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Investigation
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MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Bernard T. Carreau
Deputy Assistant Secretary
for Import Administration, Group II

DATE: September 23, 2002

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty ("AD") Investigation of Certain Cold-Rolled Carbon Steel Flat Products ("Cold-Rolled Steel") from Korea

Summary - This memorandum addresses issues briefed in this proceeding. Section A lists the issues briefed by the parties. Section B discusses the history of this investigation. Section C sets out the scope, or product coverage, of this investigation. Section D analyzes the comments of the interested parties and other participants and provides our recommendations for each of the issues.

A. Issues

Scope

1. Scope of the Investigation

Pohang Iron & Steel Co., Ltd. ("POSCO"):

Sales Issues:

Comment 1: U.S. "Channel 3" Sales
Comment 2: Middleman Dumping Allegation
Comment 3: Certifications of Completeness and Accuracy
Comment 4: U.S. Indirect Selling Expenses
Comment 5: Temper, Annealing, and Surface Finish Fields
Comment 6: Constructed Export Price - CEP - Offset
Comment 7: Critical Circumstances

*Cost Issues***:**

Comment 8: General and Administrative Expense Rate Calculation

Dongbu Steel Co., Ltd. ("Dongbu"):

Sales Issues:

Comment 9: U.S. Indirect Selling Expense Calculation Methodology
Comment 10: Constructed Export Price - CEP - Offset
Comment 11: Warranty Expenses
Comment 12: Submission of New Factual Information
Comment 13: Ministerial Errors

- *A. The Department's Preliminary Determination Failed to Distinguish Between Prime and Non-Prime Sales*
- *B. The Department's Margin Program Incorrectly Converts the Variables HMMOVE and HMPACK*
- *C. The Department's Preliminary Determination Double Counted Billing Adjustments*
- *D. The Department Failed to Assign a Weight to Dongbu's "Stone Finish" Merchandise*

Cost Issues:

Comment 14: Interest Expense/Financial Expense Ratio
Comment 15: General and Administrative Expense Rate

B. History

On May 9, 2002, the Department of Commerce (the "Department") published the preliminary determination in this investigation. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea 67 FR 31225 (May 9, 2002) ("Preliminary Determination"). The merchandise covered by this investigation is described in the Scope of Investigation section of this memorandum. The period of investigation ("POI") is July 1, 2000, through June 30, 2001. We invited parties to comment on our Preliminary Determination. We received case briefs from the following parties: Pohang Iron & Steel CO. Ltd. ("POSCO") and Dongbu Steel Co., Ltd., ("Dongbu") (collectively "the respondents"); and Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation, and Nucor Corporation (collectively "the petitioners"). A public hearing was held on September 9, 2002, with respect to this investigation.

C. Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. A full description of the scope of this investigation is contained in the "Scope Appendix" attached to the Notice of Correction to Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Australia, 67 FR 52934 (Aug. 14, 2002). For a complete discussion of the comments received on the Preliminary Scope Rulings, see the memorandum regarding "Issues and Decision Memorandum for the Final Scope Rulings in the Antidumping Duty Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea," dated July 10, 2002, which is on file in the Central Records Unit ("CRU").

D. Discussion of comments raised by interested parties and other participants

POSCO Sales Issues

Comment 1: "Channel 3" Sales

Petitioners state that POSCO and the Korean trading company are "affiliated" according to section 771(33)(g) of the Tariff Act of 1930, as amended ("the Act"), as evidenced by the highly unusual sales structure between the two companies. They stand upon the Statement of Administrative Acts ("SAA") and the Department's regulations to support their assertions. Specifically, petitioners argue that the SAA, under the direction of Congress, explicitly states that the Department looks at relationships between parties where one party was in the position to exercise restraint or direction over another, even in the absence of an equity relationship, or where the supplier or buyer becomes reliant upon the other. Furthermore, they cite the Preamble of the Department's regulations where we state that we will not find that control over another person/party exists unless that relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or the foreign like product.

Petitioners contend that information provided by POSCO and gathered during verification confirm that POSCO's U.S. "Channel 3" sales through POSCO's U.S. affiliate, Pohang Steel America Corp. ("POSAM"), should be classified as constructed export price ("CEP") sales. In support of this assertion, petitioners argue that the Korean trading company does not have title to the merchandise free and clear when they purchase subject merchandise from POSCO because the agreement between the two companies is contingent upon the resale of the merchandise to POSAM. Furthermore, they maintain that according to the Uniform Commercial Code a conditional sale is not a sale until title passes. Therefore, petitioners state the transaction

between POSCO and the Korean trading company should not be considered a sale for the purposes of Department's dumping analysis.

In addition, petitioners contend that in order for a sale to take place, the buyer must assume some element of risk. They cite record evidence that the Korean trading company does not assume any risk with respect to subject merchandise purchased from POSCO.

Finally, petitioners argue that because POSAM bears the risk and cost associated with Customs entry, and consummates the first legitimate sales transaction in the United States to the Korean trading company's U.S. affiliate, the sale of the subject merchandise does not occur until after importation into the United States. Therefore, they conclude the sale, by law, is a CEP transaction.

POSCO rebuts petitioners' allegation that some of POSCO's U.S. "Channel 3" sales are CEP sales, by noting that the Department examines the price at which the first party in the chain of distribution which has knowledge of the U.S. destination of the merchandise sells the merchandise to a U.S. purchaser, or a trading company. It claims that because POSCO's price to the Korean trading company was the first sale to an unaffiliated party in the chain of distribution who had knowledge of the U.S. destination, the sale should be classified as an EP sale. To support its argument, POSCO notes that all of its sales to the Korean trading company, regardless of whether merchandise is sold through POSAM, are identical.

POSCO also discredits petitioners' assertion that the sale of the subject merchandise does not occur until after importation into the United States, by maintaining that if the Korean trading company did not acquire title, it could not have invoiced, passed title on to, or collected money from downstream customers and earned a profit on its resale, which it did. POSCO adds that it is pointless to argue about POSAM's role in the sales chain because POSCO made a sale to an unaffiliated party in Korea, with the knowledge that it was going to be sold in the U.S. market, before POSAM acquired title. Therefore, it concludes that analysis of POSAM's downstream sales as a CEP transaction would not only be methodologically untenable but also contrary to law.

Department's Position:

We agree with petitioners that the first appropriate sales transaction to examine for U.S. "Channel 3" sales through POSAM is from POSAM to the Korean trading company's U.S. affiliate. However, our rationale for making such a decision differs from the petitioners'. In the current investigation, POSCO has established that it knew at the time of the sale of subject merchandise that the merchandise would ultimately be sold to POSAM from the Korean trading company.[1] Since POSCO had knowledge that sales of subject merchandise went through the

[1] POSCO was aware that all of its sales to the Korean trading company were ultimately destined for the United States, at the time of their sale. See POSCO's March 22, 2002

Korean trading company and were subsequently resold to POSAM, we have concluded, for the purposes of this final determination, that this sales transaction is tantamount to a sale directly to POSAM from POSCO.

This is consistent with the Department's analysis in previous cases involving subject merchandise sold to unaffiliated domestic trading companies that is ultimately purchased by respondent's U.S. affiliate. See Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Revoke Order in Part, 67 Fr 51539 (August 8, 2002) ("Silicon Metal").[2] In Silicon Metal, we noted that a respondent's knowledge that merchandise it sold to an unaffiliated domestic trading company would ultimately be purchased by the respondent's U.S. affiliate is relevant in determining which sale should be used as an EP or CEP sale. In the current proceeding, since POSCO knew, or should have known, that subject merchandise sold to the unaffiliated Korean trading company would be resold to POSAM, we conclude that it is appropriate to examine POSAM's sales as CEP transactions, and therefore the Department adjusted the margin calculation program to reflect our decision.[3]

Supplemental Response at page 9. More specifically, POSCO knew that certain sales of subject merchandise to the Korean trading company went through POSAM before being sold to the Korean trading company's U.S. affiliate's ultimate customer. See POSCO's April 11, 2002 Supplemental Response at 5, where POSCO states that, "{r}ather than excluding their U.S. subsidiaries from the {U.S. "Channel 3"} transactions, POSCO and {the Korean trading company} involved their subsidiaries . . ." See also Verification Exhibit 19 (US Preselect - Trading Company 1), at 19 and 34, where POSCO's duty drawback application (Detail of Export Report) references the export permit, which lists POSAM as the buyer of the said merchandise (both of which are dated prior to the sale of the merchandise from POSCO to the Korean trading company).

[2] The salient facts of Silicon Metal are as follows: The respondent reported sales to its unaffiliated trading companies as EP sales, notwithstanding the fact that these sales were later purchased by the respondent's U.S. affiliate. Nevertheless, the Department determined that the record evidence in that review did not establish that, at the time of its sales by the respondent to the unaffiliated trading companies, the respondent had or should have had knowledge that the subject merchandise would ultimately be purchased by its U.S. affiliate. Consequently, the Department concluded that the sales of subject merchandise to the U.S. affiliate should be treated as EP sales.

