A-560-820
POI: 07/01/08 – 06/30/09
Public Document
AD/CVD O2: GJB

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Susan Kuhbach
Acting Deputy Assistant Secretary
for AD/CVD Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia

Summary

We have analyzed the case and rebuttal briefs submitted by the petitioners[1] and the respondents[2] in this investigation. As a result of our analysis, we have made changes in the margin calculation for the final determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments from the interested parties:

---

[1] The petitioners are: Appleton Coated LLC, NewPage Corporation, S.D. Warren Company d/b/a/ Sappi Fine Paper North America, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

[2] The respondents are: PT. Pindo Deli Pulp & Paper Mills (PD), PT. Pabrik Kertas Tjiwi Kimia, Tbk (TK), PT Indah Kiat Pulp & Paper Tbk (IK) (collectively PD/TK/IK). In the preliminary determination, we determined it appropriate to treat PD, TK, and IK as one entity for margin calculation purposes because they met the regulatory criteria for collapsing. See Memorandum to John M. Andersen, Acting Deputy Assistant Secretary for Import Administration, from the Team entitled, "Whether to Treat Respondents as a Single Entity for Margin Calculation Purposes in the Antidumping Duty Investigation of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia," dated April 21, 2010. No party commented on this preliminary determination and we found nothing at verification that would otherwise compel us to reverse this determination. Therefore, we have continued to treat these affiliated companies as one entity in the final determination.

Background

On May 6, 2010, the Department of Commerce (Department) published in the Federal Register the preliminary determination of sales at less than fair value (LTFV) in the antidumping duty investigation of certain coated paper suitable for high-quality print graphics using sheet-fed presses (certain coated paper) from Indonesia. See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 24885 (May 6, 2010) (Preliminary Determination). The merchandise under investigation includes certain coated paper and paperboard in sheets suitable for high quality print graphics using sheet-fed presses; coated on one or both sides with kaolin (China or other clay), calcium carbonate, titanium dioxide, and/or other inorganic substances; with or without a binder; having a GE brightness level of 80 or higher; weighing not more than 340 grams per square meter; whether gloss grade, satin grade, matte grade, dull grade, or any other grade of finish; whether or not surface-colored, surface-decorated, printed (except paper and paperboard printed with final content printed text or graphics), embossed, or perforated; and irrespective of dimensions. For a full description of the scope of investigation, see the "Scope of Investigation" section of the Federal Register notice which this memorandum accompanies. The period of investigation (POI) is July 1, 2008, to June 30, 2009. For a detailed discussion of the events which have occurred in this investigation since the Preliminary Determination, see the "Background" section of the Federal Register notice which this memorandum accompanies.

We provided the petitioners and the respondents with an opportunity to comment on our Preliminary Determination and verification findings. The parties filed case and rebuttal briefs on all issues excluding scope on August 10, 2010, and August 16, 2010, respectively. The respondents filed a case brief on scope issues on August 20, 2010, and the petitioners filed a rebuttal brief on August 24, 2010. The briefs pertaining to scope issues were submitted on the records of all four concurrent antidumping and countervailing duty investigations of certain coated paper from Indonesia and the PRC, and are addressed in the "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China," dated concurrently with this memorandum.

Based on our analysis of the comments received and our verification findings, we have changed the weighted-average margin applicable to the collapsed entity PD/TK/IK.

<u>Margin Calculations</u>

We calculated export price (EP) and normal value (NV) for PD/TK/IK using the same methodology described in the <u>Preliminary Determination</u>, except as follows below:

1. We disregarded the cost adjustments we made at the preliminary determination with the exception of our adjustments to the calculation of the financial expense ratios of affiliated resellers used to calculate the cost of production (COP) of pulp.

2. We revised the transfer prices of certain logs to include purchases of logs greater than 30 cm in diameter.

3. We used logs greater than 30 centimeters in diameter that were purchased from unaffiliated parties as the market price for certain logs.

4. We adjusted the COP of certain logs to include the COP of logs greater than 30 cm in diameter.

5. We revised the calculation of the per-unit log COP to reflect the cost of manufacturing divided by production quantities rather than the cost of goods sold divided by sales quantities.

6. We compared the revised transfer prices, market prices, and COP of logs, in accordance with the major input rule, and found the COP of logs to be higher than the transfer and market prices. As such, we revised the pulp producers' log costs to reflect the COP of logs.

7. We recalculated the COP of pulp, compared the revised COP to the transfer and market prices of pulp, and found that the COP of pulp was higher than the transfer and market prices. As a result, we adjusted the pulp costs of PD, TK and IK to reflect the COP of pulp.

8. We revised TK's, PD's and IK's G&A expense ratios to include certain non-operating expenses in the numerator of each company's ratio.

9. We relied on each company's revised financial expense ratio, rather than the parent company's financial expense ratio, to calculate each company's per-unit financial expenses. We revised the company-specific ratios to include non-operating expenses related to financing activities.

10. We corrected a clerical error in the calculation of G&A and interest expenses in the comparison-market program by multiplying the revised total cost of manufacturing

(TOTCOM) for each control number (CONNUM) by the revised company-specific G&A and interest expense ratios. See Comments 7 and 8.

11. We corrected a clerical error in the calculation of the variable cost of manufacturing in the comparison-market program, as discussed in the May 19, 2010, Memorandum from The Team to James Maeder Re: Respondent's Allegation of Ministerial Error in the Preliminary Determination.

12. Where applicable, we deducted the returned quantity reported under QTYRETH from the quantity reported under QTYH for home market sales, consistent with verification findings.

13. We revised the gross prices reported for certain home market sales to reflect verification findings.

14. We disallowed the quantity discount reported for certain home market sales, consistent with verification findings.

15. We revised the indirect selling expense ratio used to calculate the per-unit indirect selling expenses incurred by PD/TK/IK's affiliated home market reseller (INDIRSH) to reflect verification findings.

16. We corrected a clerical error in the margin program by subtracting, rather than adding, billing adjustments from the gross prices of U.S. sales, where applicable. See Comment 11.

17. We made an adjustment to EP for a rebate granted to one U.S. customer which purchased IK-produced subject merchandise from one of IK's affiliates during the POI. See Comment 12.

18. We did not make an adjustment to EP for freight revenue, where applicable. See Comment 13.

19. We made a circumstance of-sale adjustment to NV for courier expenses incurred on U.S. sales as reported under COURRIER1U only, not both COURRIER1U and COURRIER2U, where applicable, so as not to double-count these expenses, consistent with verification findings.

20. With respect to all of PD/TK/IK's direct U.S. sales, we treated bank charges as direct selling expenses, rather than indirect selling expenses as reported, making a circumstance-of-sale adjustment to NV based on the actual per-unit bank charge verified for the transactions examined at verification, or where the actual per-unit bank charge was not on the record, the simple average of the per-unit bank charges verified for the transactions examined at

verification. We adjusted PD/TK/IK's reported indirect selling expense ratios used to calculate the per-unit indirect selling expenses incurred by PD/TK/IK for both home market and U.S. sales (INDIRS2H and DINDIRSU, respectively) to exclude a corresponding amount for these bank charges. See Comment 10.

21. We revised the calculation of the per-unit foreign inland freight-to-port expense (DINLFTPU) for certain U.S. sales made directly by IK or through one of IK's affiliates, consistent with verification findings. See Comment 15.

22. We revised the calculation of the per-unit international freight expense (INTNFRU) for certain U.S. sales made directly by IK or through one of its affiliates, consistent with verification findings.

23. We assigned per-unit domestic inland and marine insurance expenses to all of IK's direct U.S. sales using the reported expense ratios, consistent with verification findings.

24. We revised the per-unit courier expense (COURRIER1U) reported for U.S. sales made through one of IK's affiliates, consistent with verification findings.

25. We revised the indirect selling expense ratio used to calculate the per-unit indirect selling expenses incurred by one of IK's affiliates (DINDIRS2U) on U.S. sales made through this affiliate to reflect verification findings.

26. For all U.S. sales of TK-produced subject merchandise made directly by TK or through its affiliates, we recalculated the reported per-unit foreign inland freight expense (DINLFTPU) to include loading charges using the actual per-unit loading charge verified for the transactions examined at verification, or where the actual per-unit loading charge was not on the record or could not be derived based on record information, the simple average of the per-unit loading charges verified for the transactions examined at verification. We adjusted TK's reported indirect selling expenses to exclude the total amount of the loading charges added to foreign inland freight charges. See Comments 10 and 15.

27. For certain U.S. sales of TK-produced subject merchandise made directly by TK or through its affiliates, we recalculated the reported per-unit international freight expense (INTNFRU) to include ADM/AMS fees using the actual per-unit ADM/AMS fee verified for the transactions examined at verification, or where the actual per-unit ADM/AMS fee was not on the record or could not be derived based on record information, the simple average of the per-unit ADM/AMS fees verified for the transactions examined at verification. We adjusted TK's reported indirect selling expenses to exclude the total amount of the ADM/AMS fees added to international freight charges. See Comments 10 and 14.

28. We made corrections to the per-unit courier fees, billing adjustments, credit expenses, international freight and indirect selling expenses reported for U.S. sales of TK- and PD-produced subject merchandise sold through one of PD/TK's affiliates based on verification findings.

29. We applied the weighted-average margin calculated for PD/TK/IK's reported U.S. sales to the quantity of the unreported sales to Puerto Rico made by PD and TK.

See September 20, 2010, Memorandum from Case Analyst to The File, entitled "Calculations Performed for PT. Pindo Deli Pulp and Paper Mills ("PD"), PT. Pabrik Kertas Tjiwi Kimia Tbk ("TK"), and PT Indah Kiat Pulp & Paper Tbk ("IK") for the Final Determination in the Antidumping Duty Investigation of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia" (Sales Calculation Memo); and September 20, 2010, Memorandum to Neal M. Halper, Director of Office of Accounting, from LaVonne Clark, Senior Accountant, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination" (Cost Calculation Memo), for further details.

