high costs, we find that such high costs were reasonably explained through the fact that there are two companies that comprise the respondent Moorim, and that each has its own production facility. As one facility primarily produces speciality paper and has a lower capacity,<sup>17</sup> it is not unexpected or illogical that those products produced at this facility incurred

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<sup>14</sup> See Memorandum to Neal M. Halper "Verification of the Cost Response of Moorim in the Antidumping Investigation of Coated Free Sheet Paper from the Republic of Korea," dated August 31, 2007 (Moorim Cost Verification Report), and CVE 9, 11-14, 23

<sup>15</sup> See "Pre-verification Comments - Moorim," dated July 3, 2007.

<sup>16</sup> See Moorim Cost Verification Report at 29-30.

<sup>17</sup> See Moorim Cost Verification Report at 8, 30 and CVE 20.

higher per-unit costs. Thus, given these circumstances, it is reasonable that certain products would have higher associated costs. Thus, we find the petitioner's allegation to be unpersuasive and inaccurate.

We also disagree with the petitioner that Hankuk failed to support its DIFMER data. At verification, we reviewed the cost differences reported for various CONNUM pairs, including those identified by the petitioner in its May 11, 2007, pre-preliminary comments. Our test work identified several explanations for the noted cost variations between similar products. For example, the specific production route used to manufacture a product or the specific month of production created cost differences between otherwise similar products.<sup>18</sup> In the following, we address each of the petitioner's specific comments regarding Hankuk's DIFMER data.

In its first analysis of Hankuk's DIFMER data, the petitioner again challenges the inequitable cost variations between two similar CONNUMs. The petitioner contends that the labor, variable overhead, and fixed overhead costs of any two products should have similar ratios of increase based on the products' machine times (e.g., if one product took twice as long to produce as another product, one would expect to see labor, variable overhead, and fixed overhead costs for the one product to be double the other). While the Department agrees that in a simplified model, where the products were produced in the same month using the exact same production route (i.e., exactly the same equipment was used to produce both products), then this would be the expected result. However, as pointed out in the Department's cost verification report, one CONNUM was only lightly coated and was produced on paper machine number two and coating machine number one (CM1), while the other was produced on paper machine three and coated twice on coating machine number two (CM2).<sup>19</sup> Each of these machines represent a separate cost center with its own budgeted machine hour rates. For example, as noted in the verification report, CM2 only operates eight hours a day and, therefore, has much higher per machine hour fixed costs than the other coating machines.<sup>20</sup> Thus, even if one product took exactly twice the total coating machine time to produce as the other, because they were produced on separate coating machines, the products would receive different per machine hour costs. For example, assume that CM1 has a machine hour rate of \$10, while CM2 has a rate of \$20 per machine hour for fixed overhead costs. If the first product, which used CM1, took one hour to produce one ton, the fixed overhead cost would be \$10. Then, if the second product, which used CM2, took two hours to produce one ton, it would have a fixed overhead cost of \$40. So, while the machine time in the coating process for one product is exactly twice the machine time of the other product, the extended per ton fixed cost for the product is four times the amount of the other.

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<sup>18</sup> See Memorandum from Laurens van Houten to the File, "Verification of the Cost Response of Hankuk Paper Mfg. Co., Ltd. in the Antidumping Investigation of Coated Free Sheet Paper from Korea" (Aug. 31, 2007) (Hankuk Cost Verification Report), at 20

<sup>19</sup> See Hankuk Cost Verification Report at 22.

<sup>20</sup> See Hankuk Cost Verification Report at 22.

We also disagree with the petitioner's contention that Hankuk has placed contradictory information on the record. The petitioner questioned why the primary cost difference between two products that vary by the finishing characteristic, would only be the quality of pulp inputs, when Hankuk's May 21, 2007, supplemental response stated that "the type of 'finish' (*e.g.*, gloss) depends on the coating used, and not on the type or relative quantity of base paper, the 'finish' generally has little effect on the cost of pulp per ton of finished product." Again, the Department's question in this supplemental required the company to explain the general impact of certain physical characteristics on cost. The Department's question was not intended to address every possible scenario or production run, but was posed instead to gain a general understanding of the impact on cost changes in product characteristics. During our verification test work, we noted the qualitative differences in the pulp consumed and the impact of those differences on the products' costs in our review of the standard cost sheets for the products in question.<sup>21</sup> Based on the test work and documentation reviewed at verification, we disagree with the petitioner's contentions that Hankuk's DIFMER data was unverified.

Finally, regarding the assertion that the Department merely relied on standard cost tables that could easily have been manipulated in Hankuk's SAP system for purposes of the verification, we also find the petitioner's arguments to be unpersuasive. As documented in Hankuk's cost verification report, the Department was able to access Hankuk's work-in-process module which provided detailed costs for all products produced during the POI. During the overall reconciliation of the total costs from the company's audited financial statements to the total costs reported to the Department, we were able to tie in the figures from the work-in-process module thereby confirming the validity of the information recorded there. Our test work also included a detailed examination of several subject, non-subject, and third country only products' standard costs, during which we noted no variations in the standard costs assigned to products proceeding through the same cost centers.

Based on the test work performed at the Department's cost verifications of Hansol, Moorim, and Hankuk, along with our above consideration of the petitioner's comments, we find that the record does not support the application of partial facts available. Under section 776(a)(2) of the Act, partial facts available is appropriate if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i). Based on the facts of this case, partial facts available is not warranted. As such, we reject the petitioner's allegations that the Korean respondents' DIFMER data was not verified. Therefore, we have relied upon Hansol, Moorim, and Hankuk's reported costs, as adjusted in the company-specific final cost calculation memoranda, for the final determination.

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<sup>21</sup> See Hankuk Cost Verification Report at 21-22.

**B. Company-Specific Comments**

**Hansol-Specific Comments**

Comment 1: Treatment of Constructed Export Price (CEP) Offset

The petitioner argues that the Department should not rely on Hansol's selling function chart to determine that Hansol's home market sales were made at a more advanced level of trade (LOT) than its CEP sales to Global Fibres Inc. (GFI), Hansol's affiliated U.S. importer, and grant a CEP offset for Hansol. The petitioner asserts that the record does not support the finding that Hansol's home market sales were made at a more advanced LOT than its CEP sales to GFI. The petitioner alleges that Hansol performs the same functions for sales to home market customers and sales to GFI. Accordingly, the petitioner argues that the Department should not allow a CEP offset.

