Sunshine Act Meeting

July 1, 1996.

DATE AND TIME: Friday, July 12, 1996, 9:30 a.m.

PLACE: U.S Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of June 14, 1996 Meeting
III. Announcements
IV. Staff Director's Report
V. Continuation of General Programmatic Theme Discussion
VI. State Advisory Committee Report

''The Enforcement of Affirmative Action Compliance in Indiana Under Executive Order 11246'' (Indiana)

VII. Future Agenda Items

11:00 a.m. Briefing on Three Strikes and You're Out—Mandatory Life Sentences After Three Felony Convictions

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376-8312.

Miguel A. Sapp,

Parliamentarian.

[FR Doc. 96–17268 Filed 7–2–96; 2:10 pm]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part.

SUMMARY: On September 29, 1995, the Department of Commerce (the Department) published the preliminary results of administrative reviews and notice of intent to revoke in part the antidumping duty order on polyethylene terephythalate (PET) film, sheet, and strip from the Republic of Korea. The reviews cover four manufacturers/exporters of the subject merchandise to the United States and the periods June 1, 1992 through May 31, 1993 and June 1, 1993 through May 31, 1994.

As a result of comments we received, the antidumping margins have changed from those we presented in our preliminary results.

EFFECTIVE DATES: July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4475/0649.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1995 (59 FR 50547), the Department published the preliminary results of administrative reviews and notice of intent to revoke in part the antidumping duty order on PET film from the Republic of Korea (56 FR 25669, June 5, 1991). At the request of petitioners and three respondents, we held a hearing on April 9, 1996.

These reviews cover four manufacturer/exporters: Cheil Synthetics, Inc. (Cheil), Kolon Industries (Kolon), SKC Limited (SKC), and STC Corporation (STC).

We are revoking the order for Cheil because Cheil has sold the subject merchandise at not less than foreign market value (FMV) in these reviews and for at least three consecutive periods. Cheil has also submitted certification that it will not sell at less than FMV in the future.

Scope of the Review

Imports covered by these reviews are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The reviews cover the periods June 1, 1992 through May 31, 1993 (second review period) and June 1, 1993 through May 31, 1994 (third review period). The Department has conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of this administrative review. We received timely comments from the petitioners and all four respondents. At the request of the petitioners and three respondents, we held a public hearing on April 9, 1996.

Comment 1: Petitioners argue generally that the methodologies employed by SKC and Cheil to value recycled chip (RC) assign an unreasonably low cost to recycled resin. Petitioners contend that the cost of processing recycled film is directly associated with the cost of the chemicals which are reclaimed. Petitioners assert that to properly account for the cost of producing PET film, the Department must include both the cost of the materials content of the recycled film and the cost of the recycling. Petitioners also argue that both virgin resin and recycled resin contain the same basic chemicals in the same quantities, and that recycled resin is a nearly ''one for one'' substitute for virgin resin. Petitioners assert that the differences between virgin resin and recycled resin are ''minimal.'' While limits exist on the amount of recycled resin that can be used in PET film production, petitioners note that in many instances recycled resin accounts for more than 50 percent of the raw material inputs. Petitioners further note that the bill of materials (''recipes'') for PET films can be adjusted to tolerate a greater or lesser volume of recycled resin, and that producers can adjust the molecular weight of virgin chip (VC) to accommodate varying usage of recycled resin. Petitioners also assert that producers can modify the production process to minimize problems related to discoloration caused by using recycled resin.

Petitioners contend that, in general, the methodologies used by Cheil and SKC to value recycled resin do not reflect the actual cost of that material. Petitioners assert that the Statement of

Administrative Action (SAA), Congressional Reports on the Uruguay Round Agreements Act, and the Court of Appeals for the Federal Circuit (CAFC) decision in *Ipsco Inc.* v. *the United States*, 965 F. 2d 1056, 1059–1061 (Fed. Cir. 1992) (*Ipsco Appeal*), preclude the Department from using cost calculations which substitute assigned values for actual costs. Even if the methodologies employed by Cheil and SKC to account for recycled film are consisted with Korean Generally Accepted Accounting Principles (GAAP), petitioners argue that Cheil's and SKC's methodologies are unacceptable because they fail to reasonably reflect the costs associated with recycled material. Petitioners contend that the Department has accepted from Cheil and SKC different, contradictory accounting treatments of the cost of RC.

Cheil: Specifically with regard to Cheil, petitioners assert that the number of sales used by Cheil to establish the net realizable value (NRV) of recycled resin is too small to be representative of the actual cost of the material. Petitioners further argue that the customers who purchase resin from Cheil are using the resin in a less demanding process. These customers, petitioners assert, do not require recycled resin of the same quality as PET film producers. Petitioners argue that there is no indication that the grades of PET film sold by Cheil on the open market are the same as that which Cheil uses internally.

Petitioners contend that most PET films can be made within a broad range of virgin resin/recycled resin ratios. petitioners argue that given the flexibility to increase or reduce the usage of recycled resin, Cheil's decision to sell a small amount of PET resin at a price that is much lower than the price of virgin resin makes little economic sense. Petitioners suggest that Cheil's rationale for selling a small amount of recycled chip on the open market could be to establish an artificially low value for the recycled chip used in PET film exports to the United States.

In response, Cheil argues that the appropriate accounting treatment for valuing its recycled resin (pellets) is the NRV that Cheil assigns to these pellets. Cheil notes that the NRV methodology is consistent with both Korean and U.S. GAAP. Cheil contends that Departmental review, analysis, and verification of the cost data submitted by Cheil uncovered no evidence that Cheil's NRV methodology is manipulative, or that Cheil substituted increasing quantities of pellets for VCs in an attempt to minimize its dumping liability.

Cheil contends that the NRV established for recycled pellet represents a market price for that merchandise. Cheil argues that the Department has no basis to exclude these sales because such sales are ''too small'' to constitute a valid market. Cheil further contends that its NRV methodology was in place before the onset of the Department's less-than-fair-value (LTFV) investigation in 1991, and that the Department accepted and used that methodology during the fair value investigation and the first administrative review. Cheil also argues that precedent obligates the Department to accept Cheil's practice of valuing RC at its NRV. Cheil cites to thirteen separate cases in which NRV methodologies have been applied. Moreover, Cheil argues that the Court of International Trade (CIT) has approved the use of NRV for valuing by-products in *Asociacion Colombiana de Exportadores de Flores* v. *United States*, 704 F. Supp. 1114, 1125 (CIT 1989). Cheil contends that there is nothing on the record that distinguishes the instant facts from the numerous other cases in which the Department has used an NRV methodology to value by-products.

Cheil also asserts that VCs and the resin it recycles as pellets are not physically one-for-one substitutes, and, thus, its practice of valuing pellets at an NRV below that of VC is economically sound. Cheil argues that pellets and VCs have different molecular structures and chemical compositions. Cheil contends that a mixture of pellet and VC can create blending problems. Because of differences in the molecular structure of pellets and VCs, Cheil contends that VCs and pellets melt at different temperatures. Cheil also claims that additional production problems (such as contamination) will result if too many pellets are employed in the production process.

Cheil argues that waste film production has a direct costs impact on PET film through lower yields, and that higher pellet usage increases fabrication costs. Cheil contends that the Department has no basis to assume that historical production yields would remain constant if the production process utilizes 100 percent VCs. Based on these factors, Cheil argues that pellets should be assigned a lower cost than VCs.

Cheil contends that, contrary to petitioners' assertion, its usage of VC relative to pellets has actually increased from the second to the third review. Cheil asserts that the true value of pellets (because of the lack of substitutability between VC and pellet) is actually lower than their NRV.

Cheil argues that the NRVs that it assigned to pellets reflect the same set of assumptions and market behavior as the NRVs that it assigned to off-grade chip production. Cheil thus concludes that if the Department decides to back out the NRVs at the virgin and chip level, it must also back out the NRVs at the chip production cost level.

