

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Holly A. Kuga
Acting Deputy Assistant Secretary
for Import Administration, Group II

DATE: September 23, 2002

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

Summary

This memorandum addresses issues briefed in these proceedings. Section I lists the issues briefed by the parties. Section II discusses the history of this investigation. Section III sets out the scope, or product coverage, of these investigations. Section IV analyzes the comments of the interested parties and other participants and provides our recommendations for each of the issues.

I. Issues

Sales Issues

1. Excusing Corus from reporting downstream sales by its bankrupt affiliate GalvPro, LP ("GalvPro")
2. Missing payment dates for certain U.S. sales
3. Rafferty-Brown Inc. of Connecticut ("RBC") galvanizing costs
4. Scrap Recovery Offset to U.S. warranty expenses
5. Applying adverse facts available to calculate Corus' less than fair value ("LTFV") margins
6. Sufficiency of petition to provide the basis for initiation
7. Classifying Corus' U.S. sales as export price ("EP") sales or constructed export price ("CEP") sales
8. CEP offset

9. Whether GalvPro's unpaid sales should be treated as a bad debt expense
10. Critical circumstances
11. "Zeroing" methodology
12. Clerical error in the margin program
13. Clerical Errors Identified at Verification
14. Variable Cost of Manufacture ("VCOM") Calculation

Cost Issues

15. Non-Prime Offset to Standard Costs
16. General and Administrative ("G&A") Expenses
17. Corporate Rationalization Charges - G&A Expenses
18. Extraordinary Charges - G&A Expenses
19. Further-Manufacturing Overhead
20. Further-Manufacturing G&A Expenses
21. Inter-company Charges - Further-Manufacturing G&A Expenses
22. Corporate Rationalization versus Group G&A - Further-Manufacturing G&A Expenses

II. History

On May 9, 2002, the Department of Commerce (the "Department") published the preliminary results of this investigation. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 67 FR 31268 (May 9, 2002) ("Preliminary Determination"). The merchandise covered by this investigation is described in the Scope of Investigation section of this memorandum. The period of investigation ("POI") is July 1, 2000, through June 30, 2001. We invited parties to comment on our Preliminary Determination.

In May and June 2002, the Department verified the responses submitted by the respondent in this investigation, Corus Staal BV ("CSBV") and its affiliates Corus Steel USA, Inc. ("CSUSA"), RBC and Rafferty-Brown Inc. of North Carolina ("RBN"). CSBV and CSUSA are collectively referred to as Corus.

The Department verified sections A through C of Corus' responses from May 27 through May 31, 2002, at Corus Staal's headquarters in IJmuiden, the Netherlands. See Memorandum to James Terpstra from Geoffrey Craig and David Salkeld: "Verification of the Sales Response of Corus Staal BV and Corus USA in the Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands" ("Corus Sales Verification Report"), dated July 26, 2002. The Department also verified section D of Corus' response from May 13 through May 17, 2002 at Corus Staal's headquarters in IJmuiden, the Netherlands. See Memorandum to Neal Halper from Nancy Decker and Peter Scholl: "Verification of Cost of Production and

Constructed Value” (“Corus Cost Verification Report”), dated July 22, 2002. From June 13 through June 14, 2002, the Department verified the responses submitted by Corus relating to RBC and RBN at RBN’s offices in Greensboro, North Carolina. See Memorandum to James Terpstra from David Salkeld and Robert Copyak: “Verification of the U.S. Sales Response of Corus in the Investigation of Cold-Rolled Carbon Steel Flat Products from the Netherlands” (“CEP Verification Report”), dated July 26, 2002. From June 6 through June 7, 2002, we verified section E of Corus’ response, at RBN’s offices in Greensboro, North Carolina. See Memorandum to Neal Halper from Nancy Decker and Peter Scholl: “Further Manufacturing Verification” (“Further Manufacturing Verification Report”), dated July 22, 2002. Public versions of these, and all other Departmental memoranda referred to herein, are on file in the Central Records Unit (“CRU”), room B-099 of the main Commerce building.

On August 9, 2002, we received case briefs from the following parties: respondent Corus; and Bethlehem Steel Corporation, National Steel Corporation, United States Steel Corporation, and Nucor Corporation (collectively “the petitioners”).¹ On August 16, 2002, we received rebuttal briefs from Corus and the petitioners.²

III. Scope

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

¹ The Department received a brief from Skadden Arps Slate Meagher and Flom on behalf of petitioners Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation (“Skadden Case Brief”), a brief from Wiley, Rein & Fielding on behalf of petitioner Nucor Corporation (“Wiley Case Brief”), and a brief from Steptoe and Johnson on behalf of Corus (“Corus Case Brief”).

² The Department received a rebuttal brief from Skadden Arps Slate Meagher and Flom on behalf of petitioners Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation (“Skadden Rebuttal Brief”), a rebuttal brief from Wiley, Rein & Fielding on behalf of petitioner Nucor Corporation (“Wiley Rebuttal Brief”), and a rebuttal brief from Steptoe and Johnson on behalf of Corus (“Corus Rebuttal Brief”).

Argentina, Brazil, France, and Korea,” dated July 10, 2002, which is on file in the CRU.

IV. Interested Party Comments

Comment 1: Excusing Corus from reporting downstream sales by bankrupt affiliate GalvPro

Respondent states that the Department preliminarily excused Corus from reporting downstream sales made by GalvPro, which is a joint venture between Weirton Steel Corporation³ and Corus. Respondent argues that GalvPro ceased operations in March, 2001, and that during the investigation, GalvPro was in bankruptcy proceedings. Respondent further states that the Department should therefore confirm its decision in the Preliminary Determination not to require Corus to report its downstream sales to unaffiliated parties. In the Preliminary Determination, the Department used Corus’ sales to GalvPro in the U.S. sales listing. Respondent further argues that the Department should eliminate Corus’s sales to GalvPro from the U.S. sales listing.

Petitioners argue that the Department should apply adverse facts available (“AFA”) to Corus’s sales to GalvPro because they allege that Corus made no effort to obtain this data. Petitioners argue that GalvPro was an affiliated party to Corus and purchased, further processed, and sold subject merchandise during the POI. Petitioners argue that from the information on the record after the preliminary determination, it is apparent that Corus has failed to act to the best of its ability to provide the Department with information from GalvPro regarding U.S. sales and further processing.

Petitioners argue that according to the Court of International Trade, the Department has the discretion to disregard sales only if the Department finds that “inclusion of sales which are fairly atypical would undermine the fairness of the comparison of foreign and U.S. sales . . .” FAG U.K. Ltd v. United States, 945 F. Supp. 260, 265 (CIT 1996) citing to Ipsco v. United States, 714 F. Supp. 1211, 1217 (CIT 1989), rev’d on other grounds, 965 F.2d 1056 (Fed. Cir. 1992). Petitioners argue that Corus has provided no information supporting the determination that GalvPro’s sales are atypical. Petitioners argue that while the antidumping law provides an exception for the reporting of further-manufactured sales if the value-added substantially exceeds the value of the imported subject merchandise (see 19 CFR 351.402(c)(2)), that is not applicable to this investigation because the only further manufacturing performed by GalvPro was galvanizing. Petitioners further argue that GalvPro’s resales are likely not to be an insignificant portion of Corus’ total U.S. sales.

Petitioners also argue that there is nothing on the record to suggest that the Department’s calculation of U.S. price for sales by GalvPro would have a distortive effect or otherwise

³ Weirton Steel Corporation is not a petitioner in this investigation.

undermine the fairness of the comparison. Moreover, petitioners argue that including the sales from Corus to GalvPro may actually have a distortive effect on the comparison because the prices are based on the transfer price between two affiliates. Petitioners argue that the information gathered by the Department in the Preliminary Determination and the lack of explanation in Corus' May 6, 2002 supplemental response casts doubt on Corus' assertions and, they argue, demonstrates that Corus did not make a good-faith attempt to report GalvPro's sales. Petitioners note that such information was provided to the Department in the investigation of certain hot-rolled carbon steel flat products ("hot-rolled steel") from the Netherlands. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands, ("Hot-Rolled Final Determination") 66 FR 50408 (October 3, 2001), as amended by 66 FR 55637 (November 2, 2001). Petitioners also argue that Corus has refused to turn over documents related to GalvPro's declaration of bankruptcy, and that this refusal "casts doubt on the validity of the assertion itself." (Wiley Brief at 7).

In rebuttal comments, respondent argues that the situation surrounding GalvPro, which it detailed in its case brief, clearly shows that GalvPro was incapable of providing information in this investigation. See Corus Case Brief at 25-27. Respondent argues that providing two years worth of correspondence between GalvPro and Corus would have been unnecessary and unduly burdensome. Respondent argues that during the hot-rolled steel investigation Corus was able to provide downstream sales data at that time because GalvPro was staffed during most of the investigation. In contrast, respondent argues GalvPro ceased operations in March, 2001, which was a month before the petition was filed in the instant investigation, and for this investigation, GalvPro has only had a caretaker staff of two and was therefore unable to respond to the Department's inquiries. See Corus Rebuttal Brief at 4. Thus, respondent argues, the Department should continue to excuse Corus from reporting these downstream sales.

In rebuttal comments, petitioners argue that the Department has never excused Corus from reporting sales from GalvPro, and for the reasons explained in their case brief, the Department should apply AFA to these sales.

Department's position: We agree with respondent and have excused Corus from reporting downstream sales by GalvPro. We also agree that the reported transactions between Corus and GalvPro should be excluded from the U.S. database. In the Preliminary Determination, consistent with our practice, we excused Corus from reporting these downstream sales because they were a small quantity and it would have been unduly burdensome to report them in light of the current state of GalvPro. As respondent notes, GalvPro was out of business and ceased operations six months before the petition was filed. The facility is idled and a few security guards are the only staff there. We note that Corus has submitted evidence on the record showing GalvPro's bankruptcy. See generally Corus' May 6, 2002 supplemental questionnaire response. Further, at verification, we reviewed additional information regarding GalvPro's bankruptcy. See Corus Sales Verification Report at 17.