In its rebuttal case brief, Hansol argues that, as detailed in Hansol's questionnaire responses, Hansol made home market sales at a single LOT, *i.e.*, direct sales to distributors, end users, and other paper manufacturers, and it performed the same functions in selling to all three types of customers. Hansol argues that for its home market transactions, Hansol performed substantial selling activities including order receipt and processing, conducting all aspects of sales negotiations, invoicing and receiving payment from the customer, performing advertising and promotional activities, conducting market research and sales forecasting, providing warranties, and managing the overall relationship with the unaffiliated customers. In contrast, contends Hansol, Hansol's selling functions for U.S. sales are limited to filling orders placed by GFI and arranging for ocean freight and delivery from Hansol's mill to GFI's designated place of delivery. According to Hansol, GFI performed almost exclusively the types and level of selling activities that Hansol generally performed for home market sales.

Hansol further argues that the Department examined all the information contained in Hansol's responses regarding the selling activities at both Hansol's home market sales verification and at Hansol's CEP verification, and that the record fully supports the conclusion that Hansol's home market sales were made at a different and more advanced stage of marketing than sales at the CEP LOT. Accordingly, Hansol argues that the Department should affirm its prior decision and continue to grant Hansol a CEP offset in the final determination.

**Department's Position:**

We disagree with the petitioner that a CEP offset is not warranted. In the Preliminary Determination, we found that the evidence on the record was sufficient to demonstrate that Hansol's home market sales were at a more advanced LOT than its CEP sales; and because there was no basis for determining whether price differences occurred between different LOTs in the



home market, we determined that a CEP offset was warranted for Hansol's U.S. CEP sales.<sup>22</sup> At Hansol's sales verification, we reviewed Hansol's selling functions which identify the selling functions performed by Hansol for its home market sales and the selling functions performed by Hansol for its sales to the first unaffiliated party. We noted no discrepancies. We do not find persuasive the petitioner's arguments that the record does not support the finding that Hansol's home market sales were made at a more advanced LOT than its CEP sales to GFI. The petitioner has not provided any compelling arguments that would lead us to change our Preliminary Determination finding in the final determination.

Comment 2: Treatment of Indirect Selling Expenses Incurred in Korea (DINDIRSU)

The petitioner states that in its preliminary determination, the Department deducted only a portion of DINDIRSU from CEP. The petitioner argues that if the Department continues to allow a CEP offset, then it is necessary that the Department treat all expenses reported in DINDIRSU as being related to activities supporting the sale to the first unaffiliated U.S. customer. Consequently, the petitioner argues that the full amount of DINDIRSU should be deducted from U.S. price.

Hansol states that the antidumping statute provides that CEP shall be reduced by expenses that bear a direct relationship to the sale, or "any selling expense that the seller pays on behalf of the purchaser." See section 777A(d)(1)(B) of the Act. In light of this prevailing law, Hansol argues, the Department's consistent practice has been not to deduct indirect selling expenses incurred in the country of manufacture in the calculation of CEP if such expenses cannot be linked to specific economic activities occurring in the United States, citing Carbon and Certain Alloy Steel Wire Rod from Germany, 67 FR 55802 (August 30, 2002), and accompanying Issues and Decision Memorandum at Comment 1; Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 72 FR 13086 (March 20, 2007) and accompanying Issues and Decision Memorandum at Comment 4.d; and Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 23.

Hansol argues that the expenses incurred by Hansol in Korea were general expenses reflecting Hansol's role as the company's headquarters and were incurred without regard to the identity or location of the purchaser. To the extent that the Department deducts any amount of DINDIRSU from CEP, Hasol contends, the Department should limit such deduction to the salaries and benefits associated with employees that Hansol dispatched to GFI on extended assignments and expenses for inter-company travel of Korean personnel to the United States for meetings with GFI personnel, as the Department did in its Preliminary Determination.

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<sup>22</sup> See Calculation Memorandum for Hansol, Preliminary Determination in the Sales at Less-Than-Fair Value Investigation of Coated Free Sheet Paper from Korea, dated May 29, 2007.

**Department's Position:**

We disagree with the petitioner that if we continue to allow a CEP offset, we should deduct the full amount of DINDIRSU from CEP. In accordance with section 772 of the Act and 19 CFR 351.402(b), the Department does not deduct from the CEP calculation indirect selling expenses incurred in the foreign market if they support sales to the affiliated purchasers and not to the unaffiliated customer. See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 72 FR 13086 (March 20, 2007), and accompanying Issues and Decision Memorandum at Comment 4.d; see also Final Results of Antidumping Duty Administrative Review: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania, 70 FR 7237 (February 11, 2005), and accompanying Issues and Decision Memorandum at Comment 4; Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico, 70 FR 3677 (January 26, 2005), and accompanying Issues and Decision Memorandum at Comment 7.

At Hansol's sales verification, we reviewed the indirect selling expenses incurred in Korea and reported by Hansol, and found no evidence to suggest the reported DINDIRSU expenses are specifically associated with commercial activities in the United States that relate to sales to unaffiliated purchasers, with one exception, the salaries and benefits associated with employees that Hansol dispatched to GFI on extended assignments and expenses for inter-company travel of Korean personnel to the United States for meetings with GFI personnel. We continue to find that salaries and benefits paid to Hansol's employees working in the United States are tied to economic activity in the United States, and thus should be deducted from CEP. Accordingly, we have deducted a portion of DINDIRSU from CEP that relate to the benefits paid to Hansol's employees working in the United States, as we did in the Preliminary Determination.

**Comment 3: Treatment of Missing U.S. Payment Dates**

The petitioner states that for those U.S. sales for which Hansol did not report a payment date, the Department preliminarily used a pay date (PAYDATEU) of May 16, 2007, the date of its then most recent supplemental response. Since that time, Hansol updated its U.S. response with the submission of "minor corrections" on July 25, 2007. The petitioner argues that since the Department's practice for sales with missing payment dates is to set the payment date as the last day on which the respondent had an opportunity to submit new information, the Department should set PAYDATEU to the date of July 25, 2007, and should recalculate credit expenses accordingly.

Hansol did not comment on this issue.

**Department's Position:**

Upon our request, Hansol updated its U.S. data file, which reflects all minor corrections identified on the first day of Hansol's sales verification on September 5, 2007. As indicated in this submission, for records that remained unpaid as of June 30, 2007, Hansol reported August

13, 2007 (the first date of the GFI verification); and used this date as the payment date for the purposes of calculating credit expense. We find this reporting to be reasonable and consistent with the Department's practice; and therefore, no adjustment to Hansol's reported credit expenses is necessary.

Comment 4: Treatment of U.S. Repacking

The petitioner states that in the Preliminary Determination, the Department classified U.S. repacking (REPACKU), together with packing (PACKU), as a normal value adjustment. The petitioner argues that the Department's normal practice is to deduct REPACKU from CEP as a direct selling expense. Accordingly, as set forth in the Post-Preliminary Determination, this field should be deducted from CEP as a U.S. direct selling expense.

