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

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review of Polyethylene Retail Carrier Bags from
Thailand for the Period of Review August 1, 2009, through July
31, 2010

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand for the period August 1, 2009, through July 31, 2010. As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions described in this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from parties:

1. General and Administrative Expenses
2. Financial Expense
3. CV Profit
4. CV Selling Expenses
5. Zeroing

Background

On May 24, 2011, the Department of Commerce (the Department) published *Polyethylene Retail Carrier Bags From Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 30102 (May 24, 2011) (*Preliminary Results*), in the *Federal Register*.

We invited parties to comment on the *Preliminary Results*. On June 23, 2011, we received case briefs from the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation (collectively, the petitioners), and the respondents, Thai Plastic Bags Industries Co., Ltd. (TPBI), and Landblue (Thailand) Co., Ltd. (Landblue). We also received case briefs from Intoplast Group Ltd. and Master Packaging Inc. (the

importers) who qualify as interested parties as importers of subject merchandise. On June 28, 2011, we received rebuttal briefs from the interested parties. We did not hold a hearing as the only request for a hearing was withdrawn. See the petitioners' letter dated June 29, 2011.

Abbreviations

The Act - The Tariff Act of 1930, as amended

BCR – Blue Corner Rebate

CAFC - Court of Appeals for the Federal Circuit

CIT - Court of International Trade

COGS - cost of goods sold

COP – cost of production

CV – constructed value

GAAP – generally accepted accounting principles

I&D Memo – Issues and Decision Memorandum adopted by a *Federal Register* notice of final determination of an investigation or final results of review

G&A - general and administrative

URAA – Uruguay Round Agreements Act

WTO – World Trade Organization

Discussion of the Issues

1. General and administrative expenses

Comment 1: The petitioners argue that, as announced in the *Preliminary Results*, the Department instructed TPBI to submit its 2010 financial statements within seven days of their completion. According to the petitioners, such statements should have been submitted within seven days of their approval by the auditor and directors. Instead, the petitioners assert, the information was not submitted until June 15, 2011, within seven days following the completion of the translation from Thai to English but significantly later than seven days after their completion. The petitioners assert that the gap in time between the auditor's signature and the translation deprives the Department of the ability to seek clarification and additional information on the calculation of the G&A rate and financial expense ratio. As such, the petitioners urge, the Department should use the calculations for the G&A rate and financial expense ratio which it used in the *Preliminary Results*.

In the event that the Department decides to use the 2010 financial statements to calculate the G&A rate, the petitioners maintain that certain adjustments should be made to TPBI's reported G&A expenses. Specifically, they assert, the Department should include certain expenses that TPBI excluded from the G&A expense calculation.

The petitioners assert that the Department should continue to add the 2010 claim expenses¹ for the final results because TPBI has not provided a reason for excluding this item from its G&A

¹ "Claim Expenses" are included in the total administrative expenses reported in TPBI's audited financial statements. In its April 12, 2011, supplemental questionnaire response, TPBI explained that these are expenses related to non-subject merchandise or relate to the settlement of claims made by customers for billing mistakes and/or defects but are accounted for elsewhere, e.g., bank fees that have been captured with direct selling expenses.

expenses. The petitioners also assert that the Department should include the total consulting fee incurred in 2010 in the G&A expenses as opposed to excluding a portion of the consulting fees because they are associated with antidumping costs. According to the petitioners, TPBI did not provide any documentary evidence to support that any portion of the consulting fees relate to the antidumping defense. The petitioners maintain that, as a respondent in possession of the relevant information, TPBI has the burden of establishing the amount and the nature of any adjustment or exclusion.

Further, consistent with the *Preliminary Results*, the petitioners urge the Department to deny, as an offset to the G&A expenses, the 2010 revenue TPBI received from the Thai government under the BCR program. The petitioners argue that the Department's preliminary adjustment was appropriate and that TPBI has offered no new information that contradicts that fact. Contrary to TPBI's assertion that it is the Department's practice to allow revenue from governments to offset a respondent's reported G&A expenses, the petitioners argue that the cases TPBI cited did not involve the type of revenues from governments at issue here such as export incentives. Further, the petitioners assert, the Department disallowed BCR revenue as an offset to respondent's costs in *Canned Pineapple Fruit From Thailand*, 68 FR 65247 (November 19, 2003), and accompanying I&D Memo at Comment 17, and in prior reviews of the order on polyethylene retail carrier bags from Thailand where the Department did not allow the BCR revenue to offset TPBI's costs.

Finally, the petitioners argue that the Department should disallow an offset to the G&A expenses for gains on sales of assets shown on TPBI's 2010 financial statements. The petitioners acknowledge that it is the Department's practice to allow gains on sales of assets to offset the G&A expenses only when the respondent demonstrates that the gains arise from the routine disposition of assets. Given that TPBI has not demonstrated as such, the petitioners argue that the gain should not be allowed as an offset to the G&A expenses. The petitioners add that it is inappropriate for TPBI to request this adjustment in its case brief, thereby depriving the Department of the ability to seek clarification.

TPBI rebuts that the Department never defined "completion" as the date on which the board of directors approved the statements. TPBI counters the petitioners' argument that the Department is deprived of the ability to seek clarification and additional information to the calculations of the G&A rate and financial expense ratio. TPBI argues that the regulations permit the Department to ask follow-up questions at any time during a proceeding, citing 19 CFR 351.301(c)(2).

With regard to the claim expenses, TPBI argues that the Department should exclude these expenses from the reported G&A expenses because they relate to sales of non-subject merchandise or have been accounted for in the calculation of the dumping margin as direct selling expenses. With regard to consulting fees, TPBI argues that the excluded portion of the consulting fees relate solely to the ongoing defense of the antidumping order. TPBI maintains that the amounts were calculated based on relevant invoices.