Cheil further contends that any methodology which assigns an equal value to VCs and RCs would not properly account for the valuation of beginning and ending inventory. Cheil contends that this is because VCs and recycled pellets would be valued according to one cost methodology, while period-of-review costs would be valued according to a completely different methodology.

SKC: With regard to SKC, petitioners contend that its methodology for costing recycled resin is economically unreasonable and was concocted especially for the Department's fair value investigation. Petitioners assert that prior to the fair value investigation of this case, SKC calculated an average materials cost without distinguishing between virgin and recycled resin. Petitioners assert that the methodology used by SKC in these reviews ignores the costs of the material content of the recycled resin. Petitioners argue that the true cost of the recycled resin is much higher than the value assigned to it by SKC.

Petitioners argue that SKC's normal method of accounting for recycled resin correctly accounts for the processing costs (*i.e.*, labor, overhead, etc.) of recycling, but fails to address the cost of the chemicals which are reclaimed as the recycled resin. Petitioners maintain that SKC must recognize the presence of valuable PET resin in the chips that SKC recycles. By omitting material costs in determining the cost of RC, petitioners assert that SKC understates the cost of films that use a higher proportion of recycled materials.

In response, SKC maintains that its cost accounting methodology does not exclude the cost of the raw materials of recycled resin from PET film cost of production (COP). SKC argues that the PET film production process is a closed cycle, and that all costs are fully accounted for in the system. SKC explains that both VCs and RCs are released into the production line to form PET film as follows: at the end of the film production line scrap film is recovered; the recovered scrap is then reprocessed to produce recycled resin, and the recycled material is then used together with VC to produce more PET film, a portion of which will again be reclaimed. According to SKC raw materials (ethylene glycol (EG) and dimethyl terephthalate (DMT) or terephthalic acid (TPA)) are used exclusively for the production of VC; the recycled material is produced entirely from scrap film without input of additional raw materials. In other words, all recycled resin is produced from VCs that were released into the film production line during a previous production cycle. SKC states that it does not take a credit for the scrap which it recycles. Therefore, SKC argues that the finished film bears the cost of all raw materials consumed in the film production process, including the cost of raw materials that are later reclaimed to produce RCs.

SKC argues that the Department should continue to value recycled resin according to the methodology employed by SKC in its internal cost accounting system. SKC contends that its cost methodology is reasonable and consistent with accepted accounting concepts. SKC contends that recycled resin has a ''lower intrinsic viscosity, lower molecular weight, and increased discoloration'' than do VCs. SKC notes that the Department determined that there is no evidence on the record suggesting that SKC has manipulated its chip blends to alter production costs. Finally, SKC asserts that its blending ratios have been stable over time.

Department's Position: We believe that Cheil's and SKC's methods of accounting for their recycled raw materials are reasonable and have relied on them for these final determinations. The legislative history of section 773(b) states that ''in determining whether merchandise has been sold at less than cost [the Department] will employ accounting principles generally accepted in the home market of the country of exportation if [the Department] is satisfied that such principles *reasonably reflect* the variable and fixed costs of producing the merchandise.'' H.R. Rep. No. 571, 93d Cong., 1st Sess. 71 (1973) (emphasis added). The CIT has upheld the Department's use of expenses recorded in the company's financial statements, when those statements are prepared in accordance with the home country's GAAP and do not significantly distort the company's actual costs. *See, e.g., Leclede Steel Co.* v. *United States,* Slip Op. 94–160 at 22 (CIT 1994).

Accordingly, our practice is to adhere to an individual firm's recording of costs, if we are satisfied that such principles reasonably reflect the costs of producing the subject merchandise, and are in accordance with the GAAP of its home country. *See, e.g., Canned Pineapple Fruit from Thailand: Final Determination of Sales at Less Than Fair Value (Canned Pineapple from Thailand),* 60 FR 29553, 29559 (June 5, 1995); *Certain Stainless Steel Welded Pipe from the Republic of Korea; Final Determination of Sales at Less Than Fair Value,* 57 FR 53693, 53705 (November 12, 1992); *and Furfuryl Alcohol from South Africa: Final Determination of Sales at Less Than Fair Value,* 60 FR 22550, 22556 (May 8, 1995) (''The Department normally relies on the respondent's books and records prepared in accordance with the home country GAAP unless these accounting principles do not reasonably reflect the COP of the merchandise''). Normal accounting practices provide an objective standard by which to measure costs, while allowing respondents a predictable basis on which to compute those costs. However, in those instances where it is determined that normal accounting practices result in an unreasonable allocation of production costs, the Department will make certain adjustments or may use alternative methodologies that more accurately capture the costs incurred. *See, e.g., New Minivans from Japan; Final Determination of Sales at Less Than Fair Value,* 57 FR 21937, 21952 (May 26, 1992).

In the instant proceeding, therefore, the Department examined whether the respondents' normal recycled resin accounting methodology results in costs of producing the *subject merchandise* (finished PET film) that reasonably reflect its cost of production. Notably, we found that a characteristic of the PET film production process is that a substantial amount of film becomes unusable during production. The PET film production process generally takes place in two stages. In the first stage, a mixture of basic chemicals and special additives are used to crate VCs. Both Cheil and SKC produce several different types of VCs, each from a specific chemical recipe designed to promote certain physical attributes in the finished PET film product.

In the second production stage, one or more VC types are measured and mixed with recycled material. The mixture of VC and recycled material is then melted. The molten polymer is extruded onto a chilled casting drum, where it spreads into a continuous polymer film. From the casting drum the film passes through a series of stretching machines. As the finished film cools, it is wound onto a master roll. The master rolls of finished film undergo quality inspection for various physical characteristics. Films that fail this inspection are either sold as off-quality PET film or recycled.

As previously stated, the PET film manufacturing process and finished film quality standards are such that substantial quantities of recyclable waste film are generated. This film is recycled as a raw material input to the production process for PET film. Each type of PET film has a maximum amount of recycled materials that can be added while still allowing the film to meet its quality requirements. We note that the respondents use different processes for recycling the waste film and different methods of accounting for the recycled materials. (See recycled raw materials accounting memorandum, August 17, 1995). However, each company's method is similar in that they assign significantly less cost to the recycled material than they do to the original VC.

Under its normal cost accounting system, SKC attributes to its recycled film only the costs related to recycling. SKC assigns no costs to the waste film used in the recycling process. Thus, SKC records as the cost of recycled material, only the labor and overhead costs incurred for shredding the film and reprocessing it.

Cheil recycled film is treated as a by-product of the film production process and valued at its NRV. Cheil's NRV represents the revenues received (less disposal costs) for recycled material sold as filler for mattresses and toys. Cheil deducts the pellets' NRV from the cost of producing the good PET film output.

On March 20, 1996, the CIT issued its decision in the appeal of the underlying investigation in this proceeding, *E.I. Dupont de Nemours & Co., et al.* versus *United States,* Slip. Op. 96–56, Court No. 91–07–00487 (March 20, 1996) (*Dupont II*). The CIT's decision recognized the above facts with respect to the production of PET film and each respondent's accounting for recycled materials. In light of those facts, the CIT found that:

> [petitioners'] argument that pellets should be costed like virgin chip because they are functionally equivalent defies common sense and arithmetic logic. The reason that PET film production utilizes recycled material is that it is cheaper to recycle scrap film than to manufacture virgin chip; this being the case, assigning pellets the cost of virgin chip would overstate the actual costs of PET film production. *Dupont II,* at 9.

The CIT further noted that the record did not support the allegation that Cheil manipulated the usage rate of pellet in order to shift costs away from PET film exported to the United States.

The CIT also rejected petitioners' arguments concerning SKC's accounting practices. The Court noted that the reason SKC uses a ''zero value'' for the material cost of RC is that ''SKC did not subtract the value of pellets resulting from PET film production runs from the accounting cost of producing PET film; therefore, there was no basis for adding any pellet value back into the accounting cost of PET film manufactured with pellet material input.'' *Dupont II*, at 10. While the CIT determined that the Department's refusal to address SKC's methodology for valuing pellet was proper under the scope of the remand, it indicated that even if such instructions ''had been part of the remand order, SKC's methodology is reasonable and fully accounts for the value of'' its recycled resin. *Dupont II*, at 11.