Moreover, we will exclude the reported sales between Corus and GalvPro from the U.S. database, in accordance with our practice not to include sales to an affiliated U.S. party. It was an error that they were included in the preliminary determination.

Comment 2: Missing payment dates for certain U.S. sales

Petitioners argue that for sales with missing payment dates, we should use the date of the final determination as the payment date, instead of the date of the preliminary determination as we did in the Preliminary Determination.

Respondent argues that all the missing payment dates were related to sales to GalvPro, and have remained unpaid. Because GalvPro went into bankruptcy, respondent argues that it was improper for the Department to recalculate credit expenses on these transactions using the date of the Preliminary Determination as the date of payment. Instead, Corus argues the Department should use either March 15, 2001, which is the date that GalvPro ceased operations, or August 11, 2001, which is the date GalvPro filed for bankruptcy protection.

In rebuttal comments, respondent argues that the cases petitioners cite⁴, where the date of the final determination was used as best information available, imply that available actual pay dates were not supplied. In this investigation, Corus argues, there are no actual payment dates because the customer went bankrupt and did not pay. Respondent argues that the more appropriate payment date would be when GalvPro ceased operations.

In rebuttal comments, petitioners Bethlehem Steel Corporation, National Steel Corporation and United States Steel Corporation argued that credit expenses should not be calculated for these shipments, but instead they should be treated as bad debt expense. See discussion of comment 9 below.

Department's position: All the transactions with missing payment dates relate to transactions between Corus and GalvPro. As we are not using these transactions in our analysis, this issue is moot. See comment 1 above.

Comment 3: RBC galvanizing costs

Respondent reported certain U.S. costs incurred by RBC in having its cold-rolled steel galvanized in the field RBCGALVU. Petitioners argue that we failed to deduct the RBCGALVU

⁴ Canned Pineapple Fruit From Thailand, 60 FR 29553, 29556 (June 5, 1995) and Certain Stainless Steel Wire Rod From France, 58 FR 68865, 68866 (December 29, 1993).

field from U.S. Price in the preliminary determination. They argue that we should use the formula, “FURMANU = FURMANU + RBCGALVU;” in order to subtract the field from U.S. price. Respondent did not comment on the issue.

Department’s position: We agree with petitioners and have subtracted the RBCGALVU field from U.S. price in the final determination. See Memorandum from David Salkeld to James Terpstra, Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products From The Netherlands: Final Determination Calculation Memorandum- Corus Staal BV (“Final Calculation Memo”), dated September 23, 2002, located in the CRU.

Comment 4: Scrap recovery offset to U.S. warranty expenses

Petitioners argue that we should not allow Corus to claim an offset on U.S. warranty expenses. For an offset, respondent reported claims for defective merchandise on U.S. sales with revenue it received when it disposed of rejected material as scrap. Petitioners argue that the Department should disallow this offset because they claim Corus cannot show that the scrap revenue bears a direct relationship to each individual sale nor that it is related to sales of subject merchandise as required under 19 CFR 351.410(c).

In rebuttal comments, respondent argues that its warranty methodology was verified by the Department. See Corus Rebuttal Brief at 11, citing Corus Sales Verification Report at 28-29. Respondent argues that sales verification exhibits show that all the revenue from scrap recovery figures are attributable to subject merchandise. Respondent also disputes petitioners’ claim that under 19 CFR 351.410(c), direct warranty expenses should include only expenses that result from, and bear a direct relationship to, the particular sales in question. Respondent argues that in other cases, the Department has accepted an allocation that was based on as specific a basis as the company’s records permitted.⁵ Respondent argues that at verification, the Department verified that Corus totaled scrap recovery by customer over the POI. Respondent argues that because the reported scrap recovery is on rejected material from the warranty claims, that the scrap recovery material is necessarily related to the warranty claims and bears a direct relationship to the sales in questions under 19 CFR 351.410(c). Respondent adds that the same methodology was verified and accepted in the recent investigation of hot-rolled steel from the Netherlands. See 66 FR at 50410.

⁵ See Corus Rebuttal Brief at 12, citing Final Determination of Sales at Less Than Fair Value: Grain-Oriented Electrical Steel From Italy, 66 FR 14887 (March 14, 2001) and Issues and Decision Memorandum for the Final Results in The Antidumping Duty Administrative Review of Grain-Oriented Electrical Steel from Italy, dated March 6, 2001. They also cite Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from Canada, 64 FR 46344, 46347 (August 25, 1999).

Department's position: We agree with respondent. In general, the Department requires that direct expenses should include expenses resulting from, and bearing a direct relationship to, the particular sales in question. See 19 CFR 351.410(c). However, as respondent has noted, there are cases where the Department has accepted an allocation that was as specific as a company's records permitted. We have determined that the scrap recovery methodology provided by Corus was a reasonable method given its company records. Further, we noted no discrepancies at verification. Therefore, we will continue to permit the reported scrap offset to U.S. warranty expenses.

Comment 5: Applying AFA to calculate Corus' LTFV margins

Petitioners argue that we should apply AFA to all the data because, they argue, Corus did not provide independent sources for the Department's verification. Petitioners argue that in the Corus Sales Verification Report, the Department states that 2001 audited financial statements were not available at the time. (Wiley Brief at 11). Petitioners argue that the Department did not verify CSBV's, RBC's or RBN's quantity and value information with audited financial documents or other independent sources, and instead relied on unaudited internal financial records. Petitioners argue that it is Department practice when there are no audited financial statements available, or that are specific to that company, to examine other documents such as tax returns.⁶ Petitioners argue that Corus was aware of what information the Department would be verifying, and "its failure to provide the necessary source documents constitutes a failure to act to the best of its ability." (Wiley Brief at 16). Petitioners also argue that information contained in the CSBV's parent company, Corus Nederland BV (formerly Koninklijke Hoogovens NV ("KHNV"))⁷ annual report, indicates that the financial records were audited in April, 2002, which was four months prior to verification. Petitioners argue that this means that audited financial documents were available at the time of verification, (even if not in final, signed form then in some nearly final version), and should have been provided to the Department at verification.

In rebuttal comments, respondent argues that its quantity and value information was reconciled to audited financial statements and was verified by the Department with no discrepancies. Respondent argues that fiscal year ("FY") 2000 quantity and value data was reconciled to the KHNV audited financial data and that FY 2001 quantity and value data was reconciled to the financial statements for KHNV at verification. Respondent argues that Corus Nederland BV is

⁶ Notice of Final Determination of Sales at Less Than Fair Value: Fresh Cut Flowers from Mexico, 60 FR 49569, 49570 (Sept. 26, 1995); Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan, 62 FR 51427 (Oct. 1, 1997).

⁷ KHNV was renamed Corus Nederland BV in July 2001. See Corus Sales Verification Report at 7.

the successor to KHNV. Respondent further argues that under Dutch law, audited financial statements are published in June, after the time at which verification took place, but that the Department examined the financial documents underlying the financial statements and reconciled these documents to the audited financial statements. Respondent further argues that the Department noted no discrepancies when examining these documents at verification.

Department's position: We disagree with petitioners. There is no basis for using total facts available to determine the margins because the information submitted by Corus in its databases, on the whole, is substantially complete (subject to the minor errors discussed herein), generally useable and has been verified. See Issues and Decision Memoranda for the Final Determination in the Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India, 67 FR 34899 (May 16, 2002), dated May 6, 2002, at comment 14, on file in the CRU.

First, respondent timely provided information reconciling quantity and value information to the FY 2000 audited financial statements and to the underlying documents prepared for the FY 2001 financial statements. See Corus' April 26, 2002 quantity and value reconciliation submission, on file in the CRU. Moreover, respondent provided documentation to the Department at verification demonstrating how it prepared the quantity and value reconciliation submission. See Corus Sales Verification Report at 5-6. At verification, we performed the same reconciliations for 2000 and 2001 data using the same types of documents for both years. No discrepancies were noted. In the instant investigation, reviewing the underlying documents for FY 2001 was a reasonable method of reconciling quantity and value data. Second, we successfully verified the remaining items of Corus' reported data examined at verification. While there are some clerical errors in the databases examined at verification, these errors are not so significant as to call into question the integrity of the home market and U.S. market databases. Applying total facts available in this investigation would be a drastic measure and is usually applied in cases where there are "persistent and pervasive" gaps in the data. The facts of this investigation are distinguishable from other cases where gaps in the record were so "persistent and pervasive" that the Department disregarded all of the data submitted. See Steel Authority of India v. United States, 149 F. Supp. 2d 921, 928 (CIT 2001). Consequently, we are not basing Corus' margin on total facts available.

Because we have determined that the use of facts available is not appropriate in this case, an adverse inference analysis pursuant to section 776(b) is not warranted.

Comment 6: Sufficiency of petition to provide the basis for initiation

Respondent claims that the petition upon which initiation was based was insufficient to establish a reasonable basis to believe or suspect that dumping was occurring, and therefore, the Department should revoke the initiation and terminate the investigation. Petitioners alleged in the petition that price data was not available to them, so instead they relied on average unit

values (AUVs) from Customs data to derive a U.S. price. Petitioners also alleged that cost data was not available to them so they used surrogate data from their own production data to calculate cost of production. Respondent claims that petitioners use of their own surrogate cost data inflated petitioners' cost of production, which resulted in margins and below-cost sales where none existed. Respondent alleges that use of this surrogate cost information violated the law, because petitioners had cost information specific to Corus available to them at the time the petition was filed.