With regard to BCR revenue, TPBI claims that the Department denied the BCR revenue offset to the G&A expenses inappropriately and maintains that the BCR revenue relates to TPBI's cost of raw materials. TPBI cites *Notice of Final Determination of Sales at Less Than Fair Value: Live*

Swine From Canada, 70 FR 12181 (March 11, 2005), and accompanying I&D Memo at Comment 2, *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From South Africa*, 60 FR 22550, 22556 (May 8, 1995), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 30326, 30355 (June 14, 1996), unchanged in *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 38547 (July 24, 1996), where, according to TPBI, the Department permitted such revenues received from the government as offsets to G&A expenses.

Finally, in regard to the gains on sales of assets, TPBI argues that the Department should adjust TPBI's submitted G&A expenses to allow for the offset for the gains on sales of assets shown on its 2010 financial statements. TPBI reasons that the Department permits respondents to deduct such gains from the G&A expenses, citing *Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of Antidumping Duty Administrative Review*, 73 FR 14439 (March 18, 2008), and accompanying I&D Memo at Comment 2. In summary, for the final results, according to TPBI, the Department should calculate the G&A rate and financial-expense ratio using the 2010 audited financial statements. Further, it asserts the Department should not include claim expenses or consulting fees related to the antidumping defense in the G&A expenses. In addition, it requests that the Department offset the G&A expenses for BCR revenue and gains on sales of assets.

The importers also rebut the petitioners' argument that the Department should reject TPBI's 2010 financial statements. The importers assert that the submissions were necessary to correct deficiencies in the record. Citing 19 CFR 351.301(c)(2), the importers argue that the Department may request factual information at any time during a proceeding.

Department's Position: In setting the deadline for submitting the 2010 financial statements, the Department did not define "completion" as the date on which the auditor signs and the directors approve the financial statements as asserted here by the petitioners. The Department stated in the *Preliminary Results* that TPBI should provide the 2010 financial statements "within seven days of their completion." Accordingly, we have accepted TPBI's statement that it provided the financial statements within seven days of the completion of the English version of the financial statements. Nothing on the record contradicts TPBI's assertions here and the petitioners have had an opportunity to comment on the submitted information. Therefore, we have determined it is appropriate to accept the 2010 audited financial statements and we have calculated both the G&A rate and financial-expense ratio using the 2010 audited financial statements.

With respect to the claim expenses, which, according to TPBI, are related to the sales of non-subject merchandise or accounted for elsewhere as part of TPBI's direct selling expenses, and as in the prior review, TPBI has not provided record evidence demonstrating it is appropriate to exclude claim expenses from G&A expenses. See *Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review*, 76 FR 12700 (March 8, 2011) (*2008/2009 Review*), and accompanying I&D Memo at Comment 6. Under section 773(f)(1)(A) of the Act, costs are normally calculated based on the records of the exporter or producer if such records are kept in accordance with the GAAP of the exporting or producing country and reasonably reflect the costs associated with the production and sale of the

merchandise. Here the claim expenses are recorded as part of TPBI's overall G&A expenses in its normal books and records and TPBI provided no supporting documents demonstrating why these expenses should be excluded or demonstrating that these expenses were accounted for elsewhere in the antidumping calculation. As a result, we have included the 2010 claim expenses in the calculation of the G&A rate.

Further, we have determined to include the total consulting fee incurred in 2010 in the G&A expenses. Although our practice is to conduct the antidumping analysis without regard to fees paid for participation in the proceedings,² TPBI has not provided support that a portion of its consulting fees are related to the antidumping review. Specifically, we requested TPBI to provide calculations of how the excluded amounts were determined and support the amounts with internal documents.³ TPBI did not provide calculations or internal documents, stating that such support contains privileged attorney-client information.⁴ While we recognize the sensitivity associated with attorney-client privileged information, TPBI did not provide any information or calculations to support the portion of the consulting fee claimed to be related to the antidumping defense. Therefore, because of this lack of record information, we have continued to include the total consulting fee in the G&A expenses.

With respect to BCR revenue, consistent with the *Preliminary Results* and the prior review, we continue to deny the BCR revenue as an offset to TPBI's G&A expenses. See *2008/2009 Review* at Comment 3. According to TPBI, it receives rebates upon exportation of finished bags under the BCR program. See TPBI's December 22, 2010, response to the Department's original D questionnaire at page 30. Thus, the BCR revenue is related to export sales rather than the COP. Therefore, adjusting production costs (or any component of the COP) with BCR revenue is not appropriate.

Further, the cases TPBI cites are inapposite to the issue of whether to allow the BCR revenue to offset a respondent's costs. Rather, those cases refer specifically to grant revenue. BCR revenue is somewhat analogous to duty drawbacks where an adjustment to the dumping calculation, if one were made, would be an increase in the U.S. price. We only make such adjustments, however, where there is, among other requirements, a sufficient link between the import duties paid and the duty drawback revenue received from the government. In this situation, TPBI has not shown that such a link exists. Further, TPBI has not claimed the BCR revenue as a duty drawback adjustment nor has it attempted to demonstrate the link requirement or any other requirement.

Finally, TPBI is correct that the Department typically includes gains and losses related to the sales of routine fixed assets by the respondents. See *Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Indonesia*, 70 FR 13456 (March 21, 2005), and accompanying I&D Memo at Comment 13. There is no evidence on the record to suggest that gains on the sales of assets reported in TPBI's audited

² See *Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada*, 70 FR 73437 (December 12, 2005), and accompanying I&D Memo at Comment 11.

³ See the Department's first supplemental D questionnaire of February 8, 2011 (SDQ), at page 8, question 30.

⁴ See TPBI's March 11, 2011, response to SDQ at page 66, footnote 31.

financial statements are attributable to anything other than the routine disposition of assets. In the instant case, therefore, we have adjusted TPBI's reported G&A expenses to allow the offset for the gains on the sales of fixed assets.