In this review, we continue to find that Cheil and SKC have reasonably valued RC. We determined that although differing in approach, both methodologies reasonably capture the cost of producing PET film. As previously noted, every PET film production run uses both virgin chip and recycled material. The scrap film resulting from each production run is recycled into subsequent production passes. Each respondent's method of accounting for the recycled material is used in the normal course of business and is GAAP-consistent.

We examined Cheil's and SKC's books and records and found that each company relies on its recycled resin methodology in the normal course of business and has done so for at least the last several years. We further found that each respondent's allocation methodology is consistent with GAAP practiced in Korea.

We disagree with petitioners' argument that the cost basis for recycled materials should be the purchase price of the raw material. The record in this case demonstrates that recycled resin is not the functional equivalent of VC, since the production process degrades the chemicals and introduces contaminants into the process. Thus, while recycled material can be used in place of VC within certain limits, recycled resin and VC are not completely equivalent.

We also do not accept petitioners' contention that SKC's methodology is economically unreasonable. SKC's methodology fully accounts for all costs because each type of film is charged with the cost of the material consumed in its production (as well as the material which will be reused in later production runs). Thus, all production costs are fully charged to the subject merchandise.

We also disagree with petitioners' arguments that Cheil's NRV should be disallowed because it is not representative of a market value. Despite the fact that Cheil's recycled film purchasers use the pellets in less demanding processes, there is no evidence that these transactions do not represent a fair valuation for this material. Moreover, we note that a petitioner also makes sales of recycled film chips or pellets to manufacturers of pillows and carpet. This company indicated that it sells the recycled chip at a price significantly less than the cost to manufacture VC. In addition, the company explained that it had recently adopted a costing methodology based on the relative sales value of RC that is similar to that used by Cheil. (See plant tour memorandum, April 5, 1995.)

Comment 2: Petitioners contend that Cheil and SKC have understated their costs and overstated their U.S. selling prices by misrepresenting the quantities of film that they produce and sell, and that the quantity of films actually shipped are not the quantities of film actually billed. Petitioners assert that since producers will be penalized if they include too little film on a roll, producers will generally include more film on a roll than they actually invoice. Petitioners assert that exhibits collected as part of the verifications for the second and third reviews of Cheil and SKC support their assertion that SKC and Cheil are providing more film on a roll than they have actually reported to the Department. Petitioners additionally contend that the verification exhibits collected in these reviews provide further evidence that reported costs are incorrect because the sales and production quantities used to derive those costs and prices are either ''conceptionally inappropriate'' or ''simply wrong.'' Petitioners assert that the production quantities reported by Cheil fail to account for losses occurring in the second slitting process. Petitioners suggest that SKC's shifting of the reporting period form 1/1/93–12/31/93 to 7/1/93–6/30/94 for the third administrative review distorted the valuation of RCs and scrap. Petitioners assert that Cheil may have distorted its costs through a similar shifting of the reporting period.

SKC and Cheil contend that the Department verified reported production quantities. SKC and Cheil assert that there is no evidence on the record supporting petitioners' assertion that production quantities were understated or that either company shipped more film on a roll than was reported in SKC's or Cheil's responses.

Department's Position: We disagree with petitioners because there is no evidence on the record to support their claim that either Cheil or SKC understated their production quantities, or that either company shipped more PET film on a roll than the customer ordered. During these verifications, we traced reported production of PET film to the PET film production records of Cheil and SKC. Our trace of production quantities for Cheil accounted for the amount of film (sold exclusively to third countries) that underwent second slitting. (*See* Cheil July 28, 1995 second review period verification report at page 5; Cheil January 26, 1996 third review period verification report at page 3.) The Department also verified the production quantities reported by SKC. (See SKC July 28, 1995 second review period verification report at page 15; SKC February 27, 1996 third review period verification report at page 10.)

Moreover, we disagree with the petitioners' assertion that Cheil's and SKC's valuation of RC and scrap was distorted because they shifted the reporting period. The Department directed Cheil and SKC to report costs for the third review period from July 1, 1993 through June 30, 1994, rather than for the calendar year January 1, 1993 through December 31, 1993, so that the period for reporting COP/CV information would more closely correspond to the time frame covered by the third review. We have not allowed either Cheil or SKC to manipulate to their advantage the period for reporting cost information.

Comment 3: Petitioners note that the language used to determine whether below-cost sales were made over an extended period of time for Cheil and Kolon fails to identify such sales of merchandise that were sold in less than three months of each period of review. Petitioners contend that this programming error exists for each of the respondents included in these reviews.

Department's Position: We agree. For each of the respondents included in these reviews, we have amended our computer programs to exclude from FMV below-cost sales that were sold in less than three months of the PORs and that made over an extended period of time.

Comment 4: Petitioners contend that the Department erred in adjusting Cheil's home market price for pre-sale inland freight from its factory to its warehouse. Petitioners contend that this deduction contravenes *Ad Hoc Comm. of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 398, 401 (Fed. Cir. 1994).

Cheil contends that Departmental practice is to treat pre-sale inland freight as a direct expense in instances where products are channeled or customized for certain buyers.

Department's Position: We disagree with petitioners. As noted in *Canned Pineapple Fruit from Thailand*, in *Ad Hoc Committee,* the Court ruled that the Department could not use its inherent authority to deduct home market pre-sale movement expenses. Instead, we will adjust for these expenses under the circumstance-of-sale provision as long as we determine that these expenses are directly related to the sales under investigation. The Department generally treats pre-sale movement expenses as direct where those expenses ''involve products channeled or customized'' for certain buyers (*Id.* at 29563). Because Cheil knew the identity of its customer and the product specifications of that customer prior to the shipment of film from the factory to the warehouse, we have treated Cheil's pre-sale inland freight as a direct selling expense. This is consistent with our position in past segments of this proceeding. (*See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Determination of Sales at Less than Fair Value* 56 FR 16300, 16303 (April 21, 1991) (*Final Determination*)).

Comment 5: Petitioners contend that certain sales that Cheil has characterized as ''samples'' were sold in significant volume and should be included in the Department's calculations. Petitioners contend that Cheil's failure to report these sales mandates use of the best information available for Cheil.

Cheil contends that the Department verified that its zero-priced samples were not commercially valued. Cheil contends that the Department's decision to exclude there sales was consistent with past Departmental practice.

Department's Position: We do not consider Cheil's zero-priced samples to be sales within the meaning of the antidumping law. This is consistent with the position taken in *Granular Polytetrafluoroethylene Resin from Japan; Final Results of Antidumping Duty Administrative Review (PTFE from Japan)* 58 FR 50343, 50345 (September 27, 1993), in which we did not include zero-priced samples in our calculations because the samples were used for product evaluation purposes rather than for commercial consumption.

During the PORs Cheil provided a limited number of zero-priced samples to the United States. Cheil provided full documentation that the shipments were not commercially valued, and were for product evaluation purposes only. Accordingly, we did not include these zero-priced samples in our analysis.

Comment 6: Petitioners assert that Cheil has failed to report related-party commissions associated with its U.S. sales. Petitioners assert that these expenses are directly related to U.S. price.

Cheil contends that the mark-up between the price charged by Cheil to its U.S. subsidiary and the price charged by Cheil's U.S. subsidiary to Cheil's U.S. customer is not a ''commission.'' Cheil notes that a commission is ''a sum or percentage allowed to agents, sales representatives, etc., for their services.'' (See *Timken Co.* v. *United States,* 37 F.3d 1470, 1478 (Fed. Cir. 1994).) To receive a commission, Cheil argues that a commissionaire must make a sale on another party's behalf. Because there is no evidence on the record suggesting that Cheil's U.S. subsidiary solicits sales for Cheil, or engages in any activity to generate sales on Cheil's behalf, Cheil argues that the mark-up between the price charged by Cheil to its U.S. subsidiary and the price charged by Cheil's U.S. subsidiary to Cheil's U.S. customer is not a ''commission'' within the meaning of the antidumping law.

