

**DATE:** November 18, 2005

**MEMORANDUM TO:** Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

**FROM:** Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

**SUBJECT:** Issues and Decision Memorandum for the 2003-2004  
Administrative Review of Furfuryl Alcohol from Thailand

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## **SUMMARY**

We have analyzed the case and rebuttal briefs filed by interested parties in the 2003-2004 administrative review of furfuryl alcohol from Thailand. As a result of our analysis, we have made changes to the margin calculations. We recommend that you approve the positions we have developed in the "Discussion of Issues" section of this memorandum. Below is a complete list of the issues in this review for which we received comments:

- Comment 1: Certain Loss Related to General and Administrative Expenses (Cost Adjustment #1)
- Comment 2: Changes in Inventory (Cost Adjustment #2)
- Comment 3: Cost Adjustment #3
- Comment 4: Financial Expenses
- Comment 5: Technical Services Adjustment
- Comment 6: Duty Drawback
- Comment 7: Packing Costs

## **BACKGROUND**

On July 21, 2005, the Department of Commerce ("the Department") issued the preliminary results of the administrative review of the antidumping duty order on furfuryl alcohol from Thailand. See Notice of Preliminary Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from Thailand, 70 FR 42029 (July 21, 2005) ("Preliminary Results"). The period of review ("POR") is July 1, 2003, through June 30, 2004.

We invited parties to comment on the Preliminary Results. On August 22, 2005, the respondent, Indorama Chemicals (Thailand) Ltd. (“IRCT”), and the petitioner, Penn Specialty Chemicals, Inc. (“petitioner”), each filed case briefs. On August 29, 2005, the respondent and petitioner each filed rebuttal briefs. On October 27, 2005, the Department rejected the petitioner’s case brief and IRCT’s rebuttal brief on the basis that these briefs contained new factual information. The deadline for submission of new factual information was October 20, 2004. On October 31, 2005, and November 1, 2005, IRCT filed a request for the Department to reconsider its October 27, 2005, rejection of IRCT’s rebuttal brief. On November 2, 2005, the Department rejected IRCT’s request. On November 2, 2005, the petitioner and IRCT each filed a new case brief and rebuttal brief, respectively, absent the information the Department deemed to be new information.

## **DISCUSSION OF ISSUES**

### **Comment 1: Certain Loss Related to General and Administrative expenses (Cost Adjustment #1)**

#### *Petitioner’s Argument:*

The petitioner states that IRCT incurred a loss in the second half of the POR that IRCT failed to include in its reported cost of production. See Petitioner’s Case Brief, at 2. The petitioner argues that IRCT appears to have included the appropriate cost and value relating to the loss in the fiscal year 2004 financial statements that it submitted as part of its April 22, 2005, response. However, the petitioner argues that IRCT has not reported this loss as part of its total cost of manufacture in its section D cost database.

The petitioner argues that it is the Department’s practice to exclude only “extraordinary” expenses from a company’s cost of production. Similarly, the petitioner argues that a gain or loss is considered a normal cost of doing business, not an “extraordinary” expense. Therefore, the petitioner argues, the Department should revise IRCT’s reported cost of production to include the loss IRCT incurred in 2004.

#### *IRCT’s Argument:*

IRCT argues that the Department correctly excluded the loss incurred by the company from the cost of production. Citing Notice of Final Results of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from the Republic of Korea, 69 FR 61341 (October 18, 2004) and accompanying Issues and Decision Memorandum at Comment 2 (“PSF from Korea”), IRCT argues that it is the Department’s normal practice to consider activities that depart from a company’s main commercial activity and create a non-recurring gain or loss to be extraordinary and exclude this loss from a company’s general and administrative expense (“G&A expense”) calculations. Specifically, IRCT argues that the Department considers the nature, significance and relationship of each activity with the company’s general operations in determining whether

to include this loss in G&A expense calculations. Furthermore, IRCT argues, if the Department determines that a business activity is significant enough to be treated separately from a respondent's other business activities and to be unrelated to production of the subject merchandise, the Department will exclude the loss from the calculated cost of production because it is not related to the production of the subject merchandise. See IRCT's Rebuttal Brief, at 2.

IRCT argues that the Department appropriately included only the "occasional" miscellaneous gain or loss incurred by IRCT in its cost of production because such gains or losses are "small" in relation to a company's primary activities. Conversely, IRCT argues that the loss it incurred was neither "routine" nor "comparatively small in relation to the company's primary activities." See IRCT's Rebuttal Brief, at 3.

Accordingly, IRCT argues that the Department correctly excluded this loss from the cost of production because it was an "extraordinary expense." In addition, because the petitioner failed to provide any evidence that the loss incurred was "routine," the petitioner's argument is without merit and the Department should continue to exclude IRCT's reported loss from the cost of production.