[3] In any event, we note that our antidumping questionnaire requires POSCO to report all of POSAM's U.S. sales of subject merchandise. See, e.g., item II.11 of the "General Instructions," at page G-5 (requesting a single response for all affiliates, including the sales of affiliates). See also item 1.a. of the Section A questionnaire, at page A-2 (requiring that the respondent include merchandise produced and sold by your company "and its affiliates.") Therefore, it is appropriate to treat these final sales from POSAM to the Korean trading company's U.S. affiliate as CEP sales because they are sales of subject merchandise made by

Comment 2: Middleman Dumping Allegation

Petitioners argue that they demonstrated that middleman dumping has occurred and the Department has failed to initiate a middleman dumping investigation against a Korean trading company. They note that their allegation was specific and supported by reliable pricing and cost data from this investigation. As support, petitioners cite Congress' intent that the Department investigate middlemen and avoid below cost sales by middlemen. Furthermore, they argue that past Departmental precedence holds that if a trading company is failing to recover its costs in transactions concerning subject merchandise, the Department will investigate that allegation. Petitioners add that the Department's Antidumping Manual states that the Department will initiate a middleman dumping investigation if a trading company is reselling to the United States at prices which do not permit recover of its acquisition and selling costs. Therefore, they assert the Department has a clear ability and obligation to investigate credible claims of middleman dumping, which it has failed to do in this investigation.

Petitioners add that in past cases, unlike the instant investigation, where the Department has not initiated a middleman dumping investigation, those allegations did not contain the requisite pricing or cost data. Thus, petitioners conclude, the Department should give an explanation why we deviated from past history not to initiate a middleman dumping investigation.

POSCO demurs to petitioners' allegations of middleman dumping. It states that the Department has been reluctant to pursue middleman dumping investigations of trading companies, because trading companies typically operate at small mark-ups, and presumably do not take losses. POSCO notes that petitioners base their allegation, in part, on the fact that certain sales through POSCO's U.S. "Channel 3" were complex and were created to avoid payment of antidumping duties. It claims that the complexity of the sales process is irrelevant to the question of whether the unaffiliated trading company recovered its acquisition costs. Additionally, POSCO claims that since this is an investigation, the sales process could not have been designed to avoid antidumping duties because there was no order in place for the subject merchandise. Moreover, it adds that since the merchandise was produced by POSCO and imported by POSAM, petitioners have failed to explain how duties would be avoided. Finally, POSCO maintains that while petitioners did make an allegation of middleman dumping, their allegation was not supported by persuasive evidence. Namely, POSCO holds, to sustain a middleman dumping allegation, the Department must find that a substantial portion of the trading companies sales were below acquisition cost, not just one.

Department's Position:

The Department disagrees with petitioners that we should have initiated a middle man dumping investigation. As we stated above in "Comment 1", the Department determined that the

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POSCO's affiliate in the United States.

first appropriate sales transactions for POSCO's U.S. "Channel 3" sales through POSAM, is from POSAM to the Korean trading company's U.S. affiliate. However, we note that even if we had pursued the middleman dumping allegation, we do not believe that it would been appropriate to initiate a middleman dumping investigation in this case.

The statute and the Department's regulations do not specifically address the issue of middleman dumping, and the legislative history indicates that Congress expected the Department to develop an appropriate methodology to consider this issue. See Fuel Ethanol from Brazil; Final Determination of Sales at Less Than Fair Value, 51 FR 5572, 5573 (February 14, 1986). The Department's current antidumping manual, in chapter 7, indicates that allegations of middleman dumping are rare. Through its administrative practice, the Department has developed an appropriate standard for analyzing allegations of middleman dumping.

Consistent with the Department's practice, to initiate an investigation of middleman dumping, we require that the petitioners submit reasonably available information that provides us with evidence of middleman dumping. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan, 64 FR 15493, 15502 (March 31, 1999); Electrolytic Manganese Dioxide From Japan Final Results of Antidumping Duty Administrative Review, 58 FR 28551, 28555 (May 14, 1993) ("EMD From Japan"). This includes information, either direct or circumstantial, on the price actually paid to the middleman by the U.S. end user. As we have stated in Final Determination of Sales at Less Than Fair Value; Certain Stainless Steel Cooking Ware from Korea, 51 FR 42873, 42874 (November 26, 1986), "{s}ince trading companies typically operate at small mark-ups, and presumably do not take losses, we require specific evidence that the trading company is in fact dumping before initiating an investigation with respect to the trading company." See also Consolidated Int'l Automotive, Inc. v. v. United States, 809 F.Supp. 125, 130 (Court of International Trade ("CIT") 1992); EMD From Japan, 58 FR 28551, 28555; Antidumping; Final Determination of Sales at Not Less Than Fair Value; Forged Steel Crankshafts from Japan, 52 FR 36984, 36985 (October 2, 1987).

Concerning the quality of evidence provided, we have stated, "In analyzing whether to initiate, we will evaluate information, either direct or circumstantial, and will require that petitioners provide supporting data on prices and costs which are reasonably available to them and that this information is convincing." See Stainless Steel Plate in Coils from Taiwan, 64 FR at 15502. If initiated, the purpose of the investigation will be to analyze whether "substantial portions of sales are substantially below acquisition cost," thus indicating that the "middleman" is engaged in middleman dumping." Steel Wire Strand for Prestressed Concrete From Japan; Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Reviews, 62 FR 60688, 60689 (November 12, 1997). In the instant investigation, rather than initiate a middleman dumping investigation without all the salient facts, we sent out a supplemental questionnaire to POSCO to gather more information on this allegation. Moreover, even if we decided to initiate a middleman dumping allegation the receipt of data from POSCO regarding our supplemental questionnaire showed with reasonable assurance that middleman dumping did not occur. Specifically, POSCO's information showed that albeit the Korean

trading company operated at a small markup, it was still recovering its acquisition and selling costs on these sales to POSAM. See POSCO's May 1, 2002 submission.

Comment 3: Certifications of Completeness and Accuracy

The petitioners argue that the aforementioned Korean trading company's information on the record in the current investigation has not been properly certified, as set forth in sections 351.303(g)(1) and (2) of the Department's regulations. The petitioners contend that the Department solicited information from the Korean trading company which cannot be compelled to supply information under the threat of adverse facts available. The petitioners apparently believe that the Department should not have accepted the Korean trading company's information submitted by POSCO.

The respondent did not comment on this issue.

Department's Position:

We disagree with the petitioners' argument that the document was improperly filed. Sections 351.303(g)(1) and (2) of the Department's regulations state, in pertinent part, that a person must file, with each submission containing factual information, a certification that the information is complete and accurate, and if such person has legal counsel, counsel must certify that the submission does not contain any material misrepresentation or omission of fact.

In the instant investigation, POSCO submitted information on the record about the Korean trading company. This information was solicited by POSCO and obtained from the Korean trading company's officials. POSCO's submission to the Department was accompanied by the proper certification required by sections 351.303(g)(1) and (2) of the Department's regulations. Contrary to what petitioners contend, the Korean trading company does not have to certify to the accuracy and completeness of their data. All that the Department requires is that the person submitting the data, in this case POSCO, certify the accuracy and completeness of the data (and because POSCO is represented by counsel, counsel must certify that the submission does not contain any material misrepresentation or omission of fact). Therefore, we disagree with petitioners' contention that said information was not filed with the appropriate certification as set forth by sections 351.303(g)(1) and (2) of the Department's regulations.

Comment 4: U.S. Indirect Selling Expenses

Petitioners claim that in calculating its U.S. indirect selling expense ("ISE") ratio, POSCO used a total sales value that is significantly higher than what is reported in POSAM's 2001 audited financial statement ("POSAM's financial statement"), thereby understating its U.S. ISE ratio. They note that the total sales value reported on POSAM's financial statement only includes the service revenue to POSAM associated with the hot-band sales from POSCO to an affiliated customer, and not the value of the merchandise itself involved in those sales.

Petitioners agree that POSAM correctly followed U.S. generally accepted accounting principles ("GAAP") when preparing its financial statements (i.e., it did not include in its total sales those revenues earned from sales in which it does not play a significant role), but erred when preparing its response for the Department. Therefore, they assert that the Department should adjust POSCO's submitted U.S. ISE ratio by using the total sales value reported on POSAM's financial statement.

Petitioners claim that according to new rules under U.S. GAAP, if a company serves as an agent and plays a limited role in a sales transaction, the sale is not of that company. As a consequence, they add, the revenue the company should report is the revenue earned from whatever role it played in the transaction (i.e., the service revenue paid to the company) not the total sales value. Petitioners claim that because POSAM has no role in setting either the sales price or its profit in the hot-band sales, and has no inventory risk and bears only a minor credit risk, POSAM cannot lay claim to the total sales value of the merchandise.

To further support their position, petitioners submit evidence they believe demonstrates that for sales between POSCO and the aforementioned affiliated customer, POSAM is not the seller. First, they point out that record evidence confirms that POSCO's auditors view POSCO, not POSAM, as the principal in the hot-band sales. Second, they assert that according to POSCO officials, POSAM's role in the hot-band sales is limited. Third, petitioners argue that the prices for the hot-band sales are set between POSCO and its affiliated customer, and the merchandise has already been sold before POSAM renders its services. Finally, they claim that POSCO officials state that the profit POSAM earns on its hot-band sales is fixed.

Petitioners add that the Department now has on the record the actual expenses associated with hot-band sales transactions and all other sales transactions. Accordingly, they state that the Department should base POSAM's selling, general and administrative (SG&A) and interest expense ratios on the sales revenue reported in POSAM's financial statements, which includes POSAM's service revenues, but not POSCO's revenues on those hot-band sales.

Petitioners demurred at POSCO's suggestion to allocate interest expenses to hot-band sales transactions and non-hot-band sales transactions based on an average accounts receivable balance. They argue that interest expenses not only cannot be tied to particular sales or products, but the allocations POSCO proffers are distortive. Petitioners note that because it is the Department's long-standing practice not to segregate and attribute interest expenses to non-subject merchandise, the Department should use the total interest expenses reported to be allocated over the correct total sales value reported in POSAM's audited consolidated financial statement.