Department's Position: We agree with Cheil. Because Cheil's U.S. subsidiary did not solicit sales for Cheil, we do not consider the mark-up between the price charged by Cheil to its U.S. subsidiary and the price charged by Cheil to Cheil's U.S. customer to be a commission within the meaning of the antidumping law.

Comment 7: Petitioners assert that the Department should use quality control criteria values (QCCVs) rather than product codes to match Cheil's home market and U.S. sales. Petitioners contend that matching sales through QCCVs would be less susceptible to manipulation.

Cheil asserts that use of QCCVs instead of product codes would result in comparisons of home market merchandise that is less similar to the merchandise sold in the United States.

Department's Position: We disagree with petitioners. As noted in *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et. al.,* 57 FR 28360, 28366, (June 24, 1992) our policy is to ''maintain a stable, normal and predictable approach'' with regards to model match, and not to alter that methodology unless compelling reasons exist. In these reviews we have used the same methodology for matching Cheil's home market sales that we employed in the less than fair value (LTFV) investigation and in the first review. There is no evidence on the record to suggest that use of product codes has enabled Cheil to manipulate the matching of home market sales.

Finally, we note that use of QCCVs would in several instances result in the matching of merchandise that is less similar to the U.S. merchandise than would the product codes submitted by Cheil. In one instance this dissimilarity would result in the comparison of a product that is coated with a product that is non-coated, and in another instance this would result in comparison of merchandise that is of different chemical compositions.

Comment 8: Petitioners contend that the Department should calculate the credit period for Cheil's U.S. sales from the date of shipment from Cheil's factory to the U.S. customer rather than from the date of export shipment from Korea. Petitioners also assert that the Department should require Cheil to provide the actual date of payment for those U.S. sales for which Cheil had not received payment at the time that Cheil prepared its U.S. response.

Cheil contends that the Department should recalculate Cheil's inventory carrying cost expenses, if it decides to recalculate the credit period from the date of shipment from Cheil's factory.

Department's Position: In these final results we have followed our normal policy and calculated the U.S. credit period beginning with the date that the merchandise leaves the factory. (*See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et. al.*, 60 FR 10900, 10916, (February 28, 1995).) We have also recalculated Cheil's inventory carrying costs to avoid double counting of Cheil's credit expenses. Because we noted no significant discrepancies between payment term and the date that Cheil actually received payment, we used payment terms to calculate Cheil's U.S. credit expense for those U.S. sales for which Cheil had not received payment at the time that it prepared its response.

Comment 9: Petitioners contend that the Department should adjust U.S. sales for advertising and promotion expenses that Cheil incurred on its U.S. sales.

Cheil contends that it had no direct advertising or sales promotion expenses during the PORs.

Department's Position: We disagree with petitioners. In response to our questionnaire and our request for supplemental information, Cheil indicated that it had no direct promotion or advertising expenses during the periods of review, and there is no contrary evidence on the record. Since all of Cheil's sales were PP transactions and there were no commissions incurred for home market sales, the issue of whether Cheil had indirect advertising or sales promotion expenses is moot because in PP transactions we do not adjust for indirect selling expenses, absent commissions in the other market.

Comment 10: SKC contends that the Department's reallocation of its manufacturing costs between A- and B-grade film is contrary to Department practice and unreasonably overstates SKC's B- grade film costs. SKC asserts that B-grade film cannot be used by its normal PET film customers, and should not bear the same cost as A-grade film. SKC contends that the Department's allocation of cost to B-grade film should reflect the economic value of the products manufactured. SKC argues that B-grade film is a by-product of PET film rather than a co-product, and that B-grade film is an unavoidable consequence of manufacturing A-grade film. SKC contends that it seeks to minimize the production of B-grade film, and that B-grade film does not undergo significant processing prior to sale. SKC asserts that sales of B-grade film constitute a small (less than 10 percent) and declining portion of its PET film revenues.

SKC notes that in *Canned Pineapple from Thailand,* The Department did not use physical measures to allocate joint products but rather used an allocation methodology that recognized the significantly different economic values of the products. Based on the dissimilarity of A-grade and B-grade film, SKC contends that the Department's joint allocation of costs between these two products is economically unreasonable.

SKC further asserts that it valued B-grade film in accordance with its longstanding practice. SKC contends that the Department has consistently rejected the use of physical allocation methodologies in cases where the one joint product has a significantly lower economic value than the other product. SKC cites to *Elemental Sulphur from Canada: Final Results of Antidumping Finding Administrative Review,* 61 FR 8239, 8241–8243 (March 4, 1996) (*Sulphur*), and *Oil Country Tubular Goods from Argentina, Final Determination of Sales at Less than Fair Value,* 60 FR 33539, 33547 (June 28, 1995), as two such cases where the Department did not use physical measures to allocate costs. SKC contends that the Department's general practice is to use a company's normal accounting system unless that system results in an unreasonable allocation of costs. SKC further argues that the Department's methodology of allocating yield losses equally between A-grade and B-grade film produces absurd results because the methodology allocates expenses associated with one type of scrap to another part of scrap. SKC also contends that the physical defects inherent in B-grade film compel SKC to (1) sell B-grade film for non-PET film applications, and (2) assign B-grade film a lower value than A-grade film.

SKC asserts that the Department's decision to allocate yield losses equally between A-grade and B-grade film conflicts with the model-match and cost test methodologies employed in these reviews. SKC notes that for model-match purposes, the Department restricted comparisons of U.S. B-grade film to home market sales of B-grade film. SKC asserts that the Department cannot ignore differences between A-grade and B-grade film for purposes of its cost analysis.

Finally, SKC asserts that the Department should accept its cost methodology even if the Department determines that B-grade film is a co-product rather than a by-product of A-grade film. SKC asserts that its cost system is consistent with the *Ipsco Appeal* decision, since, unlike *Ipsco,* SKC does not rely upon sales value to allocate costs. SKC asserts that this is consistent with the methodology employed by the Department in *Polyvinyl Alcohol from Taiwan,* 61 FR 14064 (March 29, 1996). (See Memorandum to Chris Marsh from Art Stein, September 27, 1995.)

Petitioners argue that the Department was correct in equalizing the yield loss that SKC experienced between A-grade and B-grade films. Petitioners contend that allocating all yield loss to A-grade film would result in a misallocation of SKC's costs, an improper use of below-cost sales in the Department's margin calculations, and an understatement of margins for SKC's sales of slitted B-grade film.

Petitioners point out that in various submissions filed in the course of the initial investigation, respondents as a group (including SKC) stated that the essential facts in the administrative proceedings underlying the *Ipsco Appeal* are indistinguishable from the facts in this case.

Petitioners contend that the Department's reallocation reflects the mandate of the *Ipsco Appeal*, and also the realities of PET film production. Petitioners explain that from a batch of resin, a single production run will generate a given amount of A-grade film and a given amount of B-grade film. Regardless of the quality of film, the actual costs of producing a run of film are borne equally. Petitioners maintain that it takes the same volume of raw materials and the same processing effort to make A-grade film as B-grade film.

Petitioners argue that the fact that the *Ipsco Appeal* involved oil country tubular goods instead of PET film is irrelevant. Petitioners maintain that B-grade PET film is not a *by-product* of the PET film production process, but is PET film. B-grade PET film is used in PET film applications, and is generated from the same production run as A-grade film using the same materials and processes. Petitioners therefore conclude that SKC's A-grade and B-grade film must bear the same costs.

Department's Position: We believe that A-grade and B-grade PET film have identical production costs and we have relied on equal costing for this final determination. The CIT's decision in the remand of the underlying investigation (*Dupont II*) affirmed the Department's remand calculation of the cost of production for prime and off-grade film (*i.e.,* A-grade and B-grade film). *Dupont II,* at 6–7. The CIT determined that our recalculation of Cheil's and SKC's production costs was reasonable. As we explained in the remand, we recalculated the cost of off-grade film to reflect actual costs by allocating production costs based on actual production quantities.

