**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A–580–827]**

## Notice of Final Determination of Sales at Not Less Than Fair Value: Collated Roofing Nails From Korea

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**EFFECTIVE DATE:** October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Everett Kelly at (202) 482–4194 or Brian Smith (202) 482–1766, Group II, Office Five, Antidumping Countervailing Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

### 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 Rounds Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department regulations are to the regulations, as codified at 19 CFR Part 353 (1997).

### Final Determination

We determine that collated roofing nails (''CR nails'') from Korea are not being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins are shown in the ''Termination of Suspension of Liquidation'' section of this notice.

### Case History

Since the preliminary determination in this investigation (*Notice of Preliminary Determination and Postponement of Final Determination: Collated Roofing Nails from Korea,* 62 FR 25895 (May 12, 1997)), the following events have occurred:

In June 1996, we verified questionnaire responses for Kabool Metals (''Kabool'') and Senco Korea Company, Ltd., Senco Products Incorporated, and Je Il Steel Company, Ltd. (collectively ''SENCO''). Paslode Division of Illinois Tool Works Inc. (''Petitioner''), respondents, and Stanley Bostich (''Stanley''), an interested party in this investigation, submitted case briefs on August 7, 1997, and rebuttal briefs on August 12, 1997. The Department held a public hearing on August 13, 1997.

### Scope of Investigation

The product covered by this investigation is CR nails made of steel, having a length of $^{13}/_{16}$ inch to $1^{13}/_{16}$ inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

CR nails within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 7317.00.55.06. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

### Fair Value Comparisons

To determine whether sales of the subject merchandise by Kabool and SENCO to the United States were made at LTFV, we compared the Export Price (''EP'') or Constructed Export Price (''CEP'') to the Normal Value (''NV''), as described in the EP, CEP, and NV sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs or CEPs to weighted-average NVs.

Kabool reported that it had no viable home market or third country sales during the POI. Therefore, we made no price-to-price comparisons for Kabool. See the NV section of this notice, below, for further discussion.

### Level of Trade and CEP Offset

In the preliminary determination, the Department determined that no difference in level of trade (''LOT'') existed between home market and U.S. sales for either Kabool or SENCO. None of the parties have contested that determination. Accordingly, the Department has not investigated further into this issue. Therefore, we determine that all of SENCO's sales are made at a single LOT and no LOT adjustment or CEP offset is warranted.

As explained below, we based the NV for Kabool entirely on constructed value (''CV''). The CV LOT is that of the sales from which we derive SG&A and profit. We derived selling, general, and administrative expenses (''SG&A'') and profit from Kabool's sales of all types of nails in the home market. However, the record contains insufficient information to analyze the selling activities associated with those sales. Therefore, as facts available, we are drawing the inference that there is no distinction between the CV and U.S. LOTs. This inference is consistent with the fact that neither petitioner nor Kabool alleged a difference in LOT. Therefore we determine that a level of trade adjustment is not warranted.

### Export Price and Constructed Export Price

*Kabool*

We used EP in accordance with section 772(a) of the Act because the subject merchandise was sold to unaffiliated customers before importation and the CEP methodology was not indicated by the facts of record. We calculated EP based on the same methodology used in the preliminary determination, with the following exceptions: adjustments to brokerage expenses; duty drawback; and other corrections were made based on verification findings. (For details, *see* September 24, 1997, final determination calculation memorandum for Kabool, hereafter ''Kabool calculation memo.'')

*SENCO*

We used EP in accordance with section 772(a) of the Act where the subject merchandise was sold to unaffiliated customers prior to importation because the CEP methodology was not indicated by the facts of record. We used CEP in accordance with section 772(b) of the Act where the subject merchandise was sold to unaffiliated customers after importation. We calculated CEP and EP based on the same methodology used in the preliminary determination, with the following exceptions: adjustments to packing expenses; rebates; early payment discounts; advertising expenses; and inland freight were made based on verification findings. For CEP we also adjusted reported indirect selling expenses and inventory carrying costs to exclude Korean incurred components and applied them to transfer prices rather than starting prices. Furthermore, we are no longer using facts available for foreign inland freight expenses.