Discussion of the Issues

Comment 1: Targeted Dumping

On March 12, 2010, the petitioners filed timely allegations of targeted dumping for certain U.S. sales by PD/TK/IK to specific customers, regions, and time periods. In the preliminary determination, the Department conducted customer, regional, and time-period targeted-dumping analyses for PD/TK/IK using the methodology it adopted in Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value, 73 FR 33985 (June 16, 2008), and Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008), and applied in more recent investigations.[3] In doing so, the Department preliminarily found that there was a pattern of EPs for comparable merchandise that differed significantly among certain customers, regions and time periods for PD/TK/IK, but that those price differences were taken into account using the standard average-to-average methodology because the alternative average-to-transaction methodology yielded no difference in the margin or yielded a difference in the margin that was so insignificant relative to the size of the resulting margin as to be immaterial. Accordingly, we applied the standard average-to-average methodology to all U.S. sales. See Preliminary Determination at 75 FR 24887-24888.

[3] These investigations include Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from Taiwan, 75 FR 14569 (March 26, 2010), Polyethylene Retail Carrier Bags from Indonesia: Final Determination of Sales at Less Than Fair Value, 75 FR 16431 (April 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1; and Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 2.

The petitioners argue that for the final determination, the Department should revisit its targeted-dumping analysis and rely on the average-to-transaction methodology if use of this methodology yields a difference in the margin.

The respondents did not comment on this issue.

Department's Position:

As discussed in the Federal Register notice which this memorandum accompanies, for the final determination, we performed our targeted-dumping analysis, consistent with the methodology employed in the preliminary determination, after making certain revisions to PD/TK/IK's reported data based on verification findings and the comments submitted by the parties, as enumerated in the "Margin Calculations" section above. As a result, we found that there continued to be a pattern of export prices for comparable merchandise that differed significantly among certain customers, regions and time periods for PD/TK/IK in accordance with section 777A(d)(1)(B)(i) of the Tariff Act of 1930, as amended (the Act), and that those price differences were taken into account using the standard average-to-average methodology because the alternative average-to-transaction methodology yielded no difference in the margin or yielded a difference in the margin that was so insignificant relative to the size of the resulting margin as to be immaterial. Therefore, in accordance with section 777A(d)(1)(A)(i) of the Act, we have continued to apply the standard average-to-average methodology to all U.S. sales in the final determination. See Sales Calculation Memo.

Comment 2: Capitalization of Foreign Exchange Losses in Log Costs

During the fiscal year that matches the POR, in their normal records, the respondents' affiliated logging companies capitalized the costs related to planting activities as "timber estate in development" costs. Once the trees became ready for harvesting, the capitalization of costs was stopped and all subsequent costs incurred were expensed in the current period. Once harvesting began, the capitalized "timber estate in development" costs were then amortized over the concession period (i.e., the time over which the trees will be harvested). However, for purposes of reporting their costs to the Department, the respondents capitalized the foreign exchange losses and interest costs that were incurred after the trees matured (i.e., in addition to those foreign exchange losses and interest costs incurred prior to maturity) even though such costs had been expensed in the affiliated logging companies' normal books and records as incurred.

The respondents assert that the Department should allow the amortization of their affiliated logging companies' foreign exchange and interest costs that were incurred in the harvest period in the final determination. The respondents dispute the Department's finding in its verification report that the companies' treatment of these costs in their 2008 financial statements as current year expenses is in accordance with Indonesian generally accepted accounting principles (GAAP).[4] According to the respondents, Indonesian GAAP in 2008 did not require the

---

[4] See Memorandum to Neal M. Halper from LaVonne Clark and Robert B. Greger entitled "Verification of the Cost Response of PT Pabrik Kertas Tjiwi Kimia Tbk., PT Pindo Deli Pulp and Paper Mills, and PT Indah Kiat Pulp and Paper Tbk. in the Antidumping Duty Investigation of Certain Coated Paper Suitable for High-Quality Print Graphics

expensing of these costs in a single year, but rather would have required that they be amortized, and in 2010 Indonesian GAAP was amended to make clear that amortization of these costs is the correct treatment. Therefore, the respondents reason, the Department should permit the amortization of these costs over a six-year period as allowed by Indonesian GAAP.

The respondents claim that the Indonesian GAAP rule in effect in 2008 and still in effect today is Statement of Accounting Standards (SFAS) 26, which requires that "borrowing costs…directly attributable to a qualifying asset…should be capitalized to that qualifying asset."[5] In other words, the respondents maintain, interest costs that are incurred to acquire a capital asset cannot be expensed but rather must be amortized over the productive life of that asset. The respondents aver that this is in accordance with world-wide accounting standards, including U.S. GAAP. According to the respondents, these world-wide accounting standards require that the cost of a capital asset be amortized over the period of its useful life, commencing with its actual use. The respondents maintain that taking all the costs of acquiring a capital asset in the first year that it comes into use produces a mismatch of costs and usage, and results in a cost that is higher than the company's actual COP.

The respondents contend that once trees are ready to be cut, it takes about six years to harvest an area fully. Under normal accounting rules, the respondents reason, the interest and foreign exchange costs related to planting would be amortized over these six years, i.e., the time that it takes the asset to be utilized. The respondents opine that such a treatment accords with Indonesian GAAP as expressed in SFAS 26, and also complies with U.S. GAAP. However, the respondents add, during the POI a special rule (i.e., SFAS 32) was in effect for timber estates that required the expensing of all planting costs at the time that the trees are ready to be harvested. The respondents suggest that SFAS 26 establishes the actual Indonesian GAAP that would have applied had it not been overruled by the special rule of SFAS 32.

The respondents allege that under SFAS 32, companies expensed their full planting costs in a single year rather than amortizing them over the harvesting period of the trees. According to the respondents, SFAS 32 was a clear departure from both Indonesian and worldwide GAAP because it violated the general rule requiring the matching of income and expenses. The respondents postulate that when planting costs are expensed in the first year but harvesting continues for a further six years, this is contrary to the matching principle and results in a distortion of production costs.

The respondents argue that the fact that they followed SFAS 32 in their 2008 financial statements is not dispositive of the issue. The respondents cite section 773(f)(1)(A) of the Act and point out that the Department is not required to adopt the accounting treatment used by a company in its books in the year of investigation. In accordance with section 773(f)(1)(A), the respondents note, the Department may depart from a company's books if they do not reflect the GAAP of the country or do not reasonably reflect the COP. The respondents assert that the Department has looked beyond a company's books on numerous occasions and that this practice has been upheld by the courts so long as the departure from the books reasonably reflects the

Using Sheet-Fed Presses from Indonesia," dated June 29, 2010 (Cost Verification Report), at page 5.
[5] See respondents' Section D Supplemental Questionnaire Response dated April 9, 2010, at Exhibit 13.

company's actual costs (see e.g., Solvay Solexis S.p.A. v. United States, 628 F. Supp. 2d 1375, 1377 (2009) (Solvay Solexis)).

The respondents maintain that it is clear that SFAS 32 did not comport with Indonesian GAAP, as the subsequent revocation of that rule demonstrates. Even if the Department were to view this rule as Indonesian GAAP, the respondents reason, the fact remains that the costs calculated under this rule did not reasonably reflect the costs associated with the production and sale of the merchandise under consideration. The respondents postulate that the interest and foreign exchange costs in question can only "reasonably reflect" the costs associated with the production and sale of the merchandise under consideration when they are amortized in accordance with the time required to harvest the trees, which is in this case six years. Accordingly, the respondents conclude, the Department should accept the submitted amortization of interest and foreign exchange costs over a six-year period.

The petitioners argue that the Department should disallow the respondents' claimed deduction for capitalized interest and foreign exchange losses. The petitioners point out that the Department has found that the capitalization of interest and foreign exchange losses claimed by the respondents was done outside the dictates of each logging company's normal books and records and Indonesian GAAP. Further, the petitioners state, the Department found that these expenses were reported as period expenses in the logging companies' audited financial statements prepared in accordance with Indonesian GAAP. The petitioners assert that under section 773(f)(1)(A) of the Act and the Department's practice,[6] the Department relies on data from a respondent's normal books and records when those records are prepared in accordance with home country GAAP and reasonably reflect the cost of producing the merchandise under consideration. Citing FAG U.K. Ltd. v. United States, 945 F. Supp. 260, 271 (CIT 1996), the petitioners maintain that the Court of International Trade has upheld the Department's reliance on home country GAAP where it does not distort a company's actual costs. Thus, the petitioners reason, there is no logical or legal basis for the Department to accept the respondents' claimed adjustment.

The petitioners argue that the respondents have not demonstrated that the costs recorded in the logging companies' audited financial statements distort their production costs. The petitioners dispute the respondents' assertions that the production costs based on those financial statements are distortive because the expenses do not correspond with the associated income. According to the petitioners, the respondents have provided no reasonable and verifiable evidence of the actual amounts of the "distorting" expenses or of the particular income with which they should be associated, and therefore, their argument should be rejected.

The petitioners allege that the capitalization and amortization calculations prepared by the respondents incorrectly assume that all interest and foreign exchange costs reported in the logging companies' financial statements were incurred to prepare, plant and grow timber. The petitioners postulate that this is unlikely, and that the respondents have not provided any

---

[6] See e.g., Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination, 67 FR 15531 (April 2, 2002) and accompanying Issues and Decision Memorandum at Comment 13.

evidence that their affiliates incurred these expenses only in connection with harvest-ready timber rather than unrelated corporate activities. The petitioners cite 19 CFR 351.401(b)(1) and note that a respondent in possession of the relevant information has "the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment." In the instant proceeding, the petitioners assert, the respondents have not met this burden of proof and have failed to adequately support their claims.

Department's Position:

We disagree with the respondents that the Department should allow the capitalization and amortization of the affiliated logging companies' foreign exchange losses and interest costs incurred in the harvest period for the final determination. In accordance with section 773(f)(1)(A) of the Act, the Department will normally calculate costs based on the records of the producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Light-Weight Rectangular Pipe and Tube from Mexico, 73 FR 35649 (June 24, 2008) and accompanying issues and decision memorandum at Comment 10. As noted in the Cost Verification Report, the respondents capitalized and amortized foreign exchange losses and interest costs related to timber plantations that were expensed as current period costs in their audited financial statements prepared in accordance with Indonesian GAAP. This capitalization and amortization was done solely for purposes of reporting costs to the Department.