Hansol did not comment on this issue.

**Department's Position:**

We agree with the petitioner that we made a ministerial error in classifying U.S. repacking as a packing expense in the Preliminary Determination. We corrected this mistake and deducted REPACKU from CEP as a direct selling expense in the Post-Preliminary Determination for Hansol. We will continue to do so in the final determination.

Comment 5: Adjustment of Hansol's Reported U.S. Rebates

The petitioner argues that at verification, the Department compared the amounts reported in the REBATE1U and REBATE2U fields to the amounts recorded in GFI's financial statements, and found discrepancies. The petitioner argues that the Department should adjust Hansol's reported U.S. rebates.

Hansol states that the Department notes in Hansol's Sales Verification Report that the Sales Return (WARRU), Sales Incentive (REBATE1U), and Sales Rebate & Discount (REBATE2U) expenses that Hansol reported in its U.S. sales listing differed from those reported in GFI's POI financial statements. Hansol argues that the warranty expenses and rebates reported in Hansol's U.S. sales listing did not correspond to the same universe of sales as those reported in GFI's POI financial statements, and that there is a substantial time difference between the shipment date from Korea and the date on which rebates are paid out. Therefore, according to Hansol, these amounts would not and should not be identical. Hansol further argues it provided a reconciliation of the reported amounts to those recorded by GFI in an average 12-month fiscal year period at verification. Hansol argues that it completely and accurately reported the warranty expenses and rebates in its U.S. sales database and, therefore, no adjustments to the reported amounts are necessary.

**Department's Position:**

We disagree with the petitioner that Hansol's reported rebates should be adjusted. At Hansol's sales verification, we reviewed Hansol's reported U.S. rebates and did not find any inconsistencies. We found that there were timing differences in the universe of transactions in Hansol's reported sales files and in the amount reflected in GFI's financial statements. We reconciled the difference between the rebates reported in the U.S. sales listing and those reflected in GFI's financial statements at verification. See Hansol Sales Verification Report at 24. Accordingly, no rebate adjustment is necessary.

**Comment 6: Hansol's Production Quantities Were Not Verified**

The petitioner claims that Hansol did not provide its total production quantities until the Department's cost verification and that these figures leave many questions unanswered. Specifically, the petitioner contends that Hansol did not purchase enough pulp during the POI to produce the total quantity of paper that Hansol claims was manufactured. To reach this conclusion, the petitioner calculated an average of the standard pulp usage rates for four CONNUMs produced at the Janghang mill that were reviewed in detail at the cost verification. The petitioner then divided the Janghang mill POI pulp purchases by the average standard pulp usage rate to estimate the total volume of paper that could have been manufactured during the POI. The petitioner also performed a similar exercise for the Cheonan mill using the pulp ratio from a single product produced there and the volume of Cheonan mill POI pulp purchases. Based on these calculations, the petitioner concludes that the production quantities reported to the Department were overstated.

In closing, the petitioner reiterates its concerns that the total quantity of paper, *i.e.*, subject, non-subject, and third country only, was not obtained until the cost verification and that the easiest way to under-report per-unit costs is to overstate production quantities. According to the petitioner, this untimely presentation of production quantities did not allow for a thorough analysis of Hansol's production quantities. Consequently, the petitioner avers that the record merely contains a production report for a single month and the Department's cost verification report statement that production quantities for the selected CONNUMs were tied to production records. The petitioner concludes that the Department's verification procedures cannot provide assurance that Hansol's overall production quantities are plausible; therefore, the Department should apply partial facts available to Hansol's total cost of manufacturing for the final determination.

Hansol responds that the Department should reject the petitioner's claims as they are based on skewed and misleading analyses that, when corrected, actually support the production quantities reported by Hansol. As an initial matter, Hansol points out that the petitioner is simply wrong in claiming that Hansol did not submit a breakdown of its subject, non-subject, and third country only paper production quantities prior to the cost verification. According to Hansol, these figures were provided to the Department in exhibit SD-15 of the supplemental section D submission

dated April 19, 2007, i.e., three months prior to the commencement of the Department's cost verification.

Regarding the petitioner's extrapolation of production quantities, Hansol asserts that an examination of the cost verification documents relied upon by the petitioner shows that both pulp and scrap input materials were included in the petitioner's average pulp consumption figure. However, Hansol argues that when extrapolating total production, the petitioner failed to include scrap in the total materials available, thereby understating the total quantity of paper that could have been produced. Furthermore, Hansol points out that the analysis also fails to consider beginning inventories as well as pulp quantities transferred between mills. In fact, if the analysis is adjusted to account only for the available scrap quantities (i.e., pulp purchase quantities plus scrapped pulp quantities), Hansol calculates a potential POI production volume that well exceeds the volume reported to the Department. Thus, Hansol believes that the petitioner's corrected calculation actually demonstrates that Hansol did not overstate its POI production quantities. In addition, Hansol questions the petitioner's reliance on the standard usage rates of only four CONNUMs to extrapolate the production volume of the Janghang mill, a mill that produced more than 190 other subject CONNUMs as well as many more non-subject and third country only products. Moreover, Hansol posits that the Department specifically selected one of these four CONNUMs because of its higher-than-normal costs. Hansol also contests the use of a simple rather than weighted average of the rates for those products. Hansol contends that a simple average unfairly skews the calculation in favor of the one product of the four with the highest pulp usage rate, but the smallest percentage of production quantity.

Hansol also scrutinizes the petitioner's analysis of the Cheonan mill production quantities pointing out that the petitioner relied on the pulp usage rate of a single product, a product which has a much higher basis weight than the average product manufactured at the mill, thus requiring a greater pulp usage rate. Additionally, Hansol says that the petitioner also fails to take account of the many specialty paper products manufactured at the Cheonan mill, many of which were produced using less pulp than the average CFS product manufactured at that site.

Based on the foregoing discussion, Hansol concludes that the petitioner's assertions with regard to Hansol's production quantities are without merit. Further, contrary to the petitioner's claims, Hansol maintains that at the cost verification, the Department both thoroughly examined the total production quantities from Hansol's Janghang and Cheonan mills as well as scrutinized the reported product-specific production quantities on a detailed basis. Thus, Hansol urges the Department to dismiss the petitioner's claims and rely on Hansol's reported production quantities for the final determination.