In addition, verification revealed that SENCO's CEP sales listing included non-subject merchandise that SENCO had purchased from Taiwan and Mexico. Although SENCO did not record the country of origin for specific sales, the Department was able to determine for each model reported the percentage of total CR nail purchases accounted for by subject CR nails and to adjust SENCO's sales listing as appropriate. For example: if for model ''A'' Senco Products Incorporated (''SPI'') purchased 57 percent of its CR nails from Korea, the Department

multiplied the reported quantity by 57 percent for all sales of model ''A'' within SENCO's CEP sales listing. (For details, see September 24, 1997, final determination calculation memorandum for SENCO, hereafter ''SENCO calculation memo.'')

**Normal Value**

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

*SENCO*

SENCO reported that it had no home market sales during the POI. Therefore, in accordance with section 773(a)(1)(B)(ii), we based NV for Senco Korea on sales to its largest third country market, Canada. We calculated NV based on the same methodology used in the preliminary determination, with the following exceptions: adjustments were made to packing expenses; and domestic brokerage and handling based on verification findings. In addition, SENCO corrected omissions in the third country sales listing used for the preliminary determination. For purposes of calculating the final margin, we are no longer applying facts available for the certain U.S. sales that had no third country matches. (For details, *see* SENCO calculation memo).

*Kabool*

Kabool reported that it had no viable home or third country market during the POI. Therefore, in accordance with section 773(a)(4) of the Act, we based NV for Kabool on CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the costs of materials, labor, overhead, SG&A, profit and U.S. packing costs. We adjusted U.S. packing costs based on our findings at verification.

Section 773(e)(2)(A) states that SG&A and profit are to be based on the actual amounts incurred in connection with sales of a foreign like product. In the event such data is not available, section 773(e)(2)(B) of the Act sets forth three alternatives for computing profit and SG&A without establishing a hierarchy or preference among the alternative methods. The alternative methods are: (1) calculate SG&A and profit incurred by the producer based on the sales of merchandise of the same general type as the exports in question; (2) average SG&A and profit of other producers of the foreign like product for sales in the home market; or (3) any other reasonable method, capped by the amount normally realized on sales in the foreign country of the general category of products. In addition, the Statement of Administrative Action (''SAA'') states that, if the Department does not have the data to determine amounts for profit under alternatives one and two, or a profit cap under alternative three, it still may apply alternative three (without the cap) on the basis of the ''facts available.'' SAA at 841.

In this case, we based Kabool's SG&A and profit on the actual amounts incurred and realized in connection with the production and of the same general category of merchandise as described in alternative one, above (*see* Comment 1, below, for further discussion).

**Price to CV Comparisons**

Where we compared CV to EP for Kabool, we made circumstance of sale adjustments pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR section 353.56(a)(2). We made circumstance of sale adjustments, where appropriate, for differences in bank charges and credit expenses. We adjusted bank charges based on findings at verification. (For details, *see* Kabool calculation memorandum).

**Currency Conversion**

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions* (61 FR 9434, March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because neither the Korean Won nor the Canadian Dollar underwent a sustained movement.

**Critical Circumstances**

The petition contained a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise. Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (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.

In this case, our final determination is negative. Accordingly, a critical circumstances determination is irrelevant because there is no possibility of retroactive suspension of liquidation.

**Verification**

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

**Interested Party Comments**

*Comment 1: SG&A and Profit Calculations*

Petitioner opposes the Department's use of Kabool's company-wide SG&A and profit, arguing that the company-wide data includes lower export prices, which decreases the profit rate and, consequently, artificially lowers dumping margin. Instead, petitioner contends that Kabool's SG&A and profit should be based only on sales of merchandise that belong to the same general category of ''collated nails'' and not ''all nails'' (*i.e.*, collated and non-collated). According to petitioner, basing SG&A and profit on both collated and non-collated nails is inappropriate because collated nails require significantly different capital investment and are sold to different markets.

Stanley agrees with petitioner, arguing that the use of Kabool's company-wide SG&A and profit artificially lowers the dumping margin. Stanley also notes that, because of the significant investment and overhead costs attributable to CR nails, the same general category of merchandise cannot be broader than collated nails for purposes of calculating profit. Further, Stanley contends that Kabool has the ability to separate the profit for collated nails from the company-wide profit rate, but simply chose not to do so. Therefore, Stanley argues that the Department should apply facts available in calculating the dumping margin for Kabool.