Moreover, our use of an equal costing methodology in this proceeding is based on substantial evidence and is otherwise in accordance with law. In the instant reviews, the A-grade and B-grade film undergo an identical production process, involving an equal amount of material and fabrication expenses. The only difference in the resulting A- and B-grade film is that at the end of the manufacturing process a quality inspection is performed during which some of the film is classified as high quality A-grade product, while other film is classified as lower quality B-grade film. The identification of different grades of merchandise does not transform the manufacturing process into a joint production process which would require the allocation of costs.

SKC mischaracterizes the continuous production process of PET film as joint processing. A joint production process occurs when ''two or more products result simultaneously from the use of one raw material as production takes place.'' (*See Management Accountants' Handbook,* Keeler, et. al., Fourth Edition at 11:1.) The essential point of a joint production process is that ''the raw material, labor, and overhead costs prior to the initial split-off can be allocated to the final product only in some arbitrary, although necessary, manner,'' *Id.* In this case, the costs attributable to PET film yield losses can clearly be allocated to the production of specific types of PET film.

SKC argues incorrectly that its method of accounting for lesser quality product is consistent with the *Ipsco Appeal*. Ipsco Appeal involved the Department's use of an appropriate methodology for allocating costs between two grades of steel pipe. These two grades of steel pipe were distinguished on the basis of quality. *Ipsco Appeal*, 965 F.2d at 1058. The same production inputs for materials, labor, and overhead went into the manufacturing lot that yielded both grades of pipe. *Id*. Given these facts, in our final determination we allocated production costs equally between those two grades of pipe. We reasoned that because they were produced at the same time, on the same production lines, and following the identical manufacturing process, the two grades of pipe in fact had identical production costs. *Id*.

SKC's reliance on *Sulphur, Canned Pineapple Fruit from Thailand*, and *Polyvinyl Alcohol from Taiwan* is misplaced. Those cases relate primarily to by-product/co-product costing methodologies. In none of the cases cited by SKC were both products within the scope of the same antidumping order. The PET film production process produces two finished products, both of which are salable, and both of which are PET film products. B-grade PET film (like A-grade film) is sold as *PET film* and consumed as *PET film*. By contrast, the resulting joint products or by-products in the cases cited by SKC were of a different class or kind of merchandise than the products that the manufacturer set out to produce. Pineapple shells, cores, and ends are made into pineapple juice. Natural gas is not of the same class or kind as elemental sulphur, nor are polyvinyl alcohol and methyl acetate. Moreover, we note that in the ordinary course of business SKC treats methanol, and not B-grade film, as the by-product of the PET film production process. Accounting literature identifies by-products as separate and distinct products, not grades of the same product. Unlike the chemical reaction that occurs in the production of polyvinyl alcohol resulting in the by-product methyl acetate, B-grade film is not a by-product. Theoretically the production of B-grade film is avoidable since the PET film manufacturing process need not result in poor quality product.

Finally, SKC's argument that matching A- and B-grade film to identical merchandise necessitates that each of these models have a unique cost is without merit. Two products that are not "identical" for model-match purposes may indeed have the same costs. For purposes of determining COP/CV, however, we must account for all of the costs associated with the production of the merchandise.

Comment 11: Petitioners contend that SKC understated the cost of extending credit to Anacomp on its U.S. sales. Petitioners contend that the credit terms offered to Anacomp by SKC do not constitute a normal extension of credit between buyer and seller, but rather involve an "incentive to finance Anacomp's film purchases at below market rates." Further, petitioners argue that the antidumping statute does not contemplate a circumstance-of-sale adjustment to U.S. price for interest payments that offset credit risk. Finally, petitioners argue that if the Department accepts the Anacomp payments as interest income, it should "impute SKC's interest expense" using an interest rate that is the "equivalent of the market rate sales to Anacomp."

SKC contends that petitioners have offered no grounds for reversing the Department's previous decision to offset interest income against SKC's imputed credit expense.

Department's Position: We disagree with petitioners because, as noted in the first review of this order, "* * * failure to adjust for SKC's interest income received from Anacomp would overstate SKC's U.S. credit expense, and distort our dumping analysis." (*See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea, Final Results of Antidumping Administrative Review* (*Final Results of the First Review*), 60 FR 42835, 42838 (August 17, 1995). During our verification of SKC we determined that SKC and Anacomp adhered to all of the terms of the "Master Supply Agreement" which governed the payment of interest income to SKC. We also verified the amount of interest income received by SKC. Accordingly, in these final results we have continued to make an offset for interest income as we did in the preliminary results of this review.

Comment 12: Petitioners note that Kolon Industries (Kolon) did not include home market sales of scrap film in its sales listing because "this scrap is not PET film." Petitioners contend that Kolon has failed to substantiate its claim that these scrap sales were not of PET film.

Kolon asserts that the scrap material is not PET film. Kolon contends that the material consists of (1) molten PET material that is deposited in the filters of the extruder before the molten PET material is extruded onto the cooling drum and formed into sheet and film, and (2) shredded trimmings from the film production process. Because the scrap material is not PET film, Kolon argues that it is not within the scope of the order.

Department's Position: We agree with Kolon. Because the scope of the antidumping order is limited to PET "film, sheet and strip," and this material is not PET film, we have not included these scrap sales in our calculations.

Comment 13: Petitioners contend that the Department should include Kolon's U.S. sample sales in its margin calculations. Petitioners contend that while the Department has the authority to omit zero-price samples if the samples were not used for commercial consumption, that exception does not apply for Kolon since those sales were consumed commercially. Petitioners note that the Department included Kolon's zero-price samples in its calculations for the first review.

Kolon contends that the Department should exclude these zero-price samples from its analysis. Kolon notes that in *PTFE from Japan*, the Department excluded such transactions even though the merchandise was not returned to the manufacturer. Kolon contends that the Department's decision to include zero-price sales in its first period analysis was based upon "the incorrect belief that there is no evidence on the record that Kolon's U.S. sample sales are destroyed or rendered unusable." Kolon contends that the nature of PET film requires the tester to unwind the film, and to usually coat the film, stamp it, or use it on a machine. Kolon contends that such testing, by its nature, renders the PET film unusable.

Department's Position: As noted in response to *Comment 5*, in *PTFE from Japan* we determined that zero-priced transactions were not "sales" within the meaning of the antidumping law because the zero-priced samples were used for product evaluation purposes rather than commercial consumption. In the *Final Results of the First Review*, we indicated that *PTFE from Japan* was not applicable because there was no evidence on the record that Kolon's U.S. samples were destroyed or rendered unusable. (*See Final Results of First Review*, at 42841.)

However, the record in these reviews demonstrates that Kolon provided the zero-priced samples for product evaluation and testing purposes rather than commercial consumption. Kolon stated that its one shipment of zero-priced samples during the third review was used for product testing. Moreover, we find that record evidence shows that like PTFE resin, the nature of PET film is such that once it has been tested, it cannot be re-used. Therefore, consistent with *PTFE from Japan,* we did not include Kolon's zero priced samples in our analysis.

Comment 14: Petitioners contend that Kolon incorrectly used home market adjustments applicable to other reviews in compiling its second and third review responses. Petitioners contend that such a methodology results in inconsistencies.

Kolon contends that it did not revise sales data that it had reported in previous questionnaires in order to avoid inconsistencies from one review to the next.

Department's Position: We disagree with petitioners. It is the Department's longstanding practice to base USP and FMV price comparisons on reasonably contemporaneous sales of similar merchandise. (*See Certain Forged Steel Crankshafts from the United Kingdom,* 56 FR 5975, 5976 (February 14, 1991).) In compliance with our instructions, during the second review Kolon reported data for its sales for the period from December 1991 through July 1993. For the third review, in order to ensure contemporaneous matches, we requested data on sales for the period December 1992 through July 1994. Kolon complied with our request and did not make any revisions to the sales and adjustment data that is had previously reported in prior reviews. Because revising these data previously submitted would result in inconsistencies for identical sales, we determine that Kolon's approach is a reasonable methodology to avoid such inconsistencies.

