

***Diamond Sawblades Manufacturers Coalition v. United States and Ehwa
Diamond Industrial Co., Ltd., SH Trading, Inc., and Shinhan Diamond Industrial Co.
Ltd., Court No. 06-00248; Slip Op. 13-130 (CIT 2013)***

~~BUSINESS PROPRIETARY VERSION~~

PUBLIC VERSION

SUMMARY

The Department of Commerce (Department) prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (Court or CIT), issued on October 11, 2013, in *Diamond Sawblades Manufacturers Coalition v. United States*, Court No. 06-00248, Slip Op. 13-130 (CIT October 11, 2013) (*DSMC*). The Court issued its opinion and remand order following consolidated challenges to the Department's final determination in the less than fair value (LTFV) investigation of diamond sawblades and parts thereof (DSB) from the Republic of Korea.¹ The Court remanded the *Final Determination* to the Department with respect to six issues and granted the Department a voluntary remand on one issue.

In accordance with the Court's remand order and in reconsideration of the record evidence, the Department recalculated the LTFV margins for Ehwa Diamond Industrial Co., Ltd. (Ehwa) and SH Trading Inc. and Shinhan Diamond Industrial Co. Ltd. (collectively, Shinhan).

REMAND SCHEDULE

The Court issued its ruling on October 11, 2013. On January 27, 2014, the United States moved for an extension from the Court for its remand results, which the court granted on February 4, 2014. In connection with the Court's remand of the Department's determination not to require Section E questionnaire responses from two of the respondents in the LTFV

¹ See Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: *Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 22, 2006) (*Final Determination*).

investigation, Ehwa and Shinhan,² on January 31, 2014, the Department requested certain information from Ehwa and Shinhan. Having received extensions from the Department, both Ehwa and Shinhan submitted their respective responses on February 14, 2014.³ On February 24, 2014, and February 28, 2014, the Diamond Sawblades Manufacturers Coalition, petitioner in the underlying LTFV investigation (Petitioner or DSMC), requested extensions of time to submit factual information in response to Ehwa's and Shinhan's responses for which the Department established a deadline of February 28, 2014 and March 4, 2014, respectively.⁴ We did not receive any factual information from the Petitioner in response to Ehwa and Shinhan's response.

On March 14, 2014, the Department requested additional information from Ehwa and Shinhan regarding their Section E questionnaire responses. On March 26, 2014, the United States moved for a second extension from the court for its remand results, which the court granted on March 27, 2014. On April 11, 2014, Ehwa and Shinhan submitted their Section E questionnaire responses after receiving extensions from the Department. On April 22, 2014, and April 24, 2014, the DSMC requested extensions of time to submit factual information in response to Ehwa's and Shinhan's responses for which the Department established a deadline of April 25, 2014,⁵ which was later extended until April 28, 2014. We received factual information

² See, e.g., *DSMC*, Slip Op. 13-130 at 32.

³ See Letter from Ehwa, "Ehwa's Response to Question One of The Department's January 31, 2014, *Request for Information: REMAND CONCERNING THE ANTIDUMPING DUTY ORDER ON DIAMOND SAWBLADES AND PARTS THEREOF FROM THE REPUBLIC OF KOREA* (CASE NO: A-580-855) (POI: 04/01/2004-3/31/2005)" dated February 14, 2014 and Letter from Shinhan, "Diamond Sawblades and Parts Thereof from Korea; Remand Shinhan Response to Question 1 of Jan. 31, 2014 Letter" dated February 14, 2014.

⁴ See Department's Letter, "Diamond Sawblades Manufacturers Coalition v. United States and Ehwa Diamond Industrial Co., Ltd., SH Trading, Inc., and Shinhan Diamond Industrial Co. Ltd., Court No. 06-00248; Slip Op. 13-130 (CIT 2013): Granting request to submit rebuttal factual information" dated February 25, 2014.

⁵ See Department Letters, "Diamond Sawblades Manufacturers Coalition v. United States and Ehwa Diamond Industrial Co., Ltd., SH Trading, Inc., and Shinhan Diamond Industrial Co. Ltd., Court No. 06-00248; Slip Op. 13-130 (CIT 2013): Granting request to submit rebuttal factual information" dated April 23, 2014, and "Diamond Sawblades Manufacturers Coalition v. United States and Ehwa Diamond Industrial Co., Ltd., SH Trading, Inc., and Shinhan Diamond Industrial Co. Ltd., Court No. 06-00248; Slip Op. 13-130 (CIT 2013): Granting request to submit rebuttal factual information" dated April 25, 2014.

from the DSMC on April 28, 2014.⁶ On May 5, 2014, we established a deadline for Shinhan and Ehwa to submit rebuttal comments to the DSMC's factual information submission and requested additional information from Ehwa.⁷ Having extended the deadline, we received rebuttal comments from Ehwa & Shinhan on May 9, 2014⁸ and additional information from Ehwa on May 12, 2014.⁹

On May 23, 2014, we released our draft results of redetermination and established a schedule for interested parties to submit comments.¹⁰ We did not receive comments with respect to our draft results of redetermination by the deadlines established.¹¹

ISSUE 1: VOLUNTARY REMAND FOR RECALCUATION OF EHWA'S DIVISIONAL INDIRECT SELLING EXPENSES

Background

During the LTFV investigation, Ehwa initially reported that only its Stone and Construction Division produced subject merchandise. Accordingly, Ehwa reported an indirect selling expense (ISE) ratio for this division exclusively. At the time of the *Preliminary Results*,

⁶ See letters from DSMC, "Diamond Sawblades and Parts Thereof from South Korea: Comments on Shinhan's April Response to the Department's Request for Information" and "Diamond Sawblades and Parts Thereof from South Korea: DSM's Comments on Ehwa's Further Manufacturing Costs" dated April 28, 2014 (Petitioner's April 28, 2014 letters).

⁷ See Department letters to Shinhan and Ehwa dated May 5, 2014.

⁸ See letters for Ehwa, "Ehwa's Response to the Petitioner's April 28, 2014 Comments on Ehwa's Further Manufacturing Costs: REMAND CONCERNING THE ANTIDUMPING DUTY ORDER ON DIAMOND SAWBLADES AND PARTS THEREOF FROM THE REPUBLIC OF KOREA (CASE NO: A-580-855) (POI: 04/01/2004-3/31/2005)" and Shinhan, "Diamond Sawblades and Parts Thereof from Korea; Remand Shinhan Rebuttal to Petitioner April 28 Comments" dated May 9, 2014 (Respondents' May 9, 2014 letters).

⁹ See letter from Ehwa, "Ehwa's Response to the Department's May 5, 2014 Third Supplemental Questionnaire: REMAND CONCERNING THE ANTIDUMPING DUTY ORDER ON DIAMOND SAWBLADES AND PARTS THEREOF FROM THE REPUBLIC OF KOREA (CASE NO: A-580-855) (POI: 04/01/2004-3/31/2005)" dated May 12, 2014.

¹⁰ See Department Memoranda, "Diamond Sawblades Manufacturers Coalition v. United States and Ehwa Diamond Industrial Co., Ltd., SH Trading, Inc., and Shinhan Diamond Industrial Co. Ltd., Court No. 06-00248; Slip Op. 13-130 (CIT 2013)" and "Diamond Sawblades Manufacturers Coalition v. United States Court No. 06-00248, Slip Op. 13-130 (CIT October 11, 2013), Draft Remand Comment Deadlines" dated May 23, 2014.

¹¹ The DSMC filed an untimely request to extend the deadline to submit comments regarding the Department's draft results, which, we did not grant. See Department letter, "Diamond Sawblades Manufacturers' Coalition's Request for Extension of Time to Submit Comments on Draft Remand" dated June 9, 2014. On June 9, 2014, the DSMC filed untimely comments on the Draft Remand which we rejected. See Department letter, "Rejecting the Diamond Sawblades Manufacturers' Coalition's June 9, 2014 Submission" dated June 11, 2012.

the Department issued a scope ruling, based on a request for confirmation from Ehwa, that certain merchandise produced in Ehwa's Industrial Division was also subject merchandise.¹² At verification, we found that the U.S. ISE which Ehwa reported did not include the Industrial Division's ISE. We obtained the Industrial Division's U.S. ISE information as part of the ISE reconciliation at Ehwa's U.S. constructed export price (CEP) verification.¹³ These were expenses incurred by the Industrial Division of Ehwa's U.S. affiliate General Tool, Inc. (General Tool). During the administrative briefing stage, Petitioner argued that Ehwa's ISE ratio should include the Industrial Division's selling expenses.¹⁴ We agreed with Petitioner in principle but elected not to adjust Ehwa's ISEs because of the negligible impact of the adjustment.¹⁵ The CIT granted a voluntary remand request on this issue.¹⁶

Analysis

In the *Final Determination*, the Department calculated a home market ISE ratio which included both the Stone and Construction Division and the Industrial Division and used it in the final margin calculation.¹⁷ That is, ISEs incurred in Korea by both divisions were included in the calculation of the INDIRSH field (ISEs incurred in Korea on Korean sales) and the DINDIRSU field (ISEs incurred in Korea on U.S. sales). In the *Final Determination*, however, the expenses incurred by the Industrial Division of General Tool were not included by the Department in its calculation of the ISEs incurred in the United States on U.S. sales (INDIRSU field). Rather, as noted in the Background section above, the Department stated that while we agreed that

¹² See Department Memorandum, "Consideration of Scope Exclusion and Clarification Requests" dated December 20, 2005, at 8.