Comment 2: For the *Preliminary Results*, the Department based Landblue's G&A rate and financial-expense ratio on Landblue's 2009 financial statements but stated that it would base the ratios on the company's 2010 financial statements for the final results. Echoing their arguments with respect to TPBI's submission of its 2010 financial statements discussed in Comment 1, the petitioners assert that Landblue failed to act to the best of its ability in providing its 2010 financial statements. The petitioners state that Landblue did not submit its 2010 financial statements until June 22, 2011, despite the Department's instructions in the February 14, 2011, supplemental section A questionnaire to provide them "within seven days of their completion." The petitioners argue that, by ignoring the Department's instructions and waiting to submit its financial statements until the day before the filing of case briefs, Landblue did not provide this information by the established deadline, significantly impeding the current review within the meaning of section 776(a)(2)(C) of the Act. The petitioners argue that the Department should reject the 2010 financial statements as untimely pursuant to 19 CFR 351.302(d).

The petitioners argue further that, even if the financial statements are not untimely, they are incomplete and unusable because Landblue did not include the auditors' opinion, Landblue did not submit the official Thai version, and Landblue did not explain an unreconciled difference between administrative expenses shown on the 2010 trial balance and those in the 2010 financial statements. The petitioners assert that the Department should base Landblue's G&A expense on Thantawan's 2010 financial statements as adverse partial facts available. The petitioners suggest that an adverse inference is warranted in this case because Landblue failed to act to the best of its ability to provide its complete 2010 financial statements within the time limits established.

The petitioners argue that, even if the Department concludes that an adverse inference is not warranted in this case, the G&A rate for Landblue should still be based on the Thantawan 2010 financial statements. The petitioners maintain that section 773(e)(2) of the Act requires that CV include amounts for "selling, general and administrative expenses" in connection with the production and sale of the foreign like product "for consumption in the foreign country" and that, because Landblue had no viable home market, its own G&A expenses are unrelated to consumption in the foreign country (Thailand). The petitioners assert that the Department should determine G&A expenses for Landblue based on Thantawan's experience, pursuant to section 773(e)(B)(iii) of the Act, which provides for the use of "any other reasonable method" for determining the components of CV when actual data are not available.

The petitioners also argue that, should the Department determine both that partial adverse facts available is not warranted and that Landblue's G&A rate should be based on its own and not on Thantawan's financial statements, then the Department should make certain adjustments to Landblue's 2010 G&A calculations. The adjustments proposed by the petitioners include increasing total G&A expenses for an unreconciled difference between the administrative expenses from the 2010 financial statements and the 2010 trial balance, the inclusion of certain expenses which the petitioners assert are typically G&A expenses, and revising the COGS denominator to reflect the amount shown in the 2010 financial statements.

Landblue argues that the petitioners are making assumptions that are factually unsupported and misleading and that they have provided insufficient justification for doing so. Landblue argues that the petitioners assume incorrectly that Landblue's 2010 financial statements could have been submitted earlier just because the 2009 financial statements were signed by the auditor on a certain date. Landblue asserts that financial statements are not immediately available after being signed by the auditor. According to Landblue, certain other events such as review by the board of directors and submission to the Thai government may occur before financial statements become available. Landblue continues that its statement in the March 14, 2011, supplemental response that the 2010 financial statements would be available in May 2011 was an estimate based on its experience in prior years.

Landblue takes issue with the petitioners' characterizations of the 2010 financial statements as incomplete and unusable. For example, it asserts, while the petitioners state that Landblue did not provide the auditors' opinion accompanying the 2010 financial statements, Landblue counters that the 2010 financial statements indicate clearly that they were prepared in accordance with Thai GAAP. Landblue maintains that the absence of the auditors' cover letter does not undermine the authenticity of the submitted financial statements. As to the petitioners' statement that Landblue did not provide the original version in the Thai language, Landblue explains that the English translation of the 2010 financial statements is the same as that of the 2009 financial statements submitted with the April 11, 2011, section D supplemental response. Landblue explains further that the English translation of the 2010 financial statements also identifies comparative 2009 data that was reflected in the 2009 financial statements and does not reflect any discrepancies. Regarding the unreconciled difference between administrative expenses in the 2010 financial statements and those in the 2010 trial balance to which the petitioners refer, Landblue states that it has provided the 2010 administrative expenses as recorded in the trial balance in the same format as that in which the 2009 expenses from the trial balance were provided. Landblue adds that, while the petitioners have provided no objection to its G&A calculation based on the 2009 financial statements, the Department may use its discretion and make the appropriate adjustments for the final results.

Regarding the petitioners' argument that the statute requires the Department to calculate CV using "selling, general and administrative expenses" in connection with the production and sale "for consumption in the foreign country" and, as such, precludes the use of Landblue's own financial statements to calculate the G&A rate, Landblue responds that the Department has rejected this argument in earlier cases. Landblue asserts that the Department has acknowledged that the statute directs the Department to use a respondent's own data as long as the books and records are in accordance with GAAP and are not distortive. Citing *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065, September 12, 2007, and accompanying I&D Memo at Comment 15, Landblue states that the Department has recognized that G&A and financial expenses are more general in nature and are not associated specifically with particular products or markets where merchandise is sold. Given that Landblue's own data are on the record, that the information was prepared in accordance with Thai GAAP, and that the information is non-distortive, Landblue urges the Department to continue to use the company's own financial statements as the source for the G&A rate for the final results.

Landblue refutes the petitioners' arguments that certain adjustments are necessary for use of Landblue's own G&A rate. Landblue argues that the expenses to which the petitioners refer as excluded G&A expenses have already been reported as part of overhead expenses. With respect to an adjustment for the unreconciled difference between the administrative expenses in the 2010 financial statements and those in the 2010 trial balance, Landblue argues that it has provided the 2010 administrative expenses as recorded in the trial balance in the same format in which it provided the 2009 trial balance expenses. Landblue states that the Department may use its discretion and make the appropriate adjustments for this unreconciled difference, but it should not reject the 2010 financial statements in their entirety. Finally, Landblue states that it inadvertently included the 2009 COGS figure in its calculation of the 2010 G&A rate and agrees that the appropriate denominator is the 2010 COGS.