Although the respondents try to support their position by reference to a long-standing Indonesian GAAP standard regarding the capitalization of borrowing costs (i.e., SFAS 26), the fact remains that the specific GAAP in effect during the POI relevant to the timber industry was SFAS 32. No party to this proceeding can dispute the fact that SFAS 32 was the standard followed by both of the respondents' affiliated logging companies in their audited financial statements, and that both companies received an unqualified opinion on those financial statements from their independent auditors.[7] Thus, as it is an undisputed fact that SFAS 32 was the home country GAAP in effect during the POI, the only issue that remains is to establish whether the treatment of costs under that GAAP reasonably reflect the costs of production.

Under SFAS 32, the costs related to planting activities are capitalized as "timber estate in development" until harvesting commences. Once harvesting begins, the capitalized planting costs are then amortized over the concession period (i.e., the time over which the trees will be harvested). Any costs related to the timber estate that are incurred after the trees are ready to be harvested are recorded as production costs.[8] In accordance with SFAS 32, both companies capitalized all the costs related to the planting cycle for each timber plantation (i.e., the six years prior to the time that the trees were ready to be harvested), including interest and foreign exchange losses, and subsequently amortized these costs when harvesting began, as appropriate, in their audited financial statements. After the trees were considered ready to harvest, all

[7] See respondents' Section D Supplemental Questionnaire Response dated April 9, 2010, at Exhibit 1, and Section A Questionnaire Response dated December 22, 2009, at Exhibit 21.
[8] See respondents' Section D Supplemental Questionnaire Response dated May 3, 2010, at Exhibit 16.

subsequent costs incurred were charged directly to the cost of goods sold in the current period.[9]

In an attempt to imply that costs recorded under SFAS 32 somehow do not reasonably reflect the costs of production, the respondents assert that this rule required the expensing of all planting costs at the time that the trees are ready to be harvested. However, as noted above, all of the planting costs that are incurred prior to harvest were capitalized and amortized, not expensed as the respondents erroneously assert. Only the post-harvest costs were expensed in the current year, i.e., the costs incurred once the timber plantations were placed in service and were producing logs. It is the foreign exchange and interest costs included in these post-harvest costs specifically that the respondents infer the Department should allow them to capitalize outside of their audited financial statements.

We disagree with the respondents' arguments that SFAS 32 is not reasonable because it somehow contradicts SFAS 26 and international GAAP. Both SFAS 26 and IAS 23 (i.e., the corresponding International Accounting Standard on borrowing costs) stipulate the rules in regards to the capitalization of borrowing costs related to the acquisition or construction of fixed assets.[10] However, rather than contradict the treatment of foreign exchange losses and interest costs under SFAS 32 as the respondents allege, SFAS 26 and IAS 23 actually treat the borrowing costs related to fixed assets in precisely the same manner. For example, under both SFAS 26 and IAS 23 entities are instructed to capitalize borrowing costs that are directly attributable to the acquisition or construction of qualifying assets. Further, both standards instruct that the capitalization of such costs is to cease when the activities necessary to prepare the asset for its intended use are substantially complete.[11] In other words, when an asset is placed into service and begins to be used, no further interest or foreign exchange costs are to be capitalized, but rather should be charged to current costs as period expenses.

Under SFAS 32, the respondents' affiliated logging companies capitalized all of the planting costs related to timber plantations until the trees were ready to be harvested (i.e., borrowing costs were capitalized until the plantation assets were ready for their intended use). Further, similar to SFAS 26 and IAS 23, the capitalization of borrowing costs ceased when "construction" was complete and the plantations were placed into service, and all further costs were charged directly to the cost of goods sold. Thus, the general requirements regarding borrowing costs under Indonesian and worldwide GAAP appear to support the specific timber industry requirements under SFAS 32, rather than contradict them. Accordingly, the respondents' arguments that the Indonesian GAAP in effect for the timber industry during the POI is unreasonable are without merit.

We also disagree with the respondents that the affiliated logging companies' treatment of their foreign exchange losses and interest costs in their audited financial statements somehow violates the general accounting rule requiring the matching of income and expenses. As noted above, each logging company capitalized the planting costs (including foreign exchange and interest

---

[9] See Cost Verification Report at page 51.
[10] See respondents' Section D Supplemental Questionnaire Response dated April 9, 2010, at Exhibit 13, and http://eifrs.iasb.org/eifrs/bnstandards/en/ias23.pdf.
[11] See Id.

costs) that were incurred for the first six years (i.e., up until the time that the assets were placed into service), after which time those costs were amortized over the useful life of the assets (i.e., in accordance with the time over which the trees were to be harvested) similar to depreciation. Moreover, the costs incurred after the timber plantations were placed in service and the trees began to be harvested were expensed in the current period similar to repair and maintenance costs. Thus, similar to the accounting for any other type of capital asset, both the capitalized costs and the current costs related to the timber plantations were properly allocated over the corresponding revenue-producing period, providing a reasonable match of expenses with revenues.

Contrary to the respondents' assertions, the affiliated logging companies' expensing of the current-period foreign exchange and interest costs incurred in relation to timber plantations in their audited financial statements is fully in accordance with Indonesian GAAP during the POI. Further, for the reasons delineated above, we do not find this treatment to be unreasonable, as it reasonably reflects the costs associated with the production and sale of subject merchandise. Accordingly, we have continued to deny the respondents' capitalization and amortization of current-period foreign exchange losses and interest costs outside of their normal books and records for the final determination.

Comment 3: Market Price for Certain Logs

The respondents argue that the Department should not use the price of sawmill logs[12] sold by their affiliated log suppliers to unaffiliated parties to establish the cost of certain logs. According to the respondents, the record demonstrates that sawmill logs are not "completely substitutable" for certain logs, as the Department stated in the Cost Verification Report. Further, the respondents contend, the price of sawmill logs does not reflect the market price of certain logs in the market under consideration.

The respondents cite section 773(f)(3) of the Act and point out that market value is defined as "the amount usually reflected in sales of the major input in the market under consideration." Accordingly, the respondents argue that, if the market price being applied is from a different market than the one under consideration, it cannot be used as a measuring standard under the major input rule. The respondents argue that the market for sawmill logs is ultimately the market for lumber and that the market for pulp logs is the pulp market (i.e., the market under consideration). The respondents assert that the two markets are not the same as they have different demand curves and therefore command different prices. The respondents argue that the different demand in the lumber market results in prices that are higher than those in the market for pulp wood. Thus, the respondents reason, the price of sawmill logs sold in the lumber market cannot be used to establish a market price for logs sold in the pulp market as the sawmill logs are not sold in the market under consideration. The respondents disagree with the petitioners that most of the sawmill logs were sold to pulp companies for use in pulp production. According to the respondents, the logs that were sold to the pulp companies were not actually sawmill logs by

[12] We note that the term "sawmill logs" is a name given by the respondents to certain logs that are greater than 30 centimeters in diameter. Further, we note that this term did not appear on any official documentation or company records viewed by the Department during the course of this proceeding.

definition because they were not sold in the lumber market. The respondents allege that the fact that the log companies did not sell these logs to sawmills reflects the possibility that they were not of sufficient quality to permit them to be cut into lumber. Therefore, the respondents contend that the logs had to be consumed in pulp production.

The respondents argue that the question of substitutability of inputs is irrelevant because the statute says nothing about usage, but rather requires only that the price being used for a market price be from the market under consideration. If the market for two different products is different, the respondents contend, then the price of one product cannot be used to establish the price of the other even if they can be substituted for each other in terms of usage. Moreover, the respondents maintain, the assertion in the Cost Verification Report that sawmill logs are completely substitutable for certain logs is not supported by the facts on the record. The respondents assert that the fact that sawmill logs are sometimes used to produce pulp does not constitute substitutability. In support of this assertion, the respondents argue that sawmill logs may be used in the production of pulp, but that certain logs cannot be used in the production of lumber because they are too small. The respondents reason that the two types of logs are therefore not substitutable because they cannot be used interchangeably in both markets. Based on these facts, the respondents conclude, the Department cannot use the price of sawmill logs to establish the market price for certain logs used in pulp production.

The petitioners disagree with the respondents' argument that the Department should not use the price of sawmill logs sold by their affiliated log suppliers to unaffiliated parties to establish a fair market price for certain logs. According to the petitioners, the sales price of sawmill logs sold by these affiliates to unaffiliated parties constitutes the best evidence of a market price offered by any supplier of certain logs. The petitioners note that the Department itself used these same sales prices to establish a market price in its Cost Averaging Period Analysis Memorandum.[13] Further, the petitioners cite Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004) and accompanying Issues and Decision Memorandum at Comment 7, and point out that the Department's preference is to use the price at which affiliated suppliers sold the input to unaffiliated purchasers when the respondent itself had no purchases from unaffiliated parties.

The petitioners argue that the respondents' arguments that sawmill logs are sold in a different market for a different purpose than certain logs, asserting that the Department has found that almost all of the alleged sawmill logs sold by the affiliated log suppliers were in fact sold not to sawmills but rather to affiliated pulp suppliers. The petitioners maintain that the evidence on the record supports this finding. However, the petitioners argue that, there is no record evidence that shows that the sawmill logs sold by the affiliated log suppliers to unaffiliated purchasers were sold to sawmills, and not to unaffiliated pulp suppliers. Therefore, the petitioners conclude, the respondents have failed to demonstrate that the affiliated log supplier's sales prices should not be used to establish a market price for logs.

---

[13] See Memorandum to Neal M. Halper from LaVonne Clark and Robert B. Greger entitled "Alternative Cost Averaging Period Analysis Memorandum - PT Pabrik Kertas Tjiwi Kimia Tbk., PT Pindo Deli Pulp and Paper Mills, and PT Indah Kiat Pulp and Paper Tbk.," dated May 14, 2010 (Cost Averaging Period Analysis Memorandum).