¹³ See Department Memorandum, "Verification of the U.S. Constructed Export Price (CEP) Sales Response of Ehwa Diamond Industrial Co., Ltd." dated April 10, 2006, at 16.

¹⁴ See *Final Determination* and accompanying Issues and Decision Memorandum (IDM) at Comment 19

¹⁵ *Id.*

¹⁶ *DSMC*, Slip Op. 13-130 at 8.

¹⁷ See Department Memorandum, "Final Determination Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the Republic of Korea, Sales Calculation Memorandum for Ehwa Diamond Industrial Co., Ltd." dated May 15, 2006, at Attachment 1; see also Attachment 3 at line 2210 and Attachment 5 at line 2213.

Industrial Division's ISEs should be included in calculating ISEs incurred in the United States, we elected not to adjust Ehwa's U.S. ISEs because of the negligible impact. Thus, for the *Final Determination*, we only used U.S. ISEs incurred by the Stone and Construction Division in the United States.

To be consistent with our treatment of the Industrial Division on the home market side (*i.e.*, because home market Industrial Division ISEs were included in the calculation of the final margin), we recalculated U.S. ISEs to include Industrial Division ISEs. Specifically, using the information obtained at verification regarding the U.S. ISE incurred by Ehwa's U.S. affiliates,¹⁸ the Department calculated for this final remand a U.S. ISE ratio (for use in the INDIRSU field) that includes expenses incurred by both the Stone and Construction Division and the Industrial Division.¹⁹ The Department also recalculated Ehwa's margin using this revised ISE ratio.²⁰

ISSUE 2: EXCLUSION OF EHWA'S INTER-COMPANY INDIRECT SELLING EXPENSES

Background

During the period of investigation (POI), Ehwa made all of its sales to the United States through one of its U.S. affiliates, General Tool, which either sold to unaffiliated parties, or sold to a second U.S. affiliate of Ehwa, Dia-Technology, Inc. (Dia-Tech). This second U.S. affiliate in turn either sold to unaffiliated parties, or sold to two other U.S. affiliates of Ehwa (Maverick Diamond (Maverick) and Diamond Vantage, Inc. (DVI)), who both then sold to unaffiliated parties. Ehwa initially reported a consolidated ISE ratio for the four affiliated resellers which excluded inter-company sales. The Department instructed Ehwa to submit a separate ratio for

¹⁸ See Ehwa's CEP Verification Exhibits 1 and 34.

¹⁹ See Department Memorandum, "*Diamond Sawblades Manufacturers Coalition v. United States* Court No. 06-00248, Slip Op. 13-130 (CIT October 11, 2013), Draft Remand Calculation for Ehwa Diamond Industrial Co., Ltd." May 21, 2014 (Ehwa Draft Remand Calculation Memorandum) at Attachment 1.

²⁰ *Id.*

each affiliate.²¹ At the administrative briefing stage, Petitioner argued that: (1) separate ISE ratios should be calculated for each affiliate, and these ratios should be based on the total price including transfer prices between affiliates; (2) sales made by the second affiliate (Dia-Tech) must account for its own selling expenses plus General Tool's selling expenses, while sales made by the third and fourth affiliates (Maverick and DVI) must account for their respective selling expenses plus General Tool's and Dia-Tech's selling expense;²² and (3) the LTFV investigation record contained Department-verified information necessary to calculate the required ISE ratios inclusive of inter-company sales.²³

For the *Final Determination*, the Department first calculated ISE ratios specific to each of the four U.S. affiliates that sold subject merchandise to the unaffiliated customers by dividing the total ISE of each U.S. company by its respective total value of sales to unaffiliated customers. The total value of sales to unaffiliated customers was calculated by subtracting the total value of transfers to affiliates from the total value of sales to all parties. To determine the ISE for each sale, the Department applied each affiliate's ISE ratio to the per-unit price charged by that affiliate to its unaffiliated customers. As a result of this methodology, the Department did not "stack" the ISEs incurred by each affiliate. For instance, the Department did not apply General Tool's ratio to the sales of the other three affiliates, even though all U.S. sales to unaffiliated customers by the other three affiliates went through General Tool first. In the *Final Determination*, we stated that selling expenses are incurred when selling to external customers and not for transfers between affiliates.²⁴

²¹ See Department's October 28, 2005, Supplemental Questionnaire at 14.

²² In its position, the Department referred to this as "stacking" expenses. See *Final Determination* and IDM at Comment 20.

²³ See letter from Petitioner, "Diamond Sawblades and Parts Thereof from Korea: Revised Case Brief" dated May 18, 2006 at 75.

²⁴ See *Final Determination* and IDM at Comment 20.

The CIT remanded for further clarification and stated that an ISE “‘incurred’ with respect to the ultimate customer is no less ‘incurred’ at each stage of transacting the merchandise.”²⁵ In addition, the CIT did not discern a double counting concern with stacking these expenses and stated that “Commerce is not precluded from reconsidering the issue anew, as long as it provides a reasonable explanation therefor.”²⁶

Analysis

The Department reconsidered its determination not to include the inter-company expenses with the company-specific expenses of selling to the unaffiliated customers. As discussed further below, in analyzing the methodology anew, we find that all selling expenses incurred by the U.S. affiliates were actually already reported and used in our *Final Determination* calculations. However, they were only allocated to the unaffiliated sales made by the affiliate that incurred them, even though ISEs incurred by two of the affiliates (General Tool and Dia-Tech) supported not only their respective sales to unaffiliated customers, but also the unaffiliated sales made by Maverick and DVI (as noted above, all sales made by Maverick and DVI went through General Tool and Dia-Tech first). Thus, for the reasons discussed below, the Department recalculated Ehwa’s U.S. ISEs to allocate the ISEs to the correct universe of sales (*i.e.*, not just to the direct unaffiliated sales).²⁷

In establishing CEP, the Department’s regulations at 19 CFR 351.402(b) state that adjustments are made to “expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid.” The *Preamble* to the Department’s regulations states that the phrase “no matter where or when paid” is intended to indicate that if commercial activities occur in the United States and relate to the sale to an

²⁵ See *DSMC*, Slip Op. 13-130 at 9.

²⁶ *Id.* at 10.

²⁷ See Ehwa Draft Remand Calculation Memorandum at 2 and Attachment 2.

unaffiliated purchaser, expenses associated with those activities will be deducted from CEP even if, for example, the foreign parent of the affiliated U.S. importer pays those expenses.²⁸ Thus, a respondent's ISEs do not have to be incurred by the party whose gross selling price we start with for our CEP calculation. For example, in an antidumping administrative review of stainless steel sheet and strip coils from Italy, we found technical services expenses in the home market were related to economic activity in the United States.²⁹ Rather, the relevant factor in determining whether an expense should be treated as part of the CEP deduction pursuant to section 772(d) of the Tariff Act of 1930, as amended (the Act), is where the commercial activity associated with the expense relating to the sale to an unaffiliated purchaser occurs, not necessarily who pays for it. Therefore, the Department will analyze the expenses associated with commercial activity occurring in the United States that relate to a sale to an unaffiliated purchaser, including expenses incurred by upstream affiliates, who transfer subject merchandise to downstream affiliated parties, who sell it to unaffiliated purchasers.

As noted above, in the *Final Determination*, the Department did not actually disregard any of the affiliates' ISEs (whether incurred on unaffiliated sales or sales to another affiliate). Rather, the Department allocated the total ISEs of each affiliate only to that affiliate's sales to unaffiliated customers; that is, total ISEs incurred by each affiliate were divided by the total sales by each affiliate to unaffiliated customers. The resulting ISE ratio was then only applied to that affiliate's sales to unaffiliated customers and not to subsequent sales by downstream affiliates to unaffiliated customers (even when those subsequent sales passed through upstream affiliates first).