**Department's Position:**

We agree with Hansol. We believe the documentation reviewed and the procedures undertaken by the Department at the cost verification provide ample support for the production quantities reported by Hansol. Specifically, at the cost verification, we obtained schedules listing every

product produced at the Janghang and Cheonan mills during the POI.<sup>23</sup> These schedules show the POI production quantity for each internal product code and identify whether the products were subject, non-subject, or third country only for purposes of this investigation. The totals from these schedules agree to the mill-specific subject, non-subject, and third country only production quantities presented on April 19, 2007, in the reconciliation of the total reported sales quantities to the total reported production quantities.<sup>24</sup> We note that the cost verification was performed in Seoul, South Korea, during the week of July 16, 2007. Thus, contrary to the petitioner's claims, the production quantities were a part of the record of the case prior to the cost verification. We also obtained POI finished goods' inventory movement reports for each mill.<sup>25</sup> These reports, which agree to the company's general ledger, show the quantity and value of beginning inventory, current production, transfers, sales, and ending inventory for finished paper products. The total production quantities from the detailed production schedules for each mill tie to the total POI production quantities recorded in Hansol's inventory records. We note that these inventory and production schedules were obtained as support for the overall reconciliation of the total costs from the audited financial statements to the total costs reported to the Department, an exercise which the petitioner agrees was verified.<sup>26</sup> In addition to the information obtained regarding total production quantities, the Department also traced production quantities for specific subject, non-subject, and third country only products from the schedules to the company's production and cost accounting records.

Central to the petitioner's allegation that production quantities were not verified and are overstated, is an extrapolation of Hansol's production quantities. The petitioner attempts to calculate the total volume of paper that could have been produced from the resources available to Hansol during the POI. While the exercise has merit as a reasonableness check on the total reported production quantities, the petitioner fails to account for all inputs that were available to Hansol, thus skewing the results of their test work. Specifically, the petitioner simply includes POI pulp purchases, thus overlooking scrap inventories, beginning pulp inventories, and pulp transfers from other mills. As seen in the cost verification report and exhibits, scrap was generated and consumed in the production process at significant levels.<sup>27</sup> In fact, the mere inclusion of the available POI scrap quantities in the petitioner's calculations results in a potential paper production quantity that exceeds the total production quantity reported by Hansol. Therefore, without addressing the other potential problems with the petitioner's reasonableness check, we find that the exercise fails in its attempt to show that Hansol overstated its reported production quantities. Instead, the calculation actually confirms that Hansol's reported

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<sup>23</sup> See Hansol Cost Verification Report at 12-13, and CVE 6, at 65-90 and 92-97.

<sup>24</sup> See the April 19, 2007, supplemental section D submission at exhibit SD-15.

<sup>25</sup> See Hansol Cost Verification Report at 10-11 and CVE 6 at 60-61.

<sup>26</sup> See the petitioner's Case Brief at 40.

<sup>27</sup> See Hansol Cost Verification Report at 19 and CVE 10.

production quantities were reasonable considering the raw materials that were available to the company.

In light of the foregoing, we find the petitioner's arguments for the use of partial facts available due to Hansol's failure to support its production quantities to be unpersuasive. At verification, Hansol was able to provide production and accounting documentation that corroborated the production figures reported to the Department.<sup>28</sup> These documents were an integral part of Hansol's financial and cost accounting systems and formed the basis of the Department's overall reconciliation of the total costs from the audited financial statements to the total reported costs. Additionally, the petitioner's own test work, when adjusted to reflect all of the information on the record, actually serves to support the production figures reported by Hansol. Therefore, the Department has accepted Hansol's production quantities as reported for use in the final determination.

#### Comment 7: General and Administrative Expense Rate

The petitioner argues that Hansol's impairment loss on intangible assets should be included in the company's general and administrative (G&A) expense rate for the final determination. According to the petitioner, it is the Department's practice to include impairment losses in a respondent's G&A expense calculation as they represent real economic losses. Referencing Stainless Steel Bar from France, the petitioner notes that an impairment loss is properly included within G&A expense even if it is not directly related to production activities.<sup>29</sup> Accordingly, the petitioner contends that the Department should include Hansol's impairment loss in its G&A expense rate calculation in the final determination.

Hansol maintains that the impairment loss is related to a separate line of business and, as such, it should be excluded from the reported costs. Citing to IQF Raspberries from Chile and other cases, Hansol asserts that the Department's practice regarding G&A expenses is to include only those items that relate to the general operations of the company as a whole.<sup>30</sup> In determining whether a particular activity is related to the general operations of a company, Hansol contends that the Department considers the nature of the activity, its significance, and its relationship to

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<sup>28</sup> See Hansol Cost Verification Report at 10-13, 15, and CVE 6 at 60-61 and 65-97.

<sup>29</sup> See Final Results of the Antidumping Administrative Review of Stainless Steel Bar from France, 70 FR 46482 (August 10, 2005) (Stainless Steel Bar from France), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>30</sup> See Final Results of the Antidumping Administrative Review of Individually Quick Frozen Red Raspberries from Chile, 72 FR 6524 (February 12, 2007), (IQF Raspberries from Chile), and accompanying Issues and Decision Memorandum at Comment 6.

the general operations of the company.<sup>31</sup> Hansol acknowledges that this analysis most often relates to the disposition of fixed assets, wherein the Department distinguishes the gains and losses resulting from the routine disposal of production machinery and equipment as a G&A expense, while those resulting from the sale or shutdown of an entire plant or business unit are excluded as they are considered unrelated to the company's general operations. In support, Hansol cites to CI from Spain where the Department excluded expenses associated with the sale of a fully functioning production facility and PSF from Korea where the Department excluded losses associated with the disposal of three business units.<sup>32</sup> Hansol contends that the non-operating impairment loss reported on the company's financial statement is in no way related to the company's CFS manufacturing operations. According to Hansol, the Department verified that all revenues and expenses associated with this separate line of business were accounted for in the company's headquarters division and not in its paper manufacturing divisions. Furthermore, Hansol insists that there is no crossover in activities between these separate lines of business. Therefore, Hansol concludes that, consistent with the Department's prior practice, the impairment loss should be excluded from the G&A expense rate calculation for the final determination.

### **Department's Position:**

We agree with the petitioner that the impairment loss should be included in Hansol's G&A expense rate calculation for the final determination. As pointed out by the petitioner, the treatment of impairment losses as general expenses of a company is consistent with the Department's past practice. Specifically, in Stainless Steel Bar from France, the Department stated that “{w}hile we agree with UGITECH that the impairment loss does not directly relate to production, it is a period cost like most general expenses.”<sup>33</sup> In accordance with section 773(b)(3)(B) of the Act, the Department captures such general operating costs in the cost of production as a part of G&A expenses.