The petitioners also assert that the Department made a calculation error in calculating the market price logs in the Cost Averaging Period Analysis Memorandum. Specifically, the petitioners aver that the Department incorrectly applied a conversion factor when converting the price of logs sold by affiliated parties from Indonesian rupiah (IDR) per cubic meter to IDR per metric ton. According to the petitioners, the price per cubic meter should have been divided by the conversion factor rather than multiplied, and the price per metric ton should be greater than, not less than, the price per cubic meter. Accordingly, the petitioners assert, the Department should correct this error at the final determination.

Department's Position:

As an initial matter, we note that the issue of what constitutes a proper market price for certain logs is moot, as the "sawmill log" market price is not the highest of the transfer price, market price and COP under the Department's major input analysis for certain logs, and therefore, is not used in the Department's final calculation of the COP of pulp. However, we disagree with the respondents' suggestion that two customers in the same geographical area purchasing identical logs, in this case logs greater than 30 centimeters, are operating in separate "markets" if they intend to use the logs for different purposes. Customers competing for the same logs in the same geographical area are acting in the same "market" and would pay the supplier comparable prices regardless of the intended use. During the POI, the affiliated logging companies sold logs of greater than 30 centimeters to the affiliated pulp suppliers and to unaffiliated parties. There is no record evidence that these logs were of significantly different species or qualities. Thus, it is appropriate under 19 CFR 351.407(b) to rely on the sale prices of logs greater than 30 centimeters in diameter to unaffiliated customers in Indonesia, for determining a market price for logs greater than 30 centimeters in diameter sold to affiliated customers.

The respondents' argument that the market price of logs greater than 30 centimeters cannot be used as a surrogate market price for logs under 30 centimeters may have merit. We have recognized in other cases that the size, species and quality of the log can affect price. See, e.g., Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review, 70 FR 73437 (December 12, 2005), and accompanying Issues and Decision Memorandum at Comment 39. However, there is no record evidence as to whether logs of greater than 30 centimeters actually do command a higher price than similar logs of less than 30 centimeters when sold to unaffiliated suppliers. Accordingly, there is no evidence on the record that precludes the use of the price of "sawmill" logs, sold by the respondents' affiliated log suppliers to unaffiliated parties, as a market price for smaller logs in this proceeding. However, as noted above, the market price was not the highest of transfer price, market price and COP, and therefore was not used in the Department's final calculation of the COP of pulp.

Comment 4: Inclusion of Sawmill Logs in Log Costs

The petitioners argue that the record contains no basis for the Department to distinguish between the cost of logs less than 30 centimeters and the cost of logs greater than 30 centimeters in establishing the COP for certain logs in its major input analysis. Accordingly, the petitioners assert that the Department should use the average cost of certain logs in its establishment of the log supplier's COP of certain logs.

The respondents did not comment on this issue.

Department's Position:

We agree with the petitioners. Both types of logs were sold to the respondents' affiliated pulp producers as input into the production of the same type of pulp during the POI. When used in pulp production, both types of logs were completely substitutable for each other, regardless of size. Accordingly, because both types of logs constitute the same input (wood fiber), with the same end use in terms of pulp production during the POI, both logs less than 30 centimeters and logs greater than 30 centimeters have been included in the calculation of the COP of certain logs in our major input analysis in the final determination.

Comment 5: Transfer Price for Logs

The petitioners point out that the Department relied on transfer price information from the respondents' January 20, 2010, response to section D of the Department's questionnaire for certain logs purchased by IK in its Cost Averaging Period Analysis Memorandum. In the respondents' February 12, 2010, response to the Department's supplemental Section D questionnaire, the petitioners note, the respondents provided different transfer price information for these logs, which we subsequently verified. The petitioners suggest that the Department should modify its cost calculations to use this more current, verified data.

The respondents did not comment on this issue.

Department's Position:

We agree with the petitioners. For the final determination, we have used the most current data contained in the cost verification exhibits[14] in our major input analysis.

Comment 6: IK's Pulp Costs

The petitioners contend that the Department should adjust IK's pulp costs to reflect the results of the major input analysis for logs purchased from affiliated parties. The petitioners note that the Department did not make such an adjustment in the preliminary determination. The petitioners point out that IK produces its own pulp and uses that pulp in the production of the merchandise under consideration (i.e., certain coated paper). Because logs are a major input into the production of that pulp, the petitioners assert, the Department must employ the higher of transfer price, market price or COP to value the logs IK purchased from affiliated parties in the final determination.

The respondents did not comment on this issue.

[14] See Cost Verification Exhibit 20.

Department's Position:

At the time of the Preliminary Determination, we did not have all of the necessary information to perform our major input analysis for logs. Accordingly, we did not make an adjustment to IK's pulp costs to reflect the results of such analysis, but rather noted for the record that we intended to revisit the issue for the final determination.[15] Subsequent to the preliminary determination, we obtained and verified the necessary information and performed our major input analysis. As a result of our analysis, we have adjusted the cost of logs IK purchased from affiliated parties to reflect the higher of transfer price, market price or COP in accordance with section 773(f)(3) of the Act. Because those logs are a major input into the production of the pulp produced by IK, we have therefore adjusted IK's pulp costs to reflect the adjusted log costs for the final determination.

Comment 7: General and Administrative (G&A) Expenses

The petitioners allege that in the Preliminary Determination the Department incorrectly set PD's, TK's, and IK's revised CONNUM-specific per-unit G&A expenses equal to each respective company's G&A expense ratio. The petitioners argue that the Department should have calculated the CONNUM-specific per-unit G&A expenses by multiplying each company's G&A expense ratio by the CONNUM-specific TOTCOM.

The respondents did not comment on this issue.

Department's Position:

We agree with the petitioners and have corrected the per-unit G&A expense calculations.

Comment 8: Financial Expenses

PD/TK/IK assert that the financial ratio used by the Department in determining each company's CONNUM-specific per-unit financial expenses should be based on the unaudited 2008 consolidated financial statements of PD/TK/IK's parent company, PT Purinusa Ekarpersada (Purinusa). These statements do not include the financial information of certain other subsidiaries and the audit of these statements has yet to be completed. The respondents argue that the Department's practice is to use the financial statements at the highest level of consolidation as the basis for the financial expense ratio. The respondents assert that this practice has been upheld in the courts (see e.g., American Silicon Technologies v. United States, 334 F.3d 1033, 1038 (Fed Cir 2003) (American Silicon). Further, the respondents contend that the Department has specifically relied upon unaudited financial statements, even when audited financial statements were available, in the instance where the unaudited financial statements reasonably reflected a company's costs (see Final Results of Antidumping Duty Administrative

[15] See Memorandum to Neal M. Halper from LaVonne Clark and Robert B. Greger entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – PT Pabrik Kertas Tjiwi Kimia Tbk., PT Pindo Deli Pulp and Paper Mills, and PT Indah Kiat Pulp and Paper Tbk., "dated April 28, 2010 (Prelim Cost Calc Memo at page 2).

Review: Granular Polytetrafluoroethylene Resin From Italy, 72 FR 65939 (November 26, 2007) and accompanying Issues and Decision Memorandum at Comment 1). The respondents state that this practice has also been upheld by the courts (see Solvay Solexis). The respondents assert that although the final audited 2008 consolidated financial statements of Purinusa have yet to be completed, there is no evidence that the incomplete statements do not reasonably reflect Purinusa's actual consolidated financial costs. The respondents also claim that the subsidiaries, whose information is omitted from these statements, are non-operational companies who have no material impact on the financial cost of operating PD/TK/IK. As such, the respondents conclude that the Department should rely on Purinusa's unaudited 2008 consolidated financial statements as the basis for the financial expense ratio in the final determination.

The petitioners object to the respondents' argument that Purinusa's unaudited 2008 consolidated financial statements should be used as the basis for the financial expense ratio. The petitioners concur with respondents that the Department's practice is to rely on financial statements at the highest level of consolidation as the basis for financial expense ratios (see Final Determination of Sales At Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico, 67 FR 55800 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 7; and Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 66110 (October 30, 2002) (Rebar from Turkey) and accompanying Issues and Decision Memorandum at Comment 4). The petitioners refer to Rebar from Turkey as an instance where the Department relied on company-specific financial statements rather than the parent's unaudited consolidated financial statements because the Department was unable to assess whether the statements in question represented a true consolidation.

Because the information of certain subsidiaries has been omitted from Purinusa's unaudited 2008 consolidated financial statements, the petitioners argue that the Department should rely on PD's, TK's, and IK's consolidated financial statements as the basis of each company's respective financial expense ratio. The petitioners object to the respondents' claim that the missing subsidiaries are non-operational and have no material impact on the financial cost of PD/TK/IK. The petitioners assert that this claim is new information and, as such, the respondents' rebuttal brief should be rejected in its entirety, in accordance with the Department's practice (see Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374, 41375 (August 17, 2009)). If the Department determines that this claim is not new information, then the petitioners assert, the omitted information is in fact material to the financial statements of Purinusa because Purinusa's auditors have required the financial information of the subsidiaries to be included in the final audited consolidated financial statements. Further, the petitioners contend that because the subsidiaries' information has been omitted from the unaudited 2008 consolidated financial statements, the Department is unable to determine the effect of the subsidiaries' information on the consolidated company's financing costs.

The petitioners also contend that the Department, in its Preliminary Determination, incorrectly set PD's, TK's, and IK's revised CONNUM-specific per-unit financial expenses equal to each company's respective financial expense ratio. The petitioners argue that the Department should have determined the CONNUM-specific per-unit financial expenses by multiplying each company's financial expense ratio by the CONNUM-specific TOTCOM.

Department's Position:

We agree with the petitioners and have relied on the audited 2008 consolidated financial statements of PD, TK, and IK as the basis for determining each company's financial expense ratio. It is the Department's normal practice to calculate financial expenses at the highest level of consolidation available. In Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52055 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 7, we reiterated our preference for using consolidated financial statements at the highest level of a consolidated group of companies to which the respondent belongs as the basis for the respondent's financial expense ratio. In American Silicon, the Court of Appeals for the Federal Circuit determined that the Department properly relied on the consolidated financial statements of an ultimate parent company in the calculation of a financial expense ratio for the company under review. In calculating financial expenses at the highest level of consolidation, our preference is to rely on the financial statements audited by an outside auditing firm (see Rebar from Turkey at Comment 4).