²⁸ See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27351 (May 19, 1997).

²⁹ See *Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 70 FR 7472 (February 14, 2005) IDM at Comment 3.

Accordingly, the Department is determining to revise its ISE calculations to reflect that ISEs were incurred by the various affiliates involved in selling the merchandise to an unaffiliated customer, specific to the facts of the particular sales. That is, we find General Tool's ISEs are expenses associated with commercial activities in the United States that relate to all sales of subject merchandise in the United States regardless of which affiliate sold the merchandise to the unaffiliated purchaser. Similarly, we find Dia-Tech's ISEs also relate to all sales of subject merchandise in the United States sold by Dia-Tech, DVI, and Maverick. Therefore, we recalculated the ISE ratios for each of Ehwa's U.S. affiliates, as described below, mindful to not double count any expenses while applying the ratios to a different universe of sales.³⁰

As mentioned above, General Tool sold to unaffiliated purchasers and a second U.S. affiliate of Ehwa, Dia-Tech. Dia-Tech sold to unaffiliated purchasers and to two other U.S. affiliates of Ehwa, DVI and Maverick. To ensure no over counting of expenses, we included intercompany sales, along with sales to unaffiliated customers, in the denominators used in the calculation of General Tool's and Dia-Tech's ISE ratios. Then, for the purposes of this final remand, we applied General Tool's ISE ratio to its sales, as well as to sales made by Dia-Tech, DVI, and Maverick. We applied Dia-Tech's ISE ratio to its sales, as well as to sales made DVI and Maverick. As in the *Final Determination*, we applied DVI's and Maverick's ISE ratios to their respective unaffiliated sales. Finally, the Department recalculated Ehwa's margin in light of these ISE recalculations.³¹

³⁰ See Ehwa Draft Remand Calculation Memorandum at 2 and Attachment 2.

³¹ *Id.* at 2 at Attachments 2 and 4.

ISSUE 3: THE DECISION TO EXEMPT RESPONDENTS FROM SUBMITTING SECTION E QUESTIONNAIRE RESPONSE

Background

In the LTFV investigation, the Department exempted Ehwa and Shinhan from submitting section E questionnaire responses as well as from reporting their further manufactured (FM) sales as each claimed that its FM sales constituted less than five percent of their total sales to the United States.³² The CIT stated that, in the light of the Department's section 129 determination,³³ the effect of the section E questionnaire exemptions and absence of further manufacturing cost information could conceivably be case-determinative.³⁴ The CIT remanded to the Department the decision not to require section E responses from the respondents for the Department to consider the Petitioner's arguments, including that:

- According to Petitioner, the LTFV record demonstrated "substantial" FM-added value;³⁵
- According to Petitioner, Ehwa understated its FM sales by basing the value on [

],³⁶

- According to Petitioner, both respondents argued before the U.S. International Trade Commission (ITC) that their sales to the United States of FM items were significant enough for the respondents to be considered part of the domestic industry.³⁷

The CIT further instructed the Department to explain its alleged policy of section E questionnaire exemptions based on claimed sales volume rather than value when section E

³² See *Final Determination* and IDM at Comment 5 at 25; see also Department's October 14, 2005 Letter, at 2.

³³ See Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the Republic of Korea, 76 FR 66892 (Oct. 28, 2011) (129 Determination).

³⁴ *DSMC*, Slip Op. 13-130 at 30; see also 129 Determination.

³⁵ *Id.* at 31.

³⁶ *Id.*

³⁷ *Id.* at 31-32.

questionnaires purport to assess FM/assembly value added in the United States.³⁸ Finally, the CIT stated that Commerce is not precluded from soliciting section E information from the respondents.

During the LTFV investigation, Ehwa reported that it was unable to [] the final FM product.³⁹ However, it estimated that its FM sales in the United States represented []percent by volume and []percent by value.⁴⁰ As noted by the Court, the calculation of the []percent was disputed by the petitioner. Shinhan reported that it was unable to identify its FM products but estimated that its FM sales to the United States represented []percent, by volume, of total U.S. CEP sales of finished sawblades.⁴¹ Shinhan did not then provide a percentage by value.

Analysis

In the LTFV investigation, we exempted Ehwa and Shinhan from submitting section E responses due to their reported low sales volume of FM sales. This approach stems from the Department's discretion in an investigation to disregard certain transactions that complicate the margin calculations.⁴² For example, in *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 49347 (September 27, 2001), and accompanying IDM at Comment 10, the Department excluded two trial shipments made in small quantities from its analysis, noting that, "{i}n less than fair value investigations,

³⁸ *Id.* at 32.

³⁹ See Letter from Ehwa, Antidumping Duty Investigation of Diamond Sawblades and Parts Thereof from the Republic of Korea" dated August 19, 2005.

⁴⁰ *Id.*

⁴¹ See Letter from Shinhan, "Diamond Sawblades and Parts Thereof from Korea; Investigation" dated September 7, 2005, at 4.

⁴² See *Final Determination of Sales at Less than Fair Value and Final Negative Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying IDM at Comment 27 ("In less-than-fair value investigations, the Department is not required to examine all sales transactions in the United States. For this reason, our practice has been to disregard unusual transactions when they represent a small percentage (*i.e.*, typically less than five percent) of a respondent's total sales.").

the Department is not required to examine all sales transactions in the United States. For this reason, our practice has been to disregard unusual transactions when they represent a small percentage (*i.e.*, typically less than five percent) of a respondent's total sales, as is the case here with Greenwich's two trial shipments." Pursuant to this practice, the Department disregarded further manufactured sales when they accounted for less than five percent of total U.S. sales.⁴³ When considering whether to disregard further manufactured transactions because they constitute a relatively small proportion of U.S. sales, nothing dictates that the Department must determine the proportion based on their value over their volume. Thus, the Department has discretion in making its determination of how to ascertain proportion, and the Department reasonably relied upon volume. In the investigation, Petitioner argued that the Department should reconsider its decision to exempt further manufactured sales reporting. Specifically, it urged the Department to look at value instead of volume, asserting that "the importance of reporting these sales and the impact to the margin of these sales will become even more important."⁴⁴ In addition, Petitioner asserted that respondents understated their value percentages of further manufactured sales by using the wrong basis.⁴⁵ However, as discussed below, in this final redetermination, the Department has not disregarded either respondents' further manufactured sales, and we are thus able to assess the relative impact of these sales on each respondents' margins.

Beyond the Department's discretion, described above, to disregard certain transactions in LTFV investigations, the statute provides a mechanism for the Department to, in certain

⁴³ See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 8291 (February 19, 1999), (where the Department determined that further manufactured sales through an affiliated party accounted for less than five percent of total U.S. sales and it disregarded them), *unchanged in*, 64 FR 24329 (May 6, 1999).

⁴⁴ See letter from Petitioner, "Diamond Sawblades and Parts Thereof from the Republic of Korea: Further Manufactured Sales Exemption" dated October 24, 2005 at 2.

⁴⁵ *Id.*

circumstances, determine the CEP for further manufactured sales using a method other than based on section E data. Section 772(e) of the Act states that where merchandise is imported by an affiliate of the producer or exporter and value added in the United States by the affiliate is likely to substantially exceed the value of the subject merchandise, the Department shall determine the CEP by using (1) the price of identical merchandise sold by producer or exporter to an unaffiliated person; (2) the price of other subject merchandise sold by the producer or exporter to an unaffiliated person; or any other reasonable basis (when (1) and (2) are not available or not appropriate). 19 CFR 351.402(c)(2) provides that normally the value added is likely to substantially exceed the value of the subject merchandise where the value added is at least 65 percent of the price charged to the unaffiliated purchaser. 19 CFR 351.402(c)(2) also provides that normally the Department will estimate value added based on the difference between the price charged to the first unaffiliated purchaser and the price paid for the subject merchandise by the affiliate.

Pursuant to the Court's remand on the issue of the Department's decision to exempt Ehwa and Shinhan from submitting section E responses, on January 31, 2014, we requested that both Ehwa and Shinhan calculate whether its percentage of value added to its FM sales qualify it for the "special rule" in accordance with section 772(e) of the Act and 19 CFR 351.402(c), *i.e.*, whether the value-added percentages are above 65 percent.⁴⁶

Our request for information further asked that each respondent provide complete supporting documentation for each element of its calculation. Finally, we instructed each respondent to provide (or supplement the information on the LTFV record for) FM sales, cost (section E questionnaire responses), and constructed value (section D questionnaire responses) data for any FM sales if the respondents' calculations fell below 65 percent. We received

⁴⁶ See Department Letters to Ehwa and Shinhan, dated January 31, 2014.