Respondent argues that in the Preliminary Determination, the Department stated that the alleged margin in the petition was "relevant only inasmuch as it is sufficient to initiate the investigation." See 67 FR at 31270. Respondent argues that the Department should re-examine the petition because it did not contain information reasonably available to petitioner under section 732(b) of the Act and 19 CFR 351.202(b) but instead relied on distorted data and data from its own production experience. Respondent argues that the petition margin provides the basis for the Department to initiate less-than-fair value investigations and that if the Department had revised the margin at the time of initiation, it would have seen that petitioners' allegations were not supportable. Respondent further argues that the petition margin will always be available as an adverse facts available rate throughout cold-rolled proceedings and administrative reviews for as long as they continue. For these reasons, respondent argues, the petition margin should be reexamined.

According to respondent, under the antidumping statute, petitioners are only permitted to use surrogate cost data if they are unable to find information on foreign sales or costs. Respondent argues that ranged, public cost of production data from the recent hot-rolled steel investigation involving Corus could have provided petitioners with enough information to make the necessary calculations. Thus, respondent argues, the Department must first determine that publicly-available cost data from the hot-rolled steel investigation was not reasonably available to petitioners before it can accept petitioners' allegations in the petition. Respondent argues that if the Department determines that this hot-rolled cost information was available to petitioners, then the petition is insufficient under U.S. law and the investigation should be terminated. Respondent also argues that under U.S. and international law, this point must be addressed specifically.

Respondent contends that petitioner's surrogate data (consisting of its own production data) overstated costs of production, when compared to ranged public data Corus submitted in the hot-rolled steel investigation. Corus argues that the public data in the hot-rolled investigation covers two-thirds of the production process, as well as the G&A and interest expenses examined in the current investigation, and that since the petitioners were interested parties in that investigation, this data was reasonably available to them. As hot-rolled steel is used to produce cold-rolled steel, Corus argues that knowing the costs through the hot-rolling stages of production provides approximately 70 percent of the cold-rolling cost of manufacture ("COM").

Corus argues that the average COM from the ranged public data it submitted in the hot-rolled investigation results in an average total COM of \$230/MT. In addition, this ranged public data yields an average selling expense rate of 1.8 percent, a G&A rate of 5.3 percent, and a 1.18 percent financial expense rate resulting in a total average cost of production (“COP”) for hot-rolled steel of \$244.90/MT. Corus states that it compared the variable costs through the hot-rolled and cold-rolled stages in the petition, and found that they increased 31.5 percent. Thus, Corus argues that by increasing its COP of hot-rolled steel by 31.5 percent yields a COP for cold-rolled steel of \$322.05/MT or \$292.16/ton as opposed to the \$458.94 calculated by petitioners. Corus also argues that the actual cost of production calculated in this investigation is closer to its estimates of COP rather than petitioners’ estimate.

Respondent also alleges that in order to derive U.S. price, petitioners used a subset of Dutch imports to derive the AUVs that are not representative of Dutch sales and only comprised 7.3 percent of total imports. Corus argues that comparing the AUVs of the two HTS categories petitioners used (\$296.13/ton and \$297.31/NT) to the AUV of total imports from the Netherlands of \$342.81/ton illustrates this, and using the higher AUV would lead to a negative margin.

Respondent argues that if the Department decides not to revoke the initiation, the notice of initiation should instead be amended so that the margin contained in the notice would be 2.93 percent, which it has calculated from the AUVs used by petitioners in the petition, rather than the current 58.56 percent. Corus cites Amendment to the Notice of Initiation of the Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada, (“Lumber Initiation Amendment”) 66 FR 40228 (Aug. 2, 2001), to support its contention that the Department has the authority to amend a notice of initiation. See Corus Case Brief at 8, n.14.

In rebuttal comments, petitioners argue that there is no provision in the statute for reconsideration of the decision to initiate an investigation. Issues of sufficiency must be resolved within 20 days after the petition is filed, and no other time they argue. Petitioners argue that Congress intended that respondents not have an opportunity to comment on the sufficiency of a petition by expressly not including language to that effect. Petitioners note that Corus failed to cite any precedent for its position, petitioners could find no precedent, and the Department is on record as not reconsidering initiation decisions. See Skadden Rebuttal Brief at 2, citing Issue and Decision Memorandum from Richard Moreland to Joseph Spetrini Re: Certain Non-Frozen Apple Juice Concentrate from the People’s Republic of China (“Non-Frozen Apple Juice Concentrate Decision Memo”), dated April 2, 2000 at comment 9, located in the CRU.

Petitioners assert that Corus’ allegations that the petition’s calculation of normal value is insufficient and that the petition’s calculation of U.S. price is not representative repeat the substance of Corus’ letter of November 7, 2001. These issues, petitioners claim, were adequately addressed in the petitioners’ letter of November 16, 2001, and were never rebutted or even addressed by Corus.

Petitioners argue that an accurate calculation of COP was not possible using the public data from the hot-rolled steel investigation because it is impossible to determine the extent of the modifications to the cost database from the public version of the hot-rolled cost verification report. Such changes, they state, include adding costs not included in the master cost file, adding a startup adjustment, revisions to total cost of manufacture and revisions to the G&A and interest ratios. Petitioners argue that to use the only ranged, public data on the record of the hot-rolled investigation (which was submitted prior to verification) would not have been appropriate. Petitioners also argue that using ranged information in both the numerator and denominators to calculate G&A and interest ratios would compound the uncertainty.

Petitioners further argue that the HTS subcategories it used in the petition were representative of Dutch shipments. Petitioners argue that most Dutch imports of cold-rolled steel enter the United States under HTS classification 7255.50.80.55, which is an alloy category. They further argue that by studying import trends and AUVs, it can be demonstrated that most of these imports were micro-alloys. Petitioners also argue that this HTS category is a broad basket category, which should not serve as the basis for U.S. price in a petition; instead, they argue, non-alloy classifications should be used because they provide more detailed product descriptions. Thus, petitioners argue, the two HTS subcategories used in the petition provide a more precise comparison of U.S. price and normal value. They argue that because the non-alloy HTS classifications 7209.16.00.90 and 7209.17.00.90 are representative of non-alloy imports from the Netherlands and because non-alloy imports are representative of all subject merchandise from the Netherlands that the AUVs calculated from these two HTS subcategories in the notice were appropriate surrogates and were representative of subject merchandise.

Department's position: We agree with petitioners that the investigation's initiation should not be rescinded. Section 732(b)(1) of the Act requires the Department to examine the accuracy and adequacy of the information provided in the petition to determine whether it alleges the elements necessary for the imposition of duty. The statute requires that the petition allegations be based on information reasonably available to the petitioner. See also 19 CFR 351.203 (implementing section 732(c) of the Act with respect to determining the sufficiency of the petition). Consistent with its practice, the Department conducted such an examination in this case, and determined that there was a sufficient basis on which to initiate an investigation. See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 54198 (October 26, 2001) ("Initiation Notice").

In initiating an antidumping duty investigation, the Department normally relies on publicly available information to calculate cost of production. However, as we noted in the Issue and Decision Memorandum from Richard Moreland to Joseph Spetrini Re: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China ("Non-Frozen Apple Juice Concentrate Decision Memo"), dated April 2, 2000 at comment 9, located in the CRU, it is a

preference of the Department to use publicly-available data rather than a requirement. See id. at comment 9. As we stated in the Initiation Notice for this investigation, “Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing export price (“EP”) to constructed value (“CV”), we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred.” Initiation Notice, 66 FR at 54209. When we examined the data submitted by petitioner, there was no evidence to suggest that the data presented in the petition was inaccurate or inadequate. Moreover, the data addressed the various requirements necessary for the imposition of an antidumping duty order. Therefore, the petition met the statutory standard for initiation. A petitioner need not include or address all information that may be available to it in a petition. Some of this information may be contradictory and such contradictions need not be resolved prior to initiating an investigation. Instead, it is within the investigation itself that conflicting facts will be evaluated by the Department. Therefore, Corus’ assertion that there is additional public information reasonably available which petitioner did not use to calculate the alleged margin does not render the petition insufficient. Thus, Corus’ argument regarding that data is not sufficient to warrant revoking the initiation in this investigation.

Amending the notice of initiation in the final determination in this investigation would be an extraordinary step and would not be a “reasonable” exercise of discretion on the part of the Department. However, there are other reasonable steps that the Department can take to recognize and remedy alleged deficiencies in petition data when appropriate. For example, when applying AFA to calculate a margin, there is the requirement in the statute to corroborate the information in the petition. In the instant investigation, however, we have not used AFA to calculate the margin for the final determination. Because we have made no adverse inferences under section 776(b) of the Act, we are not required to corroborate the information in the petition pertaining to the rate in the notice of initiation as required in section 776(c) of the Act.

Comment 7: Classifying Corus’ U.S. sales as EP sales or CEP sales

Respondent argues that the Department’s decision to classify Corus’s sales as CEP sales in the preliminary determination was erroneous, as there is evidence indicating that its U.S. sales should be treated as EP sales. Respondent states that the sales are made between CSBV in the Netherlands and CSBV’s U.S. customers, and argues that this fact was demonstrated at the sales verification. Corus argues that according to the factors set forth by the U.S. Court of Appeals for the Federal Circuit in AK Steel Corp. v. United States, 226 F.3d 1361 (Fed. Cir. 2000)(“AK Steel”), the sales in question should be classified as EP sales in the Final Determination.

First, according to Corus, CSBV is responsible for the negotiations, books the sale, establishes the terms of sale, invoices the customer, transfers title to the customer and receives payment for the subject merchandise. Second, respondent argues that the material terms of sales, price and quantity, are not established until the order is invoiced, which is done by CSBV. Respondent

argues that the “Confirmation of Sale” cited in the Preliminary Determination as evidence of CSUSA’s role in the transaction does not specify all of the material terms of sale, rather, it merely memorializes the price calculation elements of base price and extras applicable to orders for a given time period (usually a quarter). Respondent argues that the material terms of sale are not fixed until it issues the invoice and argues that it has provided examples where the terms of sale changed between a confirmation of sale and the issuance of an invoice. See Corus’ May 6, 2002 Supplemental questionnaire response at Exhibit 34.