We agree with Hansol that when determining whether a particular item is related to the general operations of a company, the Department has drawn a distinction between gains and losses resulting from routine disposals from those resulting from the sale or shutdown of an entire plant or business unit. However, Hansol attempts to equate its impairment of a single asset in this case with the disposal of an entire plant or business unit. Rather, we find that the loss is more

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<sup>31</sup> See Final Results of the Antidumping Administrative Review of Certain Steel Concrete Reinforcing Bars from Turkey, *supra*, and accompanying Issues and Decision Memorandum at Comment 9, and, Final Results of the Antidumping Administrative Review of Stainless Steel Sheet and Strip in Coils from Taiwan, 71 FR 7519 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 18.

<sup>32</sup> See Final Determination of the Antidumping Investigation of Chlorinated Isocyanurates from Spain, 70 FR 24506 (May 10, 2005), (CI from Spain), and accompanying Issues and Decision Memorandum at Comment 11 and Polyester Staple Fiber from Korea, 69 FR 61341 (October 18, 2004), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>33</sup> See Stainless Steel Bar from France at Comment 1.



consistent with the gain or loss on a routine disposal of assets because Hansol is not disposing of an entire plant or business unit. In fact, during our verification, we determined that following the company's recognition of the impairment loss, the line of business that generated the loss was still on-going.<sup>34</sup>

Finally, though we agree with Hansol that the loss was generated on the impairment of an asset from a separate line of business, we believe it is appropriately included as a general expense of the company. We find that this loss falls within the confines of a routine disposal of the company's production assets. As such, the Department's practice is to include the company-wide gains or losses on assets in the calculation of the company-wide G&A expense rate. Therefore, we have continued to include the impairment loss in Hansol's G&A expense rate calculation in the final determination.

Comment 8: Financial Expense Rate

The petitioner argues that the loss on discounting of trade receivables that was excluded from Hansol's reported costs is clearly the equivalent of a financing expense, and, as such, should be included in the financial expense rate.

Hansol did not comment on this issue.

**Department's Position:**

We agree with the petitioner. Therefore, we have included the loss on discounting of trade receivables in the calculation of the financial expense rate in the final determination.

**Kyesung-Specific Comments:**

Comment 9: Price Adjustment Related to the U.S. Price

Kyesung argues that the Department should add its reported billing adjustment to the reported gross price. Kyesung argues that it made a reduction to the reported gross price of its U.S. sales, during the POI, to compensate its U.S. distributor for pre-POI sales. Kyesung refers to its Section C response at C-16. Kyesung further argues that the correspondence in Attachment C-3 of its response indicates two separate components of a discount. Kyesung explained that the first component related to pre-POI sales and the second component of the discount was related to POI sales to preserve goodwill between the two companies. Kyesung provided an internal company document that demonstrated the calculation of the discount. See Kyesung Sales Supplemental Response at Attachment C-10. Kyesung argues that the Department's verification report does not identify any discrepancies between the report and the questionnaire response.

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<sup>34</sup> See Hansol Cost Verification Report at 28.

Kyesung argues that the Department has adjusted respondents' U.S. prices in the same manner suggested by Kyesung, in other cases, for the same reasons. First, Kyesung cites to Stainless Steel Bar from India, 59 FR 66915 (December 28, 1994) at Comment 3. In the Stainless Steel Bar investigation, Kyesung argues that the Department used the price in the purchase order because the invoice price reflected a rebate related to pre-POI shipments. Second, in Gray Portland Cement and Clinker From Japan, 56 FR 12156, 12163 (March 22, 1991) at Comment 11, the Department used the contract price as the U.S. price, instead of the actual price which was paid by the customer. In the Gray Portland Cement and Clinker investigation, the actual price included a reduction to the U.S. price because of a damaged product related to a pre-POI contract.

Kyesung asserts that it provided supporting contemporaneous documentation that its U.S. price reflected a rebate that was directly linked to pre-POI sales, which are similar to the cases cited by Kyesung. Kyesung argues that the statute requires an "apples-to-apples comparison." See Section 773(a) of the Act. In contrast, Kyesung hypothetically argues that the Department would adjust the U.S. price downward if there was a post-POI rebate. In a scenario regarding revocation, Kyesung argues that the Department would also adjust the U.S. price downward if the Department found that the respondent made an agreement to adjust the price after the POI to compensate the customer for perceived overcharging, during the third POR. Finally, Kyesung argues that the Department would not have reduced the U.S. price if Kyesung had written a single check, instead of choosing to reduce Kyesung's U.S. prices, during the POI.

The petitioner disagrees with Kyesung's attempt to increase the U.S. price because a discount was related to pre-POI sales. See Kyesung's March 2, 2007, Section C Response at 16. The petitioner argues that price reductions on future shipments do not necessarily relate back to prior high priced sales. Furthermore, the petitioner argues that there is no documentation on the record to directly link the rebate to pre-POI sales. The petitioner asserts that Kyesung's argument would allow respondents to distort their dumping margins by never recognizing price reductions.

**Department's Position:**

We agree with the petitioner. The cases cited by Kyesung are not similar to Kyesung's circumstances. The above-referenced cases concern quality problems, damaged merchandise, or compensation related to using domestic materials in the production of export products. In general, we allow certain adjustments, (e.g., billing adjustments, discounts and rebates) if they bear a reasonable relation to the prices during the period we are examining and can be accurately calculated. These adjustments often occur sometime after the original transaction; however, we can establish a relationship between the adjustment and the transaction to which they are assigned. For example, rebates that are granted to a particular customer on certain sales and reported in the sales listings are often actually received/paid after the specific sales that the rebates correspond with have occurred. This is often true because a rebate is typically not earned until after a goal of a particular sales volume/value has been reached within a given time period. As such, it is reasonable to associate the post-sale rebate amount with the original transactions that happened earlier. However, in this case, the record shows unambiguously that the price

adjustment in question (*i.e.*, during the POI) relates specifically to selling decisions that occurred prior to the POI. Thus, Kyesung's suggested adjustment in no way directly reflects the pricing shown on its invoices during the POI. In fact, it is important to note that nothing on the sample invoices reported in Kyesung's responses or collected at verification specifically illustrates this rebate/discount. Therefore, we will continue to disallow the adjustment requested by Kyesung.

Comment 10: Request to Apply Partial Adverse Facts Available

The petitioner argues that the minor corrections submitted at verification by Kyesung were so extensive that they warrant the use of partial adverse facts available. The petitioner cites Tapered Roller Bearings from Japan, 56 FR 65228 (December 16, 1991), which states, "the purpose of verification is to ascertain the accuracy and completeness of the information submitted, not to allow wholesale revision." Furthermore, the petitioner argues that the Department has rejected revisions that are extensive, or that have a large impact on the antidumping calculations. Therefore, the petitioner argues that the Department should accept only those minor corrections which tend to increase net home market prices or decrease net U.S. prices. Finally, the petitioner argues that Kyesung failed to report bank charges and wire transfer charges incurred on U.S. sales. The petitioner asserts that the Department should select the highest per-unit bank charge and wire transfer charge for any U.S. sales discovered at verification, and then deduct that value from all U.S. sales.