Comment 15: Petitioners content that Kolon has incorrectly omitted labor and overhead expenses from its calculation of home market packing expenses. Petitioners contend that this error results in an understatement of FMV.

Kolon contends that its cost accounting system does not permit it to retrieve the labor and overhead costs attributable to packing.

Department's Position: We disagree with the petitioners. In Kolon's cost accounting system, because packing and labor costs for PET film are recorded in a single cost center, Kolon cannot separate the specific amount of labor and overhead expenses that are attributable to packing from the labor and overhead expenses that are attributable to the production of PET film. Moreover, since the merchandise that Kolon sold in the home market and the United States is identical, the labor and overhead expenses attributable to packing (were Kolon able to isolate them) would have no effect upon the calculations.

Comment 16: Petitioners contend that expenses associated with replacing defective film for Kolon's home market customers do not qualify as indirect selling expenses. Furthermore, rather than directly-related selling expenses, petitioners argue that these replacement shipments should be included in Kolon's home market sales listing.

Kolon argues that, consistent with past practice, the Department properly treated the costs associated with defective film as indirect selling expenses.

Kolon contents that it reported the movement expenses incurred on its ESP transactions with as much specificity as possible.

Department's Position: We disagree with the petitioners. The cost of replacing defective film is properly classified as a warranty cost rather than as new sale since these expenses are associated with replacing defective merchandise that had previously been sold. Kolon's accounting records do not separately record the costs for replacing defective film. Because the warranty expenses can not be isolated to specific sales, Kolon properly treated these expenses as indirect selling expenses. (*See, e.g., Color Television Receivers from Korea; Final Results of Antidumping Duty Administrative Review,* 51 FR 41365, 41377 (November 14, 1986).)

Comment 17: Petitioners argue that Kolon should be required to report Korean inland freight on a transaction-specific basis where Kolon's accounting records would permit such reporting. Petitioners contend that for certain exporter's sales price (ESP) transactions, Kolon could provide transaction-specific movement expenses.

Kolon contents that it reported the movement expenses incurred on its ESP transactions with as much specificity as possible.

Department's Position: We disagree with the petitioners. We accept Kolon's approach of allocating movement expenses as reasonable. Generally, the Department will accept a party's alternative methodology for allocating expenses if the party's normal accounting records do not permit it to provide data in the format requested and the party provides data in a manner that approaches the Department's preferred methodology as close as its records will allow. We have stated that we will allow this alternative methodology as long as we determine that it is reasonable. (*See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany,* 56 FR 31692, 31715 (July 11, 1991). In calculating its U.S. movement expenses Kolon did not use a single average expense for inland freight. Kolon attempted to match each ESP sale to the particular entry. Since ESP merchandise was sold from inventory, however, Kolon could not normally tie a particular ESP sale to an individual entry. Therefore, Kolon allocated movement expenses to the particular group of entries on which that merchandise could have entered. We verified Kolon's data and have no evidence that Kolon's methodology is unreasonable.

Comment 18: Petitioners argue that to the extent that the lower U.S. interest rate was available to the borrower, the Department should use that rate to calculate Kolon's home market credit expense. Petitioners assert that the Department should follow the precedent established in *LMI La Metalli Industriale, S.p.A.* v. *United States,* 912 F.2d 455 (Fed. Cir. 1990), (*LMI*) wherein the Department applied the lowest rate available to the borrower to calculate U.S. and home market interest expenses.

Kolon contends that U.S. dollar interest rates only measure the time value of money for dollars. Kolon argues that the U.S. interest rate cannot be used to determine the opportunity cost of a delayed payment in another currency, such as Korean won.

Department's Position: We disagree with the petitioners. We have used Kolon's calculation of U.S. and Home market credit expenses in these final results because Kolon's calculation of credit expenses is consistent with 'reasonable business behavior' and because we find that Kolon's actual borrowing experience is the best indicator of Kolon's cost of extending credit. *LMI* requires us to use 'usual and reasonable business behavior' to calculate credit expenses. Kolon based its calculation of both home market and U.S. credit expenses on its actual borrowings in the home market and the United States. In the home market, Kolon used the interest expenses incurred in Korea to represent its interest expense. In the United States, Kolon used the interest rate charged on borrowings by its U.S. subsidiary because the U.S. subsidiary was the entity that bore the cost of delayed payment from the customer.

Comment 19: Petitioners argue that Kolon should be required to provide customer- or transaction-specific U.S. rebates where such information is available in Kolon's accounting records. Petitioners contend that the Department should apply second-tier best information available to those sales for which Kolon has reported rebates, but did not quantify the rebate on a transaction- or customer-specific basis.

Kolon contends that it did not provide transaction-specific rebates because such a methodology would not capture rebates that were granted after the preparation of the response. Kolon contends that its methodology of dividing total rebate expense during the POR by total PET film sales is not distortive, and was adopted so that Kolon would not understate its rebate expense.

Department's Position: We agree with petitioners that our normal policy is to calculate discounts or rebates on a transaction- or customer-specific basis. (*See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et. al.,* 58 FR 39729, 39762 (July 26, 1993). In reporting its rebate expense for the first review of this order, however, Kolon discovered that a number of rebates were paid several months after Kolon filed its questionnaire response for that review. To avoid understating its rebate expenses in these reviews, Kolon divided the total rebate amount granted on PET film sold during the POR by the total U.S. sales of PET film during the period. Because we did not ask Kolon to provide customer-specific rebates, and because there is no evidence on the record suggesting that Kolon's allocation of rebates is manipulative, we have used Kolon's calculation of rebate expense in these reviews.

Comment 20: Petitioners contend that the Department should make an adjustment to PP for post-sale warehousing expenses incurred on Kolon's PP sales.

Kolon contends that the Department's normal practice is to treat post-sale warehousing expense as direct only if the expense can be tied to particular sales. Kolon asserts that in this case, the after-sale expense does not vary with specific sales. Consistent with past practice, Kolon argues that the Department should treat these warehousing expenses as indirect.

Department's Position: We disagree with the petitioners. During the PORs Kolon maintained a warehouse as its Korean factory. The expenses associated with maintaining that warehouse were fixed and did not vary with individual sales. Accordingly, we properly treated these expenses as indirect selling expenses. *See Professional Electric Cutting Tools and Professional Electric Standing/Grinding Tools from Japan: Final Determination of Sales at Less Than Fair Value,* 58 FR 30144, 30147–30148 (May 26, 1993).

Comment 21: Petitioners contend that in its margin calculations the Department overstated the value of STS Corporation's (STC) further-processed sales by using the wrong variable to represent the quantity sold.

Department's Position: We agree and have adjusted our calculations accordingly.

Comment 22: Cheil contends that the Department should use the transfer price paid to a related supplier to represent the material cost of EG in the Department's second record period calculations. Cheil contends that Departmental practice is to accept transfer prices where direct or indirect ownership is less than 50 percent between buyer and seller. Cheil notes that the equity interest between Cheil and its supplier of EG was much less than 50 percent, and asserts that there is no evidence that Cheil had control over its suppliers.

Petitioners claim that the Department was correct in its determination that Cheil is related to one of its suppliers of EG and that the Department correctly adjusted Cheil's COP/CV calculations to reflect its supplier's cost of producing EG.

Department's Position: We agree with petitioners that Cheil is related to one of its suppliers of EG. Section 773(e)(4)(F) of the Tariff Act of 1930, as amended, defines ''related parties'' as ''two or more persons directly or indirectly controlling, *controlled by*, or under common control with, any person'' (emphasis added). Cheil has stated that it was a member of the Samsung Group, which is a group of companies under common management control. (*See* Cheil September 27, 1993 Questionnaire Response at Exhibit 1, *E.I. Dupont de Nemours, et. al.* v. *United States,* 841 F. Supp. 1237, 1247–48 (CIT 1993).) The Samsung Group owns more than 50 percent of Cheil's supplier of EG. By virtue of these relationships, we consider that both Cheil and its supplier are under common control by the Samsung Group. Therefore, they are related parties within the meaning of § 773(e)(4)(F).