Petitioners argue that the Department properly concluded that certain sales occurred in the United States irrespective of the role played by Corus’s U.S. subsidiary, CSUSA. Consequently, petitioners argue, those sales should be treated as CEP sales. Petitioners refute Corus’ claim that the distinguishing factor between EP and CEP sales is the identity and location of the seller. Petitioners instead argue that the Federal Circuit’s controlling case law demonstrates that the distinguishing factor is instead the location of the transaction, not the identity of the party that made the sale. In support of this contention, petitioners also cite AK Steel, arguing that the court held that the relevant inquiry for determining EP or CEP was whether the sales were made inside or outside the United States. See Skadden Brief at 4-6. They argue that in AK Steel, the court held that sales between affiliated importers and unaffiliated U.S. customers meet the statutory requirements for treatment as CEP sales and additionally confirmed that sales between the foreign producer and an unaffiliated U.S. customer can be classified as CEP if they occur in the United States. See Skadden Brief at 4-5, citing AK Steel, 226 F.3d at 1365.

Petitioners cite Large Newspaper Printing Presses from Germany⁸, arguing Department practice is to focus on where the sale occurred, regardless of the activities or role of the U.S. affiliate. Petitioners argue that under the facts of this investigation Corus’ reported EP sales are CEP transactions. Petitioners argue that Corus is only focusing on the activities of CSUSA in arguing that the transactions are EP sales, an approach, they argue, the court rejected in AK Steel. Petitioners argue that in AK Steel, the Court clarified that the statute requires that sales between a foreign producer and a U.S. purchaser must be classified as CEP if the sales occur in the United States, and that a sale requires both a transfer of ownership and consideration. See AK Steel, 226 F.3d at 1369-74.

Petitioners argue that the record evidence shows that essential sales activities for the transactions take place in the United States, even if the Department determines that the sale was between CSBV and the U.S. customer, and therefore, the transactions should be categorized as CEP. Petitioners allege that documents from Corus’ U.S. market end-use sales show that CSUSA is heavily involved in the sales process, and argue that Corus’ responses show that CSUSA sends

⁸ Memorandum from Richard Moreland to Bernard Carreau re: Issues and Decision Memorandum for the Antidumping Administrative Review: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unasssembled, from Germany, at comment 2, dated February 26, 2001, on file in the CRU.

confirmation of sales agreements and, during the POI, signed all sales contracts in the United States. Petitioners contend that since Corus' U.S. sales are made on a delivered basis, where the transfer of title occurs when and where the seller completes delivery obligations, the transfer of ownership occurs in the United States. See Skadden Brief at 8, citing Uniform Commercial Code 2-401. Petitioners argue that because CSUSA signed contracts in the United States, this demonstrates there was consideration in the United States, and therefore, the sale took place in the United States. Petitioners disagree with Corus' contention that CSUSA is not a seller, arguing that since CSUSA, an affiliate of Corus, negotiated sales, signed sales agreements and contracts, and concluded sales in the United States, it does not matter whether CSUSA made the sales on its own or on behalf of CSBV. Petitioners argue that given the evidence in this investigation, the Department should reject respondent's assertions and continue to classify Corus' reported EP sales as CEP transactions in its final determination.

Department's position: We agree with petitioners. For certain of Corus' U.S. sales, Corus' U.S. affiliate, CSUSA, acted as a selling agent. We have continued to reclassify Corus' reported EP sales as CEP sales. CSUSA plays an active role in these transactions in many ways, including often providing the final written confirmation of the agreement and establishing the prices and quantities to the U.S. customer. Thus, in accordance with section 772(b) of the Act, we continue to calculate CEP for all of Corus' U.S. sales because the merchandise was sold (or agreed to be sold) in the United States before or after the date of importation by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. Even if CSUSA merely plays a role in facilitating communications, rather than invoicing or negotiating the sales agreement, the sales take place in the United States. As noted in the questionnaire responses, and at verification, Corus officials informed us that annual sales agreement negotiations often took place between Corus (sometimes accompanied by CSUSA) officials and customers in the United States. For further discussion, see Final Calculation Memo.

Comment 8: CEP offset

Corus argues that the Department was wrong in not granting a CEP offset to sales recategorized as CEP sales. Respondent argues that it has demonstrated that the sales activities it performs with regard to its U.S. sales are different in character from those performed on its home market sales such that a CEP offset is warranted for Corus's CEP sales. Respondent argues that of the eleven selling function categories, only four are identified by Corus at the same level of performance in both the home market and the U.S. market, with the other selling functions being performed at higher levels in the home market.

Petitioners argue that there are no significant differences in the selling functions Corus performs for its home market and U.S. sales, and that the Department properly determined that a CEP offset was not warranted. Petitioners, citing 19 CFR 351.412(c)(2), argue that the Department should find separate levels of trade ("LOTS") only where there are substantial differences in

selling activities, and that the Department should grant a CEP offset only where normal value is at a more advanced LOT than the CEP LOT. Petitioners assert that Corus performs some selling activities, such as market research, warehousing, and “freight & delivery arrangements” for its CEP sales at a more advanced LOT than its home market sales, while others, such as advertising and sales logistics support, were at a higher LOT for home market sales, but insist that, since the differences in selling activities were minimal, they do not constitute the substantial differences that are necessary to find separate LOTs.

Petitioners add that at verification the Department found no difference in the selling functions Corus performed when selling to affiliated importers or home market customers (citing Corus Sales Verification Report at 7-8). Petitioners argue that should the Department find separate LOTs, the differences in selling functions indicate that the CEP sales were at a more advanced LOT than the home market sales and that a CEP offset would not be warranted.

Department’s position: We agree with petitioners. Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP or CEP transaction. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). As we noted in the preliminary determination, substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there are differences in the stages of marketing. Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (i.e., the “chain of distribution”), including selling functions, class of customer (“customer category”), and the level of selling expenses for each type of sale.

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (i.e. no LOT adjustment is practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732-33 (November 19, 1997).

We obtained information from Corus regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by Corus for each channel of distribution. We also discussed information on sales processes at verification.

In the preliminary determination, we found that there was a single LOT in the home market and a single LOT in the U.S. market. Furthermore, in analyzing Corus' request for a CEP offset, we continue to find few differences in the selling functions performed by Corus on sales to its affiliated importers and those performed for sales in the home market. We note that Corus performs the following functions to the same degree for both the CEP and home market LOT: strategic and economic planning; market research; technical services, and engineering/R&D/product development services. Thus, we continue to determine that the record supports a determination that Corus's U.S. and home market sales were made at the same LOT. Therefore, there is no basis upon which to grant a CEP offset in this case.

Comment 9: Whether GalvPro's unpaid sales should be treated as a bad debt expense

Petitioners argue that if the Department does not apply AFA to calculate Corus' overall margins, then it should make an adjustment to U.S. direct selling expenses to account for the bad debts incurred on Corus' sales to GalvPro. At verification, petitioners argue, the Department learned that Corus transferred the accounts receivable entries for unpaid GalvPro transactions into a separate "bad debts" account. Petitioners argue that Department practice calls for an adjustment to U.S. price for these bad debts. Petitioners cite to two cases⁹, as evidence of Department practice. Petitioners argue that based on the U.S. databases and information gained at verification, all of Corus' reported sales to GalvPro constitute bad debt incurred for subject merchandise during the POI.

Petitioners further argue that the Department should allocate the total bad debt (i.e., the total value for all sales to GalvPro) over the total U.S. sales of subject merchandise as in Stainless Steel Sheet and Strip from Korea, 64 FR at 30674. Petitioners acknowledge that the WTO finds this methodology to be unacceptable in cases where the bad debt expense could not reasonably have been anticipated by the exporter.¹⁰ Petitioners also note that on remand, using the WTO's reasoning, the Department made no bad debt adjustment in that case because the bad debt expenses could not have been reasonably anticipated by the respondent at the time of sale.¹¹

⁹ Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Korea, ("Stainless Steel Sheet and Strip from Korea") 64 FR 30644, 30674 (June 8, 1999); and Notice of Final Determination in Less Than Fair Value Investigation: Stainless Steel Plate in Coils from the Republic of Korea, ("Plate in Coils from Korea") 64 FR 15444 (March 31, 1999).

¹⁰ United States- Anti-dumping Measures on Stainless Steel Plate In Coils and Stainless Steel Sheet and Strip from Korea, WT/DS179/R, adopted on February 1, 2001.

¹¹ Notice of Amended Final Determination: Stainless Steel Plate in Coils From the Republic of Korea; and Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 66

Petitioners assert that in this case, Corus openly states that GalvPro's approaching bankruptcy was not unexpected. Petitioners also note that as a joint venture owner of GalvPro, Corus was in a position to be familiar with the company's financial situation and to be aware of the likelihood that GalvPro would be unable to pay. Therefore, they conclude, the Department should pursue its normal practice and treat the unpaid sales as a bad debt and apply this expense as a direct selling expense, allocated across the remaining U.S. sales.

Petitioners argue in the alternative that if the Department does not treat these sales as bad debt and make a direct selling expense adjustment, it should use the date of the final determination for purposes of calculating credit expenses. Petitioners argue that Corus' other suggested payment dates should be rejected because although GalvPro ceased operations in March 2001, it did not file for Chapter 11 reorganization until August 2001, and did not request a change from Chapter 11 reorganization to Chapter 7 liquidation until March 2002. Petitioners point out that until March, 2002, GalvPro was actively seeking to satisfy its debts, reorganize, and resume its business operations, and that even after a conversion to Chapter 7 liquidation, GalvPro's unsecured creditors may be compensated for their claims.