*Department's Position:*

The Department's practice has been to consider certain losses as part of the normal business operations of the company as a whole because they result from activities that occurred to support on-going production operations. Accordingly, it has been the Department's practice to include such losses in general & administrative expenses. See Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Indonesia, 70 FR 13456 (March 21, 2005) and accompanying Issues and Decision Memorandum at Comment 13. However, because we are using IRCT's fiscal year 2003 financial statements to calculate the G&A expense ratio, and since IRCT incurred this loss and recorded it on its books during 2004, the loss should not be included in the G&A expense calculated for the current review. Rather, the loss incurred by IRCT would be included in the G&A expense calculation for the 2004-2005 POR where 2004 fiscal year data is used for the G&A expense ratio calculation. We have, however, adjusted the G&A expense ratio to reflect similar IRCT activity which occurred during the 2003 fiscal year that IRCT failed to include in its reported G&A expense calculation.

The details of the Department's position regarding the issue of a certain loss related to G&A expenses (cost adjustment #1) contain business proprietary information. For more information, please see the Department's November 18, 2005, Memorandum to File entitled "Final Results Calculation Memorandum for Indorama Chemicals (Thailand) Ltd. ("Final Calc Memo")", which is on file in the Department's Central Records Unit, located in Room B-099 of the main Department building ("CRU").

**Comment 2: Changes in Inventory (Cost Adjustment #2)***Petitioner's Argument:*

The petitioner argues that the Department erred in excluding cost adjustment #2<sup>1</sup> from its calculation of the total cost of manufacture for the preliminary results. The petitioner argues that IRCT's accounting system and narrative responses contradict the nature of cost adjustment #2 as described by IRCT in its submission. Furthermore, the petitioner argues that the Department should interpret cost adjustment #2 as detailed in the accounting system and include this item in IRCT's cost of production.

Specifically, the petitioner argues that conflicting information regarding the nature of cost adjustment #2 present in the evidence on the record of this case illustrates IRCT's failure to submit a complete and accurate record of this case to the Department. The petitioner argues that the Department's practice in circumstances in which there lacks a complete and accurate record is to include cost adjustments, such as cost adjustment #2, in the respondent's cost of production. See Petitioner's Case Brief, at 5.

Therefore, the petitioner argues, because the Department's practice is to include cost adjustment #2 in the cost of production and IRCT failed to form a complete and accurate record of this case, the Department should accept the petitioner's depiction of the true nature of cost adjustment #2 and include cost adjustment #2 in the calculation of the total cost of manufacture.

*IRCT's Argument:*

IRCT argues that the petitioner's depiction of cost adjustment #2 is incorrect. IRCT argues that the item description attributed to the accounting code in question refers to cost adjustment #2 as depicted in IRCT's section D response. Therefore, IRCT argues that it correctly reported this value as cost adjustment #2.

Similarly, IRCT stated that the value reported as cost adjustment #2 is reported as a sub-account for another, separate account. IRCT stated that any increase or decrease in the stock of an input is also recorded in this second account. Accordingly, IRCT argues that there was no commensurate reduction in the reported value in the second account that matches the value reported as cost adjustment #2 sub-account when comparing IRCT's trial balances from June 2003 and December 2003. IRCT argues that if cost adjustment #2 actually referred to a change in the quantity of an input, rather than cost adjustment #2, the change in value would be reflected in the second account noted above which it is not.

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<sup>1</sup> Details of this argument include business proprietary information. For a complete explanation of this adjustment, please see Final Calc Memo.

Therefore, IRCT argues, because the accounting system indicates that the cost adjustment #2 is as IRCT depicted in its section D response and the petitioner concedes that the Department's practice is to exclude such an adjustment from the total cost of manufacture, the Department should continue to exclude cost adjustment #2 from the calculated total cost of manufacture.

*Department's Position:*

Based on IRCT's description of its normal accounting practice, if the petitioner is correct in its alternative explanation of the values IRCT reported as cost adjustment #2, a commensurate decrease in value would be reflected in the second, separate account noted above. However, there was no commensurate decrease in the second separate account matching the value reported as cost adjustment #2 in the June 2003 and December 2003 financial statements. Therefore, in accordance with section 773(f)(1)(A) of the Tariff Act of 1930, as amended, ("the Act") which requires the Department to base its calculation of a company's cost of production on the company's audited books and records, if such records reasonably reflect the costs associated with the production and sale of the merchandise under consideration we will continue to consider cost adjustment #2 as depicted in IRCT's reported section D and exclude the value from its calculated total cost of manufacture. For a more detailed explanation of this adjustment, please see the Final Calc Memo at page 5.

**Comment 3: Cost Adjustment #3**

*IRCT's Argument:*

IRCT argues that the Department incorrectly included costs reflected in cost adjustment #3<sup>2</sup> in recalculating the total cost of manufacture used in the preliminary results. IRCT concedes that the Department's normal practice is to include costs reflected in cost adjustment #3 in the cost of production. However, citing Notice of Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip from Canada, 61 FR 46618 (September 4, 1996) ("Brass Sheet and Strip"), IRCT argues that the Department has excluded cost adjustment #3 from its cost of production calculations when specific circumstances exist. IRCT argues that the factual pattern in the current case is similar to the facts in Brass Sheet and Strip. Accordingly, IRCT argues that the Department should recalculate cost of production excluding cost adjustment #3. See IRCT's Rebuttal Brief, at pages 6-8.