The importers also rebut the petitioners' argument that the Department should reject Landblue's 2010 financial statements. The importers assert that the submissions were necessary to correct deficiencies in the record. Citing 19 CFR 351.301(c)(2), the importers argue that the Department may request factual information at any time during a proceeding.

Department's Position: Although the petitioners suggest that Landblue's submission was untimely, our section A supplemental questionnaire instructed Landblue to provide the financial statements within seven days of their completion. We did not define the term "completion." Further, our March 16, 2011, section D supplemental questionnaire instructed Landblue to provide the information "when available." We cannot make the assumption that, because the 2009 financial statements were signed as of a certain date last year, the 2010 statements would also be signed at approximately the same time. Moreover, even if the 2010 financial statements were signed at around the same time, there are certain events which often take place after an auditor signs the financial statements (*e.g.*, translation into English and submission to government authorities) before the statements are available. In response to the Department's request, Landblue provided its 2010 financial statements in time for interested parties to comment and for the Department to analyze them for the final results. The petitioners commented on the Landblue 2010 financial statements in their briefs. Therefore, for the final results, we have not rejected Landblue's 2010 financial statements as untimely.

We also determine that the application of partial adverse facts available to calculate the G&A rate is not warranted. Sections 776(a)(2)(A) through (C) of the Act provide that the Department shall use the facts otherwise available where a respondent either withholds requested information, fails to provide such information by the deadlines or in the form and manner requested, or significantly impedes a proceeding. In this case, Landblue did not withhold requested information from the Department, fail to provide such information by the deadlines, or significantly impede this proceeding. In response to the Department's request, Landblue submitted its 2010 financial statements and revised calculations of the G&A rate and financial-expense ratio. There is no evidence that Landblue withheld its 2010 financial statements intentionally, as the petitioners allege. Moreover, as a general rule, there is a preference for the use of a company's own data when a respondent has usable data on the record. Section 773(f)(1) of the Act recognizes the preference of a respondent's own books and records as long as they are

in accordance with GAAP and are not distortive.⁵ As such, for G&A we have determined that it is reasonable and appropriate to use Landblue's own data, in accordance with section 773(f) of the Act, for the final results.

Section 776(b) provides for an adverse inference with respect to the application of facts available where the Department finds that a respondent has not acted to the best of its ability to comply with a request for information. The petitioners argue that an adverse inference is appropriate in this case because Landblue did not act to the best of its ability. We disagree. As we have explained, there is no basis for the conclusion that Landblue has failed to cooperate. In fact, Landblue appears to have cooperated fully. We find that, pursuant to sections 776(a) and (b) of the Act, the application of facts available, with an adverse inference or otherwise, is not warranted. As discussed below, for these final results, we have calculated Landblue's G&A rate based on the company's own 2010 financial statements.

We have also determined not to adopt the petitioners' proposal to calculate Landblue's G&A expenses based on the Thantawan financial statements because Landblue's own G&A expenses are unrelated to the sale of the "foreign like product for consumption in the foreign country" (Thailand). As we discussed in the *Preliminary Results*, Landblue did not have a viable home market during the period of review. Therefore, the Department used CV as the basis for normal value. In accordance with our normal practice, we based G&A and financial expenses on Landblue's own data.⁶ In contrast to selling expenses and profit, G&A and financial expenses are not specifically tied to the markets where the foreign like product is sold. Therefore, unlike selling expenses and profit, the fact that a respondent does not have a viable comparison market does not render its own G&A or financial expenses unusable. While the petitioners suggest basing Landblue's G&A expense on Thantawan's experience pursuant to the "any other reasonable method" alternative for determining the G&A component of CV, section 773(e)(B) of the Act establishes the three alternatives in the event "actual data are not available." Here, Landblue's data are available. As discussed above, as a general rule, there is a preference for the use of a company's own data when a respondent has usable data on the record. Section 773(f)(1) of the Act recognizes the preference of a respondent's books and records as long as they are in accordance with GAAP and are not distortive. Accordingly, for G&A expenses, we have determined that it is reasonable and appropriate to use Landblue's own data to calculate this ratio in accordance with section 773(f) of the Act.⁷

Finally, as to the petitioners' three proposed adjustments to Landblue's G&A calculations, we agree in part. Regarding certain expenses the petitioners argue should be included in the G&A calculation, we reviewed information on the record of this case and found that Landblue has already reported these items as part of fixed overhead expenses. See the April 11, 2011, supplemental section D response at exhibits 1 and 9. We agree with the petitioners that we should make an adjustment to Landblue's G&A rate to include in the numerator the unreconciled

⁵ See *Certain Lined Paper Products From India: Notice of Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 10876 (February 28, 2011) (*Lined Paper from India*), and accompanying I&D Memo at Comment 1.

⁶ See, e.g., *Lined Paper from India* at Comment 1.

⁷ Although for the *Preliminary Results* we based both the G&A rate and financial-expense ratio on Landblue's own data, the petitioners' arguments focus only on the G&A rate.

difference between the administrative expenses from the 2010 financial statements and those reflected in the 2010 trial balance. Landblue recognized in its case brief that the amount of administrative expenses reflected in the 2010 financial statements is not the same as the amount it reported based on the 2010 trial balance. Therefore, for these final results, we have revised Landblue's 2010 G&A calculation to include this unreconciled difference. Finally, because Landblue based the calculation erroneously on the 2009 COGS, we have also revised the G&A rate to reflect the COGS from the 2010 financial statements.

2. *Financial Expense*

Comment 3: TPBI explains that in its June 15, 2011, submission it included an updated calculation of interest expense based on its completed 2010 financial statements and that it reduced its overall reported interest expenses by its net foreign-exchange gains. Citing *Certain Preserved Mushrooms From Indonesia: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order in Part*, 68 FR 11051 (March 7, 2003) (*Indonesia Mushrooms*), TPBI states that the Department normally includes, in the calculation of the financial expense ratio, all foreign exchange gains and losses. Therefore, TPBI argues, it is appropriate for the Department to reduce TPBI's interest expenses by its foreign exchange gains, consistent with TPBI's calculation of its interest expense. In the alternative, TPBI argues, if the Department should disallow its net foreign exchange gain as an offset to the financial expenses, the Department should allow the gain as an offset to its G&A expenses.