In the instant case, PD, TK, and IK are members of the Purinusa group of companies. Purinusa's financial statements represent the highest level of consolidation for the respondents (see respondents' April 9, 2010, submission at page 3). Purinusa, beginning in 2008,[16] is required to prepare consolidated financial statements that include PD, TK, and IK along with other members of the group, and to have those statements audited by independent outside auditors. In response to the Department's request for Purinusa's audited 2008 consolidated financial statements, the respondents submitted Purinusa's unaudited 2008 consolidated financial statements and explained in a subsequent submission that the audit of those financial statements had not yet been completed (see the respondents' April 9, 2010, submission at page 3). The Department relied on Purinusa's unaudited consolidated financial statements as the basis for PD's, TK's, and IK's financial expense ratios in the Preliminary Determination (see Prelim Cost Calc Memo at page 3).

At the beginning of the cost verification, the respondents notified the Department that the audit of Purinusa's consolidated financial statements had still not been completed. Furthermore, the respondents explained that the unaudited consolidated financial statements submitted to the Department were incomplete because they did not include the financial results of certain subsidiaries. The respondents identified these subsidiaries as carton box, tissue, and forestry companies. The Department obtained the financial statements of these subsidiaries that show that these companies are operational entities (see Cost Verification Report at Exhibit 11). At verification, the respondents also stated that Purinusa's auditor had determined that the financial

[16] As discussed in the Department's Cost Verification Report at page 8, Article 157 of Indonesian law No. 40 of 2007 (enacted in 2007 and applied beginning in 2008) requires that companies such as Purinusa prepare consolidated financial statements and have those statements audited.

results of these subsidiaries must be included in Purinusa's audited consolidated financial statements (see Cost Verification Report at page 39).

The issue at hand is whether or not the Department should rely on Purinusa's incomplete unaudited consolidated financial statements. As the Department explained in Rebar from Turkey at Comment 4, the preparation of consolidated financial statements is a complex task which is rendered even more complicated in cases where there are numerous affiliated parties. Generally, this task is completed at the direction of an outside auditing firm which certifies that the proper procedures have been performed. Consolidated financial statements are not merely summations of account balances of the consolidated entities. Reciprocal amounts are eliminated in the process of consolidation and only nonreciprocal accounts are combined and included. For this reason, in calculating financial expense at the highest level of consolidation, our preference is to rely on audited financial statements, as such statements provide reasonable assurance that the data has not been manipulated. Absent a discrete level of independent review by qualified auditors, we have no assurance that the proper eliminations have been made or the correct procedures have been followed. In the instant case, the financial information of certain subsidiaries has not been included in the unaudited consolidated financial statements submitted to the Department. Because the audit of the consolidated statements has not yet been completed, we cannot determine how the values shown in the omitted subsidiaries' financial statements impact Purinusa's consolidated financial statements because any necessary eliminating entries have not been finalized by the auditor. Moreover, because the 2008 unaudited consolidated financial statements are the first consolidated statements prepared by Purinusa, we cannot determine whether the system in place to prepare such consolidated statements is reliable without a discrete level of review by an independent auditor. Therefore, for purposes of the final determination, we have used the respondents' company-specific audited 2008 consolidated financial statements as the basis for each company's financial expense ratio. Consistent with the petitioners' argument, we have determined the CONNUM-specific per-unit financial expenses by multiplying each company's financial expense ratio by the CONNUM-specific TOTCOM.

Comment 9: Unreported Sales to Puerto Rico

During the sales verification of PD and TK, the Department found that PD and TK did not report their POI sales to Puerto Rico in their sales databases. See July 26, 2010, Memorandum to The File entitled "Verification of Sales Response of PT. Pindo Deli Pulp & Paper Mills (PD) and PT. Pabrik Kertas Tjiwi Kimia, Tbk (TK) in the Antidumping Duty Investigation of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses (Coated Paper) From Indonesia" (PD/TK Verification Report), at 16-18. The petitioners contend that the respondents should have known to include Puerto Rico sales in their sales databases because Puerto Rico is part of the customs territory of the United States. According to the petitioners, by failing to provide information for their sales to Puerto Rico, the respondents have failed to act to the best of their ability in this investigation. Therefore, following the precedent set forth in Notice of Final Results of Antidumping Duty Administrative Review and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand, 69 FR 50164 (August 13, 2004), and accompanying Issues and Decision Memorandum at Comment 2 (pages 10-11) (Eighth Administrative Review of Canned Pineapple Fruit from Thailand)), the petitioners argue that the

Department should employ an adverse inference and apply as adverse facts available (AFA) the highest margin determined for any CONNUM to these omitted sales of subject merchandise to Puerto Rico.

The respondents contend that the reporting error made by PD and TK with respect to their Puerto Rico sales was not based on a lack of cooperation, but rather was inadvertent and relatively insignificant. Therefore, the respondents maintain, the Department should either disregard these sales or, at most, apply neutral facts available to these sales for the final determination. The respondents point out that in the normal course of business, PD and TK classify sales to Puerto Rico as sales to Latin America, not North America. Moreover, the respondents assert that both PD and TK fully cooperated with the Department's request for sales information, documentation, and worksheets relevant to the unreported Puerto Rico sales during verification, all of which they state the Department can use in applying neutral facts available to these sales. Because all necessary information has been submitted for PD's and TK's Puerto Rico sales, according to the respondents, the Department should, at most, apply the average adjustments based on the applicable sales terms to the gross unit price using the worksheets provided at Exhibit PD-7B and TK-7B of the PD/TK Verification Report.

Furthermore, the respondents emphasize that the Department should not apply AFA to the unreported Puerto Rico sales, based on its precedent in Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand, 60 FR 29553 (June 5, 1995) (Canned Pineapple from Thailand LTFV), where, the respondents explain, the Department declined to make an adverse inference with respect to missing Puerto Rico sales under the best information available standard because the respondent's omission in that case was inadvertent. The respondents argue that the fact pattern in Canned Pineapple Fruit from Thailand LTFV is the same as that in the instant investigation in that in both cases the Department discovered inadvertently unreported sales that were an insignificant portion of total U.S. sales during the POI. In addition, the respondents assert that in contrast to the Eighth Administrative Review of Canned Pineapple Fruit from Thailand wherein the respondent had specific notice of the issue of missing Puerto Rico sales based on its participation in the original investigation in which the issue arose and was discussed at length, they did not have such notice in this investigation or in the 2007 antidumping investigation of coated free sheet paper from Indonesia in which they participated. Therefore, based on the facts of this case, the respondents conclude that the Department should not find willful non-cooperation on their part and that the use of an adverse inference is unwarranted.

Department's Position:

We agree with the petitioners that the Puerto Rico sales should have been reported by PD/TK/IK because Puerto Rico is part of the customs territory of the United States. However, we disagree that it is appropriate to apply AFA to these sales. Based on our findings at verification, we conclude that the omission of these sales was inadvertent, as PD and TK were not aware that these sales should have been reported based on their sales accounting system. Further, we note that these sales constitute less than one percent of the reported total quantity of U.S. sales of the subject merchandise during the POI. Unlike the respondent in the Eighth Administrative Review of Canned Pineapple Fruit from Thailand cited by the petitioners in support of their AFA claim, PD/TK/IK did not have any specific notice, either in this or any prior investigation in which PD/TK/IK participated, that these sales should have been reported in their U.S. sales databases submitted to the Department. Furthermore, we note that at verification, PD and TK provided information, including source documentation, on these sales upon the Department's request, and the Department observed no unusual product mix or pricing associated with these U.S. sales as compared against PD and TK's reported U.S. sales. See PD/TK Verification Report at 16-18, and Verification Exhibits VE PD-7B and TK-7B. Therefore, as facts available under section 776(a)(1) of the Act, we are applying to the unreported Puerto Rico sales the weighted-average margin calculated for the respondents' reported transactions. In addition, we note that if this investigation results in an antidumping duty order, the respondents will be required to report all of their U.S. sales of subject merchandise, including sales to Puerto Rico, in any subsequent administrative review of the order.

Comment 10: Treatment of Bank Charges, Loading Fees, Administrative (ADM) Fees, and Automatic Manifest System (AMS) Fees

At verification, the Department found that PD, TK and IK included the bank charges incurred on all of their direct U.S. sales of subject merchandise in their indirect selling expense calculations, rather than separately reporting these charges as direct selling expenses in their U.S. sales listings. See July 26, 2010, PD/TK Verification Report at pages 2 and 31-33, and July 30, 2010 Memorandum to The File entitled "Verification of the Sales Response of PT Indah Kiat Pulp & Paper Tbk. (IK) and {Affiliate} in the Antidumping Duty Investigation of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses (Coated Paper from Indonesia" (IK Verification Report), at pages 2 and 23. At verification, the Department also found that TK did not include an amount for loading (i.e., lift-on) fees in its foreign inland freight calculation for all of its U.S. sales of subject merchandise made directly or through its affiliates, and did not include ADM and AMS fees in its international freight calculation for its U.S. sales of subject merchandise shipped by one of its freight service providers. Rather, TK included these fees in its indirect selling expense calculations. See PD/TK Verification Report at pages 2, 23-27, and 35.

The respondents argue that if the Department decides that the above-mentioned fees should be treated as direct selling expenses, rather than indirect selling expenses as reported, then the Department need not make any adjustment to their reported direct or indirect selling expenses because these fees, either individually or in combination, constitute less than 0.33 percent or 1.0 percent, respectively, of the EP, and are therefore "insignificant" as defined under 19 CFR 351.413. The respondents maintain that the Department should follow its past practice and exercise its discretion under section 777A(a)(2) of the Act and 19 CFR 351.413, and decline to make a direct selling expense adjustment for these fees. In support of their position, the respondents cite to Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 65 FR 49219 (August 11, 2000) and accompanying Issues and Decision Memorandum (AFBs from Multiple Countries) at Comment 48; and Certain Steel Concrete

Reinforcing Bars from Turkey: Final Results of Antidumping Duty Administrative Review, 66 FR 56274 (November 7, 2001) and accompanying Issues and Decision Memorandum at Comment 22 (Rebar from Turkey). Alternatively, the respondents assert, if the Department decides that it must adjust direct selling expenses to account for the fees at issue, then it must also deduct the same amount from indirect selling expenses to avoid double-counting these expenses.