Petitioners note that if the Department prefers, it may attribute SG&A associated to non-subject merchandise, as reported by POSCO, to non-subject merchandise; however, any remaining unallocated, or common expenses should be included in the ISE and allocated over the total sales amount reported in POSAM's financial statement.

Petitioners argue that the Department should reject POSCO's new ISE methodology presented at verification. They claim that at verification POSCO ostensibly provided unrequested analysis of what it believes petitioners' approach would be and offers its proposal as a comparison point. Petitioners object to what they claim is a revision of POSCO's response methodology of ISE, which the Department allowed without comment or participation from petitioners.

POSCO disagrees with petitioners' assertion that the Department should use POSAM's net sales figure from POSAM's financial statements in the denominator, rather than the total sales for which the expenses were incurred, to calculate the U.S. ISE ratio. They contend that the vast majority of POSAM's ISEs are common and cannot be segregated. For this reason, POSCO states, it has always allocated POSAM's ISEs to subject sales by dividing POSAM's total selling expenses by POSAM's total sales value. It adds that the Department has agreed with POSCO on this issue in the past, by stating that any factor, including an ISE ratio, applied to gross unit price must be calculated on the same basis as gross unit price and that it would be inappropriate to include POSAM's indirect selling and interest expenses associated with sales to UPI in the numerator but to exclude the revenue associated with those sales from the denominator.

POSCO rebuts petitioners' contentions that POSAM's involvement in the UPI sales are insignificant. It asserts that the independent auditors characterized POSAM as an agent for financial statement reporting purposes, and that the record could not be clearer that POSAM engaged in significant selling activities with respect to sales to UPI, as these activities are defined and analyzed for antidumping purposes. First, it notes that POSAM's role in the sales process was the same for subject sales and sales to UPI (i.e., POSAM engaged in all the same selling functions for sales to UPI for subject sales in U.S. Channel 1). Second, POSCO contends that the vast majority of POSAM's sales, SG&A, and interest costs are associated with its sales to UPI. Finally, it concludes that the exclusion of the total sales value from the denominator would vastly inflate the ISE factor and POSCO's margin in violation of law.

Lastly, POSCO rebuts petitioners' allegations that they have proposed an alternative ISE calculation methodology. It claims that the petitioners have misread the information verified by the Department and mistakenly believed that POSCO suggested a new ISE methodology.

Department's Position:

The Department agrees with POSCO that we should use POSAM's gross sales figure from POSAM's financial statements in the denominator of its U.S. ISE ratio, rather than the lower sales value based on the service revenue. After discussions with company officials at POSCO and POSAM, and an examination of POSAM's financial statements, the Department has determined that because a majority of POSAM's interest expense and SG&A incurred during the POI was associated with sales to UPI, we will not use the net sales figure reported on POSAM's financial statement for our dumping analysis. The exclusion of the gross sales amount from the denominator of the ISE calculation would result in a misallocation of expenses, and thus an

inaccurate reflection of POSAM's total sales value. In particular, we note that the numerator of the ISE ratio is based on all expenses reported in POSAM's books and records (prepared in the normal course of business) incurred in connection with the gross sales value. Accepting petitioners' argument would result in a disparity between the expenses used in the numerator and the value of sales in the denominator upon which those expenses were incurred.

POSAM's auditors acknowledged that they reported POSAM's net sales value on its financial statements, for hot-band steel purchased from POSCO and resold to UPI, simply because the guidelines set forth in Emerging Issues Task Force ("EITF") Issue 99-19 ("Reporting Revenue Gross as a Principal Versus Net as an Agent") requires such a presentation in the company's audited financial statements. Notwithstanding, it is the Department's long standing practice to rely on data from a respondent's normal books and records where those records are prepared in accordance with GAAP and reasonably reflect the respondent's expenses.[4] The general ledger used to prepare POSAM's audited financial statements, in accordance with GAAP, recognizes the gross revenue from these sales as the total sales revenue for financial accounting purposes. Although POSAM only reports the net revenues from these sales for purposes of presenting this information in the audited financial statements (POSAM also reported the gross amount in the notes to the financial statement), this is only done to comply with EITF Issue 99-19, which ostensibly was enacted to provide investors an option on how to evaluate POSAM's performance during the fiscal year.

We agree with POSCO that the inclusion of the net sales value as reported on POSAM's financial statements would inaccurately inflate POSCO's ISE factor and margin. Therefore, we believe the gross sales value POSAM reported during the POI more accurately reflects its sales revenue. As such, for this final determination, we continue to include POSAM's total sales value in the ISE calculation.

Comment 5: Temper, Annealing, and Surface Finish Fields

Petitioners claim that POSCO's narrative explanation of certain data fields contained in its response is inconsistent with its database. Specifically, they claim that POSCO reported CONNUMs in its database as having been annealed and as being full hard products, while in the narrative, POSCO claims that full hard products are not annealed. Petitioners add that POSCO reported CONNUMs in its database as having a bright surface finish and as being full hard products; however, in the narrative POSCO claims full hard products do not have a finish. They claim that the Department should re-code these CONNUMs and recalculate each CONNUM's

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[4] See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From the United Kingdom, 67 FR 3146, (January 23, 2002) and accompanying Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Stainless Steel Bar from the United Kingdom, at Comment 4 (January 23, 2002) ("Stainless Steel Bar").

cost of production, constructed value, variable cost of manufacturing, and fixed cost of manufacturing.

POSCO refutes petitioners' claims that it needs to rewrite the physical characteristic coding by adding a new surface finish code to the database. First, they claim that petitioners failed to raise questions regarding POSCO's reporting of either surface finish or annealing on a timely basis, and therefore, these comments must be rejected. Nonetheless, POSCO adds that the Department verified that in the home market, full hard products are neither temper rolled or annealed, contrary to what petitioners assert. Furthermore, POSCO claims that most of its full hard products have matte finishes, although, at times, due to the cold-rolling process, a bright finish can also be obtained. In those instances, they note, they correctly reported the surface finish as bright.

Department's Position:

We disagree with petitioners that we should re-code the specific CONNUMs enumerated in their August 26, 2002 case brief, and recalculate their cost of production ("COP") and constructed value ("CV"). Although we agree with petitioners that POSCO stated in its response that full hard products are not annealed, petitioners failed to realize that those full hard products were actually fully processed non-oriented steel ("NO steel"), as evidenced by the "E4" code in the carbon level field and "H" code in the quality field. The NO steel, while not tempered like the full hard products, are annealed.

Additionally, for the CONNUMs not expressed above, but included in petitioners case brief argument, and which the petitioners have identified as being inconsistent with the narrative, we agree with POSCO. For example, some of the CONNUMs that petitioners have singled out as full hard product with bright surface finishes are actually NO steel products with bright finishes, as evidenced by the "E4" code in the carbon level field, "H" code in the quality field, and the "A" in the surface field.

In its section B and C response to the Department's initial questionnaire, POSCO states that full hard coil products do not have a matte or bright surface finish, however it stated that it coded all of the said products as matte finish for reporting purposes. Although POSCO has reported several full hard coil products as having a bright surface finish in its database, POSCO's explanation that at times the cold-rolling process leaves a bright finish and therefore codes it as such is a sufficient justification. Furthermore, since full hard coil products have neither a bright nor matte finish, the fact that POSCO reported some CONNUMs as bright and others as matte would suggest that it is reporting conservatively. Therefore, we have made no changes to POSCO's reported CONNUMs.

Comment 6: Constructed Export Price - CEP - Offset

POSCO argues that the Department's margin program for the preliminary determination failed to reflect the constructed export price ("CEP") offset granted by the Department for POSCO's CEP sales in U.S. Channels 1 and 2. It claims that the Department did not set the "LOTMATCH" variable to "NO" in the margin program, which resulted in the denial of their CEP offset. POSCO urges the Department to correct this error for the final determination.

The petitioners argue that the error with the Department's determination is not the programming language, but the decision to grant POSCO a CEP offset. They claim that POSCO is not entitled to a CEP offset because all of POSCO's U.S. sales are at the same level of trade ("LOT").

Department's Position:

The Department agrees with POSCO in part. Due to an inadvertent error in the programming language of the Preliminary Determination, the Department failed to reflect the CEP offset the Department intended to grant to POSCO for its CEP sales. The Department will correct this error for the final determination of this investigation. However, because CEP offsets do not apply in EP comparisons, POSCO's EP sales will be compared to home market sales without this adjustment and the programming language for the "LOTMATCH" variable will be changed to reflect this.

Regarding petitioners' claim that POSCO should not have been granted a CEP offset because all of its U.S. sales are at the same LOT, we adhere to the decision in the Preliminary Determination, where we determined that POSCO's U.S. LOT 1 (i.e., CEP sales) are different from the home market LOT and are at a less advanced LOT than that of the home market LOT. Moreover, the petitioners have not provided any new information or arguments to change our decision in the final determination. For additional details, refer to our discussion of this issue in the Preliminary Determination.

Comment 7: Critical Circumstances

POSCO contests the Department's preliminary affirmative determination of critical circumstances with regard to POSCO and to Korea in the aggregate. POSCO maintains (as it has throughout the investigation) that the majority of its imports after June 2001 were captive shipments to "UPI" that were necessitated by a fire at UPI's cold mill. Consequently, it adds, the imports from POSCO and Korea in general were higher after July 1, 2001 than they would have otherwise been due to the captive consumption by UPI. POSCO also notes that these shipments were not the result of any impending dumping petition. In conclusion, POSCO maintains that whether these increased imports were dumped or not, there is no history of material injury by reason of imports to UPI, and thus the Department's analysis of this factor was also deficient.