The petitioners counter TPBI's alternative argument, stating that foreign exchange gains and losses should be accounted for in the calculation of TPBI's financial expense, not in TPBI's G&A rate, citing *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 54847 (September 9, 2010), and accompanying I&D Memo at Comment 5.

Department's Position: As stated in *Indonesia Mushrooms*, the Department's practice is to include net foreign exchange gains and losses in the calculation of a company's financial expense ratio. This approach recognizes how the entity as a whole was able to manage its foreign currency exposure in any one currency. The Department also explained in *Indonesia Mushrooms* that there may be unusual circumstances in certain cases which may cause the Department to deviate from this general practice and that the Department will address exceptions on a case-by-case basis. See *Indonesia Mushrooms*, 68 FR at 11054. Given that there are no unusual circumstances presented here in the calculation of TPBI's interest expense, we do not find there is reason to deviate from this practice and adopt TPBI's alternate suggestion to allow foreign exchange gains to offset its G&A expenses. Accordingly, for the final results, we have included TPBI's net foreign exchange gain from its 2010 audited financial statements in the calculation of its financial expense ratio.

3. *CV Profit*

Comment 4: As explained in the *Preliminary Results*, the Department used the publicly available financial statements of Thantawan to calculate a CV-profit ratio for Landblue. Landblue comments that, based on the segment information from the 2010 Thantawan financial

statements, which provides revenue and expense data separately for each product line, while 77 percent of Thantawan's sales were of bag products, only 75 percent of the company's operating profits were from sales of bag products. Landblue also comments that Thantawan's sales of straw products, which account for 15 percent of total sales, generated 17 percent of profits. Consequently, Landblue argues, these numbers demonstrate a disproportionately high profit ratio of sales of non-subject merchandise (*i.e.*, straw products) which distorts the overall profit ratio.

Landblue proposes that the Department use the segment information from Thantawan's 2010 financial statements to calculate an adjustment factor which reflects the actual amount of profit attributable to sales of subject *versus* non-subject merchandise. Specifically, the respondent suggests applying an adjustment factor (calculated as the bags operating-profit share divided by the percentage of bag sales) and applying the factor to the CV-profit ratio that the Department calculated for the *Preliminary Results*.

Landblue asserts that, although in other determinations the Department has calculated CV profit based on the financial statements of another producer of both subject merchandise and non-subject merchandise in the same general category of the subject merchandise, the information available in such cases was not sufficiently detailed to calculate a product-specific CV profit. Landblue argues that, in this case, Thantawan's 2010 financial statements provide enough detail to identify the profit rate attributable to sales of subject merchandise and to distinguish this rate from the profit rate generated by sales of non-subject merchandise. Citing *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 49349 (September 27, 2001), and accompanying I&D Memo at Comment 8, Landblue asserts that the Department has held that "the greater the similarity in business operations and products, the more likely there is a greater correlation in the profit experience of the two companies."

Landblue also argues that the Department should include an amount for "management benefit expenses" from the 2010 Thantawan financial statements in the denominator of the calculation of the CV-profit ratio. Landblue asserts that, based on the description of these expenses from the Thantawan financial statements, they are general and administrative in nature and appropriate for inclusion in the denominator of the calculation of CV profit.

The petitioners reiterate their argument that the Department should base the profit ratio for Landblue on the profit rate it calculates for TPBI. If the Department decides to calculate CV profit using the Thantawan 2010 financial statements for the final results, the petitioners assert that the Department should not adjust the CV-profit ratio as Landblue proposes. Instead, they argue, the operating profit attributable to Thantawan's product lines is irrelevant because it does not account for the allocation of certain non-operating expenses among those product lines. Additionally, the petitioners assert the proposed adjustment factor is based on the relationship of operating profit to sales value, not operating profit to the COP, and that it would therefore be "mixing apples and oranges" to apply such a factor to the CV-profit ratio.

If the Department uses the segment information from Thantawan's 2010 financial statements for purposes of the CV-profit calculation, the petitioners urge the Department to calculate a CV-profit ratio based on the ratio of Thantawan's operating profits to costs for bag products and apply that ratio to the sum of Landblue's total cost of manufacturing and G&A expenses.

Department's Position: We disagree with Landblue's suggested methodology for adjusting the CV-profit ratio we calculated for the *Preliminary Results*. Landblue's proposed adjustment factor is based on the relationship of profit to sales revenue for bag products. It would be incongruous to apply a ratio calculated on this basis to the CV-profit percentage we calculated for the *Preliminary Results* because that ratio was based on the relationship of net profit to total costs. We do agree with Landblue that there is sufficient detail on the record of this case (*i.e.*, the segment information presented in the notes to the Thantawan financial statements) to permit a bag-specific calculation of CV profit. Therefore, for these final results, we used data from Thantawan's 2010 segment information to calculate a revised CV-profit ratio which reflects the profit as a percentage of total costs for bag products only.

With regard to Landblue's argument that management benefits should be included in the denominator of the CV-profit calculation, we agree. In calculating a ratio for CV profit when using surrogate financial statements, the Department normally includes in the denominator the cost of sales, selling, financial, and general and administrative expenses. Based on the description of the management-benefit expenses in the publicly available 2010 Thantawan financial statements that we used as a surrogate for CV profit for Landblue in the *Preliminary Results*, these expenses are general and administrative in nature because they relate to the general operations of the company as a whole. Therefore, we have included management-benefits expenses from the Thantawan financial statements in the denominator of our revised CV-profit ratio.