Kabool asserts that the Department should use the profit rate based on Kabool's sales of collated and non-collated nails, which was provided in its April 16, 1997, supplemental Section D response, as corrected and verified by the Department at verification. Kabool argues that both collated and non-collated nails are processed in the same facility using the same equipment and the same production processes. Moreover, Kabool notes that the Department previously held that the ''class or kind'' of merchandise in a case involving steel wire nails included all steel wire nails—without distinguishing between collated and non-collated nails. Finally, Kabool argues that petitioner's claim that the Department should use a profit rate specific to collated nails was only raised in petitioner's case brief and, thus, too late in this proceeding to request such information. Kabool also notes that although the Department's questionnaire never requested information regarding the profit on home market sales of collated and non-collated nails, Kabool submitted information on its profit for nail products in the home market. Therefore, Kabool contends that the Department should reject petitioner's and Stanley's arguments and determine that the same general category of merchandise upon which to base SG&A and profit is collated and non-collated nails.

*DOC Position*

We agree with Kabool. Kabool does not have a viable home market or third country market for a foreign like product. Section 773(e)(2)(B) of the Act states that if actual SG&A and profit data on home market sales of the subject merchandise are not available, the Department may use the SG&A and profit rates incurred by the producer on the sales of the same general category of merchandise as the exports in question (*see* Kabool's NV section for a discussion of the three alternative methodologies ). In this instance, we verified the aggregated SG&A and profit data on Kabool's sales in the home market of both collated and non-collated nails that it submitted. We determined that collated and non-collated nails are of the same general category of merchandise. (*Cf. Certain Steel Wire Nails From Korea: Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order*, 50 FR 40045 (Oct. 1, 1985) (all steel wire nails found to constitute a single class or kind of merchandise). Accordingly, consistent with section 773(e)(2)(B), the Department has used the verified SG&A and profit rate reported by Kabool on its sales of all nails in the home market.

*Comment 2: Facts Available*

Petitioner contends that the Department should use adverse facts available for SENCO's and Kabool's dumping margins. Petitioner argues that the numerous verification corrections, whether disclosed by the respondents or found by Department officials, indicate that both Kabool and SENCO have failed to act to the best of their abilities. Petitioner specifies four examples of problems with SENCO's responses: (1) errors in the reporting of purchases of CR nails from Je Il Steel Company Ltd. (''JISCO''); (2) inability to explain discrepancies in reported trucking freight charges; (3) discrepancies noted by the Department when reconciling quantity and value figures to SPI's financial statements; and (4) failure to include POI sales to Canada in the third country database. Further, petitioner argues that SENCO did not provide a complete explanation of its relationship with its distributor in Canada.

SENCO states that petitioner correctly summarizes the instances in which SENCO's submissions, prior to the preliminary determination, warranted the use of facts available by the Department. However, SENCO contends that it has corrected all the deficiencies in its June 2, 1997, response to the Department's second supplemental antidumping questionnaire. Because the corrected deficiencies have been verified by the Department, SENCO claims that the Department should use the information provided by SENCO to make the final determination in this investigation.

Kabool contends that the petitioner has not indicated which corrections and errors actually merit the use of adverse facts available. Kabool claims that the corrections it has submitted do not warrant wholesale rejection of its responses. Kabool states it was cooperative in providing information throughout the investigation. Kabool further states that petitioner has not identified a single instance of a pattern or systematic misstatement of fact in Kabool's submissions. Accordingly, Kabool contends that there is no basis for the Department to reject Kabool's submissions or to rely on adverse facts available. Rather, Kabool claims that the Department's final determination in this investigation should be based on the information it has submitted.

*DOC Position*

We agree with both respondents. The facts on the record of this investigation demonstrate that the respondents answered the Department's questionnaire to the best of their ability. The corrections and errors found in the responses to the Department's questionnaire and at verification do not warrant the use of facts available. The Department's practice is to permit respondents to provide minor corrections to submitted information at the commencement of verification. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Taiwan*, 62 FR 1726, 1729 (January 13, 1997). Kabool and SENCO provided the Department with their corrections in a timely manner at the beginning of their respective verifications (cost verification report for Kabool dated July 28, 1997; sales verification reports for Kabool, Senco Korea, and SPI dated July 7, 1997, and July 30, 1997, July 29, 1997, respectively). In sum, the corrections submitted by Kabool and SENCO were typical of the minor corrections routinely accepted by the Department at the commencement of verification.