Petitioners contend that the Department correctly determined that critical circumstances exist with regard to POSCO and Korea in the aggregate. They note that POSCO's reasoning behind its increase in imports is irrelevant in a critical circumstances analysis, and theat the critical circumstances determination does not turn on whether the imports are captive shipments or not. Finally, petitioners disagree with POSCO's claim, that because those imports never entered the merchant market, they did not compete with merchandise within the merchant market, arguing that if UPI had not imported the merchandise from POSCO, UPI would be consuming the merchandise in the merchant market. Therefore, they conclude the Department should continue to find that critical circumstances exists for POSCO and Korea in the aggregate.

Department's Position:

We disagree with POSCO and continue to find that critical circumstances exist in the final determination with respect to Korea (excluding Dongbu) for the reasons stated in the preliminary critical circumstances decision. See Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation, 67 FR 19157, (April 18, 2002) ("Preliminary Critical Circumstances Determination"). See also Memo to File from Mark Manning: Respondent's Arguments Concerning the Preliminary Determination of Affirmative Critical Circumstances, dated April 26, 2002. In the Preliminary Critical Circumstances Determination we found that with respect to Korea (excluding Dongbu) there was a history of dumping and material injury by reason of dumped imports of subject merchandise in the United States; there was a reasonable basis to believe or suspect importers of the subject merchandise knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and there have been massive imports of the subject merchandise over a relatively short period of time. POSCO has provided no new credible evidence to the contrary to undermine these findings of a history of dumping, injury, and massive imports in the final determination. Therefore we have not altered out findings and we have determined that critical circumstances exist for imports of cold-rolled steel from Korea (with the exception of Dongbu).

With regard to POSCO's argument that most of its imports after June 2001 were captive shipments to UPI necessitated by a fire at UPI's cold-rolled mill, we do not believe it is appropriate to take into account disruptions at the production facilities of affiliated companies located in the United States when analyzing whether there have been "massive imports" for purposes of critical circumstances. Section 733(e)(1)(B) of the Act states that the Department will determine whether there is a reasonable basis to believe or suspect that imports of the subject merchandise were massive over a relatively short period. Since the Act does not provide the Department with any instruction on how to determine whether imports were massive, section 351.206(h)(1) of the Department's regulations states that the Department, in conducting this analysis, normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. For additional details, see April 26, 2002, Memorandum to the File from Mark Manning referenced above.

POSCO Cost Issue

Comment 8: General and Administrative Expense Rate Calculation

POSCO argues that the Department made an error in its preliminary determination by excluding short-term financial income earned on monetary instruments from the calculation of general and administrative ("G&A") expenses. POSCO states that the Department's practice is to include short-term financial income in the calculation of COP. POSCO cites three different cases to support its argument. See e.g., Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Stainless Steel Bar from Korea, 67 FR 3149 (January 23, 2002) (Stainless Steel Bar from Korea), Notice of Final Determination of Sales at less Than Fair Value: Certain Preserved Mushrooms from India, 63 FR 72246 (December 31, 1998), and Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900 (Part II) (February 28, 1995). Therefore, POSCO asserts that the short-term financial income should be included in the calculation of COP regardless of whether the offset is included in the G&A or in the financial expenses rate calculation.

Petitioners argue that the Department correctly rejected POSCO's gains from marketable securities that it took as an offset to its G&A expense ratio. Petitioners state that the Department's established practice is to disallow gains unrelated to the company's manufacturing and selling operations to offset G&A expense. In the past, the Department has repeatedly found that gains on disposal of investment assets (i.e., marketable securities) do not relate to the manufacturing and selling operations of the company and thus disallowed gains and losses on disposal of those assets to be included in the G&A expense calculation.

Petitioners contend that it is the Department's precedent to include only short-term interest income as an offset to interest expenses and not the income from investment activities. Petitioners argue that cases cited by POSCO in which the Department allowed respondents to reduce interest expenses by short-term interest income are irrelevant because the gains in this case are not interest income but investment income. In addition, the petitioners state that the material facts of this case and Stainless Steel Bar From Korea, are the same and in Stainless Steel Bar From Korea, the Department disallowed the offset to G&A expense for gains on disposition of marketable securities. Petitioners assert that the Department should reject POSCO's argument and continue to make the adjustments to POSCO's submitted costs in the final determination.

Department's Position:

We agree with respondent. When determining whether it is appropriate to include or exclude a particular item from the G&A or interest expense rate calculation, the Department reviews the nature of the activity and the relationship between this activity and the operation of the company. Under Korean GAAP, certain short-term investments (e.g., money market, short-

term mutual funds, etc.) are classified as a current marketable securities on the financial statements and generate short-term interest income. Generally, these items are classified as cash and cash equivalents on the financial statements under U.S. GAAP. We verified that the items at issue in this case were money market funds and that the income generated was short-term interest income. In Stainless Steel Bar From Korea, cited by petitioners, the Department disallowed short-term gains on marketable securities in the G&A expense rate calculation and stated that it is the Department's practice to offset financial expenses with short-term interest income at the highest level of consolidation. Therefore, in this case, consistent with our normal practice, the Department included the short-term interest income as an offset to interest expense. See e.g., Issues and Decision Memo for the Antidumping Duty Investigation of Stainless Steel Bar from Italy; Final Determination, 67 FR 3155(January 23, 2002) comment 22, and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding, 61 FR 57629 (November 7, 1996) comment 24.

Dongbu Sales Issues

Comment 9: U.S. Indirect Selling Expense Calculation Methodology

The petitioners state that ISEs are those selling expenses which are not directly related to selling a particular product (see 19 C.F.R. 351.412(f)(2) (2000)). The petitioners argue that where the Department is satisfied that ISEs can be linked to the sales revenue generated by particular products sold, the Department has permitted respondents to separate ISEs into distinct product categories, or as common expenses, where expenses are undertaken by the company as a whole. However, the Department must carefully examine claims made by respondents. The petitioners argue that this is why the Department generally relies on a ratio of overall overhead expenses to total sales. The petitioners claim that Dongbu uses an allocation methodology that shifts expenses away from subject merchandise. The petitioners argue further that Dongbu's methodology for U.S. ISEs is distortive and that we should revise Dongbu's U.S. ISEs.

The petitioners argue that Dongbu's methodology assigns less than a third of its non-common SG&A expenses to subject merchandise while Dongbu's sales of subject merchandise comprise a majority of its total sales. The petitioners argue that the Department found nothing at verification to support this methodology, nor did it test distortions in Dongbu's methodology, and claims that Dongbu's methodology reflects its normal accounting records are not meaningful. Thus, the petitioners state, the record does not support Dongbu's methodology and the Department should recalculate Dongbu's ISE ratio based on its normal methodology.

The petitioners state that Dongbu uses the same allocation method it used for several previous reviews and that Dongbu USA Incorporated's ("Dongbu USA") expenses were

separated under three categories.[5] The first category covered was expenses that Dongbu linked to the sale of "flat-rolled" products, during the period of investigation ("POI"), and were related to sales of subject merchandise. The second category addressed was expenses that Dongbu linked to sales of other, non-subject merchandise and segregated calling these items "other expenses." The third group contained expenses that Dongbu did not link to either of the two categories already described and was identified as "common expenses."

The petitioners state, that Dongbu USA's general ledger showed that the specific expense categories labeled "bank charges" and "professional fees," related to "POSVEN," a joint business venture from which neither Dongbu USA nor Dongbu had any purchases during the POI. Thus, claims the petitioners, as the amounts did not relate to sales of specific merchandise, Dongbu incorrectly categorized these particular expenses as "other expenses" when the expenses should have been categorized as "common expenses." The petitioners argue further that the only expenses that can be allocated to sales of "other" merchandise are those expenses that relate to products actually being sold by Dongbu USA during the POI. The Department must correct this error in its final determination.

Respondent states that a review of Department precedent demonstrates that the Department does accept reasonable methodologies including the segregation of total indirect selling expenses into discrete groups such as by market, and by product. Moreover, the respondent states that the Department has examined the same issue with respect to Dongbu's methodology in the last two administrative reviews of the existing antidumping duty order on corrosion-resistant flat-rolled steel. Citing to both reviews, respondent argues that the Department has accepted Dongbu's allocation methodology. See Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 66 FR 3540 (Jan. 16, 2001) and accompanying issues and decision memorandum (Jan. 5, 2001) at comment 3, page 9 (hereafter "Final Results CR/CORR 2001"); and Final Results CR/CORR 2002, at comment 6.

Respondent argues that Dongbu's ISE calculation methodology is not distortive and that the petitioners argument to the contrary merely assumes that "because ISEs should be allocated uniformly, any methodology that results in non-uniform ISE is distortive." See respondent's September 5, 2002 rebuttal brief at 5. Respondent states that the cold-rolled purchases from Dongbu constitute a large share of Dongbu USA's sales value, but that they require little of Dongbu USA's time or resources to sell. Thus, respondent claims that Dongbu USA's cold-rolled sales account for a small portion its U.S. expenses.

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[5] See Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 67 FR 11976, and accompanying decision memorandum at comment 6 (Mar. 18, 2002) (hereafter "Final Results CR/CORR 2002").

Furthermore, respondent argues that the record demonstrates that certain ISEs are attributable only to sales of non-subject merchandise. Specifically, Dongbu USA has two locations, New York ("NY") and Los Angeles ("LA"). The NY office has no involvement in the sales of steel products. Therefore, none of the expenses incurred by the NY office are related to sales of the subject merchandise. Additionally, the respondent claims that the LA office is responsible for all sales of steel products to the United States and other countries. For these sales, Dongbu incurs expenses that it does not incur on flat-rolled sales. For example, Dongbu USA arranges freight for its pipe sales, but it does not incur these expenses on flat-rolled sales. Thus, respondent argues that the record shows that flat-rolled sales (i.e., cold-rolled products) are a large part of Dongbu USA's revenue, but that a significant percentage of its ISEs incurred during the POI are unrelated to them.