Ehwa's and Shinhan's responses on February 14, 2014 (ESQR) and both argued that their respective value-added percentages were above 65 percent.⁴⁷

On March 14, 2014, we requested that Ehwa and Shinhan provide complete and/or supplemental information for FM sales, as well as section E and D questionnaire responses.⁴⁸ We received Ehwa and Shinhan's responses on April 11, 2014.⁴⁹ Petitioner commented on April 28, 2014, on Shinhan's and Ehwa's responses. For both companies, Petitioner cited to several discrepancies in the cost and FM data that each company submitted. On May 9, 2014, Ehwa and Shinhan rebutted Petitioner's comments, each noting that Petitioner compared disparate data, for which comparisons are not logical. Lastly, we requested and received corrected data fields for U.S. FM sales from Ehwa on May 12, 2014.⁵⁰

Analysis of Each Companies' Responses

Ehwa

During the investigation, Ehwa reported a database of its FM sales which we verified.⁵¹ This database listed quantity and gross unit price of Ehwa's FM sawblade as well as the per unit price Ehwa charged its U.S. affiliate for each imported part used in the sawblade.⁵² Ehwa

⁴⁷ See Letter from Ehwa, "Ehwa's Response to Question One of The Department's January 31, 2014, Request for Information: REMAND CONCERNING THE ANTIDUMPING DUTY ORDER ON DIAMOND SAWBLADES AND PARTS THEREOF FROM THE REPUBLIC OF KOREA (CASE NO: A-580-855) (POI: 04/01/2004-3/31/2005)" and Shinhan, "Diamond Sawblades and Parts Thereof from Korea; Remand Shinhan Response to Question 1 of Jan. 31, 2014 Letter" dated February 14, 2014 (Ehwa Feb 14 letter).

⁴⁸ See Department Letters to Ehwa and Shinhan, dated March 14, 2014.

⁴⁹ See letters from Ehwa, "Ehwa's Response to the Department's March 14, 2014, Request for Information: REMAND CONCERNING THE ANTIDUMPING DUTY ORDER ON DIAMOND SAWBLADES AND PARTS THEREOF FROM THE REPUBLIC OF KOREA (CASE NO: A-580-855) (POI: 04/01/2004-3/31/2005)" and Shinhan, "Diamond Sawblades and Parts Thereof from Korea; Remand Shinhan Response to March 14, 2014 Letter" dated April 11, 2014.

⁵⁰ See letter from the Department dated May 5, 2014 and letter from Ehwa, "Ehwa's Response to the Department's May 5, 2014 Third Supplemental Questionnaire: REMAND CONCERNING THE ANTIDUMPING DUTY ORDER ON DIAMOND SAWBLADES AND PARTS THEREOF FROM THE REPUBLIC OF KOREA (CASE NO: A-580-855) (POI: 04/01/2004-3/31/2005)" dated May 12, 2014.

⁵¹ See Ehwa Letter "Antidumping Duty Investigation on Diamond Sawblades and Parts Thereof from the Republic of Korea" dated October 3, 2005, and Department Memorandum, "Verification of the U.S. Constructed Export Price (CEP) Sales Response of Ehwa Diamond Industrial Co., Ltd." dated April 10, 2006.

⁵² *Id.*

prepared its February 14, 2014 ESQR using this database. According to Ehwa, its ESQR demonstrates that it qualifies for the special rule based on a FM weighted-average value-added of [] percent. However, the Department's analysis indicates that Ehwa's ESQR consists of FM sales separated into several line items for each imported part, as FM sawblades may be composed of several segments and cores.⁵³ Thus, a single FM sale may appear in Ehwa's ESQR up to three times.⁵⁴ Thus, accounting for any double- or triple-counting, the Department calculated that Ehwa's value-added percentage is [] percent.⁵⁵

As noted, during the LTFV investigation, Ehwa reported that its U.S. subsidiary did not [].⁵⁶ Therefore, for the purposes of reporting its ESQR, Ehwa [] based on []. For example, Ehwa []

[]. In a supplemental questionnaire response during the investigation, Ehwa provided a reconciliation of FM sales which, as stated, we verified and accepted.⁵⁷

Shinhan

Shinhan's ESQR lists the quantity of FM sales by product code and the price of these sales to unaffiliated customers, *i.e.*, the United States sales price.⁵⁸ Shinhan's ESQR also lists

⁵³ See Ehwa's ESQR at Exhibit 1.

⁵⁴ See Ehwa Feb 14 letter at Exhibit One, page C2-3

⁵⁵ See Draft Remand Calculation Memorandum at Attachment 5.

⁵⁶ See Ehwa Letter "Antidumping Duty Investigation on Diamond Sawblades and Parts Thereof from the Republic of Korea" dated October 3, 2005.

⁵⁷ *Id.*

⁵⁸ *Id.* and Shinhan's ESQR at Exhibit 1.

the transfer prices of the cores and segments used in the FM sawblades.⁵⁹ From this information, Shinhan derives a weighted-average value-added percentage of [] percent. In support, Shinhan provided U.S. sales invoice, as well as the related work order for one line-item product code.⁶⁰ Shinhan also traced the quantity and value of this FM sale to the U.S. affiliate's accounting system.⁶¹ Both the quantities of FM sales and the prices charged to unaffiliated customers in Shinhan's ESQR tie to its section C database from the LTFV.⁶²

In its ESQR, Shinhan cites to the LFTV verification report where the Department verified that FM sales constituted [] percent of total U.S. sales volume. Further, Shinhan argues that the Court did not mandate the Department to abandon its practice of disregarding "unusual" sales that comprise 5 percent or less of total U.S. sales.

Although Petitioner noted some discrepancies in Ehwa's and Shinhan's FM and cost data,⁶³ Shinhan and Ehwa clarified in their rebuttal comments that Petitioner's arguments improperly compare disparate data not subject to comparison.⁶⁴ We agree with Shinhan and Ehwa on their assessment of Petitioner's discrepancy comments, and after reviewing the submitted data we find that Ehwa's and Shinhan's data are usable and they do not appear to include discrepancies.

Accordingly, having requested and received information relating to Ehwa's and Shinhan's FM sales and cost data during this remand, we recalculated Ehwa's and Shinhan's LTFV margins to incorporate this information. We used the programs from the section 129

⁵⁹ *Id.*

⁶⁰ *Id.* at Exhibit 2.

⁶¹ *Id.*

⁶² Shinhan's section C database included these FM sales which the Department did not use in calculating Shinhan's LTFV margin.

⁶³ See Petitioner's April 28, 2014 letters.

⁶⁴ See Respondents' May 9, 2014 letters.

final,⁶⁵ and in addition to the FM sales and cost data submitted in this remand, we used the remaining home and U.S. market sales and cost data from the original investigation.

ISSUE 4: ADJUSTMENTS TO U.S. NET PRICE AND CEP PROFIT

Background

As Ehwa and Shinhan were excused from reporting their FM sales and section E questionnaire responses in the LTFV investigation, the Department did not account for the costs of FM or assembly (including additional material and labor) in Ehwa's and Shinhan's CEP profit calculations or in their margin calculation pursuant to section 772(d)(1)(D)(2) of the Act. The CIT remanded this issue as it is implicated with the Department excusing Ehwa and Shinhan from reporting their FM sales and section E questionnaire responses.⁶⁶

Analysis

As described above, we recalculated the LTFV margins for Ehwa and Shinhan taking into account their further manufactured sales. In doing so, we included the costs of FM or assembly in the CEP profit calculation and, pursuant to section 772(d)(2) of the Act, we accounted for the costs of FM or assembly in our margin calculations.⁶⁷

ISSUE 5: NON-APPLICATION OF THE MAJOR INPUT RULE

Background

In the *Final Determination*, the Department determined that none of Ehwa and Shinhan's affiliated party transactions qualified as major inputs.⁶⁸ As such we analyzed the affiliated party transactions in accordance with section 773(f)(2) of the Act, *i.e.*, the transactions disregarded

⁶⁵ See 129 Determination.

⁶⁶ Remand Brief at 33.

⁶⁷ See Draft Remand Calculation Memorandum.

⁶⁸ See *Final Determination* and IDM at Comment 10.

rule.⁶⁹ The Court remanded the Department's determination stating that the "issue as a whole requires fuller proof on the record by way of fuller explanation or reconsideration."⁷⁰ In

compliance with the Court's remand, the Department re-analyzed Ehwa's and Shinhan's POI transactions with affiliated parties. Since a myriad of figures and numerous inputs are referenced in these proceedings, the Department provided summary tables of the transactions in question to help clarify and enhance the ensuing discussion. The tables outline the transactions at issue, the suppliers' country of operation, and the various percentages that have either been referenced in the proceedings to date or are germane to the following discussion.