The petitioners did not comment on this issue.

Department's Position:

We disagree with PD/TK/IK. It is the Department's standard practice to make a circumstance-of-sale adjustment to NV for bank charges directly associated with EP sales under section 773(a)(6)(C)(iii) of the Act, irrespective of the magnitude of that adjustment. See, e.g., AFBs from Multiple Countries at Comment 45. Similarly, it is the Department's standard practice to make deductions to EP for all applicable foreign inland freight expenses including loading fees, and all applicable international freight expenses including ADM/AMS fees, which are incurred on EP sales under section 772(c)(2)(A) of the Act, irrespective of the magnitude of such deductions. While the Department may have exercised its discretion under section 777A(a)(2) of the Act and 19 CFR 351.413 to disregard certain expenses in AFBs from Multiple Countries and Rebar from Turkey based on the specific fact patterns in those cases, in this case, we have sufficient verified information on the record to make an appropriate adjustment for the expenses at issue in our final margin calculations, and therefore have done so.

Specifically, with respect to all of PD/TK/IK's direct U.S. sales, we made a circumstance-of-sale adjustment to NV for bank charges using the actual per-unit bank charge verified for the transactions examined at verification. Where the actual per-unit bank charge was not on the record, as facts available under section 776(a)(1) of the Act, we used the simple average of the per-unit bank charges verified for the transactions examined at verification. We adjusted PD/TK/IK's reported indirect selling expenses to exclude a corresponding portion for these bank charges so as not to double-count these expenses in our final margin calculation. See Sales Calculation Memorandum for expense calculation details.

With respect to foreign inland freight-related loading fees incurred on TK's direct U.S. sales and U.S. sales through affiliates, we recalculated the reported foreign inland freight expenses deducted from EP to include these charges using the actual per-unit loading charge verified for the transactions examined at verification. Where the actual per-unit loading charge was not on the record or could not be derived based on record information, as facts available under section 776(a)(1) of the Act, we used the simple average of the per-unit loading charges verified for the transactions examined at verification. In addition, with respect to the international freight-related ADM/AMS fees incurred on TK's U.S. sales of subject merchandise (either direct or through affiliates) shipped by one of its freight service providers, where applicable, we recalculated the reported international freight expenses deducted from EP to include these fees using the actual per-unit ADM/AMS fees verified for the transactions examined at verification. Where the actual per-unit ADM/AMS fees were not on the record or could not be derived based on record information, as facts available, we used the simple average of the per-unit ADM/AMS fees verified for the transactions examined at verification. We adjusted TK's reported indirect selling expenses to exclude a corresponding portion for these foreign inland freight and international freight charges so as not to double-count these expenses in our final margin calculation. See Sales Calculation Memorandum for expense calculation details. See also Comments 14 and 15 below.

Comment 11: Billing Adjustments

In the preliminary determination, the Department added billing adjustments to U.S. gross unit prices, where applicable, in the margin calculation program. The petitioners argue that in doing so, the Department committed a clerical error which should be corrected in the final determination. Specifically, the petitioners maintain that all billing adjustments should be deducted from U.S. gross prices for purposes of the final margin calculation given the manner in which the respondents reported these adjustments in their narrative questionnaire response and sales databases.[17]

The respondents did not comment on this issue.

Department's Position:

We agree with the petitioners and have corrected this inadvertent clerical error in the final determination.

Comment 12: Rebates

In their questionnaire responses, the respondents claimed that no rebates were granted on any of their U.S. sales of subject merchandise during the POI (either direct or through affiliates). See BCQR at page C-27. Based on the petitioners' review and interpretation of the sales documentation examined by the Department for a selected sales transaction at the verification of one of the affiliates through which IK sold subject merchandise during the POI, the petitioners contend that the respondents failed to report information on all rebates associated with U.S. sales made by this affiliate during the POI. In particular, the petitioners point to a POI sales invoice issued by the affiliate in which a rebate amount is included but not accounted for in the affiliate's U.S. sales database, arguing that this documentary evidence conflicts with the respondents' no-rebate claim with respect to U.S. sales made through this affiliate. See Exhibit Supp. C-02 of the March 31, 2010, response to section C of the Department's supplemental questionnaire (SCQR), and July 30, 2010, Memorandum to the File entitled "Verification of the Sales Response of {Affiliate} in the Antidumping Duty Investigation of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses (Coated Paper) from Indonesia" (IK Affiliate Sales Verification Report) at VE K-8E. The petitioners also assert that the reason for the rebate

[17] The respondents reported in their narrative questionnaire response that the reported billing adjustments should be subtracted from gross unit price, and they reported in their sales databases positive values under the billing adjustment field (BILLADJU) instead of negative values. (See the January 12, 2010 response to sections B and C of the Department's antidumping duty questionnaire (BCQR) at page C-25).

offered by the affiliate at verification differed from that reflected in the sales documentation provided in the questionnaire response and reviewed at verification. Based on these observed discrepancies, the petitioners maintain that the Department cannot rely on the respondents' no-rebate claim and should reconsider its finding at verification that it observed no discrepancies with this claim. See IK Affiliate Sales Verification Report at page 15. Therefore, according to the petitioners, the Department should make an adverse inference and reduce the prices of all U.S. sales through this affiliate by a percentage derived by dividing the total value of the rebate by the total value of the sales invoice examined at verification.

The respondents disagree with the petitioners' argument that the Department should apply AFA to all U.S. sales through the affiliate at issue for rebate information allegedly omitted from the record, asserting that this argument is premised on irrelevant considerations and a misunderstanding of the factual record. The respondents point out that the rebate listed on the invoice in question was for a sale that took place prior to the POI (in 2006), a fact which they claim the Department verified. Therefore, they claim, to apply AFA in the manner recommended by the petitioners—reducing all of the prices of the affiliate's U.S. sales during the POI by the amount of a rebate relevant outside the POI—would be unreasonable. The respondents assert that there is no credible evidence on the record of any rebates relevant during the POI, emphasizing that at verification the Department found no evidence of rebates applicable to the affiliate's reported U.S. sales of subject merchandise. See IK Affiliate Sales Verification Report at page 13. The respondents contend further that the description of the rebate provided at verification and that reflected in the rebate memorandum collected by the Department at verification are not inconsistent with each other, as suggested by the petitioners. Rather, according to the respondents, they reflect two different ways of explaining the same procedure. Specifically, the respondents explain, one description is that the rebate was given for "meeting target and price," and the other is that it was given for "overpayment." The respondents explain further that if the customer qualifies for the rebate--or has met its target--then the customer has overpaid on previous sales which were paid at full price and receives a rebate; therefore, they reason, there is no discrepancy with respect to the rebate description. The respondents conclude, based on the alleged irrelevance of the pre-POI rebate and petitioners' misunderstanding of the factual record, that the Department should reject the petitioners' argument that AFA be applied to the U.S. sales through the affiliate in question.

Department's Position:

While we agree with the petitioners that we should make an adjustment to EP for the rebate included on the above-referenced sales invoice examined at verification under section 19 CFR 351.401(c), we disagree with the petitioners with respect to the manner in which we should calculate this adjustment.

For the preliminary determination, the Department accepted the respondents' claim that no rebates were granted with respect to their U.S. sales of the subject merchandise (either made directly or through their affiliates) during the POI. We examined this claim during the verification of the respondents, including the verification of one of the affiliates through which IK sold subject merchandise during the POI. Based on our review of the affiliate's sales revenue adjustment accounts for selected months of the POI which was conducted in the context of our sales reconciliation and completeness tests at verification, we found no evidence of any discounts or rebates applicable to the affiliate's reported U.S. sales of subject merchandise during the POI. See IK Affiliate Verification Report at pages 12 and 13. However, in the context of our sales-trace exercise for one reported U.S. sale selected for examination, we noted on the invoice relevant to that sale a deduction for a "rebate and over price" amount. At our request, the affiliate provided additional documentation relevant to that transaction, explaining that the rebate listed on the invoice related to a revised rebate deduction amount from an overpayment made by the U.S. customer on a pre-POI (2006) sale, which was not properly applied until the issuance of this particular invoice. See IK Affiliate Verification Report at page 15 and VE K-8E. Based on our review of the additional source documentation provided, we noted in our verification report that we found no discrepancy with the affiliate's claim that the rebate amount related to a pre-POI sale and therefore was not associated with POI sales of subject merchandise. However, upon further review of the relevant sales documents and in consideration of the comments of the parties, we have re-evaluated our findings at verification with respect to this rebate issue.

Irrespective of the fact that the rebate granted to the U.S. customer in this instance related to a pre-POI transaction, it was expensed in the context of a POI sales invoice containing subject merchandise, thereby reducing the price of that merchandise. Moreover, there is no evidence to suggest that this rebate, as originally granted to the U.S. customer in the pre-POI period, was unrelated to subject-merchandise sales. Furthermore, it is the Department's practice to include rebates in the calculation of U.S. price during the period in which the adjustment to the sales price actually occurred, not the period in which the customer became eligible for the rebate, as these periods do not necessarily coincide in the normal course of business. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 63 FR 33320 (June 18, 1998) and accompanying Issues and Decision Memorandum at Comment 2. Therefore, we find it appropriate to take this rebate into account in our final margin calculations. However, given the fact that we found no other evidence of rebates granted to any other U.S. customer or applicable to any other subject-merchandise sale/invoice during the POI, and the fact that the respondents complied with all Department requests for information at verification with respect to the rebate issue, we do not find it appropriate to make an adjustment for rebates to the prices of all reported U.S. sales made by the affiliate during the POI, as proposed by the petitioners. Rather, we find it reasonable to allocate the rebate amount noted on the invoice in question over the total quantity of the reported sales to the U.S. customer to which the invoice was issued, and deduct the resulting per-unit amount from the reported prices of the sales to that customer. Accordingly, we have done so in the final determination. See Sales Calculation Memorandum.