Respondent states that the Department conducted a thorough verification of Dongbu's ISE calculation methodology, as evidenced by the comprehensive verification exhibit concerning selling expenses. See CEP Verification Exhibit ("VE")-15. Respondent argues that Dongbu supported the methodology it used to segregate ISEs by product, and that the Department thoroughly tested the accuracy of its methodology. For example, the Department confirmed the operation of Dongbu USA's NY and LA offices and it tested its recording of expenses from its journal voucher system to its general ledger. The Department also tested the accuracy and consistency of the segregation of the expenses into the three different groups. See CEP VE 15 at 16-18. Moreover, the bulk of the professional fees were incurred for litigation involving non-subject pipe products. See CEP VE 15 at 19-26. In addition, the Department reviewed details for all expenses in June 2001. See CEP VE 15 at 27-47. Respondent argues that it is important to note: "Dongbu's general ledger system, is not established for dumping purposes and it is used in the preparation of the audited financial statements. Finally, the Department discovered nothing in two days of verification that calls into question the accuracy of Dongbu's accounting (e.g., general ledger) system." See respondent's September 5, 2002 rebuttal brief at 8, footnote 7.

The respondent argues that Dongbu properly excluded professional fees and bank charges related to POSVEN and that the excluded expenses had no relationship to Dongbu USA's sales of subject merchandise. The respondent states that POSVEN is a joint venture operation in Venezuela that for part of the POI produced hot-iron briquettes. In connection with its investment in POSVEN, Dongbu USA incurred minor professional fees, interest expenses, and bank charges. The respondent states that it included the interest expenses in accordance with the Department's rule that all money is fungible, but excluded the professional fees and bank charges that were booked as general expenses because they had no relationship to any U.S. sales made by Dongbu USA of any product. Additionally, the respondent argues that if Dongbu in Korea rather than Dongbu USA had incurred these expenses, the Department would have excluded these from the G&A calculation solely because they were related to investment activity. For these reasons, the Department should continue to exclude the professional fees and bank charges from the calculation of Dongbu USA's ISE ratio.

Finally, the respondent argues that if the Department includes the bank charges in the ISE calculation, they should be classified as interest expenses or financing costs. The bank charges are related to POSVEN's loan that has been guaranteed by the Industrial Bank of Korea ("IBK"). Dongbu USA pays IBK for POSVEN's loan guarantee.

Department's Position:

We agree with the respondent that Dongbu properly quantified its ISEs for its U.S. sales of subject merchandise. First, the Court of International Trade ("CIT") has ruled that alternative ISE allocation methodologies are permissible "provided that they do not result in inaccuracies or distortions and are based on data which can be verified."[6] Importantly, the petitioners also acknowledge that alternative methodologies are accepted as well (see Nucor Corporation's August 26, 2002, case brief at page 14). Additionally, past precedent regarding this product demonstrates that the Department has accepted Dongbu's methodology in the last two administrative reviews of the previous antidumping duty order on corrosion-resistant flat-rolled steel. In particular, in Final Results CR/CORR 2001, the Department stated:

> "We agree with Respondent. In the two cases cited by Petitioners, the respondent was unable to demonstrate at verification that the non-financial ISEs which the respondent had allocated to a particular product were generated by selling activities of that product. In contrast, the record in this case contains no evidence that the reporting methodology used by Respondent was distortive or otherwise inappropriate. Therefore, we have accepted Dongbu's methodology with respect to its assignation of ISEs to flat-rolled sales and non-flat rolled sales divisions."
> See Final Results CR/CORR 2001, at comment 3.

It is significant to note, the Department upheld its finding regarding Dongbu's ISEs in the subsequent review (see Final Results CR/CORR 2002 at comment 6). Petitioners' argument that Dongbu's ISE calculation methodology is distortive is unpersuasive as well. The petitioners' analysis simply focuses on differences in Dongbu's assignment of its "non-common" SG&A expenses, espousing the Department's preference for a uniform ISE calculation that applies total expenses to total sales while providing no examples or citations of where the Department's preference is recorded. The Act does not use the term indirect selling expenses, but refers to any selling expenses other than direct selling expenses, commission expenses, and expenses paid by the seller on the buyer's behalf. See section 772(d) of the Act (19 U.S.C. § 1677a(d)(1)(D)). The SAA simply states:

> "Section 772(d)(1)(D) provides for the deduction of indirect selling expenses from CEP. Indirect selling expenses are expenses which do not meet the criteria of 'resulting from

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[6] See Micron Technology, Inc. v. United States, 44 F. Supp. 2d 216, 222 (January 28, 1999) CIT; Federal-Mogul Corporation v. United States, 862 F. Supp. 384, 404 (August 26, 1994) CIT.

> and bearing a direct relationship to' the sale of the subject merchandise. . . Such expenses would be incurred by the seller regardless of whether the particular sales in question are made, but reasonably may be attributed (at least in part) to such sales." See the SAA, at page 154.

In short, the focus is on the appropriate expenses that would be incurred whether the sale is made or not, with a concentration on those expenses that may reasonably be attributed (at least in part) to subject merchandise sales. Thus, any methodology that results in a "non-uniform" ISE ratio is not inherently distortive, particularly if said methodology more accurately reflects those expenses that are incurred in relation to the sale of subject merchandise.

The record clearly shows that Dongbu USA's ISE calculation for subject merchandise, while based on a non-uniform segregation of its total company-wide selling expenses, accurately reflects Dongbu USA's day-to-day business activities and accounting practices conducted in the normal course of business.[7] Furthermore, the record shows that certain ISEs are attributable only to Dongbu USA's sales of non-subject merchandise. Specifically, the Department verified that Dongbu USA has two locations, NY and LA. The Department also verified that the NY office has no involvement in the sale of steel products. Thus, none of the expenses incurred by the NY office are related to sales of the subject merchandise. Moreover, the LA office is responsible for all Dongbu USA's sales of steel products (i.e., subject and non-subject merchandise) and Dongbu USA incurs expenses that it does not incur on flat-rolled sales. For example, Dongbu USA arranges freight for its pipe sales, but it does not incur these expenses on flat-rolled sales. Therefore, the record demonstrates that Dongbu ISE calculation methodology does not result in an inaccurate or distorted reflection of Dongbu USA's business activities and accounting practices and, finally, is based on data which was thoroughly verified.

The Department conducted a comprehensive verification of Dongbu's U.S. ISE calculation methodology, as evidenced by the Department's verification report (see August 9, 2002, Memorandum to the File, through James Terpstra at pages 5 - 8, and 23 - 24[8], CEPVE-3, CEPVE-4 at pages 1 - 2 and 4 - 10, CEPVE-15, 15A, and 15B). Additionally, throughout the two day verification at Dongbu USA's offices in LA, the Department not only thoroughly tested the accuracy of Dongbu USA's ISE methodology, but also tested the accuracy, completeness, and reasonableness of Dongbu USA's reporting of its entire business practices, corporate structure,

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[7] See Dongbu's December 14, 2001 section A response at Exhibits 2 and 13, Dongbu's January 14, 2002 section C response at Exhibit C-19; see also Dongbu's U.S. CEP Sales Verification Exhibits at CEPVE-3 at page 7, CEPVE-15 at pages 1 - 11. Dongbu USA sells various products. See Dongbu's U.S. CEP Sales Verification Exhibits at CEPVE-15, 15-A, and 15-B.

[8] *Results:* We noted Dongbu USA's methodology for assigning expenses to "flat rolled," "other," and "common" remained {consistent} throughout our reconciliations. We noted no discrepancies.

and accounting practices. Nothing about Dongbu USA's business reporting was found to be inaccurate. Additionally, Dongbu USA's general ledger system (i.e., accounting system), is not established for dumping purposes and it is used in the preparation of its audited financial statements.

Finally, the Department finds that Dongbu properly excluded professional fees and bank charges related to POSVEN and that the excluded expenses had no relationship to Dongbu USA's sales of subject merchandise. The record establishes that Dongbu USA's involvement in POSVEN was purely as an investor and that neither Dongbu nor Dongbu USA made any purchases of any product from POSVEN (see Dongbu's April 5, 2002 supplemental response at pages 8 - 11 as well as sales verification exhibits CEPVE-3 at pages 10 - 11). The exclusion of the income or expense related to investments is not tied to whether or not the expenses can be allocated to other products, but instead occurs because the investment is unrelated to the production or sale of the subject merchandise. Thus, the Department will continue to exclude the professional fees and bank charges from the calculation of Dongbu USA's ISE ratio.

Comment 10: Constructed Export Price - CEP - Offset

The respondent argues that Dongbu qualifies for a CEP offset on its U.S. CEP sales in this investigation. The respondent claims that in the preliminary determination, the Department mistakenly denied Dongbu a CEP offset on its U.S. CEP sales. However, the respondent argues that the information on the record in this investigation provides ample evidence that normal value is at a more advanced LOT than CEP. Respondent states that Dongbu's questionnaire responses explain in detail the differing channels of distribution of its home market and U.S. CEP sales and identify the differences in selling functions undertaken in connection with these different sales channels. Respondent also states that in the home market, Dongbu performs the following selling functions: negotiates the sales terms, invoices the customer, handles inland freight in Korea, and receives payment from customers. For Dongbu's U.S. Channels 3 and 4 (i.e., Dongbu's EP sales), Dongbu performs all categories of selling functions: negotiates the sales terms, invoices the customer, handles inland freight in Korea, and receives payment from customers. Respondent claims that the record shows that Dongbu's selling activities for its U.S. Channels 1 and 2 sales (i.e., Dongbu's CEP sales), differed significantly from its EP sales. For Dongbu's CEP sales, there are several functions that Dongbu USA is heavily involved in or performs exclusively: negotiates the sales terms, invoices customers, performs market research and analysis, handles importation documents, serves as importer of record, pays U.S. brokerage and handling, and receives payment from customers. Respondent states that for its CEP sales the majority of the selling functions were performed by Dongbu USA.