Kyesung argues that the Department should reject the petitioner's request to use adverse facts available to calculate its margin in the final determination. First, Kyesung argues that it is the Department's standard practice to allow a respondent to correct previously submitted information if those revisions are submitted at the outset of verification, verified to be accurate and complete, isolated in nature, minor in impact, and do not affect the overall integrity of its response. Kyesung cites notices, such as Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Fifth Antidumping Duty Administrative Review and Final Results of the Seventh New Shipper Review, 68 FR 25861 (May 14, 2003), and accompanying Issues and Decision Memorandum at Comment 2. Furthermore, Kyesung cites similar cases where corrections were made and upheld by the U.S. Court of International Trade.<sup>35</sup>

Kyesung asserts that the issue is not the number of individual corrections, but whether the corrections affected the Department's ability to verify Kyesung's information or undermined the integrity of Kyesung's response. Kyesung points out that neither the sales nor the cost verification report indicates that the Department had difficulty verifying the responses. Furthermore, Kyesung argues that neither verification report disputed the results of the minor

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<sup>35</sup> Tatung Co. v. United States, 18 CIT 1137, 1141-42 (1994); Maui Pineapple Co., Ltd. v. United States, 264 F. Supp. 2d 1244, 1257-58 (CIT 2003); Slater Steels Corp. v. United States, 297 F. Supp. 2d 1362, 1366 (CIT 2003); Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Mfrs. v. United States, 44 F. Supp. 2d 229, 235-37 (CIT 1999); Magnesium Corp. of America v. United States, 938 F. Supp. 885, 902-03 (CIT 1997);

corrections. In addition, Kyesung asserts that the minor corrections have a small impact on its margin.

Kyesung argues with regard to bank charges and wire transfer charges that it included the charges in the indirect selling expense calculation. Kyesung cites two cases to support its claim that bank charges and wire transfer charges are not always reported as direct selling adjustments as suggested by the petitioner.<sup>36</sup> Kyesung also argues that the bank charges in question are so trivial that the Department has the authority to ignore them altogether. See 19 CFR § 351.413. Finally, Kyesung argues that it acted to the best of its ability to comply with the Department's requests during the investigation, in accordance with section 776 of the Act.

### **Department's Position:**

We agree with Kyesung. In this particular case, we do not find that it is appropriate to apply partial adverse facts available to the minor corrections submitted to the Department before the verifications. Section 776(a) of the Act states that the Department will use facts available when an interested party withholds information, fails to provide such information, significantly impedes a proceeding, or provides information that cannot be verified. Furthermore, section 776(b) states that an adverse inference will be applied if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In this case, Kyesung provided the sales and cost information as requested in the Department's original and supplemental questionnaires, and did not impede the verification. Furthermore, Kyesung presented its minor corrections at the beginning of each verification to the Department as permitted in the Department's verification agendas, and we examined those minor corrections at verification.<sup>37</sup> Moreover, the margin calculated for Kyesung for the final determination does not indicate a large impact on the margin as suggested by the petitioner.<sup>38</sup>

In regard to the treatment of bank charges and wire transfer charges, we discovered at verification that Kyesung incurred certain bank charges and wire transfer charges for certain U.S. sales, but failed to report such expenses as direct selling expense in its U.S. sales database.<sup>39</sup> However, these charges were insignificant and were only incurred on a few sales. At verification, we corrected transaction-specific information, which allowed us to calculate a per-unit bank charge.

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<sup>36</sup> Final Results of the Antidumping Administrative Review of Bottle-Grade Polyethylene Terephthalate (PET) Resin From Indonesia, 70 FR 13456 (March 21, 2005) and Issues and Decision Memorandum at Comment 7; and Final Results of the Antidumping Administrative Review of Extruded Rubber Thread From Malaysia, 64 FR 12967 (March 16, 1999) and Issues and Decision Memorandum at Comment 12.

<sup>37</sup> Verification of the Sales Response of Kyesung Paper in the Antidumping Duty Investigation of Coated Free Sheet Paper (CFS) from Korea dated August 30, 2007 (Kyesung Sales Verification Report).

<sup>38</sup> The petitioner's Case Brief at 54.

<sup>39</sup> See Kyesung Sales Verification Report.

As shown in Kyesung's Sales Verification Report, the wire transfer charge was so trivial (less than 0.00 percent of the sales value) that it would not affect the U.S. sales price.<sup>40</sup> As facts available, we will deduct the bank charges from Kyesung's U.S. sales as a direct selling expense for the final determination.

### **Moorim-Specific Comments**

#### Comment 11: Moorim's Pulp Costs Remain Unexplained

The petitioner claims that Moorim's pulp costs remain unexplained and unsubstantiated. Citing to its May 11, 2007, pre-preliminary comments, the petitioner points out that while pulp input costs were at their highest at the end of the POI, the reported per-unit pulp costs were declining in regard to a high volume product. The petitioner attests that the cost verification report does not discuss the matter directly, indicating that charts provided consisted only of cost trends without a showing of how a major product was produced with continuously lower pulp costs in the face of rising pulp prices in the final months of the POI.

Moorim finds the petitioner's contentions to be based on nothing more than criticisms of the Department's verification techniques and speculations of data which "should" have been found at the cost verification. Moorim attests that the Department officials thoroughly reviewed Moorim's actual accounting records, production reports, and cost of production calculations, as well as source documentation showing how machine hours relate to specific inputs and products. Moorim, moreover, contests that the petitioner's arguments lack merit and fail to identify any substantive inaccuracies in the reported costs. With regard to pulp costs specifically, Moorim states that the petitioner's arguments are contradicted by the verification record. In citing to the materials section of the cost verification report, Moorim asserts that the verification report fully documents that the reported pulp costs were accurate and directly correlated with Moorim's normal books and records. In citing to the yield section of the cost verification report, Moorim affirms that the report directly addresses the underlying reasons for the variations in the reported costs.

### **Department's Position:**

We agree with Moorim. The petitioner claims that variations in pulp costs remain unexplained and unsubstantiated without acknowledging the ample record evidence reviewed and tested at verification related to pulp costs and the test work performed specifically for the CONNUM referenced by the petitioner. The cost buildup for the CONNUM in question included calculation worksheets, accounting records, production records, and raw material inventory ledgers, all of which established reliable and relevant evidence to substantiate the reported per-unit pulp cost.<sup>41</sup>

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<sup>40</sup> See Kyesung Sales Verification Report at 20.

<sup>41</sup> See Moorim CVE 13.