Accordingly, we determine that resorting to facts available is unwarranted in this particular case. We, therefore, used all verified information for both respondents in the final margin calculations.

*Comment 3: Plating Thickness*

Petitioner argues that the plating thicknesses of CR nails reported by respondents do *not* meet U.S. Federal or regional building codes. Moreover, petitioner claims that the actual plating thicknesses were not verified by the Department. Therefore, petitioner contends that the Department should assume that respondents were aware of the U.S. building codes and produced CR nails that complied with the codes. Petitioner urges the Department to use the information contained in the petition to calculate NV based on CR nails that meet the U.S. building codes.

Kabool argues that petitioner's statements regarding plating thickness are unsubstantiated and do not provide any basis for rejecting or even questioning Kabool's submissions. Kabool states that, because its NV was based on CV, there is no question of incorrect product comparison. Further, Kabool contends that it reported actual costs incurred in producing (and plating) the CR nails exported to the United States, thereby accounting for all of its materials and fabrication costs incurred in the process of plating CR nails. Kabool also states that the costs reported by Kabool were verified by the Department. Accordingly, there is no basis for rejecting Kabool's submissions.

SENCO argues that there is no indication in the petitioner's case brief as to where or when the issue of sub-standard plating thickness of CR nails was previously raised on the record. SENCO states that there is nothing on the record to suggest that its CR nails do not meet applicable standards. Accordingly, SENCO contends that there is no basis for rejecting SENCO's submissions.

*DOC Position*

We agree with Kabool that we have captured all costs incurred in producing CR nails. During the cost verification of Kabool, we examined whether all material costs (including plating costs) associated with the subject merchandise were included in the CV databases. We noted no discrepancies regarding the material costs with the exception of minor errors, which have now been corrected (*see* cost verification report for Kabool dated July 28, 1997). Thus, we have verified all of Kabool's material costs. With respect to SENCO, we noted no discrepancies regarding its reported product characteristics. Any alleged misrepresentation concerning compliance with U.S. building codes is not within the purview of the antidumping statute because such misrepresentation would have no impact on our calculations.

*Comment 4: Allocation Methods*

Petitioner contends that respondents' allocation methods were distortive because they were based on incorrect and unsupported expenses in the following areas:

*(1) Shipping Expenses.* International freight expenses were improperly based on gross weight instead of volume. Because CR nails weigh less per cubic foot than bulk nails, respondents' shipping expenses were thus systematically under-reported.

*(2) Production Expenses, Factory Overhead, and Indirect Selling Expenses.* The allocation method for production-related expenses, factory overhead, and indirect selling expenses should be based on weight that includes scrap. However, the post-scrap production expenses, such as packing, should be allocated based on weight of the CR nails without scrap.

*(3) Duty drawback.* The duty drawback expense allocation method should be based on the net weight of CR nails.

*(4) Actual Weighing.* The Department should rely on actual physical weighing of the CR nails, not the reported gross weight for all allocation methods based on weight.

In rebuttal, Kabool argues that petitioner's assertions, which are enunciated for the first time in petitioner's case brief, are untimely. Moreover, Kabool emphasizes that the allocation methods used are consistent with the Department's past practice and the proposed modification would produce insignificant changes. Therefore, any modification of Kabool's current allocations is without merit. Specifically, Kabool addresses the following allocations:

First, Kabool argues that petitioner's assumption that Kabool's shipments regularly include both bulk nails and CR nails is inaccurate. Kabool states that it reported actual ocean freight costs for its U.S. sales on a shipment-by-shipment basis. Moreover, Kabool contends that allocation of ocean freight costs based on weight, rather than volume, is consistent with the Department's normal practice. Moreover, an alternative allocation based on volume would not have been practical since the documents do not state the volume of each shipment. Thus, there is no basis to revise the freight allocations.

Second, Kabool states that petitioner's proposed allocations for production-related expenses, factory overhead, and indirect selling expenses are factually incorrect and contrary to the law. Kabool claims that most of these items were not allocated based on weight. For instance, Kabool's indirect selling expenses were allocated based on sales value. Kabool asserts that the only overhead allocation based on weight was the fabrication costs for polishing and coating. According to Kabool, any new allocation would result in insignificant changes.

Third, Kabool argues that it did allocate duty drawback based on the net weight of the CR nails.