4: CV Selling Expenses

Comment 5: Landblue argues that the Department was incorrect to use Thantawan's total selling expenses, which include both direct and indirect selling expenses, to calculate selling expenses for CV. In accordance with section 773(e)(2)(B) of the Act and normal Department practice, Landblue contends that the Department should use only Thantawan's indirect selling expenses calculated on a ratio corresponding to Landblue's direct and indirect selling expenses. Citing *Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of Antidumping Duty Administrative Review*, 72 FR 9924 (March 6, 2007) (*Tubular Goods from Korea*), and accompanying I&D Memo at Comment 2, Landblue argues that the Department has recognized that direct selling expenses such various types of movement expenses should not be included in the selling-expense ratio pursuant to section 773(e) of the Act and, in the instant case, cannot arbitrarily assume that Thantawan's reported selling expenses did not include direct selling expenses.

In addition, Landblue argues, because a significant amount of Thantawan's exports indicates that its allocation of direct and indirect selling expenses is likely similar to Landblue's experience and because the Department finds Thantawan to be similar to Landblue to the extent that it is calculating selling expenses and profit based on the selling expenses and profit from Thantawan's financial statements, it is reasonable to make adjustments to Thantawan's total selling expenses to ensure that the selling-expense ratio reflects the experience of Landblue as closely as possible. Landblue argues further, citing *Tubular Goods from Korea* at Comment 2 and *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Thailand*, 69 FR 34122 (June 18, 2004) (*PRCBs from Thailand*), and accompanying

I&D Memo at Comment 4, that the Department should use Landblue's actual financial data for its direct and indirect selling expenses to calculate an adjustment factor to allocate a portion of Thantawan's selling expenses to direct selling expenses. For such an adjustment and for purposes of using a public figure that is within 10 percent of Landblue's actual figures, Landblue suggests using a ratio equivalent to 52 percent of Landblue's direct selling expenses and 48 percent indirect selling expenses and applying that ratio to Thantawan's selling expenses, using only the portion for indirect selling expenses in its calculation of CV.

Interplast states that it supports Landblue's position.

The petitioners argue that the Department should not recalculate Thantawan's selling expenses when calculating selling expenses for CV for two reasons. First, the petitioners argue, Landblue's reported direct selling expenses were comprised of expenses specific to Landblue whereas the Department cannot be certain as to whether or how much Thantawan's total expenses included such direct selling expenses. Second, citing to various determinations,⁸ the petitioners argue that the Department has stated that it "...cannot go behind line-items in the surrogate financial statements, {as} it is the Department's longstanding practice not to make adjustments that may introduce unintended distortions into the data rather than achieving greater accuracy..." and "...it is the Department's practice to accept data from the surrogate producer's financial statements *in toto*, rather than performing a line-by-line analysis of the types of expenses included in each category."

Department's Position: With no viable home market or third-country market, the Department has no Landblue sales and profit data upon which to base CV profit and CV selling expenses. Being unable to use the profit and selling expenses of another selected respondent in this review, we determined that it is appropriate to use the profit and selling expenses from the 2010 financial statements of a third company not under review, Thantawan, in accordance with section 773(e)(2)(B)(iii) of the Act. In addition and in the interest to adhere as closely as possible to the requirements set forth by statute, we used Landblue's G&A expenses in conjunction with Thantawan's profit and selling expenses in our calculation of CV in order to reflect as closely as possible the experience of the respondent in question, Landblue.

We find merit in Landblue's argument that we should adjust Thantawan's total selling expenses to exclude direct selling expenses by applying a ratio based on Landblue's reported direct and indirect selling expenses. Landblue argues correctly that, in accordance with the statute, it is the Department's practice to exclude direct selling expenses in the calculation of selling expenses for CV. Landblue is also correct that, in using Thantawan's total selling expenses figure in the calculation of CV, we should not assume that direct selling expenses were excluded from that

⁸ *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review*, 76 FR 22871 (April 25, 2011) (*Tires from the PRC*), and accompanying I&D Memo at Comment 11, *Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 9753 (February 22, 2011) (*Film from the PRC*), and accompanying I&D Memo at Comment 1, and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011) (*Bearings from the PRC*), and accompanying I&D Memo at Comment 16.

figure. Although Thantawan's total selling expenses do not provide details on whether the expenses are direct or indirect in nature, adjusting Thantawan's total selling expenses by applying a ratio of only Landblue's indirect selling expenses to Thantawan's total selling expenses prior to calculating selling expenses for CV would result in CV selling expenses that reflect Landblue's experience more closely. See *Tubular Goods from Korea* at Comment 2, where we made a similar adjustment to SeAH Steel Corporation's salary expenses, retirement expenses, and employee-benefit expenses based on a ratio derived from Husteel Co., Ltd.'s reported selling expenses. We also agree with Landblue's argument that such a ratio should be a figure which Landblue has adjusted to be within ten percent of the actual figure to avoid the exposure of Landblue's business-proprietary information.

On the other hand, we disagree with the petitioners that we should not adjust Thantawan's total expenses as suggested by Landblue because there is no evidence of the nature or amount of direct selling expenses included in Thantawan's reported total selling expenses and because it is not appropriate to "go behind line items" on or make adjustments to surrogate financial statements used in its CV calculation. It is true that, based on Thantawan's 2010 financial statements, we do not know with certainty the nature and the proportion of direct to indirect selling expenses which are included in Thantawan's reported total selling expenses. We have concluded, however, that it is reasonable to assume that based on normal commercial practices Thantawan's total selling expenses include both direct and indirect selling expenses. We also believe it is reasonable to conclude that the nature and proportion of direct and indirect selling expenses are similar to those of Landblue because Thantawan is a Thai producer of similar merchandise, has a similar customer base, and operated with a profit.

It is our longstanding practice not to make adjustments that may introduce unintended distortions into the data rather than achieving greater accuracy. See, e.g., *Film from the PRC* at Comment 1. We do not believe this determination differs from that practice. In the cited determinations, we wanted to avoid "reading into" or "reclassifying" specific line items so as to not introduce unintended distortions. In the instant case, we are accepting what was included in Thantawan's financial statements *in toto* to the extent that it serves our purpose in satisfying the requirements of section 773(e)(2)(B) of the Act. Because we accept that the selling expenses in Thantawan's statements are comprised of both direct and indirect expenses, no adjustment of the expenses to exclude direct selling expenses would likely introduce unintended distortions rather than avoid them. Accordingly, an adjustment is necessary.