As the following tables demonstrate, Ehwa obtained inputs from two affiliated parties, both of which were located in a non-market economy (NME) country, while Shinhan obtained inputs from four affiliated parties, only one of which was located in an NME.⁷¹ In the LTFV investigation, the DSMC argued that the []⁷² Ehwa obtained from its NME affiliate [], and all of the inputs that Shinhan obtained from its four affiliated parties (three market economy (ME) and one NME) were major inputs into the production of DSB.⁷³ With regard to Ehwa's second affiliated party, [], we note that Petitioner did not argue that the [] inputs were major inputs. However, during the investigation the Department did

⁶⁹ *Id.*

⁷⁰ See DSMC, Slip Op. 13-130 at 38.

⁷¹ See Table 2 presented with the discussion of Shinhan's inputs below.

⁷² In re-analyzing the issue on remand, we note that [] fees may not qualify for treatment as a major input given the language of section 773(f)(3) of the Act, which states, "If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise... ." [] fees are not inputs "produced" by a manufacturer. Rather the fees paid represent the amounts paid for []; thus, the fees may only be subject to the Transactions Disregarded rule under section 773(f)(2) of the Act.

⁷³ See Letters from Petitioner, "Diamond Sawblades and Parts Thereof from the Republic of Korea: Allegation of Purchases of Major Inputs at Prices Below Affiliate's Cost of Production" dated December 12, 2005, at 3-6, ("Ehwa Major Input Allegation") and "Diamond Sawblades and Parts Thereof from the Republic of Korea: Allegation of Purchases of Major Inputs at Prices Below Affiliate's Cost of Production" dated December 12, 2005, at 2.

examine and adjust the [] inputs under the transactions disregarded rule. We will first address Ehwa's transactions with [].

Analysis

As we discuss below, the inputs Ehwa and Shinhan obtained from their affiliated suppliers are not major in relation to the total cost of producing the merchandise under consideration. As such, the Department analyzed such transactions in accordance with section 773(f)(2) of the Act, the transactions disregarded rule, and not section 773(f)(3), *i.e.*, the major input rule.

Ehwa

Table 1: Ehwa					
Input	Supplier/Country	Relationship	% of COM by Transfer Price	% of COM by Market Value⁷⁴	Price Used In Final Determination
[]	[]/PRC	Affiliated	[]%	[]%	Ehwa's COP
[]	[]/PRC	Affiliated	[]%	[]%	Ehwa's COP
[]	[]/PRC	Unaffiliated	[]%	[]%	Transfer Price

The [] fees paid by Ehwa to [] accounted for a mere [] percent of Ehwa's total cost of manufacturing DSB, when based on the transfer price. However, Petitioner argued that the valuation of these fees cannot be relied upon for the major input determination as they reflect NME sourced transfer prices.⁷⁵ As such, the DSMC provided its own estimated market value for the [] using its own NME surrogate value

⁷⁴ The market values here reflect the following: 1) the []' market value is based on the Petitioner's calculation of COP under its NME methodology; 2) the [] market value reflects Ehwa's COP for producing the []; and, 3) the [] market value reflects an unaffiliated price for a representative [].

⁷⁵ See Diamond Sawblades Manufacturer Coalition Brief, May 14, 2012, at 29.

calculation. Based upon this estimate, the DSMC concluded that the [] obtained from [] were major inputs into DSB production as they accounted for [] percent of Ehwa's total cost of manufacturing.⁷⁶

Setting aside the issue of whether DSMC's surrogate value calculations are accurate, and also whether it is practical to perform numerous surrogate value calculation inquires for individual inputs in the confines of an ME case, DSMC's purported [] percent calculation is flawed. Specifically, the DSMC's calculation is overstated because DSMC divided its estimated market value for the POI [] fees by the POI manufacturing costs related only to the DSBs sold in the South Korean (*i.e.*, home) market rather than by Ehwa's total POI manufacturing costs for all DSBs.⁷⁷ Thus, the DSMC overstated the [] fees' input percentage by improperly limiting the pool of product costs that were included in the denominator of its affiliated input calculation to only a [] subset of DSBs.

However, as noted previously in these proceedings,⁷⁸ when determining whether an affiliated input is major, the Department considers both what percentage of the input is procured from the affiliated party and what percentage that input represents of the total cost of manufacturing. Thus, the Department seeks to establish the significance of the affiliated input to the total cost of manufacturing the merchandise under consideration when making major input decisions. Along these lines, and for arguments sake, when the total universe of DSB POI manufacturing costs are included in the denominator of the affiliated input calculation (*i.e.*, the same denominator used to calculate the [] percentage above for total cost of manufacturing DSB based on transfer price), DSMC's proposed "market" value of the [] fees

⁷⁶ *Id.*

⁷⁷ See Ehwa Major Input Allegation, December 12, 2005, at 13-15 and Exhibits 3 & 11.

⁷⁸ See *Final Determination* and IDM at Comment 10, and the DSMC's December 12, 2005 Major Input Allegation at 4.

represent [] percent of Ehwa's total cost of manufacturing DSB during the POI (*i.e.*, KW [] / []),⁷⁹ not [] percent. As discussed below, the Department does not consider [] percent of Ehwa's total cost of manufacturing to constitute a major input.

Furthermore, even measured at the overstated [] percent, the [] fees, do not automatically qualify as a major input. In its arguments with regard to Ehwa's and Shinhan's affiliated inputs, the DSMC improperly cites our determination in *LNPP from Japan*⁸⁰ as evidence that the Department has and should confer major input status to "material goods that constitute as little as two percent of the total cost of production of a finished good."⁸¹ However, the Department disagrees that *LNPP from Japan* supports treating the affiliated inputs obtained in this case as major inputs. In considering the threshold for *LNPP from Japan*, the Department noted that large newspaper presses were a unique product that required tens of thousands of inputs, each of which accounted for a very small portion of total production cost. DSBs, conversely, have relatively few inputs,⁸² and a small number of raw material inputs account for the majority of the production cost (*e.g.*, coils used to produce the cores, diamond segments, labor, and factory overhead).⁸³ As DSBs do not follow the fact pattern presented in *LNPP from Japan*, the Department does not find it appropriate to apply a two percent major input threshold in this proceeding. Therefore, even considering the DSMC's proposed "market" value for the [] fees, the Department does not find that [] percent of Ehwa's total DSB production costs rises to the level of a major input for the production of DSBs. For the reasons

⁷⁹ Assuming *arguendo* that the denominator is also adjusted to reflect the same estimated ME costs rather than the NME [], the percentage would be further reduced. See Ehwa's January 17, 2006 response at 4 for Ehwa's total cost of manufacturing.

⁸⁰ See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan, 61 FR 38139, 38162 (July 23, 1996) (*LNPP from Japan*).

⁸¹ See Diamond Sawblades Manufacturer Coalition Brief, May 14, 2012, at 4.

⁸² See, *e.g.*, Shinhan's January 11, 2006 response at Exhibit S-55.

⁸³ *Id.*

discussed above, the Department continues to find that the [] fees paid by Ehwa to [], whether based on the reported transfer price, Ehwa's actual cost used as a market price surrogate, or on the DSMC's estimated market value, do not represent a major input into Ehwa's production of DSBs.

In its remand, the Court stated that if the Department "continues to find {section 773(f)(2) of the Act} applicable, it shall further state why the respondents' costs of producing the input is a 'reasonable surrogate' for the market price of the disregarded transaction(s) for which it found no comparative unaffiliated sales to use as a market price for comparison to the transfer price."⁸⁴ We note that, although not a major input, the affiliated [] fees paid were adjusted to reflect market prices under section 773(f)(2) of the Act in a manner similar as to what might be done under the major input rule.⁸⁵ In applying section 773(f)(2) of the Act, the Department over time has constructed a hierarchy for establishing market price. The Department's preference is to rely on a respondent's purchases of the input from unaffiliated parties, or if unavailable, the affiliate's sales of the input to unaffiliated parties. Lacking these options, the Department relies on any reasonable method to confirm that the affiliated prices reflect arm's length values.⁸⁶

Because Ehwa did not obtain [] from unaffiliated parties, nor did [] provide such services to unaffiliated parties during the POI, the Department was unable to compare the affiliated transfer prices with unaffiliated POI transactions prices. In the absence of unaffiliated [] transaction prices or other usable market prices, the Department relied on Ehwa's own cost for [] in Korea, the market under consideration, as a

⁸⁴ DSMC, Slip Op. 13-130 at 38.

⁸⁵ See [] in Table 1: Ehwa.