Comment 13: Freight Revenue

The respondents reported that they had earned a small profit on inland freight related to certain U.S. sales made by one of their affiliates. In its preliminary margin calculations, the Department added this freight revenue, where applicable, to the starting EPs, and capped it by the amount of freight expenses incurred, consistent with its normal practice. See Preliminary Determination at 75 FR 24889.

The petitioners claim that the respondents never provided an adequate explanation or documentation supporting the derivation of their claimed freight revenue adjustment, despite the Department's specific requests for this information in two supplemental questionnaires. Citing Timken Co. v. United States, 11 CIT 786, 804, 673 F. Supp. 495, 513 (1987) and Zenith Elecs. Corp. v. United States, 988 F.2d 1573, 1583 (Fed. Cir. 1993), the petitioners argue that the burden of providing support for the claimed offset to freight costs rests with the respondents, as they are the ones in possession of the information. Therefore, because the respondents have failed to provide this necessary information, the petitioners contend that the Department should deny the claimed freight revenue adjustment in the final determination.

Contrary to the petitioners' assertions, the respondents contend that the documentation necessary to calculate freight revenue was provided in their June 16, 2010, supplemental questionnaire response (SSCQR) at Exhibit Second Supp C-03, and therefore is on the record. The respondents assert that the amount reported in their affiliate's sales database represents the difference between the freight charged by the affiliate to its customer and the amount the affiliate paid to the freight company. However, because the invoices contain both subject merchandise and non-subject merchandise, the respondents assert, the totals do not precisely reconcile with the sales database. This fact, the respondents contend, does not suggest that information was withheld from the Department during the investigation. Therefore, for the final determination, they conclude that the Department should continue to allow the adjustment for freight revenue.

Department's Position:

We agree with the petitioners and have not made the claimed freight revenue adjustment in the calculation of PD/TK/IK's final margin. The respondents failed to provide a calculation worksheet and sufficient documentation supporting the reported per-unit freight revenue amounts, despite the Department's specific request for such information in two supplemental questionnaires. See supplemental questionnaire issued on March 2, 2010, at page 23, and supplemental questionnaire issued on June 1, 2010, at page 2. Regarding the documentation contained in SSCQR at Exhibit Second Supp C-03, we disagree with the respondents that this documentation provides the necessary information to support the reported freight revenue amounts. The document contained in this exhibit appears to be a freight supplier invoice; however, absent any explanation or calculation worksheet from the respondents, the Department cannot determine how this document relates to the per-unit freight revenue amounts reported in the applicable sales database. Therefore, we have denied the claimed freight revenue adjustment.

Comment 14: International Freight

In their response to section C of the Department's original questionnaire,[18] the respondents stated that they had reported international freight costs incurred on their U.S. sales (both direct and

[18] See BCQR at page C-33.

through affiliates) on a transaction-specific basis. Through subsequent supplemental questionnaires, the Department sought to reconcile the methodology the respondents used to calculate international freight costs with the per-unit amounts reported in their U.S. sales databases. See SCQR at page 10, and SSCQR at page 3. The petitioners argue that despite the Department's multiple requests to obtain worksheets illustrating the calculation of international freight expenses incurred on U.S. sales made through two of the respondents' affiliates,[19] the respondents failed to provide such information, thereby precluding the Department from confirming the accuracy of the respondents' reporting of international freight expenses for sales through these two affiliates. The petitioners contend that because the respondents withheld requested information and the Department did not verify any information associated with the U.S. sales made through the two affiliates in question, the Department cannot rely on the per-unit international freight expenses reported for the U.S. sales made through these affiliates. The petitioners state further that the Department is not obligated to rely on the reported information if it is unreliable, but rather in this case must rely on facts otherwise available under section 776(a)(2)(A) of the Act to determine the amount of international freight expenses to be allocated to those U.S. sales. Because the respondents failed to act to the best of their abilities to provide the requested information despite being given several opportunities to do so, according to the petitioners, the Department must apply AFA under section 776(b) of the Act, and use the highest international freight cost reported for any U.S. sale for each of the two affiliates in the final margin calculation.

The respondents disagree with the petitioners' argument for applying AFA to the international freight costs incurred on sales made through the two affiliates at issue because according to the respondents, the petitioners' argument rests solely on the fact that a worksheet was not provided to show the per-unit calculation of international freight. Contrary to the petitioners' claim that the information on the record is so incomplete that it cannot be relied upon, the respondents assert that they provided all of the source documentation requested by the Department in a timely manner, and that failure to include a calculation worksheet neither impedes the Department's investigation nor warrants the application of AFA. Moreover, in response to the petitioners' argument that they failed to link the affiliates' invoices to international freight invoices, the respondents note that although the Department did not verify the sales data of the affiliates in question, the Department verified the sales data of other affiliates and observed no discrepancies with respect to the respondents' ability to link international freight expenses with mill invoices and mill invoices with the affiliates' invoices. See IK Affiliate Verification Report at pages 10 and 17; June 26, 2010, Memorandum to the File entitled "Verification of the Sales Response of {PD/TK Affiliate} in the Antidumping Duty Investigation of Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses (Coated Paper) from Indonesia" (PD/TK Affiliate Verification Report), at page 11; and PD/TK Verification Report at pages 21-23. The respondents also note that with respect to sales of TK-produced merchandise made through these affiliates, the ADM and AMS fees that the Department found at verification were omitted from the calculation of international freight expenses for certain transactions were included in TK's reported indirect selling expense calculation. Therefore, the respondents argue, there is no basis

[19] Only PD and/or TK made subject-merchandise sales through these affiliates during the POI.

for the Department to apply AFA to the international freight expenses reported for the U.S. sales made through the two affiliates at issue.

Department's Position:

For the reasons explained below, we disagree with the petitioners and find that the data on the record allows the Department to determine the accuracy of the per-unit international freight amounts reported for the U.S. sales made through the two affiliates in question which the Department chose not to verify. In instances where TK incorrectly treated certain international-freight related expenses (i.e., ADM and AMS fees) as indirect selling expenses and did not include these expenses in the per-unit international freight amounts reported for its direct sales and its sales made through affiliates (including the two affiliates at issue), we have made the necessary adjustments to the reported data based on verification findings, as discussed below.

Because we chose not to conduct verification of the sales and expense data submitted by the two affiliates at issue that reported sales of PD- and/or TK-produced subject merchandise during the POI, we requested that the respondents provide worksheets and source documentation showing how the per-unit international freight amounts reported for four selected sales transactions made by these two affiliates were derived. See June 1, 2010 supplemental questionnaire. Although the respondents did not provide a calculation worksheet showing how they derived the reported per-unit international freight amounts for any of the selected sales transactions, data contained in Exhibit C-06 of the BCQR and Exhibit Second Supp C-06 of the SSCQR, and data obtained at verification (i.e., TK VE-7A) enabled the Department to reproduce the respondents' per-unit international freight calculations for three of the four selected sales transactions.

However, at verification, we found that one of the ocean freight service providers TK used to ship subject merchandise from Indonesia during the POI charged TK an AMS fee and ADM fee (in addition to bill of lading and ocean freight fees) which TK did not include in its per-unit international freight calculations for its POI sales of subject merchandise (either direct or through affiliates), where applicable. Instead of including these fees in its international freight calculation, TK treated these fees as "other selling expenses" and included them in its indirect selling expense calculation. While TK did report these expenses by including them in its indirect selling expense calculation, these expenses are freight-related expenses, not selling expenses, and as such, they should have been included in TK's international freight calculations for all U.S. sales of subject merchandise it produced and shipped using the ocean freight provider at issue. Because this reporting error is limited in scope (as it relates only to a small portion of the international freight expenses TK incurred using one particular ocean freight service provider) and we have sufficient information on the record to correct it in our margin calculations, we do not find that the application of AFA is warranted in this instance.

Using the information examined at verification, we are able to determine which U.S. sales of TK-produced subject merchandise reported by TK and its affiliate selected for verification were affected by this reporting error. See PD/TK Verification Report at Exhibit TK-15A, and PD/TK Affiliate Verification Report at Exhibit 13A. Therefore, for these sales transactions, we increased the reported INTNFRU amount by the ADM/AMS fee actually incurred on the particular sales transaction if that sales transaction was specifically examined at verification. For those transactions where the actual ADM/AMS fee data was not on the record, as facts available under section 776(a)(1) of the Act, we increased the reported INTNFRU amount by the average fee incurred on the sales transactions examined at verification, as noted in the PD/TK Verification Report.[20] However, for TK-produced subject merchandise sold through TK's two other affiliates (at issue above) whose sales data the Department did not verify, with the exception of two sales transactions for which source documentation was provided in TK's questionnaire response, we are not able to determine for which sales TK should have included the AMS/ADM fees in its international freight calculation. Therefore, as facts available under section 776(a)(1) of the Act, for U.S. sales of TK-produced merchandise made through these two affiliates, with the exception of the two transactions referred to above, we adjusted the reported per-unit international freight expenses using the average ADM/AMS fee noted in the PD/TK Verification Report.[21] We find this average expense amount to be a reasonable approximation of the ADM/AMS fee applicable to sales of TK-produced subject merchandise for which the transaction-specific expense data is not on the record. Finally, we removed the total amount of AMS/ADM fees added to international freight expenses from the pool of expenses TK included in its indirect selling expense calculation in order to avoid double-counting these expenses. See Sales Calculation Memo.