Corus argues that the Department should not adjust its U.S. prices for "bad debt" on sales to GalvPro. Respondent argues the inclusion of a bad debt expense for these transactions would be improper because these transactions were between affiliated parties, and as such should not be included in the margin calculation at all. See Corus Rebuttal Brief at 6. Respondent adds that these transactions were not written off during the POI, but were only written off in February 2002, therefore, Corus argues, petitioners' argument that the expenses should be included as a direct selling expense is without merit. If these sales are included, respondent argues that the cases cited by petitioners are distinguishable from the instant investigation because the bad debt is caused by transactions to an affiliate rather than sales to unaffiliated customers. Corus argues that the proposed bad debt adjustment is based on a transfer price to an affiliated party rather than a sale to an unaffiliated customer, therefore, the proposed bad debt expense adjustment is not relevant to the calculation of the final dumping margin on subject merchandise, and its inclusion would be contrary to the purpose of the statute.

Corus argues this is not a situation in which treating the sales as a bad debt direct selling expense would be appropriate. Instead, respondent argues, at most, the expenses should be considered additional indirect selling expenses of CSBV and that the expenses should be allocated over all CSBV sales to all markets, as Corus reports for its other indirect selling expenses. Alternatively, respondent argues if the Department deems that the debt should be assigned as a direct selling expense, then the debt should still be allocated over all CSBV sales of subject merchandise in all markets, not just U.S. sales of cold-rolled steel. Corus argues that inasmuch as GalvPro was a

FR 45279, 45282 (August 28, 2001) ("Korean Stainless Steel Cases Remand").

customer for, and benefitted CSBV generally, then the debts should be allocated across all the products CSBV sold, including subject and non-subject merchandise.

Respondent further argues that such an expense, if applied, should be valued at the variable cost of manufacture and not the transfer price between affiliated parties because the true cost to the company is the incremental, variable expense associated with the manufacture of the goods.

Department's Position: We agree with petitioners insofar as we agree that bad debt expense should be included in the margin calculation. However, according to our practice, we must first consider whether we can determine an amount of bad debt expense that could be reasonably anticipated based on the historical experience of the company. See Korean Stainless Steel Cases Remand, 66 FR at 45282. The record indicates that the company did have a bad debt account. Based on the audited annual reports on the record for CSBV and for the consolidated Corus Group Plc. (which is the parent corporate entity for all the companies of the merged British Steel/Hoogovens), we found that CSBV had provisions for bad debt. See, e.g., Corus' December 7, 2001 supplemental questionnaire, Exhibit A-12, Corus Group 2000 Annual Report, page 54; id. at KHNV 2000 Annual Report, page 15; id. at KHNV 1999 Annual Report, page 14; id. at CSBV 2000 Annual Report, page 10. Moreover, the chart of accounts for CSBV list accounts and reserves related to bad debt. See December 7, 2001 questionnaire response, exhibit A-11, CSBV chart of accounts, at page 4.

Therefore, we find that an adjustment for bad debt expense is warranted based on Corus' historical experience. We are basing the bad debt expense on the allowance for bad debt in this investigation because information regarding the specific amount in the bad debt expense account is not on the record. There is no information on the record of the instant investigation to indicate the specific amount of the allowance for bad debt for CSBV during the POI. However, there is specific information on the record indicating the amount of the Corus Group's allowance for bad debts. Therefore, we have used the latest allowance for bad debt figure in the Corus Group's annual report as the basis for this adjustment. Because this figure is part of the consolidated annual report for Corus Group, this allowance amount was compiled from companies involved in sales of many products and markets, not just sales of subject merchandise. Therefore, we allocated the allowance for bad debt over all of Corus Group's sales during the same period. See Final Calculation Memo. Because this allowance is derived from companies involving multiple markets and sales, including sales of subject merchandise in the Netherlands and the United States, we have applied this ratio as an indirect selling expense in both the home and U.S. markets. See id.

Comment 10: Critical circumstances

Respondent argues that in the Department's preliminary affirmative critical circumstances determination, the Department incorrectly applied the statute to this case. Specifically, respondent argues that the Department ignored Corus's import levels in the five-month period immediately before the issuance of the Preliminary Determination, and also ignored Corus's overall import practices subsequent to the filing date of the petition. Respondent further argues that its recent import data shows that recent imports are at such reduced levels that the Department's analysis should have resulted in a negative determination. Respondent also argues that in the last years of the previous antidumping order on cold-rolled steel, Corus was found to have de minimis margins. Respondent further argues that because the International Trade Commission ("ITC") made the prospective finding that imports from the Netherlands would not injure the domestic industry if the previous dumping order was revoked¹², the Department should not rely on that order as the basis for its critical circumstances determination in this investigation.

Respondent argues that for most of the past few years, Corus's exports to the United States have declined rather than increased and argue that the 6-month period examined by the Department in its critical circumstances analysis were an aberration from this trend. Corus contends that it supplied relevant data from 1999 through March 2002, and that by choosing the particular six-month periods in the Preliminary Determination, rather than using all of Corus' submitted data for a longer period of time, Corus was not provided the opportunity to have a company-specific critical circumstances determination, as is required by the statute.

Petitioners argue the Department's finding of a history of dumping and material injury by reason of imports of cold-rolled steel from the Netherlands is demonstrated by the antidumping order that was in effect from 1993 through December 2000. Petitioners further argue that once the history of dumping and material injury is established it is not necessary for the Department to consider evidence of imputed knowledge. Nevertheless, petitioners argue that the Department would have been justified in finding imputed knowledge of dumping if it had not already found an actual history of it. Petitioners also argue the Department correctly chose to examine imports for a six-month period based on a reasonable finding that importers had reason to believe that an antidumping case was imminent by May 2001. They further argue that the Department should continue to find that critical circumstances exist with regard to imports of cold-rolled steel from the Netherlands in this final determination.

¹² See Certain Cold-Rolled Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, Inv. Nos. AA-1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-50, and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, & 614-618, USITC Pub. 3364 (Nov. 2000).

Department's Position: We agree with petitioners and continue to find that critical circumstances exist in this final determination.

Section 733(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and, (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine whether there has been a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of a prior order by the United States on the subject merchandise to be sufficient. Imports of cold-rolled steel from the Netherlands were subject to an antidumping duty order from 1993 through December 2000. Therefore, we found that there is a history of dumping of cold-rolled steel from the Netherlands according to the plain language of the statute. See Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation, (“Preliminary Critical Circumstances Determination”) 67 FR 19157 (April 18, 2002). No factual information has been provided on the record that would affect this conclusion, thus, we continue to find that the first prong of the knowledge requirement (i.e., section 733(e)(1)(A)(i)) of the critical circumstances analysis) is satisfied.¹³

Under section 733(e)(1)(B), we are also required to determine whether massive imports occurred over a relatively short period. In this case, we agree with petitioners that we chose an appropriate period to examine with respect to imports for this analysis. Id. As discussed in the preliminary critical circumstances determination, we have determined that May 2001 is the month in which importers, exporters or producers knew or should have known an antidumping duty investigation was likely. Therefore, in applying the six-month comparison period, we used a comparison period of June 2001 to November 2001, and a base period of December 2000 to May 2001. As we explained in the preliminary critical circumstances determination, there are several reasons for choosing this six-month period in this case. First, at that time we had import data for all

¹³ This is the same basis on which we found that the knowledge prong of the critical circumstances analysis was satisfied in the preliminary critical circumstances determination. See Memorandum from Bernard Carreau to Faryar Shirzad Re: Antidumping Duty Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Australia, India, the Netherlands, and the Republic of Korea - Preliminary Affirmative Determinations of Critical Circumstances, dated April 10, 2002, at 6-8, located in the CRU.

exporters for this six-month period and we did not believe it was appropriate to use different periods for different exporters. Second, we believe that choosing a six-month period in general properly reflects the relatively short period commanded by the statute for determining whether imports have been massive. Third, the period selected allows the Department to determine whether a genuine surge in imports has occurred shortly after exporters knew or should have known about the likelihood of an antidumping petition.

Under the statute, the Department is permitted to seek time periods for comparison that pre-date the petition if information on the record indicates that importers, exporters, or producers had early knowledge of an impending petition. As we indicated in the preliminary critical circumstances determination, there is evidence on the record showing that importers had such knowledge in May 2001. Because there is no new information on the record indicating that the base and comparison periods used in making our preliminary critical circumstances determination are inappropriate, we continue to find that critical circumstances exist with respect to this merchandise.

Comment 11: “Zeroing” methodology

Corus argues that the Department’s “zeroing” methodology (*i.e.*, disregarding so-called negative margins” or setting them to zero) is contrary to U.S. obligations under the WTO Antidumping Agreement. Specifically, respondent argues that such methodology is identical to the methodology that was found to violate Articles 2.4. and 2.4.2 of the Antidumping Agreement in the Appellate Body decision in European Communities - Antidumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R (Mar. 1, 2001) (“Bed Linen”). Corus further argues that there is nothing in the U.S. antidumping statute that mandates this approach, therefore, there is no inconsistency between U.S. domestic law and U.S. international obligations as embodied in the Antidumping Agreement that would inhibit a change in practice. According to established precedent, Corus argues, the U.S. law must be interpreted so as not to defeat those international obligations whenever possible, see Murray v. Schooner Charming Betsy, 2 L. Ed. 208 (1804)), therefore, the Department should adopt a methodology that does not set “negative margins” to zero.

Petitioners argue the Department is not required to alter its practice of “zeroing negative dumping margins” when calculating the overall weighted-average antidumping margin. Petitioners contend that the Department must maintain its current practice because it is mandated by the statute. They also argue the Appellate Body decision in Bed Linens does not require a different result, and urge the Department to reject this argument from Corus.