⁸⁶ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012) (BMRF from Mexico) and IDM at Comment 16.

reasonable surrogate for testing whether the affiliated transfer prices reflected arm's length values. Based on this comparison, the transfer prices paid to Ehwa's affiliate for [

] were increased to reflect a surrogate market value (*i.e.*, Ehwa's own costs for the same processing).⁸⁷ As this was the information available with regard to the fair value of these services, for this final remand we relied on Ehwa's own cost for identical processing as any reasonable method for purposes of section 773(f)(2) of the Act.

Additionally, section 773(f)(3) of the Act, *i.e.*, the major input rule, provides that the Department may value the major input on the basis of, *e.g.*, information regarding the cost of production of such input.⁸⁸ Taking guidance from section 773(f)(3), when conducting a section 773(f)(2) analysis, in instances where an unaffiliated price is unavailable, we looked to the affiliated supplier's cost of production because: 1) it is a value that is readily available; and, 2) we have the authority to request such data from the respondent.⁸⁹ Both the transactions disregarded rule and the major input rule address the treatment of transactions between affiliated parties for purposes of calculating cost. Therefore, if the use of a cost of production is acceptable to measure the valuation of a major input, we likewise determine that it is acceptable to use it to value an input under section 773(f)(2) of the Act when no other market price information is available. Additionally in this case, Ehwa is a producer of [] and DSBs operating in a ME and, as such, had available the ME cost of [] (*i.e.*, [] fee costs).

⁸⁷ See [] in Table 1: Ehwa.

⁸⁸ See section 773(f)(3) of the Act ("...the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production...").

⁸⁹ See, *e.g.*, *BMRF from Mexico* and *IDM* at Comment 16; and *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 55186, 55189 (September 7, 2012) (*LWRP from Mexico*), unchanged in, *Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review*, 78 FR 1199 (January 8, 2013), where the Department relied on the cost of production where no market price was available for purposes of testing affiliated transfer prices.

Furthermore, in considering alternatives for market price, a company's own cost to produce an input would be a significant factor in a company's decision to purchase versus manufacture the requisite input. In situations where a company has the production capability, as does Ehwa, the price they are willing to pay for the input likely would not be significantly higher than their own cost to produce the input. As such, a respondent's own cost of producing the input is a reasonable surrogate when market price is unavailable.

It should be noted as a general matter that DSMC's NME approach would require the collection of a vast amount of additional information, such as soliciting factors of production data and having the parties submit the corresponding ME surrogate values, thus greatly increasing the administrative burden of the case. The Department gave careful consideration to DSMC's approach before rejecting it, giving weight to the fact that the inputs represented such small percentages of the overall cost of manufacturing. For the reasons discussed above, the Department continues to find that the respondents' own cost of producing the input in question is a reasonable surrogate for the market price of the disregarded transactions for which we found no comparative unaffiliated sales to use as a market price for comparison to the transfer price.⁹⁰

Shinhan

Next, we reviewed Shinhan's POI transactions with affiliated parties. We again point out that only one of Shinhan's four affiliated parties was located in an NME. Thus, while the DSMC's allegations insinuate otherwise, only the transactions with this one affiliated party, *i.e.*, [], were reported as the NME-sourced transfer prices which the DSMC alleges should be re-valued using the Department's NME surrogate value methodology when

⁹⁰ Additionally, regarding the residual affiliated inputs listed in the preceding chart, we point out that the inputs obtained from [] were not considered to be major by either the DSMC or the Department, and the inputs obtained from Ehwa's unaffiliated NME supplier will be discussed at Comment 6. See [] in Table 1: Ehwa.

determining whether they are major inputs. We will first address the DSMC's contention that the inputs received from [] should be considered major inputs into Shinhan's DSB production.

Table 2: Shinhan					
Input	Supplier/Country	Relationship	% of COM by Transfer Price	% of COM by Market Price	Price Used In Final Determination
[]	[]/PRC	Affiliated	[]%	[]%	Shinhan's COP When Higher
[]	[]/PRC	Affiliated	n/a ⁹¹	n/a	
[]	TPC/Korea	Affiliated	[]%	[]%	Transfer Price
[]	TPC/Korea	Affiliated	[]%	[]%	Transfer Price
[]	TPC/Korea	Affiliated	[]%	[]%	Transfer Price
[]	TPC/Korea	Affiliated	[]%	[]%	Market Price
[]	TPC/Korea	Affiliated	[]%	[]%	Transfer Price
[]	[]/Korea	Affiliated	[]%	[]%	Transfer Price
[]	[]/TPC/Korea	Affiliated	[]%	[]%	Transfer Price
[]	[]/TPC/Korea	Affiliated	[]%	[]%	Transfer Price

Inputs from []

As we stated above, when determining whether an affiliated input is major, the Department considers both what percentage of the input is procured from the affiliated party and what percentage that input represents of the total cost of manufacturing. During the POI, [] sold [] to Shinhan. With respect to [], in reviewing Shinhan's reported data we found that [] of the []

⁹¹ These [] are not [] as they are considered [].

[] obtained from [] during the
POI.⁹² The remainder of the []

[].⁹³ On average, [] to [] [] were used in the
production of one [].⁹⁴ For comparison purposes, we note that the []
[] produced by Shinhan during the
POI and based on transfer price accounted for [] percent of the company-wide total cost of
manufacturing.⁹⁵ If we view the [] from a quantity perspective,
[]
[].⁹⁶ Raw materials accounted for
approximately [] percent of Shinhan's total cost of production.⁹⁷ Hence, even if the []
[] were considered to account for 100 percent of the raw material costs for the
[] that consumed the [], it would be difficult to
characterize them as a major input.⁹⁸ Nevertheless, again lacking market prices (*i.e.*, Shinhan
was not able to obtain prices for [] paid between two unaffiliated parties), we used the
respondent's own cost to produce two identical segments as a means to test and adjust the
transfer prices for the [] and found that Shinhan's cost of production
was higher for one of the two types of [] supplied by []. Thus, when
the [] with the lower transfer price was adjusted to represent Shinhan's cost of

⁹² See Shinhan's January 17, 2006, response, at Exhibit S-80, sum of [], and Exhibit S-81, sum of column "[]".

⁹³ *Id.*, at Exhibit S-80.

⁹⁴ *Id.*, at Exhibit S-81 (column b / column g).

⁹⁵ *Id.*, at 3 and Exhibit S-80.

⁹⁶ We also note that the blades manufactured with [] were only sold in the home market.

⁹⁷ See Shinhan's January 11, 2006, response at Exhibit S-55. The [] percent is the sum of raw material percentages.

⁹⁸ Because the sales and costs of refurbished blades were excluded in the Final Determination, the significance of the [] to Shinhan's total costs is further diminished by the fact that several were used in the production of these refurbished blades. See *Final Determination* and IDM at Comment 31. When the segments on a DSB wear out, the customer may return the worn-out DSB to have the old segments removed from the core and new segments attached. See Shinhan's January 11, 2006, response at 7.

production, [] constituted [] of total cost of manufacturing.⁹⁹

With regard to the [] obtained from [], because [] attached the cores and segments in the People's Republic of China (PRC), we considered the country of origin for these [] are PRC product and are not included in the proceeding covering DSBs from South Korea. The Court affirmed the Department's determination that the country of origin lies with the locality where the cores and segments were attached.¹⁰⁰

Inputs from TPC, [], []

Finally, we reviewed Shinhan's remaining affiliated party transactions (*i.e.*, those with its South Korean affiliates TPC, [], and []). While the DSMC's arguments may also be construed to question the Department's use of an affiliated party transfer price in determining the significance of an ME-sourced input, the Department did consider the market values, or, if not available, the surrogate market values, in determining that Shinhan's affiliated ME-sourced inputs were not major inputs.¹⁰¹

Based on transfer prices, Shinhan obtained [] from TPC, which accounted for [] percent, [] percent, [] percent, [] percent, and [] percent, respectively, of Shinhan's total cost of producing DSB.¹⁰² Additionally, Shinhan obtained [] from [] and []

⁹⁹ See [] in Table 2: Shinhan.

¹⁰⁰ See DSMC, Slip Op. 13-130 at 23-26.

¹⁰¹ See *Final Determination* and IDM at Comment 12 where the Department states that "we used market prices for the affiliated inputs in analyzing the significance of the transactions with affiliates."

¹⁰² See Shinhan's January 11, 2006, Section D Response, at Exhibit S-57; see also Table 2: Shinhan.