The petitioners also argue against any adjustments to Thantawan's selling expenses, citing as support several determinations made by the Department in previous cases where the Department decided to accept data from the surrogate producer's financial statements only *in toto*. See, e.g., *Tires from the PRC* at Comment 11, *Film from the PRC* at Comment 1, *Bearings from the PRC* at Comment 16, and *Lined Paper from India* at Comments 2 and 3. With respect to the determination in *Film from the PRC* and *Paper from India*, the Department's goal was to select the most appropriate financial statements to be used as a surrogate which closely reflected the experience of the respondent in question. See, e.g., *Film from the PRC* at Comment 1 and *Paper from India* at Comment 1. That differs from the facts in this case where the Department is trying to determine whether to use specific expenses within a single financial statement.

With respect to the determinations in *Tires from the PRC* and *Bearings from the PRC*, the Department's task was to classify or reclassify specific known expenses for the particular firm, again in order to reflect as closely as possible the experience of the respondent in question. See, e.g., *Tires from the PRC* at Comment 11 and *Bearings from the PRC* at Comment 16. In the instant case, the issue is whether to use total selling expenses or only a portion thereof in our calculation of CV. Again, the facts of this case are not the same.

While the facts in the cases discussed above differ from the instant case, there is a unifying theme in the determinations made in the cases cited by both the petitioners and Landblue, particularly the determinations made in *Tubular Goods from Korea* at Comment 2 and *PRCBs from Thailand* at Comment 4 cited by Landblue, that guides our decision in the instant case. In each determination and in accordance with 773(e)(3) of the Act and normal Department practice, direct selling expenses are excluded from the calculation of CV and, in each determination, pursuant to 773(f)(1) of the Act, the Department intended to reflect the actual commercial experience of the respondent in its calculations. Ideally for the instant case we would use Landblue's home-market and third-country sales data for our calculations. Because this is not an option, we have determined that the best means of reflecting Landblue's commercial experience as closely as possible in our calculations is to use Landblue's G&A expenses in conjunction with the profit and selling expenses from a surrogate company and adjust the surrogate selling expenses by excluding direct selling expenses in our calculation of CV. Our decision in this case is fully consistent with previous determinations.

5. *Zeroing of Negative Margins*

Comment 6: Landblue argues that, because the Department has acknowledged its revision of its previous interpretation of section 771(35) of the Act to adhere to its WTO obligations by ceasing its zeroing practice in investigations referring to *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006) (*Final Modification in Investigations*), it is not reasonable for the Department to construe section 771(35) of the Act in a contradictory fashion for administrative reviews and, therefore, it should not apply the zeroing methodology in the final results of review. In addition, citing *Dongbu Steel Co., Ltd. v. United States*, 635 F.3d 1363 (CAFC 2011) (*Dongbu Steel*), Landblue argues that, because the CAFC has rejected the Department's argument that the meaning of section 771(35) of the Act may be interpreted differently depending on the stage of the antidumping proceeding, the use of zeroing in administrative reviews is inconsistent with its non-use of zeroing in investigations. Although the courts have accepted the use of zeroing in administrative reviews up until the decision in *Dongbu Steel*, Landblue states that the courts have recognized the practice of zeroing "distorts" the margin calculation, citing *Corus Staal BV vs. United States Department of Commerce*, 259 F. Supp. 2d 1253, 1261 (CIT 2003). Landblue argues that such distortions are contrary to the Department's primary purpose of calculating dumping margins as accurately as possible.

TPBI argues that, because the WTO has struck down the U.S. practice of zeroing in both original investigations and administrative reviews, the continued use of zeroing in administrative reviews

is in violation of the Department's WTO obligations and the Department should cease its practice of zeroing in this and all administrative reviews.⁹

The importers support the positions of Landblue and TPBI.

The petitioners argue that the Department's interpretation of section 771(35) of the Act with respect to investigations and administrative reviews is not inconsistent. Citing the Department's decision in *Certain Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*, 76 FR 36089 (June 21, 2011) (*Steel Pipe*), and accompanying I&D Memo at Comment 1, the petitioners assert that the U.S. Supreme Court explained in *Chevron v. Natural Res. Def. Council*, 467 U.S. 837 (1984), that, when the language and congressional intent behind a statutory provision is ambiguous, an administrative agency has discretion to interpret that provision reasonably and that different interpretations of the same provision in different contexts is permissible. Further, the petitioners maintain, based on the Department's decision in *Steel Pipe* at Comment 1, the Department is able to interpret the statute differently between investigations and administrative reviews because investigations and administrative reviews are different proceedings with different purposes. The petitioners continue that the CAFC has upheld as reasonable the continued application of zeroing in administrative reviews even after the Department changed its practice to eliminate zeroing in investigations, citing *SKF USA Inc. v. United States*, 630 F.3d 1365 (CAFC 2011) (*SKF USA*).

Department's Position: We have not changed our calculation of the weighted-average dumping margins for these final results of review with respect to our zeroing methodology. Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price and constructed export price of the subject merchandise" (emphasis added). Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export price (EP) or constructed export price (CEP). We disagree with the respondents that our zeroing practice is an inappropriate interpretation of the Act. Because no dumping margins exist with respect to sales where normal value is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of section 771(35) of the Act. See, e.g., *Timken Co. v. United States*, 354 F.3d 1334, 1342 (*Timken*), and *Corus Staal v. Department of Commerce*, 395 F.3d 1343, 1347-49 (CAFC 2005) (No. 04-1107) (*Corus I*).