Petitioners note that in several recent determinations, the Department has rejected other arguments to stop the practice of “zeroing” margins, arguing that the Department’s practice is consistent with its statutory obligations. Petitioners argue that the statute does not provide for calculation of “negative dumping margins.” Instead, they argue, an individual dumping margin

may only reflect the amount by which NV exceeds EP or CEP, not the amount by which NV is less than EP or CEP. In turn, they argue, calculation of the weighted-average dumping margin is based on the aggregation of individual margins, each of which may only reflect the amount by which NV exceeds EP or CEP. Thus, they argue, by statute, the Department may not calculate a negative dumping margin, nor include negative margins in its calculation of the weighted-average dumping margin.

Petitioners also argue that the WTO Appellate Body decision in Bed Linens has no impact on U.S. law or Department practice. Under U.S. law, they argue, the Department cannot change agency practice or procedures based on the outcome of a Dispute Settlement Body or Appellate Body report. Moreover, they argue, the decision in Bed Linens applies only to the European Communities, not to the United States and because of differences between EC and US antidumping laws, such a decision should not be construed to apply to the United States as well.

Department's position: We disagree with respondent and have not changed our calculation of the weighted-average dumping margin for the final determination with respect to this issue. Non-dumped sales are included in the margin calculation as just that – sales with no dumping margin. The value of such sales is included in the denominator of the margin along with the value of dumped sales. We do not, however, allow non-dumped sales to cancel out dumping determined to be present on other sales.

This methodology is required by U.S. law. Section 771(35)(A) of the Act defines “dumping margin” as “the amount by which the normal value exceeds EP or CEP of the subject merchandise” (emphasis added). Section 771(35)(B) defines “weighted-average dumping margin” as “the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.” These sections, taken together, direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and to divide this amount by the value of all sales. The directive to determine the “aggregate dumping margins” in section 771(35)(B) makes clear that the single “dumping margin” referred to in section 771(35)(A) applies to calculating individual transaction margins, and does not itself apply on an aggregate basis. There is no statutory provision directing that the amount by which EP or CEP exceeds NV on non-dumped sales cancel out the dumping margins found on other sales. Finally, the Bed Linens panel and Appellate Body decisions concerned a dispute between the European Union and India, thus, we have no WTO obligation to act based on these decisions.

Comment 12: Clerical error in the margin program

Respondent argues that it has identified a clerical error in the Department's margin program that resulted in an incorrect conversion of certain home market selling expenses from euros to dollars. Specifically, respondent takes issue with the Department converting the home market euro-denominated selling expenses into dollars by multiplying them by the exchange rate after the home market expenses are merged into the U.S. model data set. Respondent argues that SAS software is known to produce unpredictable results when calculations are nested inside a merge of two or more datasets. Respondent argues that the home market selling expense values that result after the conversion into dollars do not equal the euro home market expenses multiplied by the appropriate exchange rate. Respondent argues to correct this error, the Department needs to split the currency conversions into a discrete programming step separate from the merge of the home market and U.S. sales databases.

In rebuttal comments, petitioners argue there was no programming error in the Department's preliminary margin program, therefore, no corrections are required. Petitioners argue that MUSXRATE is correctly applied to the home market variables in the margin program in order to derive the U.S. dollar value of the variable. Petitioners further argue there is no evidence that the exchange rates under the variable name MUSXRATE are incorrect; the only small differences in resulting dollar values seen in the program are due to rounding.

Department's Position: We agree with petitioners that there is no error. In the margin program, the exchange rates are applied correctly to the euro-denominated variables in the home market database after they are merged with the U.S. database.

Comment 13: Clerical Errors Identified at Verification

Petitioners have taken issue with two errors identified at verification related to the transfer price field and the quality variable on certain U.S. sales. Petitioners first argue that we should reject Corus's corrections to the quality characteristic CRQUALU. At verification, Corus noted that the quality characteristic for three CONNUMs had been reported erroneously. Petitioners argue that at verification, Corus purported to provide language to correct the error in coding the CONNUMs but that it did not provide the necessary language. Petitioners argue that we should reject the CRQUALU revisions submitted at verification and continue to use the CONNUMs as originally reported. Second, petitioners argue that we should not make the correction to Corus's transfer price field, (TRPRCU) by converting euros to dollars. They claim that Corus indicated it would submit a mini-file to correct the field, but that it did not do so, and therefore, we should not make any corrections to TRPRCU and other fields that are derived from the transfer price field: indirect selling expenses incurred in the country of manufacture (DINDIRSU), indirect selling expenses incurred in the United States (INDIRS1U), inventory carrying costs in the United States (INVCARU), and the further manufacturing field (FURMANU).

Corus argues that all the clerical errors identified at verification should be corrected and contends there are simple ways to correct the two errors addressed by petitioners.

Department's position: We agree with petitioners in part and with Corus in part. The Department identified several discrepancies in Corus' reported data at the verifications of Corus and Rafferty-Brown that have led us to make changes from our preliminary calculations. See Corus Sales Verification Report, Corus Cost Verification Report, CEP Verification Report, and Further Manufacturing Verification Report. Further, during the verification of Corus' responses, Corus identified several what it termed clerical errors for the Department. See Corus Sales Verification Report at 2. At verification, Corus informed us that for several CONNUMs for the U.S. market the quality variable had been incorrectly coded. See id. They informed us this was an unintentional data entry error in coding. At verification, Corus presented to the Department information to correct this error, but we declined to take it on the basis that it was new information. Moreover, these changes were too significant to be considered corrections appropriate for verification. We did not include this information in the verification exhibits we collected and it is not on the record of this investigation. The sentence in the Corus Sales Verification Report referring to corrective language in an exhibit is erroneous. Thus, we agree with petitioners that the CRQUALU field should not be changed.

We disagree with petitioners, however, that the Department should not correct the errors identified at the beginning of verification with regard to the transfer price field and expense fields based on transfer price. At verification, Corus informed the Department that in its response, it had indicated the transfer price field (TRPRCU) had been converted from euros to dollars in the U.S. database, but that in preparation of several pre-selected sales traces it had discovered that the prices had not been converted into dollars. Corus asserted this was an unintentional error in programming. We reviewed the information presented and were satisfied that the transfer prices were not converted to dollars because of an inadvertent error. To correct this error, we have converted reported transfer prices into U.S. dollars using the exchange rate of the Federal Reserve Bank in effect on the date of sale of the subject merchandise. See 19 CFR 351.415.

With respect to the remaining items that Corus identified as clerical errors at the beginning of verification, we have made the appropriate corrections. See Memorandum from David Salkeld to James Terpstra Re: Certain Cold-Rolled Carbon Steel Flat Products from The Netherlands: Final Determination Calculation Memorandum ("Final Calculation Memo").

Comment 14: VCOM Calculation

Petitioners argue that the Department should correct its calculation of VCOM in its margin and comparison market program. The petitioners contend that the Department incorrectly defined VCOM because fixed overhead is not the only difference between the total cost of manufacturing (TOTCOM) and VCOM. The petitioners provide calculations for the TOTCOM and VCOM

fields, and note the differences between the two. The petitioners assert that the Department should use the VCOM in Corus' submitted cost file for both the comparison market and margin programs.

Department's Position: We agree with petitioners that the VCOM used in the comparison market and margin programs in the preliminary determination was incorrect. We have used the VCOM reported in Corus' most recent cost file for purposes of this final determination. See Memorandum to Neal Halper from Nancy Decker through Peter Scholl, Re: Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products From The Netherlands: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination, dated September 23, 2002, located in the CRU.

COST ISSUES

Comment 15: Non-Prime Offset to Standard Costs

Petitioners argue that the Department should disallow the non-prime offset to standard costs (QUALTY2 field). The petitioners note that Corus created the QUALTY2 field to "deduct from the standard cost of prime quality merchandise the premium included in the standard to capture the cost of reducing the standard cost of second quality production," and add back "to the standard cost of non-prime quality production the valuation reserve used to reduce the standard to realizable value." Petitioners assert that based on examination of the database, the respondent did not simply reverse the adjustments for non-prime products made in the normal course of business, but instead used the field as a means to achieve targeted cost reductions for certain products.

Respondent counters that it correctly adjusted standard cost for the amount contained in the field QUALTY2. Respondent states that petitioners' claim demonstrates petitioners' misunderstanding of the calculation and the significance of the adjustment. Corus explains that the adjustment is by its very nature always a reduction to the standard cost of prime merchandise, and contends that in its normal cost accounting system, it assigns a lower standard cost to second quality production to reflect its lower commercial value. Respondent notes that in reporting the standard cost of second quality merchandise, it did not report the reduced standard but reported the standard cost of the same product in its prime condition. Therefore, respondent asserts that to eliminate the double counting that would result from also including the upward adjustment for second quality merchandise contained in the prime quality standard cost, Corus had to adjust the standard cost of all prime quality production downward. Therefore, according to Corus, the fact that there are no increases to standard cost does not indicate a flaw in its methodology since it never reported the reduced non-prime standard costs. Corus also notes that its non-prime

adjustment methodology was utilized in the Department's investigation in last year's hot-rolled steel investigation, where it was verified and accepted by the Department.

Department's Position: We disagree with petitioners that the respondent used its non-prime offset adjustment to achieve targeted cost reductions for certain products. A careful examination of Corus' books and records demonstrates that in deriving its product-specific standard cost of manufacturing in the ordinary course of business, Corus attributes a higher standard cost to a prime product than to the non-prime product with identical physical characteristics. However, the Department requires that products requiring the same inputs and production processes (regardless of whether they are considered to be prime or non-prime merchandise) be reported with identical costs. Therefore, in reporting both prime and non-prime product-specific costs to the Department, Corus started with its internal standard cost of manufacturing for prime merchandise and then adjusted this cost downward to reverse the effect of the company's standard cost system, which attributes a higher yield loss, and thus, a higher cost to prime merchandise. This downward adjustment was applied by broad product group, not on a targeted basis as claimed by petitioner. As this adjustment appears reasonable and was verified by the Department, we are continuing to use these costs as reported. See Corus Cost Verification Report and verification exhibits CVE-6 and CVE-18.