Finally, Kabool states that it reported its shipping expenses, production-related expenses, factory overhead, indirect selling expenses, and duty drawback in accordance with Korea's generally accepted accounting principles (''GAAP'') and its own cost accounting system. Kabool claims that the statute requires the Department to follow the methodologies used in the company's normal accounting system. Moreover, Kabool argues that to allocate expenses based on a weight that includes scrap is nonsensical as this would result in allocating a portion of the product costs to scrap and not to the finished product. Accordingly, there is no reason to allocate these expenses in the manner petitioner has proposed.

SENCO claims that petitioner failed to adequately identify in its case brief what type of shipping expenses should be subject to a different allocation methodology. SENCO also notes that its methodologies for calculating freight expenses were verified by the Department and generally accepted as appropriate. In addition, SENCO states that it reported that it received no duty drawback on the exportation of CR nails.

*DOC Position*

The Department normally accepts the company's recording of costs, provided that it reasonably reflects the cost of producing subject merchandise and it is in accordance with the home country's GAAP. *See* section 773(f)(1)(A); SAA at 834–35; *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses from Japan*, 61 FR 38139 (July 23, 1996). We have determined that the allocations of the expenses, challenged by petitioner, are reasonable for the reasons stated below.

*(1) Shipping Expenses.* We found no discrepancies with respect to the allocation methodology used by respondents. (*See* Sales Verification Reports for Kabool at 7 and Senco Korea

at 10 dated July 7, 1997, and July 30, 1997, respectively.) Respondents' cost accounting systems, which are consistent with Korean GAAP, only record the weight of their shipments to customers, not the volume. Thus, the allocation method used was the most specific method feasible. In addition, it does not cause distortions or inaccuracies in our calculations. Therefore, the Department has not changed the freight methodology for the final determination.

*(2) Production Related Expenses, Factory Overhead, and Indirect Selling Expenses.* Allocating expenses over the weight of the finished goods necessarily accounts for all costs related to scrap. If the Department were to allocate certain expenses over a weight which included scrap, the denominator of the calculation would be greater than the weight of the finished product and would result in understating the per-unit expense.

Further, most of Kabool's items were not allocated based on weight. Indirect selling expenses were allocated based on sales value. The only overhead allocation based on weight was the fabrication costs for polishing and coating. Therefore, any new allocation would have been insignificant. Thus, we reject petitioner's argument and will continue to allocate expenses over the total amount of finished product.

*(3) Duty Drawback.* As stated in the sales verification reports dated July 9, 1997, and July 30, 1997, the Department verified that Kabool allocated duty drawback on the net weight of the CR nails and that Senco Korea received no duty drawback on the exportation of CR nails.

*(4) Physical Weights.* At verification, the Department examined the weights of the products in order to confirm certain allocation factors. We found no discrepancies. We will use each company's verified weights in our calculations.

Respondents reported all of the aforementioned expenses in accordance with Korea's GAAP and their own cost accounting systems (*see* Section 773(f)(1) of the Act). The methodologies for calculating these expenses were verified by the Department and accepted as appropriate. Accordingly, the Department did not change the allocation methodologies for these expenses. Further, as noted above, because few factors were allocated on the basis of weight any changes in the allocations would not have a significant impact.

*Comment 5: Constructed Value Calculation—Kabool*

Petitioner argues that Kabool's cost methodology for CV was not appropriate because the cost of materials obtained from non-affiliated suppliers should be determined through a price comparison against independent Korean market values to ensure that prices are reasonable.

*DOC Position*

We disagree with petitioner. The Department verified Kabool's cost of materials. Kabool's material purchases constituted arm's-length transactions and reported costs were tested against Kabool's cost accounting systems. Because the prices that Kabool paid for its materials reflect market values, it is neither necessary nor appropriate for the Department to benchmark Kabool's material costs against other ''independent'' market values.

*Comment 6: Collapsing Senco Korea and its Affiliate*

Petitioner claims that Senco Korea and its affiliate should be collapsed for purposes of the final determination. Petitioner states that in identifying the potential for manipulation of price or production the Department may consider the following factors: (1) Level of common ownership; (2) shared management; (3) intertwined operations, shared facilities and/or employees, and significant transactions between affiliated parties. Petitioner cites *Sulfanilic Acid From China: Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 25917 (May 12, 1997), in which the Department found that two companies were affiliated when substantial retooling of either company would not be necessary to restructure their collective manufacturing priorities, and that there was a potential for price manipulation between the two producers. Petitioner claims that the same principle should be applied to Senco Korea and its affiliates.