[] from [] which accounted for [] percent, [] percent, and [] percent, respectively, of Shinhan's total cost of producing DSB.¹⁰³

Because Shinhan had limited or no transactions with unaffiliated parties for these inputs (*i.e.*, no arm's length market values) the Department requested and obtained the TPC, [] and []'s cost of production for each input.¹⁰⁴ As noted previously, the Department articulated a hierarchy for establishing market price in the application of section 773(f)(2) and (3) of the Act (*i.e.*, the "transaction disregard" and "major" input rules). The Department's preference for determining market price is to rely on a respondent's purchases of the input from unaffiliated parties, or if unavailable, the affiliate's sales of the input to unaffiliated parties. Finally, lacking these options, the Department relies on any reasonable method to confirm that the affiliated prices reflect arm's length transactions.¹⁰⁵

In the case of the above affiliated inputs, a comparable per-unit market price was only available for the TPC [].¹⁰⁶ While still refuting that [] percent of total costs constitutes a major input into subject merchandise based on the record of this case, the Department notes that the record information for [] demonstrates that the transfer price (KW[]) was higher than either the market price (KW[]) or the affiliate's cost of production (KW[]).¹⁰⁷ For the residual inputs, where no market values were available, the Department compared the transfer prices to the affiliates' cost of production to satisfy itself that the inputs reflected arm's length values.¹⁰⁸ As the statute contemplates consideration of the cost of production in evaluating the value of an input supplied by an affiliate, *see e.g.*, section

¹⁰³ *Id.*; *see also* Table 2: Shinhan.

¹⁰⁴ *Id.*

¹⁰⁵ *See e.g.*, *BMRF from Mexico* and *IDM* at Comment 16; and, *LWRP from Mexico*, where the Department relied on the cost of production where no market price was available for purposes of testing affiliated transfer prices.

¹⁰⁶ *See* Shinhan's January 11, 2006, Section D Response, at Exhibit S-57.

¹⁰⁷ *Id.*

¹⁰⁸ *See* Shinhan's Cost Verification Report, April 4, 2006, at 27-29.

773(f)(3) of the Act, the comparison and adjustment (where applicable) of the affiliated transfer prices to the affiliates' costs of producing the inputs was consistent with the statute.

After comparing the affiliated transfer prices for the remaining inputs to the affiliates' cost of production for the inputs, the Department found that with the exception of the [] obtained from TPC, the affiliate's cost of production of the inputs resulted in a lower percentage of the total cost of manufacturing than the transfer price of the inputs, thus no adjustment was made to the transfer price of inputs.¹⁰⁹ Specifically, [] valued at its affiliated transfer price versus affiliate's cost of production comprised [] and [] percent, respectively, of the total cost of manufacturing DSB.¹¹⁰

While the DSMC places special emphasis on the [] transfer prices that represented [] percent of the total cost of manufacturing, we note that input represented an input for which a market price was unavailable. As such, we obtained the affiliated party's cost for the input, *i.e.*, information that was available with regard to the fair values of the input. In doing so, we found that the transfer price of the [] was higher than the market value determined, *i.e.*, the affiliate's actual cost.¹¹¹ Additionally, as mentioned earlier, DSBs, have relatively few inputs, and a small number of raw material inputs account for the majority of the production cost, thus the Department does not find it appropriate to automatically qualify an input that represents [] percent of the total cost of manufacturing as a major input.

Hence, based on the foregoing, the Department determined that the affiliated inputs raised by the DSMC do not represent major inputs to either Ehwa's or Shinhan's costs of

¹⁰⁹ See [], [], [], and [] from TPC; [] from []; and [] and [] from [] in Table 2: Shinhan.

¹¹⁰ See [] from TPC in Table 2: Shinhan.

¹¹¹ Section 773(f)(3) of the Act, or the major input rule, directs the Department to obtain the affiliated party's cost of producing the input in question. In this case we relied on the affiliate's cost of production as a surrogate for market price, thus, we effectively determined the value in a manner consistent with the method permitted by section 773(f)(3) of the Act; see [] from TPC in Table 2: Shinhan.

producing DSB. However, because these inputs involved transactions between affiliated persons, under section 773(f)(2) of the Act, the Department compared the affiliated transfer prices to market values where available. Where there were no market prices for comparable inputs, the Department relied on the information available, *e.g.*, affiliate's cost or respondent's own cost for the same input, to ascertain whether the affiliated transfer prices reflected arm's length values. As a final matter, while not conceding that the inputs are major, we note that the ultimate result of the Department's adjustments in the final determination, *i.e.*, the adjustment to the higher of transfer price or the affiliate's cost of production, comports with the DSMC's original requests in its May 8, 2006, brief for the *Final Determination*. Specifically, in the underlying brief, the DSMC argued that the Department should find that the inputs described above "are major inputs sold to Shinhan at prices below the affiliates' cost of production, and that they should also be valued at the affiliates' cost of production."¹¹²

ISSUE 6: NON-ADJUSTMENT OF COST OF PURCHASES FROM UNAFFILIATED NON-MARKET ECONOMY SUPPLIERS

Background

In the *Final Determination*, the Department reviewed the relative percentages that the unaffiliated NME inputs represented of Ehwa's cost of production and compared the NME prices to market based prices.¹¹³ After applying the percentages that the NME inputs represented of Ehwa's cost of production to the percentage differences between the NME and market prices, the Department determined that the resulting small percentages demonstrated that the use of NME prices does not result in an unreasonable reflection of the cost associated with the production and sale of merchandise.¹¹⁴ The Court requested "a fuller explanation of, and/or redetermination on,

¹¹² See Petitioner's Revised Case Brief, May 8, 2006, at 29.

¹¹³ See *Final Determination* and IDM at Comment 12.

¹¹⁴ *Id.*

those comparisons” stating that such explanation and/or redetermination “would assist the court’s and parties’ understanding.”¹¹⁵ The Department initially notes that Ehwa transacted with two affiliated NME suppliers, [] and [], and one unaffiliated NME supplier, [], during the POI. The transactions with [] and [] were addressed in Issue #5, above.¹¹⁶

Analysis

The reasoning behind DSMC’s conclusion that the prices paid by Ehwa to its unaffiliated NME supplier are understated is flawed. In its arguments, the DSMC points to Ehwa’s *affiliated* NME transfer-price-to-market-price comparisons as proof that the transactions with [] are understated and must be adjusted.¹¹⁷ The fact is however that Ehwa’s transactions with its affiliated suppliers, [] tell us nothing about Ehwa’s transactions with the *unaffiliated* supplier, []. The only commonality is that all of these suppliers have PRC operations, but they supplied different parts. As demonstrated by the Department below, when [] from [] are examined in terms of the total volume of cores consumed and total cost of production, using market prices, the inclusion of the unaffiliated NME prices had a negligible impact on Ehwa’s reported costs.

Nevertheless, the Department re-analyzed the record information underlying its decision that any distortion that may result from using the [] prices in Ehwa’s cost of production (COP) would be negligible. Ehwa reported that during the POI Ehwa obtained [] from [] that accounted for [] percent by volume and [] percent by value of Ehwa’s total POI [] purchases and [] percent of Ehwa’s total DSB raw material

¹¹⁵ DSMC, Slip Op. at 40.

¹¹⁶ See Issue 5 and Table 1: Ehwa.

¹¹⁷ See Diamond Sawblades Manufacturer Coalition Brief, May 14, 2012, at 31.

costs.¹¹⁸ With regard to the [] purchase percentages, we note that Ehwa also [], the quantities and values for which were not taken into account in calculating the percentages stated above. Accordingly, the figures do not reflect the proportion of total [] Ehwa *consumed*, only the proportion of [].¹¹⁹

To offer a clearer picture of the significance of the [] to Ehwa's total [], we compared the unaffiliated [] [] quantity ([]) to the [] total finished blades reported in Ehwa's cost file, pointing out that each blade would consist of one [].¹²⁰ Supposing also that all [] purchased during the POI were consumed, we calculate that the [] [] represented [] percent of the total volume of [] in the reported cost file.¹²¹ According to Ehwa's reported data, we found that [] represented approximately [] percent of the total production cost for saw blades.¹²² While the DSMC contests any reliance on percentages constructed with [] NME-to-ME prices, at only [] percent of the total population of [] consumption, by quantity, any understatement of total [] costs as a percentage of total production costs would be minimal.

To address whether the value of the [] were distortive to Ehwa's total production costs, the Department at verification, reviewed the details for a representative [] that was purchased both from [] and from other unaffiliated parties.¹²³ We note that Ehwa obtained [] different types of [] from []. Using the average price paid

¹¹⁸ See Ehwa's January 11, 2006, response at Exhibit SD-1 and Ehwa's November 21, 2005, response at 9. While referred to as the percentage of total costs, the [] percent actually reflects the percentage of raw materials.