Based on this relationship, we tested the transactions between Cheil and its related supplier of EG. During verification we collected a schedule that reported the production costs of the related supplier. The schedule indicated that the product cost of EG exceeded the average price paid by Cheil. (See Memorandum to Chris Marsh from Art Stein, p.3, September 7, 1995.) Accordingly, consistent with our general practice, we relied on the supplier's cost as the value for EG in PET film production.

Comment 23: Cheil contends that the Department should subtract its short-term interest income from its interest expense to derive Cheil's net interest expense. Cheil asserts that the record indicates that its interest income was clearly short-term in nature. Cheil contends that the methodology which it employed in these reviews to derive net interest expense is identical to that which was accepted by the Department in the fair value investigation and the first review of this case. Cheil contends that the Department may not depart from its established practice without explaining its basis for so long. Finally, Cheil asserts that there is no statutory or regulatory basis for denying interest income as an offset to interest expense because that interest income is restricted.

Petitioners claim that the Department correctly denied Cheil's claimed short-term interest income offset because the income generating assets were pledged as collateral for loans. Petitioners note that the Department's standard questionnaire allows the respondent to reduce its interest expense by any interest income earned on short-term investments of its working capital. Petitioner contends that the assets that were collateralized have, in effect, been transformed from short-term to long-term assets.

Department's Position: We have disallowed Cheil's claimed offset of short-term interest income against interest expense. We allow an offset for interest expense only with interest income from short-term investments. (*See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plat from Canada,* 61 FR 13815, 13819 (March 28, 1996).) While this interest income was classified as ''short-term'' in Cheil's financial statements, the financial statements indicate that the assets are ''pledged for collateral for borrowings,'' and ''are restricted as to use and are not subject to immediate withdrawal.'' (See notes (3) and (5) to Cheil's 1992 audited financial statements, Section A Questionnaire Response, September 27, 1993). Because these assets are not readily available to Cheil, we consider it inappropriate to treat them as short-term investments of working capital.

Comment 24: Cheil, Kolon, and STC contend that the Department should make a tax-neutral adjustment to U.S. price for home market taxes which were forgiven by virtue of export of the product to the United States.

Department's Position: We agree. In light of the CAFC's decision in *Federal Mogul Corp.* v. *United States,* 63 F. 3d 1572 (Fed. Cir. 1995) the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. We have adjusted our calculations accordingly.

Comment 25: Cheil contends that the Department should include indirect selling expenses in its calculation of COP.

Department's Position: We agree. Since indirect selling expenses were included in the price compared to COP, we have included indirect selling expenses in our calculation of COP.

Comment 26: Cheil contends that the Department should include duty drawback in the home market price that is compared to COP.

Department's Position: We agree. Duty drawback was applicable to Cheil's local export sales. Accordingly, when comparing the home market price to COP, we have included the duty drawback incurred on Cheil's ''local export'' sales.

Comment 27: Cheil contends that in calculating profit the Department should not use net price rather than gross price.

Department's Position: We agree. Because profit represents the arithmetic difference between sales revenue and the expenses incurred in realizing that revenue, we have used Cheil's home market price net of adjustments to calculate home market profit.

Comment 28: Cheil contends that in its second review period calculations, the Department used an incorrect amount for differences in merchandise (difmer). Cheil further contends that the Department erroneously added rather than subtracted difmer from FMV in the second review period. Finally, Cheil contends that since its difmer claim is denominated in Korean won, the Department should convert difmer into U.S. dollars prior to adding this amount to an FMV stated in dollars.

Department's Position: We agree and have adjusted our calculations accordingly.

Comment 29: Cheil contends that the Department should exclude direct selling expenses from its CV calculations because they are comprised exclusively of movement expenses.

Department's Position: We agree and have excluded these expenses from our calculation of CV.

Comment 30: Cheil and SKC contend that the Department double-counted packing in its CV calculations.

Department's Position: We agree and have revised our CV calculations to eliminate the double-counting of packing expenses.

Comment 31: Cheil, SKC, and STC contend that for U.S. sales which were compared to CV, the Department should make an addition to U.S. price for duty drawback. Cheil, SKC, and STC contend that this adjustment is necessary because they included these duties in the cost of manufacture (COM) component of CV.

Department's Position: We agree. Because Cheil, SKC, and STC included import duties in their calculation of COM, we have made an addition to U.S. price in these final results for duty drawback.

Comment 32: Kolon contends that for comparisons to CV, home market inventory carrying costs would be included in the pool of indirect selling expenses.

Department's Position: We agree. In these final results we included inventory carrying costs in the pool of indirect selling expenses.

Comment 33: SLC argues that the Department should accept the price charged to SKC by its related supplier of DMT and TPA. SKC notes that the equity interest between SKC and its supplier of DMT and TPA was much less than 50 percent, and asserts that there is no evidence that SKC has control over its supplier. SKC asserts that it demonstrated that its purchases of DMT and TPA were at arms-length. SKC also asserts that it purchased DMT and TPA at ''market prices.'' SKC further contends that a proper analysis of the cost of producing DMT and TPA provides no evidence that prices for these materials were below cost.

Petitioners contend that the Department correctly adjusted SKC's COP/CV calculations to reflect the supplier's cost of producing DMT and TPA. Petitioners contend that SKC and its supplier are related within the meaning of the antidumping law because an equity relationship exists between SKC and that supplier.

Department's Position: We agree with petitioners that SKC is related to one of its suppliers of DMT and TPA. During the PORS, SKC owned more than a 5 percent interest in its supplier. (*See* SKC October 12, 1993 questionnaire response at § VIII at 18, and SKC October 11, 1994 questionnaire response § VIII at 21.) Thus, pursuant to § 773(e)(4)(E) of the statute, these parties are related.

Based on this relationship, we tested the transactions between SKC and its related supplier. Analysis of these prices indicated that the transfer price between SKC and its supplier was less than the supplier's cost of producing DMT and TPA. During our verification of SKC, we met with the supplier, who furnished us with a copy of the detailed inventory statement from its financial statement. The inventory statement listed the total and per-unit cost of goods sold in the supplier's finished inventory.

SKC's supplier suggested that selling, general and administrative expenses, and interest expense should be based on the cost of goods sold (COGS) from the supplier's income statement. We calculated the full cost of producing DMT and TPA based on that methodology. We then compared these costs to the average monthly transfer prices reported on attachments 4 and 5 of SKC's March 13, 1995 submission, and determined that the supplier's cost for TPA exceeded the average transfer price charged to SKC. We also determined that the supplier's cost for DMT exceeded the average transfer price charged to SKC. (See Memorandum to Chris Marsh from Paul McEnrue, August 18, 1995, at page 3.) Accordingly, consistent with our general practice, we relied on the supplier's cost as the value for TPA and DMT purchased from related suppliers.

Comment 34: SKC asserts that if the Department does not use the prices charged to SKC from a related supplier, the Department should ensure that it relies upon a reasonable estimate of the supplier's cost. SKC argues that the Department used an erroneous rate for SG&A expenses in its analysis of the cost of producing DMT and TPA. SKC also asserts that the Department in its third review calculations erroneously compared the prices for DMT and TPA charged by all of its suppliers for these materials, rather than the prices paid by SKC to its related suppler.

Petitioners argue that the calculation methodology reflects a reasonable and proper exercise of the Department's discretion. Petitioners note that the methodology was proposed by SKC's related supplier in the second review. Petitioners maintain that SKC, unhappy with the results, proffered an alternative methodology in the third review to achieve more favorable results. Petitioners argue that the Department should reject SKC's request for changes since it failed to substantiate why a change in mehtodology would be appropriate.

Department's Position: For the third review we changed the SG&A rate used in our analysis of SKC's cost of DMT and TPA. Prior to verification, we requested supplemental information for the third review. Specifically; we asked SKC to document that its purchases of major inputs were at arm's length. Based on the information provided by SKC, and for the reasons noted in response to *Comment 33,* we have revised our calculations of the supplier's cost of producing DMT and TPA for the third review period.