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or

⁹ TPBI cites *United States - Measures Relating to Zeroing and Sunset Reviews*, WTIDS3221AB/R at para, 137-138 (January 23, 2007), *United States - Anti-Dumping Measure on Shrimp from Ecuador*, WT/DS335/R, at paras, 7.43, 8.1 (January 30, 2007) (finding zeroing inconsistent with the WTO Antidumping Agreement "as applied" to the investigation at issue; ruling issued after *United States - Measures Relating to Zeroing and Sunset Reviews*, thereby confirming the line of decisions holding zeroing inconsistent with the WTO Antidumping Agreement), and *United States - Laws, Regulations, and Methodology for Calculating Dumping Margins ("Zeroing")*, WTIDS294/AB/R at paras, 133, 263(a)(i) (April 18, 2006) (finding zeroing inconsistent with the WTO Antidumping Agreement "as applied" to the reviews at issue).

producer by the aggregate export prices and constructed export prices of such exporter or producer.” We apply these sections by aggregating all individual dumping margins, each of which is determined by the amount by which normal value exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term “aggregate dumping margins” in section 771(35)(B) of the Act is consistent with the Department’s interpretation of the singular “dumping margin” in section 771(35)(A) of the Act, as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the normal value permitted to offset or cancel the dumping margins found on other sales. This does not mean that we disregard non-dumped sales in calculating the weighted-average dumping margin. It is important to recognize that the weighted-average margin will reflect any non-dumped merchandise examined during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

The CAFC explained in *Timken* that denial of offsets is a “reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to ‘mask’ sales at less than fair value.” See *Timken*, 354 F.3d at 1342. As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate “masked dumping” before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales. See, e.g., *Timken*, 354 F.3d at 1343, *Corus I*, 395 F.3d 1343, and *NSK Ltd. v. United States*, 510 F.3d 1375, 1381 (CAFC 2007).

With regard to TPBI’s reliance on the Department’s obligations to the WTO, in 2007, the Department implemented a modification of its calculation of weighted-average dumping margins when using average-to-average comparison in antidumping investigations. See *Final Modification in Investigations*. With this modification, the Department’s interpretation of the statute with respect to non-dumped comparisons was changed within the limited context of investigations using average-to-average comparisons. Adoption of the modification pursuant to the procedure set forth in section 123(g) of the URAA was specifically limited to address adverse WTO findings made in the context of antidumping investigations using average-to-average comparisons. The Department’s interpretation of the statute was unchanged in all other contexts.

It is reasonable for the Department to interpret the same ambiguous language differently when using different comparison methodologies in different contexts. In particular, the use of the word “exceeds” in section 771(35)(A) of the Act can reasonably be interpreted in the context of an antidumping investigation to permit negative average-to-average comparison results to offset or reduce the amount of the aggregate dumping margins used in the numerator of the weighted-average dumping margin as defined in section 771(35)(B) of the Act. The average-to-average comparison methodology typically applied in antidumping duty investigations averages together high and low prices for directly comparable merchandise prior to making the comparison. This means that the determination of dumping is not made for individual sales but rather at an “on average” level of comparison. For this reason, the offsetting methodology adopted in the limited

context of an investigation using average-to-average comparisons is a reasonable manner of aggregating the comparison results produced by this comparison method. Thus, with respect to how negative comparison results are to be regarded under section 771(35)(A) of the Act, it is reasonable for the Department to consider whether the comparison result in question is a product of an average-to-average comparison or an average-to-transaction comparison.

In *United States Steel Corp. v. United States*, 621 F.3d 1351 (CAFC 2010) (*U.S. Steel*), the CAFC considered the reasonableness of the Department's interpretation not to apply zeroing in the context of investigations using average-to-average comparisons while continuing to apply zeroing in the context of investigations using average-to-transaction comparisons pursuant to the provision at section 777A(d)(1)(B) of the Act. Specifically, in *U.S. Steel*, the CAFC was faced with the argument that, if zeroing was never applied in investigations, then the average-to-transaction comparison methodology would be redundant because it would yield the same result as the average-to-average comparison methodology. The Court acknowledged that the Department intended to continue to use zeroing in connection with the average-to-transaction comparison method in the context of those investigations where the facts suggest that masked dumping may be occurring. See *U.S. Steel*, 621 F.3d at 1363. The Court then affirmed as reasonable the Department's application of its modified average-to-average comparison methodology in investigations in light of the Department's stated intent to continue zeroing in other contexts. *Id.*

In addition, the CAFC has upheld, as a reasonable interpretation of ambiguous statutory language, the Department's continued application of zeroing in the context of an administrative review completed after the implementation of the *Final Modification in Investigations*. See *SKF USA*. In that case, the Department had explained that the changed interpretation of the ambiguous statutory language was limited to the context of investigations using average-to-average comparisons and was made pursuant to statutory authority for implementing an adverse WTO report. We find that our determination in this administrative review is in accordance with the CAFC's recent decision in *SKF USA*.

We disagree with Landblue's argument that the CAFC's recent decision in *Dongbu Steel* requires us to change our methodology in this administrative review. The holding of *Dongbu Steel* and the recent decision in *JTEKT Corporation v. US*, 2010-1516, -1518 (CAFC June 29, 2011) (*JTEKT*), was limited to finding that the Department had not explained the different interpretations of section 771(35) of the Act in the context of average-to-average comparisons in investigations *versus* average-to-transaction comparisons in administrative reviews adequately, but the CAFC did not hold that these differing interpretations were contrary to law. Importantly, the panels in neither *Dongbu Steel* nor *JTEKT* overturned prior CAFC decisions affirming zeroing in administrative reviews including *SKF USA* in which the Court affirmed zeroing in administrative reviews, notwithstanding the Department's determination to no longer use zeroing in investigations with average-to-average comparisons. Unlike the determinations examined in *Dongbu Steel* and *JTEKT*, we are providing additional explanation here for our changed interpretation of the statute subsequent to the *Final Modification for Antidumping Investigations* whereby we interpret section 771(35) of the Act differently for investigations when using average-to-average comparisons and administrative reviews using average-to-transaction comparisons. For all these reasons, we find that our determination is consistent with the holdings in *Dongbu Steel*, *JTEKT*, *U.S. Steel*, and *SKF USA*.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the review and the final dumping margins for all of the reviewed firms in the *Federal Register*.

Agree _____

Disagree _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date