SENCO argues that petitioner fails to identify Senco Korea's alleged affiliate, but states that SENCO assumes that petitioner is referring to JISCO. SENCO states that it has readily acknowledged on the record that JISCO is affiliated with Senco Korea. However, SENCO contends that because the Department verified that JISCO had no independent sales of CR nails, Senco Korea has reported all of its sales of CR nails.

*DOC Position*

The Department has treated Senco Korea, JISCO, and SPI as affiliated parties throughout the entire investigation. The companies submitted a consolidated questionnaire response and verification revealed no material errors or omissions that could not be corrected. *See* section 771(33)(E) of the Act and SENCO's February 28, 1997, submission of section ''A'' response to the Department's antidumping questionnaire. Accordingly, the Department has treated these companies as one entity. Because we are dealing with a single producer, the type of collapsing analysis suggested by petitioner is not relevant.

*Comment 7: SENCO Indirect Selling Expenses*

Petitioner makes two points with respect to SENCO's reported indirect selling expenses. First, petitioner argues that certain U.S.-incurred indirect selling expenses, such as salaries and benefits for the heads of customer service and distribution services, which SENCO proposed to exclude from reported indirect selling expenses, should be deducted from CEP. However, petitioner states that ''the Department should make an offsetting adjustment to SG&A.''

Second, petitioner contends that SENCO inappropriately revised its reporting of Korean-incurred indirect selling expenses and inventory carrying costs by allocating these items over transfer price instead of gross price.

SENCO claims that it properly reported and allocated its indirect selling expenses. Prior to verification, SENCO revised its indirect selling expenses to excluding certain expenses related to selling activities in the United States. SENCO argues that this correction was appropriate because these expenses are incurred in Korea. SENCO also asserts that SG&A expenses should not have been included in the indirect selling expenses incurred in Korea and that the corrected amounts were reviewed at verification.

SENCO contends that basing indirect selling expenses on the transfer price, rather than the resale price originally reported, constituted an appropriate correction that was explained to the Department at verification.

*DOC Position*

With respect to petitioner's first argument, we agree. We have not accepted SENCO's proposal to exclude from the indirect selling expenses deducted from CEP certain selling expenses incurred at SPI because those expenses relate to economic activity in the United States. Because Senco Korea's margin calculation is based on a price-to-price comparison, there is no

need to correct SG&A as that figure is not used in the calculation.

With respect to the allocation of Korea-incurred selling and inventory carrying expenses, the Department does not need to address this question because these expenses have not been determined to be associated with economic activity in the United States and thus are not being deducted from CEP or otherwise taken into account.

*Comment 8: Correct Reporting of Affiliated Parties*

Petitioner contends that sales made between Senco Korea and its customer in Canada do not appear to be at arm's length. Accordingly, petitioner urges the Department to use facts available in its final determination in this investigation.

Stanley claims that SENCO failed to provide complete information regarding its affiliations (or ''relationships with its customers''). Stanley states that Senco Korea's distributor for CR nails in Canada is affiliated with the corporate entity that controls SPI. Because of the lack of complete information with respect to SENCO's affiliates, Stanley contends that the Department is not able to determine whether Senco Korea's reported third country sales are arm's-length transactions. Accordingly, Stanley contends, the Department is required to use facts available for making SENCO's final determination in this investigation.

SENCO argues that it has no affiliates in Canada and that it properly excluded from its sales listing CR nails sales made by its unaffiliated distributor. According to SENCO, its customer in Canada is an unaffiliated distributor and the independent relationship of many of SPI's various distributors was verified by the Department.

*DOC Position*

We agree with SENCO. At verification, we noted that SPI has a large number of formal business relationships with many distributors and resellers throughout the world and the majority of these relationships do not meet the Department's requirements for affiliation (*see* SPI verification report at 3, July 29, 1997). Specifically, there was no indication noted by the Department that SPI was affiliated with its customer in Canada. Accordingly, there is no basis to conclude that the third country sales listing is flawed, and use of facts available for the Department's determination is not warranted. Moreover, we note that petitioner and Stanley first raised this concern in their case briefs—far too late in this proceeding for a detailed analysis of potential affiliation between a supplier and its customer.