SKC also attempted to supply this information for the second review period. The information, however, was provided outside the time constraints of 19 CFR 353.31(a)(1)(ii), and was not provided in response to our request. Therefore, we did not use this untimely and unverified information in our second review period calculations.

Comment 35: SKC contends that if the Department does adjust RC costs, it should calculate a uniform cost for VCs and for RCs. SKC asserts that such an approach would be preferable to calculating the cost of RC as the full cost of the scrap film plus the cost of recycling.

Department's Position: As noted in our response to *Comment 1,* because we did not adjust RC costs, this issue is moot.

Comment 36: For the third review SKC argues that the Department should adjust its COM for certain period costs. SKC asserts that these period costs could not be determined until the end of its fiscal year. SKC assets that correction of these period costs is necessary in order to ensure that the Department's cost calculations reflect the most complete and accurate data available.

Department's Position: We agree, and for the final results of the third review we have adjusted the COM of all products to reflect the final, audited cost results.

Comment 37: SKC asserts that for the second that third reviews, the Department erroneously used CV for all U.S. sales that had sufficient home market comparisons. SKC asserts this error resulted from the Department's erroneous reading of SKC's product concordance.

Department's Position: We agree with SKC that we misread its product concordance in our preliminary results. In these final results we amended our calculations to match U.S. sales with home market sales of identical merchandise according to the concordance data provided by SKC.

Comment 38: SKC asserts that due to a spreadsheet formula error, the Department overstated the COM for products SM30/12 and SS01/12 in the second review.

Department's Position: We agree, and for the final results of the second review we have recalculated the COMs of these products.

Comment 39: SKC asserts that in these reviews the Department erroneously overstated home market profit by failing to include selling expenses in COP.

Department's Position: We agree. In these final results we have included SKC's selling expenses in our calculation of home market profit.

Comment 40: SKC contends that the Department erroneously included inventory carrying costs in CV for purchase price (PP) sales.

Department's Position: We agree with SKC that inventory carrying costs should be excluded from CV for comparisons with PP sales, and we have amended our calculations accordingly.

Comment 41: SKC asserts that the Department overstated CV financing expenses in these reviews by not including notes receivable in the calculation of the financing expense offset.

Department's Position: We agree and have added notes receivable in the offset used to calculate net finacning expenses for CV.

Comment 42. SKC asserts that for the third administrative review the Department erroneously used COMs for the second review for products SS01/12 and SS01/15.

Department's Position: We agree and have amended these final results accordingly.

Comment 43: STC asserts that the Department should exclude aberrant U.S. sales of obsolete merchandise from its margin analysis. STC contends that the CIT determined in *American Permac, Inc.* v. *the United States,* 783 F. Supp. 1421 (CIT 1992) that the Department had the discretion to exclude such U.S. sales.

Department's Position: We disagree with STC. As noted in the *Final Results of the First Review,* there is no provision in the statute for the exclusion of U.S. sales based upon those U.S. sales being ''aberrant'' or outside the ordinary course of trade (*See Final Results of First Review,* (42842).) Therefore, we have included these sales in our calculations.

Comment 44: STC asserts that if the Department includes sales of obsolete merchandise in its margin calculations for the third review, it should compare them to comparable home market sales, even if such sales were below cost. STC asserts that the legislative history of the sales-below-cost provision and the SAA accompanying the Uruguay Round support the use of below-cost sales of obsolete merchandise in the calculation of FMV.

Department's Position: We disagree with STC. As explained in our preliminary determination, all comparable home market sales were excluded because they were below cost. Section 773(b) of the Act explicitly mandates the exclusion of below cost sales if such sales have been made in substantial quantities over an extended period of time and are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. Because the language of the statute unambiguously requires the exclusion of all below cost sales that have satisfied the listed criteria, it is unnecessary to resort to the legislative history for further guidance. *See Davis* v. *Michigan Dep't. of Treasury,* 489 U.S. 803, 808, n.3 (1989) (''Legislative history is irrelevant to the interpretation of an unambiguous statute.'').

Moreover, it is a primary tenet of statutory construction that, if possible, legislative history must be read to be consistent with the meaning of a clear statutory mandate. *See* Sutherland Stat. Const. § 48.06 (5th ed. 1992). Therefore, the references to obsolete and end-of-model year merchandise in the legislative history of the COP provision merely provide examples of instances when below cost sales may not satisfy the statute's criteria of being made in substantial quantities over an extended period of time and at prices which permit recovery of costs.

Therefore, because we determined that STC's below-cost sales satisfied the statutory criteria for exclusion, we complied with the clear statutory mandate to disregard STC's below cost sales, including these sales of obsolete merchandise. When necessary, we have used CV, in accordance with section 773(b).

Comment 45: STC contends that the Department should correct its calculation of profit for value-added sales by adjusting for movement expenses.

Department's Position: We agree and have adjusted our calculations accordingly.

Comment 46: STC contends that for third period ESP sales compared to CV, the Department should include inventory carrying costs in the pool of indirect selling expenses.

Department's Position: We agree that inventory carrying costs should be included in the pool of indirect selling expenses for the calculation of CV when used as the comparison for ESP sales. We have adjusted our calculations accordingly.

Final Results of Review and Revocation in Part

Upon review of the comments submitted, the Department has determined that the following margins exist for the periods indicated:

Company	Period	Margin (percent)
Cheil	92–93	0
Cheil	93–94	0.01
Kolon	92–93	0.11
Kolon	92–93	0.12
SKC	92–93	5.89
SKC	93–94	0.52
STC	92–93	0.47
STC	93–94	0.93

Based upon the information submitted by Cheil during these reviews and the first administrative review, we further determine that Cheil has met the requirements for revocation set forth in § 353.25(a)(2) and § 353.25(b) of the Department's regulations. Cheil has demonstrated three consecutive years of sales at not less than fair value and has submitted the certifications required under 19 CFR 353.25(b)(1). The Department conducted a verification of Cheil as required under 19 CFR 353.25(c)(2)(ii).

On the basis of no sales at less than FMV for a period of three consecutive years, and the lack of any indication that such sales are likely, the Department concludes that Cheil is not likely to sell the merchandise at less than FMV in the future. Therefore, the Department is revoking the order with respect to Cheil.

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions concerning each respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed firms will be the rates outlined above for the third review period except for Cheil and Kolon; because Kolon's weighted-average margin is *de minimis*, its cash deposit rate will be zero percent; because we are revoking Cheil, no cash deposit will be required for Cheil; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 4.82 percent, the all-others rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 26, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–17159 Filed 7–3–96; 8:45 am]

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[A–489–501]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey in response to a request by the petitioners.[1] This review covers shipments of this merchandise to the United States during the period May 1, 1994, through April 30, 1995.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs to assess antidumping duties equal to the differences between the United States price and NV.

Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Stagner or Magd Zalok, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1673 or (202) 482–4162, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On May 10, 1995 (60 FR 24831), the Department published in the Federal Register a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on *Certain Welded Carbon Steel Pipe and Tube from Turkey* covering the period May 1, 1994, through April 30, 1995 (58 FR 53709). In accordance with 19 CFR 353.22(a)(1), in May 1995, the petitioners requested a review of the following producers and exporters of certain welded carbon steel pipe and tube: (1) The Borusan Group[2] (Borusan); (2) Mannesmann-Sumerbank Boru Industrisi T.A.S. (Mannesmann); (3) Yucelboru Ihracat, Ithalat ve Pazarlama A.S./Cayirova Boru Sanayi ve Ticaret A.S. (Yucelboru); and (4) Erbosan

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[1] Allied Tube & Conduit and Wheatland Tube Company.

[2] Including Borusan Birlesik Boru Fabrikalar A.S., Kartal Boru Sanayi ve Ticaret A.S., and Borusan Ihracat Ithalat ve Dagitim A.S.