Respondent purports that the Department has found different LOTs (i.e., home market LOT v. U.S. LOT (CEP sales)) in cases similar to Dongbu's. In particular, the respondent notes that in the current investigation, the Department correctly granted POSCO a CEP offset under similar facts and circumstances. Respondent argues that the Department "found POSCO's U.S. Lot 1 (i.e., CEP sales) to be different from the home market LOT and to be at a less advanced

LOT than that of the home market LOT." See Preliminary Determination, 67 FR 31225, 31230 (May 9, 2002).

Finally, respondent states that it is not claiming a LOT adjustment, as it has no sales in the home market that are at the same LOT as that of U.S. CEP sales. Therefore, Dongbu cannot quantify a LOT adjustment. However, as demonstrated above, adjusting for the selling functions performed by Dongbu USA results in a U.S. LOT that is less advanced than the home market LOT. Thus, argues respondent, a CEP offset is required for Dongbu's U.S. CEP sales.

Petitioners argue that the Department properly denied a CEP offset for Dongbu's U.S. CEP sales because they claim Dongbu's CEP sales were made at the same LOT as its home market sales. Citing to section A at Exhibit A-22, the petitioners state that Dongbu's CEP and home market sales are at the same LOT because the selling functions Dongbu provides in each market do not vary significantly and are nearly the same. Contrary to Dongbu's assertion that Dongbu USA exclusively handles the CEP sales negotiating process, the petitioners claim that Dongbu's responses show that it is involved in the CEP sales negotiating process, providing further evidence that Dongbu's selling functions in both markets differed slightly. Moreover, the petitioners argue that the selling function chart included in respondent's September 5, 2002 case brief at Attachment 3, indicates that Dongbu performs market research on its home market and EP sales to the U.S. while Dongbu USA performs market research on CEP sales. The petitioners argue that given the affiliation between Dongbu and Dongbu USA, market research conducted in the United States might not have distinguished between CEP and EP customers, indicating that Dongbu performed some market research involving CEP sales. Thus, the remaining selling functions performed solely by Dongbu USA merely involve moving the merchandise through U.S. customs.

Additionally, the petitioners argue that Dongbu has not reported that it recently altered its selling practices or activities which have been reviewed in several previous cold-rolled steel reviews. In fact, in several previous reviews (and as recently as the seventh administrative review[9]) Dongbu has repeatedly claimed that there was no LOT difference between the home market and U.S. market and thus, claimed no CEP offset was warranted. The petitioners state that the Department agreed, finding that the selling functions were consistent with those described in previous reviews (i.e., 1st-3rd and 5th-7th administrative reviews). The petitioners state further, the one occasion in which Dongbu claimed a CEP offset, the request was denied by the Department. See Preliminary Results of the Fourth Antidumping Duty Administrative Reviews of Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea 63 FR 48173, 48177 - 78 (September 9, 1998). Thus, the petitioners argue, Dongbu was properly denied a CEP offset.

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[9] See Preliminary Results of the Seventh Antidumping Duty Administrative Reviews of Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea 66 FR 47163, 47169 (September 11, 2001) (hereafter "Seventh AR of CR/CORR").

Department's Position:

As noted in the preliminary determination, section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP or CEP transaction. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 C.F.R. 412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. Id. See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we review the distribution system in each market (i.e., the "chain of distribution"),[10] including selling functions, class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (i.e., NV based on either home market or third country prices[11]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See Micron Technology, Inc. v. United States, Court Nos. 00-1058, 00-1060 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability. For CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT, and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (i.e., no LOT adjustment was practicable), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

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[10] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[11] Where NV is based on constructed value ("CV"), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

In the preliminary determination, we found that the evidence on the record was insufficient to demonstrate that a CEP offset was warranted for Dongbu's U.S. CEP sales. In particular, we noted that Dongbu's four U.S. sales channels constituted a single LOT because the selling activities reported by Dongbu through U.S. channels 1 and 2 differed only slightly from U.S. channels 3 and 4. See Preliminary Determination, at 31230. Moreover, we noted that Dongbu's HM and US LOTs were essentially "the same because the selling functions that Dongbu provides are really the same in each market and do not vary significantly between markets." Id. Based on this understanding of the facts, we concluded that no LOT adjustment or CEP offset was warranted.

For purposes of this final determination, the Department has revised our analysis and now find that, after verification, the information on the record in this investigation demonstrates that Dongbu's normal value (i.e., home market sales) is at a more advanced LOT than its CEP sales, and that a CEP offset is warranted. Dongbu's supplemental questionnaire responses and accounting records that were reviewed during verification explain in sufficient detail the differing channels of distribution and identify the differences in selling functions undertaken in connection with these different sales channels.[12] Although we continue to find that Dongbu's home market sales are made at one LOT,[13] we now find that the record demonstrates that Dongbu's EP and CEP sales constitute two separate LOTs, and that Dongbu's selling activities for U.S. Channels 1 and 2 sales (i.e., CEP sales) differed significantly from its U.S. Channel 3 and 4 sales (i.e., EP sales).

Specifically, for Dongbu's U.S. Channels 3 and 4 (i.e., EP sales), we found that Dongbu always/mostly performs the following categories of selling functions: maintains customer relations, negotiates the sales terms, invoices the customer, inland freight in Korea, international freight, receipt of payment from customers, development of new customers, and market analysis; while Dongbu rarely performs: inventory maintenance, after sales service, and warranty claims. Previously during the Preliminary Determination we found that Dongbu mostly performed the following selling functions: inland freight in Korea, international freight, negotiated sales terms,

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[12] See Dongbu's December 14, 2001, section A questionnaire response at pages A-10 - 19 and selling function chart included at Exhibit A-22, and, in particular, the revised selling function chart submitted as a minor correction during Dongbu sales verification, which is included in Attachment 3 of Dongbu's August 26, 2002 case brief (i.e., sales verification exhibit ("SVE") 6A), and Dongbu's March 22, 2002 supplemental questionnaire at pages 9 - 10.

[13] For all its home market sales of subject merchandise, Dongbu always/mostly performs the following categories of selling functions: maintains customer relations, negotiates the sales terms, invoices the customer, inventory maintenance, inland freight in Korea, receipt of payment from customers, early-payment-discount and rebate monitoring, delinquent payment monitoring, development of new customers, and market analysis; while Dongbu sometimes/rarely performs: after sales service and warranty claims.

invoiced the customer, and arranged for credit; while Dongbu rarely performed: inventory maintenance, after sales service, and warranty claims.

Additionally, for Dongbu's U.S. Channels 1 and 2 sales (i.e., CEP sales) we found that Dongbu USA always/mostly performs the following categories of selling functions: maintains customer relations, negotiates the sales terms, invoices the customer, maintains inventory (i.e., merchandise in transit), performs U.S. customs clearance, serves as importer of record, arranges U.S. brokerage and handling, receives payment from customers, develops new customers, and conducts market analysis; while Dongbu USA sometimes performs after sales services and warranty claims. Previously during the Preliminary Determination we found that Dongbu USA mostly performed the following selling functions: U.S. customs clearance, U.S. brokerage and handling, negotiation of sales terms, invoicing customers, arranging for credit, and serving as importer of record; while Dongbu USA rarely performed after sales services and warranty claims. Thus, for CEP sales, the majority of the selling functions are performed by Dongbu USA.

Therefore, based on our analysis of the facts from this more complete record, we find that Dongbu's four U.S. sales channels constitute two LOTs (i.e., U.S. LOT 2 for U.S. channels 1 and 2 and U.S. LOT 1 for U.S. channels 3 and 4). Moreover, we find that Dongbu's home market and U.S. LOT 1 are the same because the selling functions that Dongbu provides are virtually the same in each market. Finally, Dongbu does not have an LOT in its home market that is comparable to its U.S. CEP sales, Dongbu's normal value is at a more advanced LOT than Dongbu's U.S. CEP sales, and the Department has found no means from which to quantify Dongbu's differences in its LOTs. Thus, for Dongbu's U.S. sales channels 1 and 2, a CEP offset is warranted.

Regarding the petitioners' arguments concerning Dongbu's history of requesting or not requesting a CEP offset in the seven antidumping duty administrative reviews of certain cold-rolled and corrosion-resistant carbon steel flat products from Korea, it is important to note that while the Department considers past cases in making its determinations, the facts on the record of the current proceeding are most important. In particular, simply because Dongbu has not made a specific declaration that its selling practices have changed since the seventh administrative review of CR/CORR, does not mean that, after review of the facts on the record, Dongbu would not be eligible for a CEP offset in this investigation. Since its first response to the Department's antidumping duty questionnaire, Dongbu has maintained throughout the investigation that it should be granted a CEP offset. Thus, it is the facts on the current record which are most significant and the Department finds that the facts in this proceeding support granting of CEP offset for Dongbu's U.S. channel 1 and 2 CEP sales.