*Comment 9: Critical Circumstances*

Petitioner alleges that the petition provided a reasonable basis to suspect that critical circumstances exist with respect to imports of subject merchandise. In particular, petitioner maintains that the revoked antidumping order on steel wire nails from Korea, *Certain Steel Wire Nails From Korea,* 50 FR 40045 (Oct. 1, 1985), provides a sufficient basis to find a history of dumping (a requirement of section 733(e)(1)(i) of the Act). Accordingly, petitioner believes that there is a reasonable basis to suspect that critical circumstances exist with respect to imports of subject merchandise.

Kabool contends the Department should affirm its preliminary determination that critical circumstances do not exist in this case for Kabool. Kabool asserts that petitioner neglected to mention three facts: (1) The steel wire nails final determination cited by petitioner was published in 1980, which is more than 15 years ago; (2) the same steel wire nails antidumping order was revoked in October 1985; (3) Kabool was not investigated in that proceeding, and it was never found to be dumping steel wire nails or any other product. For the above reasons, Kabool claims that petitioner's argument should be rejected.

SENCO states that nothing has changed since the preliminary determination to alter the Department's conclusion that the first prong of section 733(e)(1) pertaining to history of dumping, or knowledge on the part of importers, has not been met. Furthermore, SENCO submits that the second prong of that provision cannot be satisfied because the change in the quantity of shipments of CR nails by Senco Korea to the United States from the post-petition period over the pre-petition period does not indicate that imports were massive. Because neither prong of section 733(e)(1) has been satisfied, SENCO argues that there is no basis to find that critical circumstances exist.

*DOC Position*

Because our final determination is negative, it is not necessary to address whether critical circumstances exist as there is no possibility of retroactive suspension of liquidation.

*Comment 10: Unverified CEP Expenses*

SENCO claims that the Department should accept its reported data for the following expenses: U.S. inland freight, U.S. customs duties, credit expenses, advertising expenses, and inventory carrying costs incurred in the United States. Although the Department was unable to verify these expenses, SENCO notes that the verification process was generally complete. SENCO contends it demonstrated a willingness to cooperate with the Department by responding to the antidumping questionnaires in a timely manner. Accordingly, the application of adverse facts available would be inappropriate.

Petitioner contends that the Department's inability to verify the CEP expenses was not minor. Petitioner argues that the treatment of these expenses directly affects the Department's calculation methodology for the final determination. Petitioner claims that the Department is required to verify all information relied upon in its final determination. Accordingly, for these unverified expenses, petitioner urges the Department to use facts available.

*DOC Position*

Due to limitations of time and resources, the Department is rarely able to verify every single piece of data submitted in a response. *See Monsanto Co.* v. *United States* 698 F. Supp. 275, 281 (1988) (''Verification is a spot check and is not intended to be an exhaustive examination of the respondent's business.'') Verification is an opportunity for the Department to test the accounting and business systems of the respondent to a level of detail that gives the Department a reasonable indication as to the integrity of the response. *See Micron Technology, Inc.* v. *United States,* 117 F.3d 1386, 1396 (1997) (ITA performs selective verification of reported data until it is satisfied that the data supplied by the foreign respondent is accurate). For the information that was verified, the Department found no significant problems. While we would have preferred to have an opportunity to verify these expenses, based on the results of verification, we find SENCO's data to be reliable overall. Moreover, we find that the level of SENCO's cooperation with our requests for information would not warrant an adverse inference. Nor have we found any reason based on other information on the record to conclude that the information in question is erroneous. Thus, even though not specifically verified, SENCO's reported expense information is the most appropriate facts available to the Department for the calculation of SENCO's margin. Accordingly, the Department has used

SPI's CEP expenses for purposes of the final determination.

*Comment 11: Treatment of Relocation Costs for CV*

Kabool states that it made a substantial investment in relocating its production facilities. Kabool states that production levels were limited by technical factors and contends that production during and immediately after relocation constitutes a start-up operation under the statute. Kabool contends that the Department should reduce CV to account for this relocation, either by granting a start-up adjustment or by determining that these costs are extraordinary.

Kabool contends that the plant relocation was clearly unusual in nature and infrequent in occurrence, thus satisfying the criteria for an expense to be considered extraordinary.