¹¹⁹ *Id.* at Exhibit SD-1.

¹²⁰ See COP3bystage cost database. Sum of all production quantities for products classified as saw, industrial, and cutter.

¹²¹ See Ehwa's January 11, 2006, response at Exhibit SD-1. Percent is calculated as []/[] pieces.

¹²² *Id.* at Exhibit SD-19. Percent is calculated as sawblade [] cost divided by the total direct materials and conversion costs (*i.e.*, million KW []/[]+[]).

¹²³ See Ehwa's Verification Report, April 7, 2006, at 27, PR 480, CR 194.

to non-NME unaffiliated parties (*i.e.*, KW []¹²⁴) for a representative [] to revalue all of the [], we estimate a total “market value” of KW [], or [] percent of the total reported DSB production costs.¹²⁵ Thus, even assuming, *arguendo*, that the costs for [] percent of the [] consumed in production may not be reflective of market values, their relative market value to total COM is approximately [] percent, while as reported their transfer price reflects [] percent of total COM. After consideration of these figures, the Department continues to determine that in the instant case any distortion created by the inclusion of the unaffiliated NME-to-ME prices had a negligible impact on Ehwa’s reported costs, even assuming, for arguments sake, they were sold at prices below the South Korean market price.

**ISSUE 7: USE OF FACTS OTHERWISE AVAILABLE OR ADVERSE INFERENCES
(WHETHER CONSOLIDATED FINANCIAL STATEMENTS OBTAINED AT
VERIFICATION CAN BE USED FOR FINANCIAL EXPENSE RATIO (SHINHAN))**

Background

The Court directs the Department to explain on remand the Department’s acceptance and incorporation of Shinhan’s parent company, Technoplus Co. Ltd.’s (TPC), consolidated financial statements obtained at verification for the final determination.¹²⁶ In the *Final Determination* the Department chose to use TPC’s consolidated financial statements to calculate Shinhan’s financial expense ratio. The Department instructed Shinhan in the section D questionnaire to calculate the financial expense ratio based on the highest consolidation level available.¹²⁷ In responding to the section D questionnaire, Shinhan calculated the financial expense ratio based

¹²⁴ *Id.*

¹²⁵ Percent is calculated as total market value divided by Ehwa’s total cost of manufacturing (*i.e.*, KW [] / []). See Ehwa’s January 17, 2006 response at 4 for Ehwa’s total cost of manufacturing.

¹²⁶ See *DSMC*, Slip Op. 13-130 at 47.

¹²⁷ See Shinhan’s November 22, 2005 response, at 20.

on its own unconsolidated financial statements.¹²⁸ At verification, the Department obtained TPC's consolidated financial statements. The Department's *Final Determination* did not address the "discovery" of the financial statements at the verification nor our basis for accepting and incorporating them in the final determination. However, the Court stated that if "Commerce concluded that its prior Section D request had presented some reasonably latent or inconspicuous ambiguity" that was revealed only in light of Shinhan's prior response to the questionnaire, and that the failure was unintentional and inadvertent, then the Department's request at verification would fall squarely within section 782(d) of the Act.¹²⁹

The Department did not specify the reasons behind its decision to take TPC's consolidated financial statements in its verification report of the *Final Determination*. Therefore, it would be speculative to try to discern these circumstances several years after the verification took place. But, per the Court's guidance, we reviewed the record evidence and reconsidered our prior decision.

Analysis

In the August 26, 2005 section A response, Shinhan indicated that it has a parent company, TPC.¹³⁰ In the November 22, 2005 section D response Shinhan calculated its financial expense ratio based on its own unconsolidated financial statements, despite our direction to calculate it based on the highest level consolidated financial statements available.¹³¹ The Department issued its preliminary determination on December 29, 2005.¹³² The Department issued supplemental section D questionnaires to Shinhan on December 14, 2005 and February 1,

¹²⁸ See Shinhan's November 22, 2005 response, at 20 and Appendix D-8.

¹²⁹ See *DSMC*, Slip Op. 13-130 at 47.

¹³⁰ See Shinhan's August 26, 2005 Section A Questionnaire Response, at 4.

¹³¹ See Shinhan's November 22, 2005 Section D Questionnaire Response, at 20 and Appendix D-8.

¹³² See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Critical Circumstances Determination: Diamond Sawblades and Parts Thereof from the Republic of Korea, 70 FR 77135 (December 29, 2005).

2006.¹³³ Our review of these supplemental questionnaires shows that neither of these questionnaires requested Shinhan to state whether TPC prepared consolidated financial statements. Further, neither of these supplemental questionnaires instructed Shinhan to recalculate its financial expense ratio based on TPC's consolidated financial statements, if they, in fact, prepared such documents. On April 4, 2006 the Department issued the cost verification report for Shinhan and noted in the summary of issues section, "{a}t verification, we discovered that {Shinhan's} parent, TPC prepared consolidated financial statements for the year end 2004. It may be appropriate to calculate SDC's financial expense rate based on these consolidated financial statements."¹³⁴ The audit report of TPC's consolidated financial statements is dated March 23, 2005, indicating these financial statements were available at the time Shinhan provided its section D response, in November 2005. In the financial expenses section of the verification report it states that, "{w}e obtained and reviewed three financial expense rate calculations prepared by SDC...the third financial expense rate calculation was prepared from TPC's consolidated financial statements."¹³⁵

Following the cost verification, which ended on March 10, 2006, the cost verification exhibits (CVE) were served upon the petitioner, including CVE 26 which contained the consolidated financial statements of TPC.¹³⁶ The administrative case briefs were due on April 17, 2006, a month after the verification documents were served on Petitioner. The rebuttal briefs

¹³³ See Letters from Neal M. Halper to Shinhan dated December 14, 2005, and February 1, 2006.

¹³⁴ See Memorandum to the File from Michael P. Harrison entitled "Verification of the Cost Response of Shinhan Diamond Industrial Co., Ltd. in the Antidumping Investigation of Diamond Sawblades and Parts Thereof from Korea" (Shinhan Cost Verification Report), April 4, 2006, at 3.

¹³⁵ *Id.* at 33.

¹³⁶ See Letter from Michael P. Martin to Shinhan Diamond Industrial Co., Ltd. "Verification Agenda" date February 22, 2006 (noting that the Department verifiers will conduct the "verification of Shinhan Diamond Industrial Co., Ltd. ("Shinhan") from March 6, 2006 through March 10, 2006..." and that "...all verification exhibits must be released under administrative protective order by the end of the third business day after this verification is completed..."). CVE 26 contained the consolidated financial statements of TPC, and CVE 23 contained three financial expense ratio calculations, including the rate originally calculated by Shinhan of [] percent which used Shinhan's own unconsolidated financial statements and a rate of [] percent calculated using TPC's consolidated financial statements.

were due on April 24, 2006. On May 15, 2006 the Department issued its final determination and included an adjusted financial expense ratio based on TPC's consolidated financial statements.

Section 782(d) of the Act states that if the Department determines that a response to a request for information does not comply with the request, the Department shall inform the submitting party of the nature of the deficiency and, to the extent practicable, provide an opportunity to remedy or explain the deficiency in light of the Department's time limits. The record demonstrates that at the time the Department received the section D questionnaire response Shinhan reported its financial expense ratio based on its unconsolidated financial statements. Additionally, the Department did not ask Shinhan any follow-up questions in the two supplemental questionnaires regarding its submission of the ratio based on unconsolidated financial statements, as required for any deficient submissions pursuant to 782(d) of the Act. In light of the fact that, prior to the cost verification, the Department did not inform Shinhan of the nature of its deficiency or provide an opportunity to remedy the deficiency, as provided for in the statute, the Department reasonably accepted the consolidated financial statements at verification and used the financial statements in the final determination.

Further, as administrative case briefs were due more than a month after the verification exhibits were served upon the petitioner, the petitioner had a meaningful opportunity to evaluate and opine on the consolidated financial statements obtained at verification. We note that the financial expense ratio was calculated using amounts that were taken directly from the consolidated financial statements and these amounts did not need to be derived. Thus, we believe it was reasonable to use the consolidated financial statements obtained at verification for the final determination where Shinhan was never informed of the deficiency and the petitioner was given a meaningful opportunity to evaluate TPC's financial statements.

FINAL RESULTS OF REDETERMINATION

Pursuant to the Court's Remand Order, we reviewed the facts on the record and redetermined the issues pertaining to Ehwa's ISEs and Ehwa's and Shinhan's FM sales. Consistent with our analysis of the information on the record, in this final remand redetermination we recalculated Ehwa's LTFV margin as 0.00 while Shinhan's LTFV margin as 0.00.



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance



Date