Comment 11: U.S. Warranty Expenses

Petitioners allege that Dongbu should have reported its U.S. warranty expenses on a transaction-specific basis, where possible, and that in one instance, Dongbu could have and did not report its U.S. warranty expenses on a transaction-specific basis. Instead, the petitioners

assert, Dongbu submitted a customer-specific allocation, which spread the U.S. warranty claim over all sales to that customer. The petitioners state that verification exhibit CEP-5 identifies clearly that one U.S. warranty claim related specifically to one contract number. The petitioners note that this verification exhibit includes a copy of an invoice number relating to this contract number, that the quantity reconciles to the claim, and that in Dongbu's database, this invoice ties to specific observations by quantity, customer code, and invoice number. The petitioners argue that Dongbu could and should have reported this U.S. warranty expense on a transaction-specific basis, and by not doing so, Dongbu failed the specificity requirement of 19 C.F.R. 351.401(g), the verifiability requirement of section 782(e)(2) , and the cooperation requirement of section 782(e)(4) of the Act. The petitioners allege that as a result, Dongbu under reported the U.S. warranty expense for those specific observations. Petitioners assert that the Department should apply adverse facts available in its final determination, because Dongbu was in control of this information.

The respondent states that Dongbu's methodology for reporting U.S. warranty expenses is consistent with the methodology it used in reporting its home market warranty expenses. The respondent argues that warranty expenses are generally accepted on a customer-specific basis in recognition of the fact that companies do not always keep records in a way that allows a claim to be associated with specific sales, and more importantly, that warranty costs in a given period (as in this case for Dongbu) do not necessarily relate to sales in the period. Additionally, it is not the Department's practice to specify only one acceptable way to report warranty costs. In this case, Dongbu USA identified warranty claims by examining its advanced payment account where its warranty claims are maintained. The record shows that there is no established warranty claim system, and Dongbu USA does not maintain a warranty expense account. The original invoice in this case could be identified because of the limited number of transactions. However, a number of the claims were for shipments outside the POI. No changes to Dongbu's reported warranty expense are therefore warranted.

Department's Position:

We agree with respondent that for purposes of the final determination the Department should not apply adverse facts available and should continue to use Dongbu's customer-specific reporting of its U.S. warranty expense. First, Dongbu's warranty expense reporting methodology is consistent for both its U.S. and home market sales listings. As noted in the Department's verification report, Dongbu did not report its home market warranty expenses on a transaction-specific basis, and in numerous instances of warranty claim expenses associated with its subject merchandise, sales would have been excluded from the total warranty expenses actually incurred by Dongbu during the POI (see August 9, 2002, Memorandum to the File, through James Terpstra at page 16). Additionally, as the petitioners' analysis has shown, there is only one instance in which part of Dongbu's U.S. warranty expense for the POI can be linked to a specific sales transaction. Petitioners do not explain how the remaining U.S. warranty expenses should be accounted for. Thus, while reporting consistency between and within the U.S. and home

market sales listings is not the ruling factor in this case, it lends support to the determination not to apply adverse facts available.

Second, reporting customer-specific warranty costs is an approach that the Department has accepted in previous cases. See e.g., Notice of Final Determination: Stainless Steel Bar from France, 67 FR 3143, 3145 (January 23, 2002), and accompanying Issues and Decision Memorandum (January 23, 2002), at Comment 9 (warranty costs on a customer-specific basis); Notice of Final Results: Grain-Oriented Electrical Steel from Italy, 66 FR 14887 (March 14, 2001) and accompanying Issues and Decision Memorandum (March 14, 2001) at Comment 6 ("Grain-Oriented") (Department normally will accept an allocation of warranty expenses on as specific a basis as possible, including a customer-specific basis). According to19 C.F.R. 351.410(c) of the Department's regulations direct selling expenses are expenses that result from, and bear a direct relationship to the particular sale in question. Further, as the Department explained in Grain-Oriented:

> "Where the respondent does not record warranty expenses on a model-specific basis in the normal course of business, the Department allows these expenses to be reported on a customer-specific basis. . . . The Department has to weigh whether the relative importance of the expense to its antidumping duty calculation warrants the imposition of this additional burden on the respondent."
> See Grain-Oriented, 66 FR 14887 (March 14, 2001) and accompanying Issues and Decision Memorandum (March 14, 2001) at Comment 6.

In this investigation, the transaction-specific warranty information in Dongbu's accounting system could only be retrieved for one transaction (see August 9, 2002, Memorandum to the File, through James Terpstra at verification exhibit CEPVE-5). Therefore, due to the relative importance of the expense to the antidumping duty calculation and the fact that Dongbu used a consistent warranty expense calculation methodology in its U.S. and home market sales listings, the imposition of adverse facts available or facts available is not warranted in this case. Thus, the Department will continue to use Dongbu's U.S. warranty expense as it is reported.

Comment 12: Submission of New Factual Information

The petitioners assert that Dongbu's May 8, 2002 submission contains new factual information, is unsolicited, and is submitted past the deadline for new factual information. The petitioners note that, according to the Department's regulations, the deadline to submit new information in an antidumping investigation is seven days prior to the commencement of verification of any party. The petitioners argue since the first verification began on May 13, 2002, the deadline for new information was May 6, 2002, two days before Dongbu's submission. The petitioners also point out that Dongbu's letter was not submitted in response to a factual request by the Department, and conclude that the Department should reject Dongbu's May 8, 2002 submission.

The respondent did not comment on this issue.

Department's Position:

We disagree with the petitioners. Dongbu initially submitted the English translation of its fiscal year ("FY") 2000 financial statements originally issued in Korean as part of its December 14, 2001 questionnaire response (see Dongbu's December 14, 2001 section A response at Exhibit 13, page 20 of the notes to financial statements). The May 8, 2002 submission in question was from Dongbu's original Korean detailed financial statement text which is the source data that was used to compile the FY 2000 financial statements included in Dongbu's section A response. Therefore, the May 8, 2002 submission simply clarified data that was already on the record. Additionally, the same data contained in the May 8, 2002 submission was reviewed, discussed, and included in the Department's July 3, 2002, cost verification report (see July 3, 2002, Memorandum To: Neal M. Halper, "Verification of the Cost of Production and Constructed Value Data submitted by Dongbu Steel Co. Ltd." at page 17 and cost verification exhibit 26). Thus, we are considering the data properly submitted for the record.

Comment 13: Ministerial Errors

A. The Department's Preliminary Determination Failed to Distinguish Between Prime and Non-Prime Sales

Dongbu claims that the Department, in calculating the preliminary dumping margin, deviated from its normal practice of distinguishing prime from non-prime merchandise at key steps in the margin calculation, thereby artificially increasing its dumping margin. The respondent asserts that the Department's normal practice is to differentiate secondary from prime merchandise, because though secondary merchandise falls within the definition of subject merchandise, sales of secondary merchandise are unrepresentative, and to avoid distortion, must be treated separately. The respondent notes that in the administrative reviews of the 1992 - 1993 flat-rolled case (see Notice of Antidumping Duty Order on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products From Korea, 58 FR 44159 (August 19, 1993)), in which they were participants, the Department consistently conducted its dumping analysis by differentiating between prime and secondary merchandise at each stage of its analysis. The respondent argues that the Department, in this case, is not adhering to that standard by factoring the condition of the merchandise only in the sections dealing with the calculation of the weighted-average price. The respondent claims that this methodology particularly affected the cost test, where the Department grouped products with the same physical characteristics into only one category, which resulted in the failure of some prime grade products that would have passed the cost test had the Department distinguished between prime and non-prime merchandise. The respondent argues that this methodology creates a distortion in the calculation that the Department has in the past sought to avoid.

The petitioners did not comment on this issue.

Department's Position:

The Department agrees with the respondent and has distinguished between prime and non-prime merchandise for purposes of the final determination. For the details of the corrections to the margin program, please refer to the Department's September 23, 2002 Dongbu Margin Calculation Memorandum to James Terpstra at page 2.

B. The Department's Margin Program Incorrectly Converts the Variables HMMOVE and HMPACK

Dongbu notes that the margin program developed for the preliminary determination contains an error in coding, such that, at the final stage, the U.S. net prices are merged with the concordance data set that contains the net home market prices for purposes of calculating FUPDOL. The respondent asserts that the Department gave the same name to two variables, HMMOVE and HMPACK on both sides of the equation when it converted won to U.S. dollars for the value of the home market products. The respondent explains that when the same variable name is assigned on both sides of the equation at a merge step, SAS is unable to pick up the entire amount of the expense each time it is used, which results in the program reading the value correctly the first time the product is selected, but incorrectly reduces the amount of the expense every other time it is used as the comparison.

The petitioners did not comment on this issue.

Department's Position:

The Department agrees with the respondent and has corrected this error for purposes of the final determination. For the details of the corrections to the margin program, please refer to the Department's September 23, 2002 Dongbu Margin Calculation Memorandum to James Terpstra at page 3.

C. The Department's Preliminary Determination Double Counted Billing Adjustments

Dongbu notes that the Department erroneously adjusts the gross price reported in field CRSUPRH for the billing adjustments in field BILLADJH in its calculation of home market price. The respondent asserts that, in their response to the Department's questionnaire, they explained that the reported gross price included all billing adjustments, and the billing adjustment field was provided for information purposes only. The respondent points out that the Department verified the accuracy of this explanation during the on-site verification of the responses. The respondent argues that the Department should eliminate billing adjustments from the calculation of the net home market price.

The petitioners did not comment on this issue.

Department's Position:

The Department agrees with the respondent and has corrected this error for purposes of the final determination. For the details of the corrections to the margin program, please refer to the Department's September 23, 2002 Dongbu Margin Calculation Memorandum to James Terpstra at page 2.