Comment 15: Foreign Inland Freight

In their response to section C of the Department's original questionnaire,[22] the respondents reported the cost for transporting subject merchandise from the factory/warehouse to the port of export (DINLFTPU) on a transaction-specific basis. In subsequent supplemental questionnaires, the Department requested that the respondents provide worksheets and source documents supporting their DINLFTPU calculations for U.S. sales during the POI. See SCQR at page 8 and Exhibit Supp C-03, and SSCQR at page C-06. The petitioners claim that although the respondents attempted to reply to the Department's request for information, they failed to supply the Department with sufficient information to allow the Department to understand how they calculated DINLFTPU for the sales reported by the affiliates which the Department did not select for verification. Moreover, the petitioners point out that the respondents had to provide extensive corrections to their DINLFTPU calculations at verification for IK's U.S. sales (made either directly or through an affiliate), and the Department found at verification that TK did not include loading fees in its foreign inland freight calculations for its U.S. sales (made either directly or through an affiliate). See respondents' June 22, 2010, submission at Exhibit 1, and PD/TK Verification Report at page 2. Furthermore, the petitioners assert that the quantity of U.S. sales for which DINLFTPU had to be corrected at verification or for which inadequate documentation was provided in the questionnaire responses, when compared against the quantity

[20] See PD/TK Verification Report at page 25.
[21] With respect to one of the two sales transactions for which TK provided source documentation in its questionnaire response, we adjusted the reported per-unit international freight expense using the actual ADM/AMS fee incurred for that transaction. With respect to the other sales transaction, we did not make any adjustment to the reported per-unit international freight expense because we were able to determine that no ADM/AMS fee was incurred for that transaction.
[22] See BCQR at page C-31 and Exhibit C-6.

of sales for which reported DINLFTPU could be verified, demonstrates that the respondents' DINLFTPU reporting was unreliable.

Therefore, consistent with the fact pattern and Department's decision in Chlorinated Isocyanurates from Spain: Notice of Final Determination of Sales at Less Than Fair Value, 70 FR 24506, 24507-24509 (May 10, 2005) (Isos from Spain), the petitioners maintain the Department should apply AFA to the respondents' reporting of DINLFTPU in the final determination because: (1) the respondents failed to accurately and timely report these expenses despite three opportunities to do so in response to questionnaires, (2) impeded the Department's investigation by providing multiple corrections to their expense reporting at verification, and (3) provided information that could not be verified (i.e., according to the petitioners, the loading fees omitted from TK's reported foreign inland freight calculations could not be verified). As AFA, the petitioners recommend that the Department use in its final margin calculation the highest per-unit DINLFTPU amount reported for any U.S. sale.

The respondents argue that the petitioners have mischaracterized their reporting of DINLFTPU in this investigation, and incorrectly allege that they failed to accurately and timely report these expenses. To the contrary, the respondents assert, they reported DINLFTPU in all of their U.S. sales databases submitted to the Department, and the Department accepted their minor corrections to DINLFTPU at the outset of verification. Moreover, the respondents note that providing minor corrections at the beginning of verification which are accepted and verified by the Department does not impede an investigation, as suggested by the petitioners. The respondents argue further that the Department does not have the authority to apply AFA to all of their U.S. sales, as recommended by the petitioners, because: (1) the Department found that PD and IK correctly included all applicable expenses in their DINLFTPU calculations for their U.S. sales (both direct and through affiliates); (2) the Department was able to collect at verification complete DINLFTPU documentation for numerous TK sales (both direct and through an affiliate) which illustrate TK's DINLFTPU calculations; and (3) the Department confirmed that the loading fees which it found at verification TK omitted from its DINLFTPU calculations were insignificant (as discussed in Comment 10 above) and accounted for in TK's reported indirect selling expenses.

Department's Position:

For the reasons which are explained below, we disagree with the petitioners that the nature and extent of the errors made by the respondents in reporting their DINLFTPU expenses require the application of AFA in the final determination.

First, with respect to U.S. sales of PD-produced subject merchandise (both direct and through one of PD's affiliates which we verified), we found no discrepancies at verification with the reported per-unit DINLFTPU expenses for the sales we examined. See PD/TK Verification Report at page 22.

Second, with respect to U.S. sales of IK-produced subject merchandise (both direct and through one of IK's affiliates which we verified), the respondents provided certain corrections to their reported DINLFTPU expenses at the start of verification. These corrections reflected the correction of a programming error in the reporting of this expense in the U.S. sales database submitted to the Department and/or provided updated expense information based on IK's books and records which was not available at the time of the respondent's reporting of this information to the Department. Moreover, at verification the Department was able to confirm the accuracy of these corrections for selected transactions without undue burden. See IK Verification Report at pages 22 – 23, and IK Affiliate Verification Report at pages 16 – 17.

Third, with respect to U.S. sales of TK-produced merchandise (both direct and through affiliates), we found at verification that the only error TK made in its DINLFTPU calculations was that it did not include the lift-on (or loading) fees it incurred, and this error was small in magnitude. Moreover, there is sufficient verified information on the record to correct this reporting error in the final determination. Furthermore, we note that while TK did not include the loading fees at issue in its DINLFTPU calculations, it did otherwise account for these fees in its expense reporting to the Department by including them in its indirect selling expense calculations. See PD/TK Verification Report at pages 23-24 and 35.

Specifically, at verification, we selected numerous sales transactions involving TK-produced subject merchandise reported in the U.S. sales listings submitted by TK and one of its affiliates. For each selected sales transaction, we noted, without exception, that TK did not include the lift-on fee in the DINLFTPU amount reported for that transaction. As stated above, we also noted that TK did include this expense in its indirect selling expense calculation. Because we chose not to conduct verification of the sales and expense data submitted by TK's two other affiliates, in a supplemental questionnaire response issued on June 1, 2010, we requested TK to provide worksheets and source documentation showing how the DINLFTPU per-unit amounts reported for two sales transactions made by one of those affiliates were derived. Although TK did not provide a calculation worksheet showing how its reported per-unit DINLFTPU amounts were derived for these two sales transactions, data contained in Exhibit C-06 of the BCQR and Exhibit Second Supp C-06 of the SSCQR, and data obtained at verification (i.e., TK VE-7A) enabled the Department to establish that TK also did not include the lift-on fee in the DINLFTPU calculations for those transactions as well. However, as stated above, we are able to correct this reporting error based on the verified information on the record.

Furthermore, we disagree with the petitioners that the fact pattern with respect to the respondents' DINLFTPU reporting in this case is similar to that in Isos from Spain. In Isos from Spain, the number and magnitude of the errors the respondent made in reporting its U.S. movement charges (consisting of not only foreign inland freight but also foreign brokerage and handling, international freight and U.S. brokerage and handling expenses) could not be properly verified by the Department, and therefore, the corrections to these errors could not be considered "minor" corrections to the respondent's expense reporting or otherwise acceptable to the Department. However, in this case, we were able to verify any corrections to the reported expense data submitted by the respondents at verification and have sufficient information on the record to correct any reporting error found by the Department at verification. Therefore, under these circumstances, we find that the application of AFA to the respondents' reporting of DINLFTPU is not warranted, as claimed by the petitioners. Rather, with respect to U.S. sales of

PD-produced subject merchandise and IK-produced subject merchandise, we have relied on the verified expense data on the record in our final margin calculations. With respect to U.S. sales of TK-produced subject merchandise sold by TK directly or through the affiliate whose sales data we verified, we increased the reported per-unit DINLFTPU expenses by the loading fee actually incurred on the particular sales transaction if that sales transaction was examined at verification. For those transactions where the actual loading fee data was not on the record, as facts available under section 776(a)(1) of the Act, we increased the reported per-unit DINLFTPU expenses by the average loading fee incurred on the sales transactions examined at verification, as noted in the PD/TK Verification Report.[23] For TK-produced subject merchandise sold through TK's two other affiliates whose sales data we did not verify, we also adjusted the reported per-unit DINLFTPU expenses using the average loading fee noted in the PD/TK Verification Report.[24] We find that this average expense amount is a reasonable approximation of the loading charge applicable to sales of TK-produced merchandise for which the actual transaction-specific expense data is not on the record. In addition, we removed the total amount of the loading fees added to inland freight expenses from the pool of expenses TK included in its indirect selling expense calculation in order to avoid double-counting these expenses. See Sales Calculation Memo.

Comment 16: Treatment of Certain U.S. Sales

In their questionnaire responses, the respondents claimed that a portion of their U.S. sales through affiliated trading companies during the POI involved an affiliated U.S. company, and argued that the sales made through this U.S. company should be treated as constructed export price sales. However, the Department preliminarily found that the company at issue was not affiliated with the respondents under section 771(33) of the Act, and treated the sales at issue as EP sales. See Preliminary Determination at 75 FR 24889.
The petitioners contend that since the preliminary determination no new information has been obtained or submitted that should change the Department's treatment of these U.S. sales as EP sales for the final determination. However, the petitioners urge the Department to obtain information on these sales so that they may be properly taken into account in the final margin calculation.

The respondents did not comment on this issue.

Department's Position:

We have continued to treat the sales at issue as EP sales in the final determination because as stated by the petitioners, since the preliminary determination no new information has been

---

[23] See PD/TK Verification Report at page 24.
[24] With respect to one of the two sales transactions made by one of these affiliates (referred to above), TK provided source documentation in its questionnaire response for the lift-on fee incurred for that sales transaction; therefore, we increased the per-unit DINLFTPU amount reported for this transaction by the actual lift-on fee incurred based on the source documentation provided. With respect to the other sales transaction made by that same affiliate (referred to above) but for which TK did not provide a worksheet showing how it derived the DINLFPTU amount reported for that sale in its questionnaire response, we added the average lift-on fee noted in the PD/TK Verification Report to the reported DINLFTPU amount.

obtained or submitted on the record, as a result of verification or otherwise, to change our treatment of these sales. Contrary to the petitioners' suggestion, however, the respondents reported the requisite information for these sales in a revised database submitted on April 16, 2010, which the Department included in the calculation of PD/TK/IK's preliminary margin. The respondents subsequently revised this database in a submission made on June 16, 2010, in response to a supplemental questionnaire issued by the Department on June 1, 2010, and we have included this revised database in the calculation of PD/TK/IK's final margin.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final determination of this investigation and the final weighted-average dumping margin for the investigated firms (i.e., the collapsed entity PD/TK/IK) in the Federal Register.

Agree ___ Disagree ____

____
Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

____
(Date)