Petitioner contends that Kabool's plant relocation does not require special treatment by the Department. Petitioner further states that Kabool did not supply the necessary data to effect the requested adjustment. Furthermore, Kabool did not establish (as the statute requires) that the startup period extended ''beyond the POI.''

*DOC Position*

We agree with petitioner that it is not appropriate to make an adjustment, under the startup provision of section 773(f)(1)(C)(ii) of the Act, to account for the costs incurred by Kabool during the relocation of its production facility. To qualify for an adjustment for startup operations, the producer must show that (1) it is using new production facilities or producing a new product that requires substantial additional investment, and (2) the production levels are limited by technical factors associated with the initial phase of commercial production. *See* 773(f)(1)(C)(ii). The SAA explains that ''new production facilities'' means substantially complete retooling of an existing plant that involves a replacement or rebuilding of nearly all production machinery. *See* SAA at 836. A product is ''new,'' according to the SAA, if it requires ''substantial additional investment,'' or if the producer incurs substantial additional cost because of revamping or redesigning its existing product. Id.

In this case, Kabool reported in its April 16, 1997, supplemental section D response that all of the production machinery used in Kabool's new plant was transferred from its old plant. Kabool thus did not replace or rebuild nearly all of its machinery, but merely relocated its production facility. Kabool's technology for producing CR nails has not changed and there is nothing on the record to indicate that a new product is being produced in the new facility. Because Kabool merely relocated its production facility without replacing or rebuilding nearly all of its machinery, and the record evidence does not show that the relocation involved a substantial investment in connection with the revamping or redesigning of CR nails, the first condition for the start up adjustment is not satisfied.

Because Kabool does not meet the requirements outlined in the first prong of the start-up provision, the Department is not required to address whether or not Kabool's production levels were limited by technical factors associated with the initial phase of commercial production during the relocation of its facilities. In sum, the Department has determined to reject Kabool's claim for startup adjustment because it did not demonstrate that its production facility was new, or that it would involve a production of a new product under section 773(f)(1)(C)(ii) of the Act.

As in the preliminary determination, Department did not make an adjustment for Kabool's relocation costs based on the Department's practice of adjusting CV for extraordinary costs. The Department maintains that additional expenses stemming from Kabool's relocation do not constitute, in the words of the SAA at page 832, ''an unforeseen disruption in production,'' which is beyond the management's control.'' *(See also Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses, from Japan,* 61 FR 38139, 38153, July 23, 1996). Accordingly, because the relocation was not an unforseen event, the Department will include all the expenses associated with the relocation of Kabool's nail production facilities for purposes of calculating CV.

*Comment 12: Indirect Selling Expenses—Kabool*

Kabool claims that the revised home-market indirect selling expense calculation set forth in the sales verification report incorrectly allocates all of Kabool's home-market indirect selling expenses (which related to sales of all of its products) over the sales of CR nails sales instead of company wide sales. Accordingly, the Department should make the correction of the calculation error.

Petitioner states that the Department should include indirect selling expenses for the same general category of products (*i.e.* collated nails) as the Department should select for SG&A and profit. Petitioner argues that by including indirect selling expenses allocated for sales in the same general category, the Department will be making the most precise calculation of CV.

*DOC Position*

We agree with Kabool. The Department made a calculation error in the recalculation of the home-market indirect selling expense (*see* the Department's July 28, 1997, cost verification report, page 13). Accordingly, the Department has corrected the calculation as illustrated on page 15 of Kabool's August 6, 1997, case brief. For reasons outlined in our response to comment 1 we are calculating indirect selling expenses based on sales of the same general category of nails as provided by Kabool.

**Termination of Suspension of Liquidation**

In accordance with section 735(c)(2) of the Act, we are directing the Customs Service to terminate suspension of liquidation and release any bond or other security and refund any cash deposit.

The weighted-average dumping margins are as follows:

| Manufacturer/Producer/Exporter | Margin percentage |
|---|---|
| Senco | 0 |
| Kabool | 0 |

Because our determination is negative, the investigation will be terminated upon publication of this notice and no order will be issued.

**International Trade Commission Notification**

In accordance with section 735(d) of the Act, we have notified the International Trade Commission of our determination.

This determination is published pursuant to section 735(d) of the Act.

Dated: September 24, 1997.

**Robert LaRussa,**

*Assistant Secretary for Import Administration.*

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