Further, Moorim also provided charts developed to identify specific cost variations attributable to its change in accounting systems during the POI (i.e., the “legacy” system was used during the first nine months of the POI, and the “ERP” system was implemented during the last three months of the POI, which plays a role in the variations in the pulp costs).<sup>42</sup> In evaluating the former “legacy” accounting system and the new “ERP” accounting system, Moorim was able to demonstrate that the methodological changes and revised product-specific usage rates did not affect the overall total costs, but rather the manner in which costs were allocated among products. Specifically, the adjustments made to the standard usage rates of raw material inputs made under the ERP system included product-specific refinements.<sup>43</sup> For example, the production personnel explained that CONNUMs with higher basis weights generally require a smaller portion of pulp than those CONNUMs with smaller basis weights.<sup>44</sup> These input requirements, based on production reality are, moreover, reflected in the “ERP” system, and such revisions to the raw material standard usage rates largely affected the reported per-unit pulp costs.

In regard to the actual pulp input cost for the CONNUM at issue, we traced each cost element directly from the reported pulp cost in the cost database to the relevant cost worksheets, bill of materials, inventory ledgers, and production records without exception.<sup>45</sup> In examining the inventory ledgers, we gained an understanding that the “legacy” system only recorded pulp consumption on broad categories of pulp, while the “ERP” system recorded pulp consumption based on distinct pulp types. Using the product inventory ledgers and the product-specific standard usage rates revised in the “ERP” system, we were able to identify the specific pulp type requirements for the CONNUM in question. When we compared the input cost of the specific pulp type maintained under the “ERP” system to the input cost of the broad category of pulp maintained under the “legacy” system, we found pulp cost variations between the two systems for the same product. While the various types of pulp, as a whole, experienced price increases in the final months of the POI, as record evidence demonstrates, the pulp types used for this CONNUM and the manner in which inputs were valued contributed to the variations in the reported per-unit pulp costs.<sup>46</sup>

If we put aside the discussion of changes in input costs and pulp types due to the accounting changes in this instance, it is important to point out that the change in accounting systems also contributes to other cost variations in the reported per-unit material and conversion costs. The verification report documents that the Department conducted exhaustive verification procedures, collected extensive source documentation, and requested Moorim to prepare various

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<sup>42</sup> See Moorim CVE 15 at 1-14.

<sup>43</sup> See Moorim Cost Verification Report at 19.

<sup>44</sup> See Moorim Cost Verification Report at 29 and CVE 15 at 39-42 and 53-56.

<sup>45</sup> See Moorim Cost Verification Report at 16-19 and CVE 13 at 1-18.

<sup>46</sup> See CVE 13 at 14, 18.

compilations of data to isolate and examine the variations in costs between the two accounting systems.<sup>47</sup> The verification report directly discusses these “unexplained” cost variations between the two accounting systems which include, but are not limited to, the treatment of yield loss and scrap utilization, as well as the revised standard usage rates for products. The Department reviewed the activity reports, actual machine hours, production records and allocation worksheets to evaluate how conversion costs were allocated to specific products under the two accounting systems.<sup>48</sup>

The fact that Moorim implemented a new accounting system during the POI does not provide sufficient grounds for the Department to conclude that the reported costs are unsupported, invalid, or inaccurate. We have reviewed both systems in detail and have determined that both accounting systems were used in the normal course of business and employ a reasonable method of allocating costs to specific products. As the petitioner has failed to provide any substantive reason to reject or modify Moorim’s reported costs, we have continued to use Moorim’s reported cost data, as adjusted, in the final determination.

### **Hankuk-Specific Comments**

#### Comment 12: Timeliness of Targeted Dumping Allegation concerning Hankuk Paper

Hankuk argues that the petitioner’s revised June 5, 2007, targeted allegation was untimely filed. Thus, Hankuk contends that the Department’s decision to conduct a targeted dumping analysis with respect to Hankuk is improper, and should be dismissed in the final determination. Furthermore, Hankuk suggests that if the Department continues to accept the untimely targeted allegation, then it should revisit its analysis to determine whether the price differentials for the allegedly targeted and non-targeted customer groups identified in that allegation are significant.

The petitioner counters that it did not withdraw its targeted dumping allegation with respect to Hankuk. The petitioner states that although it revised the definition of the targeted set in the June 5 supplemental targeted dumping allegation, there is no reason why the petitioner should have been precluded from doing so. Moreover, the petitioner contends that the supplemental targeted dumping allegation was in response to a specific request by the Department. In any event, the petitioner asserts that whether the targeted set is defined as it was in the original allegation, or in the supplemental allegation, Hankuk still engaged in targeted dumping.

### **Department’s Position:**

We disagree with Hankuk. The petitioner made its allegation on April 26, 2007, which was timely; it subsequently modified the allegation on June 5, 2007, partially in response to questions

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<sup>47</sup> See Moorim CVE 4, 7, and 15.

<sup>48</sup> See Moorim Cost Verification Report at 25-28.

by the Department. The June 5, 2007, allegation was not a new allegation, as argued by Hankuk, but a modified version of the original; as such we consider it timely.

Comment 13: Standard Costs for Hankuk

The petitioner argues that Hankuk's standard costs could not be verified. According to the petitioner, Hankuk stated on page 20 of its April 19, 2007, supplemental section D response that it "does not maintain historical information on the standard bills of material and production routing used in the past." The petitioner contends that the Department was not able to verify Hankuk's response without the build-up of the standard costs in effect during the POI. The petitioner argues that Hankuk was only able to show the Department the bottom line standard costs themselves and did not document how the standard costs were derived.

The petitioner claims that Hankuk should have been able to generate activity reports to explain how costs were allocated among products including the required production (in kilograms) for one ton of finished product, machine times, downtime, the usable width of the paper coming out of each process, and the basis weight of the paper. The petitioner claims that the Department did not obtain any of this information, and therefore, the standard costs were not verified. Thus, the petitioner argues that the Department should apply partial facts available to Hankuk's cost of manufacture for the final determination.

Hankuk argues that the Department verified its standard costs. Hankuk claims that while it did not keep its historical bills of material, its work-in-process inventory module keeps the detailed information that was used to calculate the standard costs recorded as entries into inventory. According to Hankuk, its work-in-process module records the standard usage quantity and standard unit price for each material used in production for each lot produced as well as the standard usage time and unit cost per usage hour for each production process used. Hankuk claims that the Department verified its standard cost when reviewing the cost buildups for each of the selected CONNUMs. According to Hankuk, the Department traced the reported production quantities to Hankuk's inventory records, traced the reported standard costs to detailed reports showing usage and unit costs for all material inputs for a single production lot, and reconciled the production lot to the total reported costs. Hankuk also states that the Department examined the standard unit cost for each material for each quarter of the POI to confirm that the unit costs reasonably reflected the actual acquisition cost. Hankuk also notes that the Department traced the labor costs not only to Hankuk's inventory records but also to detailed records for each production lot and in doing so, the Department reviewed the calculation of the production volume per machine hour for the product, the manpower per machine hour, and the production volume per man hour. According to Hankuk, the Department also reviewed the routing for the product code and the calculation of depreciation at each stage of production without noting any discrepancies. Hankuk argues that the petitioner did not bother reading the cost verification report. Otherwise, it would have seen that the verification involved a detailed analysis of standard costs. Hankuk argues that its standard costs were fully verified. Therefore, the Department should reject the petitioner's claims.