Comment 16: G&A Expenses

Petitioners assert that Corus understated the Corus Group Plc's¹⁴ (the "Corus Group's"), G&A expenses that should be included in the reported costs. Petitioners note that Corus Group's 2000 consolidated financial statements, which Corus used to allocate the parent's portion of the G&A expense ratio, indicate Corus Group incurred significant SG&A expenses as well as rationalization and impairment charges.¹⁵ Petitioners contend, however, that only a fraction of the parent's SG&A expenses were included in reported G&A expenses. Petitioners argue that in supporting this claim both in the response and at verification, Corus submitted a list of items included in reported G&A rather than specifying and justifying the amounts excluded from the total. Petitioners argue that pursuant to section 776(a) of the Act, the Department should apply partial facts available and rely on information submitted in one of the cost verification exhibits (exhibit CVE-15 of the Corus Cost Verification Report). Specifically, petitioners assert that the Department should calculate the percentage of CSBV's G&A expenses to total SG&A expenses,

¹⁴ Corus Group Plc is the parent corporation for all the business units that make up the merged British Steel/Hoogovens, and is therefore the ultimate parent corporation for CSBV.

¹⁵ In the Corus Group Annual Report, it lists these charges as exceptional items related to the British Steel/Hoogovens merger and related efforts to increase efficiency. See December 7, 2001 questionnaire response, Exhibit A-12, Corus Group Plc. 2000 Annual Report at 5, 48.

and apply that percentage to the parent's total SG&A expenses to derive the total G&A for the Group.

Respondent asserts that it correctly included its head office administrative expenses in the reported G&A expenses. Respondent argues that the accuracy of its head office administrative expenses was verified not once, but twice, once in this investigation and once in the recent hot-rolled steel investigation. Respondent points out that it reported G&A expenses based on fiscal year 2000 data, which it had also reported for the hot-rolled investigation that the Department conducted last year. Respondent points out that in the instant investigation, Corus included the G&A worksheet attached to the Department's final analysis memorandum in the hot-rolled investigation and that this worksheet included the head office administrative expenses now in question. Respondent argues that the head office expenses in question along with other G&A items reported by Corus were verified during the hot-rolled verification and again during the instant verification.

Department's Position: We disagree with petitioners. We have no reason to believe that respondent did not accurately report the correct portion of the Corus Group's G&A expenses. It is not surprising that the SG&A on Corus Group's financial statements is much larger than the Corus Group administrative expenses reported in the response because the Corus Group financial statements are consolidated. The amount on the financial statements contains not only G&A expenses, but also the selling expenses for all Corus Group companies; it does not contain expenses solely for the headquarters' administrative functions. In exhibit CVE-15 attached to the Corus Cost Verification Report, Corus provided the breakout of expenses for the Corus Group administration unit itself. Corus also demonstrated how this total could be linked to the Corus Group reporting system. The portion relevant to Corus Group could be derived as a percentage of consolidated cost of goods sold because these G&A expenses support all Corus Group companies. In the Department's questionnaire, we asked respondent to include in G&A expenses an amount for administrative services performed on the company's behalf by its parent company. As Corus has done this, we have used the G&A expenses as reported by Corus.

Comment 17: Corporate Rationalization Charges - G&A Expenses

Petitioners argue that Corus improperly allocated its parent's rationalization and impairment charges in the G&A calculation. Petitioners state that it appears that Corus first identified the portion of the rationalization and impairment charges on the parent's financial statements pertaining to CSBV's strip mill division, then calculated a ratio based on this amount, and applied the ratio to the reported G&A expenses. Petitioners assert that it is nearly impossible to determine if Corus included or excluded costs at each step in the calculation, and that Corus' methodology represents a clear departure from the company's normal books and records, and a departure from generally accepted accounting principles (GAAP) as they were applied to the charges in question in the Group's audited financial statements. Petitioners cite to section 773(f)(1)(A) of the Act which states that costs shall normally be calculated based on the records

of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country. Petitioners contend that while the calculation of consolidated rationalization and impairment charges should be based on information from companies in the consolidated group, none of the financial statements of the companies in the group include restructuring charges (pointing in particular to CSBV's financial statements.) Petitioners theorize that these charges are excluded from company-specific financial statements based on the applicable GAAP (i.e., U.K., Dutch, or U.S.). Petitioners assert that none of the national accounting standards consider it appropriate to include these charges at the company-specific level, because these charges are a general expense benefitting the companies not individually but only as a group. Therefore, according to petitioners, the three national accounting standards independently established that the economic picture of member companies would be distorted if these consolidated charges were reported at the company-specific level. Petitioners argue that by allocating these costs to the company-specific level for the response to the Department, Corus departs from both its normal books and GAAP. Petitioners assert that the Department should disregard Corus' company-specific allocation and include the consolidated rationalization and impairment charges in the total consolidated G&A allocation.

Respondent counters that it correctly identified and included in reported G&A expenses the rationalization and impairment charges that it incurred on behalf of assets used to produce the merchandise under investigation and properly excluded those expenses that were incurred on behalf of assets not used to produce the merchandise under investigation. Respondent counters petitioners' argument that charges incurred on behalf of assets located in the United Kingdom, not the Netherlands, the country under investigation, should be allocated to merchandise under investigation as baseless. Respondent argues that the information submitted by Corus and verified by the Department in this investigation was also submitted by Corus and verified in the hot-rolled steel investigation. Respondent asserts that in the hot-rolled steel investigation, the Department computed Corus' G&A allocation rate by including those rationalization expenses incurred by Hoogovens Steel Strip Mill Products, the former name of the division responsible for producing the cold-rolled merchandise currently under investigation and the hot-rolled products under investigation last year. Respondent states that in the hot-rolled investigation, the Department did not include rationalization expenses incurred by Corus divisions or companies that did not produce the merchandise under investigation, and that those same divisions and companies are applicable here. Respondent argues that the rationalization expenses incurred by Corus are not general corporate overhead expenses but are expenses that were incurred on behalf of specific countries and product lines. Therefore, according to Corus, its specific identification reporting method is not improper but the most accurate allocation method available, as it assigns expenses only to those countries and product lines for which the expenses were incurred. Respondent argues that allocating rationalization expenses incurred on behalf of non-subject merchandise to cold-rolled merchandise under investigation would distort the cost of the merchandise under investigation.

Department's Position: We disagree with petitioners. Respondent used the most specific identification reporting method available in determining the portion of corporate rationalization and impairment charges relevant to the production of subject merchandise. Moreover, we were able to trace the reported expenses to total expenses and income from CSBV and Koninklijke Hoogovens (KH) financial documents which tie to Corus Group's financial statements. Therefore, all applicable extraordinary items have been recorded in their books and brought forward to the Group's financial statements. We note that Corus Group's 2000 financial statements were for the fifteen month period from October 1999 through December 2000 and were stated in British pounds; however, KH's and CSBV's financial statements were for the twelve month calendar period and were stated in euros. Therefore, the amounts will not match between these statements. In addition, Corus Group's annual report, in discussing the rationalization provision, indicates that "Corus undertook a strategic review of its U.K. carbon steel activities seeking to ensure their return to profitability through margin enhancement and cost reduction measures." The report discusses the restructuring measures including capacity reduction and plant and process line closures. This explanation corresponds with the fact that the majority of the exceptional charges in the breakdown provided by Corus in Exhibit SD-16 of the April 3, 2002, response were related to British operations of the former British Steel, which is a separate legal entity from the respondent. The breakdown of rationalization and redundancy costs is reasonable and we have no reason to doubt its accuracy. Therefore, we are using the rationalization and redundancy costs as reported in the G&A rate calculation.

Comment 18: Extraordinary Charges - G&A Expenses

Petitioners argue that the Department should include unidentified extraordinary charges in Corus' reported G&A. Petitioners point out that according to Note 17 of CSBV's 2000 audited financial statement, Corus incurred extraordinary charges. Petitioners assert that Corus has not provided anything on the record to explain these charges and the Department's verification report does not discuss these charges. Petitioners note that the Department has stated in numerous cases that the burden lies with respondent to place necessary information on the record and that section 776(a)(1) of the Act states that if necessary information is not on the record, the Department should use facts otherwise available in reaching the applicable determination. According to petitioners, the only fact that is on the record in this case is that these charges are part of the company's costs according to GAAP. Therefore, petitioners argue that as facts available, the Department should include these charges in Corus' G&A expenses.

Respondent argues that Corus' FY 2000 extraordinary charges are neither unidentified nor a cost item. Respondent points out that the extraordinary charge is actually an income item. Respondent notes that a review of the CSBV financial statements shows that the charges identified by petitioners increase net income after taxes, and therefore, the extraordinary items reflect income not cost during FY 2000. Respondent states that footnote 17 of CSBV's fiscal year 2000 financial statements explains the nature of these extraordinary amounts as being extraordinary income concerning the reversal of part of a provision the company recorded in

1999. Respondent asserts that the initial extraordinary charge consisted mainly of costs incurred in connection with a 1999 provision for the restructuring of the Long Products division. Respondent notes that the Long Products division does not produce the merchandise under investigation. Respondent argues that it properly excluded this extraordinary income from its G&A expenses.

Department's Position: We agree with respondent that the item referred to by petitioners is an income item associated with the reversal of part of the 1999 provision for restructuring for the Long Products division. As this reversal relates to a correction to a prior period estimate, we do not consider it appropriate to reduce current period costs by this amount.