D. The Department Failed to Assign a Weight to Dongbu's "Stone Finish" Merchandise

The petitioners note that the Department failed to assign a weight to Dongbu's stone finish merchandise. The petitioners assert that the Department should assign an appropriate weight (i.e., a value used to determine the relative similarity or difference between the codes reported in the surface finish fields "CRSURFH" and "CRSURFU") for this characteristic, and that the Department should apply the same weight to Dongbu's stone finish merchandise as it does to POSCO's stone finish merchandise.

The respondent agrees with the petitioners suggestion to apply the coding system used in POSCO's margin calculation program and notes that this correction has no impact on the analysis.

Department's Position:

The Department agrees with the petitioners and the respondent and has corrected this error for purposes of the final determination. For the details of the corrections to the margin program, please refer to the Department's September 23, 2002 Dongbu Margin Calculation Memorandum to James Terpstra at page at page 2.

Dongbu Cost Issues

Comment 14: Interest Expense/Financial Expense Ratio

Respondent argues that the Department should base Dongbu's interest expense ratio on the interest expense shown on the Dongbu Group combined financial statements rather than on the interest expense presented in Dongbu's consolidated financial statements. Respondent claims that it is the Department's longstanding practice to base interest expense ratio on the interest expense and cost of sales from the audited financial statements at the highest level of consolidation available due to the fungibility of funds within corporate entities. Respondent further argues that the Dongbu Group financial statements are audited and are required under Korean generally accepted accounting principles ("GAAP") and Korean law. Respondent notes that the combined financial statements are prepared using the same principles of consolidation as other consolidated financial statements in Korea, including the elimination of all inter-company transactions. Dongbu maintains that the record in this investigation demonstrates that member companies of the Dongbu Group are under common control, and that corporate financing

decisions are made at the group level. Therefore, Dongbu concludes, the Department should use the Dongbu Group combined financial statements for the calculation of Dongbu's interest expense ratio.

Petitioners argue that the Department should use the consolidated statements of Dongbu Steel Co., Ltd. to calculate Dongbu's financial expense ratio because it more accurately reflects Dongbu's cost of producing the subject merchandise. Petitioners, citing American Silicon Technologies v. U.S., No. 97-02-00267, Slip Op. 99-34 (CIT April, 9, 1999) claim that the court has already ruled on this issue in favor of not using super-consolidated financial statements because they do not reflect the cost of producing the subject merchandise. Petitioners point out that the Korean law requiring combined financial statements is not all-inclusive, because it does not require companies with assets of less than 7 billion won and the companies with less than 30% equity interest or other specific evidence of control be included in the combined statements. As such, petitioners contend, these statements do not capture the activities of the entire Dongbu Group. Petitioners further argue that there is not enough evidence on the record to support the respondent's claim that the Dongbu Group member companies are under common control. Without such evidence, petitioners conclude, the Department could not fully investigate the nature of affiliations among group members, and should, therefore, deny Dongbu's request to use the combined financial statements to calculate the interest expense ratio for the final determination.

Department's Position:

We agree with Dongbu. Section 773(b)(3)(B) of the Act states that for purposes of calculating cost of production, the Department shall include "an amount for selling, general, and administrative expenses based on the actual data pertaining to the production and sales of the foreign like product by the exporter in question." Section 773(e)(2)(A) of the Act states that for purposes of calculating CV, the Department shall include "the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses." The Department's long standing practice of calculating financial expenses for COP and CV purposes based on the borrowing costs at the highest consolidated group level is in accordance with the provisions set forth in the Act and most accurately reflects the "actual" cost of financing to the respondent. The Department's practice recognizes the fungible nature of money within a group of companies. It also recognizes that the controlling entity within a consolidated group has the ultimate power to determine the capital structure and financial costs of each member within the group. See Final Results of Antidumping Duty Administrative Review of Fresh Atlantic Salmon From Chile, 65 FR 78472, 78474, Issues Memo (Comment 7) (December 15, 2000).

There are many reasons why the financial expenses based on the highest consolidated figures are better than financial expense based on respondent's own financial statements, or a lower-level consolidation. First, financial expense based on a respondent's own financial statements, or a lower-level consolidation, only reflects the financial position that the controlling

entity wishes to present for that particular subsidiary or group of subsidiaries. We cannot ignore the fact that the company is operating as a member of a larger group with the support (direct or indirect) to which it is entitled from the group. The controlling management of the group coordinates members' activities in order to maximize the benefit to the group as a whole. A few examples of these types of activities include, but are not limited to: debt moved to specific companies in order to shield assets in other companies from creditors; monies moved through manipulated transfer prices to avoid tax liabilities or currency restrictions; or, conversions of debt into equities (or vice versa) may be made in order to present a group member in a more favorable financial position. The corporate control on the financing operations of individual group member companies may exist even in the apparent absence of specific inter-company financing transactions. The true economic picture can only be seen when all inter-company holdings (i.e., shares in affiliates and debts between affiliates) and inter-company transactions (i.e., inter-company sales, receivables, payables, etc.) have been eliminated and the capital structure of other consolidated companies is accounted for. Only after such consolidation does the debt structure of the group become apparent and does the actual cost of borrowing of group companies become visible. This provides an untainted picture of the financial expense incurred to produce the products of the group. Consolidation also derives a cost-of-sales figure free of inter-company transactions.

We note that the combined Dongbu Group financial statements at issue in this case are entirely different from combined statements encountered by the Department in the past, where unaudited combined statements were prepared voluntarily, did not eliminate inter-company transactions and were not governed by home country GAAP or law. The record of this investigation indicates that in 1999 Korean law and GAAP were amended to broaden the definition of control, which in effect requires all large business groups known as Chaebols to prepare audited combined group financial statements that present consolidated results of the entire group. This requirement was adopted based on the recognition that, although these business groups may not meet traditional accounting criteria for consolidation which are based on vertical parent-subsidiary relationships, member companies are effectively under common control, making it misleading to consider the financial results of any one group member company in isolation. The combined financial statements must be prepared using the same principles of consolidation as for other consolidated financial statements in Korea, including the elimination of all inter-company transactions. The new Korean GAAP defines the purpose of combined group financial statements (see cost verification exhibit 24):

> "A business group which is effectively controlled by an entity and its related parties, forms an economic entity with a common fate and an affiliated company's risk is closely related with those of other affiliated companies in the same business group through cross guarantees of debts, unreasonable inter-company loans and borrowings, and other inter-company transactions. Combined financial statements can provide users with useful information about the financial position, results of operations, cash flows, guarantees of debts for other affiliates, collaterals provided for other affiliates, inter-company loans and

borrowings, inter-company investments in capital, and other inter-company transactions which individual or consolidated financial statements do not show."

Based on the above, we find that the Dongbu Group audited financial statements, prepared in accordance with Korean GAAP, represent the highest level of consolidation available for the respondent. Accordingly, for the final determination, we used the Dongbu Group financial statements to calculate Dongbu's interest expense ratio.

With respect to petitioners' reference to the lack of evidence to support the group members' affiliation via common control, we disagree. As noted above, the Korean law and GAAP were amended to specifically address the issue of common control among members of a large business groups. The instances where such control exists are set forth in Korean GAAP (cost verification exhibit 24). The law requires the Department to rely on the records of the producer if such records are kept in accordance with the producer's home country GAAP and reasonably reflect the costs (section 773(f)(1) of the Act). We note that the companies included in the Dongbu Group combined financial statements satisfy the criteria for common control established by Korean GAAP. We also note that while under Korean GAAP some of the smaller companies may be excluded from the Dongbu Group financial statements, nonetheless the combined audited financial statements of the Dongbu Group, prepared according to Korean GAAP, represent financial statements at the highest consolidated level available.

Comment 15: General and Administrative Expense Rate

Respondent argues that the Department erred in its preliminary determination by excluding all of the extraordinary gains from the calculation of the general and administrative ("G&A") expense ratio and including all the extraordinary losses. Dongbu states that the Departments's decision was based upon its understanding that the gains related only to gains on sale of land, which, according to Dongbu, the Department normally excludes from the calculation of the G&A expense. Respondent maintains that the Department has since verified that the extraordinary gains were also related to the sale of fixed assets other than land, and that the extraordinary losses related to the sale of land in addition to the sale of buildings. Therefore, respondent argues, should the Department continue to exclude extraordinary gains from the calculation of Dongbu's G&A expense, the Department should exclude only gains associated with the sale of land. Moreover, respondent concludes, for consistency, the Department should also exclude the amount of the extraordinary losses related to the sale of land from the calculation of the G&A expense ratio.

The petitioners did not comment on this issue.

Department's Position:

We agree with respondent. At verification we gained a better understanding of the extraordinary gains and losses and noted that they include gains and losses on sale of land as well

as gains and losses on sale of other fixed assets, such as buildings, machinery and equipment. The Department normally includes gains and losses on the sale of fixed assets in the G&A expense. However, the Department's practice with regard to sales of land is different. Land is generally non-depreciable asset, which is not consumed in the production process. Depreciation expense is generally not calculated on the land, which means that no costs associated with these expenses are included in the COP. Therefore, we normally do not consider it appropriate to include in COP the associated gain on the disposal of this type of asset when it is sold. See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the Republic of Korea, 66 FR 33526, 33528 (June 22, 2001), Issues Memorandum (Comment 7). As Dongbu has noted, it would be inappropriate to exclude the gain but include the loss on the sale of land in the G&A ratio calculation. As a result, for the final determination, we have included the gains and losses on sale of fixed assets and excluded both the gain and the loss on the sale of land from the calculation of the G&A expense ratio.

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

Agree_____ Disagree_____

_____

Faryar Shirzad
Assistant Secretary
for Import Administration

_____

(Date)