**Department's position:**

We disagree with the petitioner's claim that Hankuk's standard costs could not be verified. The Department reviewed Hankuk's standard costs extensively at verification and documented those steps. See Hankuk's Cost Verification Report. The petitioner's argument is based on a statement by Hankuk on page 20 of its April 19, 2007, supplemental section D response that it "does not maintain historical records of past bills of materials or routing." While Hankuk does not maintain those specific reports, its work-in-process inventory module maintains the detailed information that was used to calculate the standard costs recorded as entries into finished goods inventory. This information is summarized in the company's WIP account distribution reports. Each lot (batch) produced is recorded in Hankuk's finished goods inventory as standard costs. For each lot, there is a discrete job report which shows the detailed standard costs including the quantity of the semi-finished product needed to produce one ton of the finished product, as well as the standard input quantities and unit costs needed to produce each lot. The information contained in each discrete job report for each lot matched the information contained in the WIP account distribution report. As demonstrated in the cost verification report, the Department tested this detailed supporting data and obtained extensive support for Hankuk's standard costs as well as the underlying usage rates.<sup>49</sup> Accordingly, Hankuk's standard costs were fully verified by the Department. Thus, the record in this investigation does not support the assertions made by the petitioner concerning the standard cost and we have continued to rely on Hankuk's standard costs as reported.

**EN Paper-Specific Comments**

Comment 14: Credit Balance for Bad Debt Allowance

EN Paper argues that the Department erred in the Preliminary Determination when it excluded the offset for "credit balance for bad debt allowance," which was an amount included in non-operating income and expenses in EN Paper's audited financial statements, from the calculation of the G&A expense ratio. The respondent points out that the Department explained in its Preliminary Determination and in the Preliminary Cost Calculation Memorandum<sup>50</sup> that the Department excluded the item because EN Paper did not (1) fully explain what the item represented or (2) provide supporting documentation. EN Paper contends that at the cost verification the company explained that the credit balance reflected the collection of an account previously classified as doubtful and thus was included as part of EN paper's bad debt allowance.

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<sup>49</sup> See Hankuk CVE 10.

<sup>50</sup> Memorandum to Neal M. Halper, through Michael P. Martin, from James Balog: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - EN Paper Mfg. Co., Ltd., dated May, 29 2007 (Preliminary Cost Calculation Memorandum).

EN Paper cites to page 30 of the Cost Verification Report<sup>51</sup> where the Department noted that EN Paper had included the full amount for bad debt expense in its calculation of indirect selling expenses. EN Paper maintains that if the Department were to continue to exclude this offset from the G&A expense ratio calculation, bad debt expenses would be double counted by the amount of the offset because EN Paper's bad debt expenses were based on the full amount of the allowance for bad debt before the offsetting credit balance. Therefore, for the final determination, EN Paper asserts that the Department should follow the accounting treatment on EN Paper's audited financial statement and include the credit balance on bad debt allowance as part of the overall non-operating income and expense included in G&A expenses for purposes of calculating the G&A expense ratio.

The petitioner rebuts that the Department properly disallowed the offset to EN Paper's G&A expenses for the credit balance for bad debt allowance. The petitioner first contends that the Department's practice is to include a respondent's provision for bad debt as an indirect selling expense and not as part of G&A expenses. The petitioner points out that EN Paper did include its bad debt expense as part of indirect selling expenses and contends that if there is to be an offset for the credit balance then it should be an offset to indirect selling expenses and not G&A expenses. The petitioner then contends that it is the Department's practice not to offset bad debt expenses included in indirect selling expenses for a reversal of bad debt. For support, the petitioner cites Seamless Pipe from Brazil,<sup>52</sup> where the Department held that the provision for bad debt expense "should not be lowered due to a correction or adjustment to previous years' write-offs." The petitioner asserts that EN Paper has not demonstrated that the amount at issue relates to sales of the subject merchandise during the POI, and therefore, there is no basis to permit the requested offset.

### **Department's Position:**

We agree with the petitioner. As noted in the Department's Preliminary Determination, "EN Paper did not fully explain what the gain represents or provide supporting documentation." Therefore, the Department disallowed the adjustment to G&A expenses. See Preliminary Determination. EN Paper did not fully explain what the offset was related to until the cost verification, at which time Department officials learned that it was related to the collection of an account previously classified as doubtful. The Department's practice is to include a respondent's provision for bad debt expense in indirect selling expenses. See Seamless Pipe from Brazil and

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<sup>51</sup> Memorandum to The File, through Neal M. Halper, through Michael P. Martin, through LaVonne Clark, from James Balog and Angela Strom: Verification of the Cost Response of EN Paper Mfg. Co., Ltd. in the Antidumping Investigation of Coated Free Sheet Paper From Korea (September 4, 2007) (Cost Verification Report).

<sup>52</sup> Small Diameter Circular Seamless Carbon and alloy Steel Pipe from Brazil: Final Results of Antidumping Administrative Review, 70 FR 7243 (February 11, 2005), and accompanying Issues and Decision Memorandum at Comment 6 (Seamless Pipe from Brazil).

SS Bar from India.<sup>53</sup> As noted by the Department in its cost verification report (see EN Paper Cost Verification Report at 30), EN Paper recognized this practice and included bad debt expense as part of its reported indirect selling expense. Therefore, as the offset relates to bad debt expense and not G&A expenses, we are not allowing the offset to G&A expenses. Furthermore, The Department's practice is that the provision for bad debt expense should not be lowered because of a correction or adjustment to previous year's write-offs. See Seamless Pipe from Brazil. Therefore, consistent with our practice, we have disallowed the offset for the amount at issue from bad debt expense and consequently indirect selling expenses.

Recommendation

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

Agree \_\_\_\_

Disagree \_\_\_\_

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David M. Spooner  
Assistant Secretary  
for Import Administration

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(Date)

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<sup>53</sup>See Stainless Steel Bar from India: Final Results of the Administrative Review, FR 68 FR 47543 (August 4, 2003) (SS Bar from India), and accompanying Issues and Decision Memorandum at Comment 7.