Comment 19: Further-Manufacturing Overhead

Petitioners assert that the Department should apply AFA to Rafferty-Brown's reported manufacturing overhead. Petitioners note that in its original Section E response, Corus used employee headcount to allocate a wide range of Rafferty-Brown's overhead costs. Petitioners note that the Department in its supplemental section E questionnaire, based on findings in the previous case involving Corus, instructed Corus to revise its calculation to reflect a more appropriate allocation basis. Petitioners point out that Corus then allocated over all machines by calculating a single overhead per ton rate. Petitioners argue that while this methodology might be considered as the most appropriate in some circumstances, the Department discovered at verification that Rafferty-Brown's further manufacturing production reports list not only "unit tons produced by machine" and "total man-hours" but also "unit tons per hour by machine" and "unit turn hours." According to petitioners, each of these items reflects a more appropriate allocation basis than headcount or total production quantity and should have been used to allocate overhead costs to machines. Petitioners assert that the information was clearly available to Corus, the company chose not to use or report it until it was discovered by the Department at verification, and nowhere prior to verification did Corus mention that there were alternative bases for allocating overhead costs. Petitioners assert that the Department acted properly at verification by simply noting that the information was available without putting the information itself on the record because this would have constituted the acceptance of new information. Therefore, petitioners argue that since Corus did not act to the best of its ability to allocate and report Rafferty-Brown's overhead cost, the Department should use AFA and apply to every further-manufactured U.S. sale the higher reported overhead rate Corus reported for the maximum amount of processing.

Respondent argues that it properly and timely reported Rafferty-Brown's manufacturing overhead. Respondent explains that in its original section E response, it allocated manufacturing overhead costs to each machine using a headcount method (costs were then divided by tonnage processed on each machine to determine a unit manufacturing overhead cost for each machine). Respondent notes that in the supplemental section E questionnaire, the Department instructed Corus to revise its calculation to reflect a more appropriate allocation basis and directed Corus to

review the methodology used in the final determination of the hot-rolled steel investigation. Respondent notes that the methodology used by the Department in the final determination of the hot-rolled steel investigation was based on tons processed. Respondent points out that in its supplemental section E response, Corus revised, based on the Department's instructions, the manufacturing overhead calculation based on tons processed by machine. Respondent asserts that in making this calculation, it relied upon the further-manufacturing production reports referenced by petitioners. Respondent contends that it used the tons processed by each machine as contained in this report. Respondent argues that petitioners' claim that information from this report was not reported by Corus prior to verification is erroneous. Respondent concludes that since Corus reported these costs consistent with the Department's instructions and from the same document referenced by petitioners, the assertion that the Department should apply adverse facts available to Rafferty-Brown's manufacturing overhead is without merit.

Department's Position: We disagree with petitioners that we should use AFA to value Rafferty-Brown's further-manufacturing overhead. We agree with respondent that it used processed tons by machine for its allocation basis (not just total tons processed) and that the report petitioners are referring to includes both unit tons produced per machine and unit tons per hour by month. Contrary to what petitioners state, this summary report is on the record in FMVE-7 of the Further Manufacturing Verification Report, although the original monthly reports are not on the record. We note that we disagree with respondent's implied assertion that the Department specifically instructed Corus to change its allocation to be based on tons processed. In our supplemental questionnaire, we cited the final in the hot-rolled steel investigation to explain why employee headcount was not an appropriate basis for allocation in this case. The Department used tons processed in the hot-rolled steel determination because it was the only information available on the record. While tonnage produced is often not an appropriate allocation basis, we note that Rafferty-Brown's production process is the same regardless of the product characteristics of the product. Therefore, a time-based allocation may not be any more accurate than an allocation based on tonnage produced by machine. When evaluating the reasonableness of an allocation methodology, the Department must base its decision on the facts on the record of that particular proceeding. We note that neither the SAA nor the Act prescribe a specific method for allocating expenses to specific products when the respondent's normal books and records fail to provide such specificity. The Department's regulations stipulate that the allocation method must not cause inaccuracies or distortions. See 19 CFR 351.401(g)(1). When statute and regulations are silent or ambiguous, the determination of a reasonable and appropriate method is left to the discretion of the Department. Therefore, because respondent's allocation methodology in this case is reasonable and does not appear to cause inaccuracies or distortions, we are continuing to use further-manufacturing overhead as reported.

Comment 20: Further Manufacturing G&A Expenses

Petitioners argue that the Department should calculate and apply the further manufacturing G&A expense ratio separately for each of the two Rafferty-Brown companies. Petitioners note that in its calculation of the further-manufacturing G&A ratio, Corus combined the G&A expenses and costs of goods sold of the two Rafferty-Brown companies, and calculated a single G&A ratio that it applied to all production processing codes regardless of location. Petitioners assert that it is the Department's practice to calculate further manufacturing G&A separately for each company. Petitioners point out that the Section E questionnaire instructs respondents to report the per-unit G&A expenses incurred by the company and explains that the respondent should rely on the company's audited financial statements. Therefore, petitioners argue that the Department should calculate and apply the further manufacturing G&A expense ratio separately for each of the two Rafferty-Brown companies.

Respondent counters that it correctly calculated a single G&A expense ratio for the Rafferty-Brown companies. Respondent notes that Rafferty-Brown North Carolina is a subsidiary of Rafferty-Brown Connecticut. Respondent points out that the president for both companies is located in Connecticut, while the controller for both is located in North Carolina. Therefore, according to respondent, both companies share key management personnel. Respondent argues that it demonstrated at verification that in an effort to reduce overall expenses of each company, significant administrative expenses are negotiated on behalf of both companies whenever possible. Respondent concludes that for these reasons, it is proper to compute a single G&A expense rate for both locations

Department's Position: We agree with petitioners that we should calculate separate rates for each Rafferty-Brown entity. We have revised further manufacturing G&A to calculate one rate for RBC and one for RBN. In addition, we note that in the further manufacturing G&A calculation for RBC, we are also revising that company's cost of goods sold, as noted on page 2 of the Further Manufacturing Verification Report.

Comment 21: Inter-company Charges - Further Manufacturing G&A Expenses

Petitioners argue that the Department should include intercompany charges when re-calculating G&A for each Rafferty-Brown company. Petitioners note that Corus excluded from its reported further-manufacturing costs for both Rafferty-Brown companies certain charges identified as inter-company costs (Management Service Fees and Consultant Fees). Petitioners contend that Corus failed to explain the nature of these intercompany charges anywhere on the record, and there is no reference to these charges in the Department's Further Manufacturing Verification Report. Petitioners assert that the Department should therefore include these charges in its recalculated G&A.

Respondent argues that it properly excluded certain inter-company charges when calculating the G&A expense rate for Rafferty-Brown. Respondent notes that Department personnel extensively reviewed the nature of the inter-company charges while conducting the further manufacturing and CEP verifications of Rafferty-Brown (citing the July 22, 2002, Further Manufacturing Verification Report at pages 14 - 15). Respondent asserts that the Department's verifiers reviewed the detail for these accounts and discussed the nature of the expenses reported in these accounts in great detail with company officials. Respondent contends that if the Department found Corus' calculation to be inappropriate, it would have identified them as such in its verification reports.

Department's Position: We agree with petitioner that intercompany charges in question should be added to the G&A calculation for each Rafferty-Brown company. We note in particular that respondent's assertion that if the Department found Corus' calculation to be inappropriate, the Department would have identified them as such in its verification reports, is incorrect. We note on page 2 of the July 19, 2002 Further Manufacturing Verification Report that the list of findings may not be inclusive and the Department had not determined at that date whether the cost calculation methodologies used by the company were appropriate. We examined the detailed trial balance for the accounts concerning these items and found them to be inter-company management fees to various headquarters entities for Rafferty-Brown. See page 10 of the Further Manufacturing Verification Report and exhibits FMVE-5 and FMVE-11. As these are services that Rafferty-Brown pays for, we find no reason that these accounts should be excluded from the G&A calculation. Therefore, it is appropriate to include these amounts in the further manufacturing G&A calculations for each company.

Comment 22: Corporate Rationalization versus Group G&A - Further Manufacturing G&A Expenses

Petitioners argue that instead of including corporate rationalization charges per Corus' allocation in Rafferty-Brown's G&A, the Department should add the Corus Group administrative percentage. Petitioners note that it has argued in another comment that Corus understated its share of the parent's G&A expenses. Therefore, petitioners contend that instead of including in Rafferty-Brown's G&A Corus' reported corporate rationalization charges, the Department should add to G&A the group administrative percentage.

Respondent asserts that it properly included an amount for group G&A reflecting the actual corporate rationalization charges of each of the reporting entities. Respondent notes that in computing the further manufacturing expenses for Rafferty-Brown, it included an amount in G&A reflecting the rationalization expenses booked for Rafferty-Brown which were included in the Corus Group audited income statement. Respondent points out that petitioners have provided no legal or factual support for petitioners' request that the Department eliminate the booked company-specific expenses and replace it with an allocated amount of total group restructuring charges incurred for the entire Corus Group. Respondent argues that this is because there can be

no rational support for favoring a general allocation in place the actual expenses reflected in the audited income statement of Corus Group. Similarly, according to respondent, there can be no rational support for replacing the G&A expense calculation previously verified and accepted by the Department in the hot-rolled steel investigation with the result-oriented calculation favored by the petitioners.

Department's Position: We disagree with petitioners. For the same reasons cited in Comment 17 (Corporate Rationalization Charges - G&A Expenses), we have no reason to believe the rationalization and redundancy cost breakdown provided by Corus in Exhibit SD-16 of the April 3, 2002, response is not accurate. Therefore, we are using the rationalization and redundancy costs related to Rafferty-Brown as reported in the calculation of further manufacturing G&A. We note that while we are including the Corus Group administrative percentage in G&A (as stated in the previous comment), we are not using the Corus Group G&A rate calculated in petitioners' brief and as explained in the petitioners' section of Comment 17 above.

Recommendation

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

Agree _____

Disagree _____

Faryar Shirzad
Assistant Secretary
for Import Administration

Date