*Petitioner's Argument:*

The petitioner argues that the Department should continue to include cost adjustment #3 in the cost of production as in the preliminary results. The petitioner argues that IRCT's argument for

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<sup>2</sup> Details of this argument include business proprietary information. For a complete explanation of this adjustment, please see Final Calc Memo at page 5.

exclusion of cost adjustment #3 on the basis that equipment and machinery commissioned by IRCT to produce furfuryl alcohol were not related to the production process for furfuryl alcohol are without merit given the fact that IRCT produces only furfuryl alcohol. Accordingly, the petitioner argues that all of IRCT's assets are dedicated to the production of furfuryl alcohol and all costs borne by these assets are attributable to IRCT's production of furfuryl alcohol. See Petitioner's Rebuttal Brief, at 4.

Moreover, the petitioner argues, there are many options available to companies to account for period expenses incurred to reflect the cost for equipment. The petitioner cites to depreciation of assets, "writing off" of assets, noting that "assets are impaired," or selling the assets and incurring a gain or loss on the sale of assets as examples. The petitioner claims that it is a normal and ordinary activity for companies to choose and execute one of these options. The petitioner argues it is standard procedure for the company in question to then include the expenses incurred as a result of these activities in the cost of production. See Petitioner's Rebuttal Brief, at 4-5.

In its financial statements, the petitioner argues, IRCT chose to account for its period expenses as reflected in cost adjustment #3. Therefore, the petitioner argues, because the costs reflected in cost adjustment #3 are a normal and ordinary costs incurred by the company, and it is the Department's long-standing practice to include such costs in the cost of production, the Department should include cost adjustment #3 in the cost of production for the final results.

*Department's Position:*

The costs reflected in cost adjustment #3 should be included in IRCT's cost of production. In accordance with section 773(f)(1)(A) of the Act, the Department's normal practice with regard to the costs reflected in cost adjustment #3 is to include these costs in the calculation of general & administrative expenses. For the preliminary results, we determined that, because IRCT manufactures and sells only one product, all costs incurred by IRCT are ultimately related to the production of the subject merchandise. Moreover, because these assets could feasibly be restarted and used in the production of the subject merchandise, IRCT must incur a cost for maintaining them. Therefore, we will continue to include these costs in IRCT's manufacturing costs for the final results. For a more detailed explanation of this adjustment, please refer to the Final Calc Memo.

**Comment 4: Financial Expenses**

*Petitioner's Argument:*

The petitioner argues that the Department based the calculation of IRCT's financial expenses for the preliminary results on the financial data of what IRCT erroneously reported to be its parent company. The petitioner argues that the company cited by IRCT as its parent company is

actually not the ultimate parent company<sup>3</sup> of IRCT. The petitioner argues that the company cited by IRCT is actually part of a larger, poorly identified Indorama group of companies. See Petitioner's Case Brief, at 4.

Specifically, the petitioner argues that the reported parent company's financial statements reveal many related party transactions which, the petitioner argues, raises questions about any potentially unidentified affiliations of the Indorama group of companies. The petitioner argues that this information included in IRCT's financial statements and the inability of the respondent to provide a complete and clear explanation of the corporate structure calls into question the true nature of the corporate structure as reported by IRCT. See Petitioner's Case Brief, at 5.

The petitioner argues that it has been the Department's practice in circumstances in which the nature of the corporate structure of a company is in question, to calculate a company's financial expenses based on the actual manufacturer/exporter's financial expenses that are subject to review. Accordingly, the petitioner argues, due to the conflicting information surrounding the nature of the actual corporate structure of the Indorama group of companies in this case, the Department should rely on past case precedent and use IRCT's trial balances to determine IRCT's financial expenses.

*IRCT's Argument:*

IRCT argues that the Department properly calculated financial expenses using the financial statements of IRCT's ultimate parent company. IRCT argues that the petitioner provided no substantive evidence supporting its assertion that the reported parent company is not, in actuality, the ultimate parent company. Therefore, the Department should continue to calculate IRCT's financial expenses using the financial data from IRCT's reported parent company for the final results.

*Department's Position:*

The Department's practice with regard to the calculation of financial expenses is to base financial expenses on information contained in the audited financial statements at the highest level of consolidation. See section 773(f)(1)(A) of the Act; see also Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17334 (April 9, 1999) at comment 15 (citing E.I. Dupont de Nemours and Co. v. U.S., Slip Op. 98-7 (CIT 1998)). In the Preliminary Results, we calculated interest expenses based on the financial statements of IRCT's reported parent company because it was the highest level of corporate consolidation that conforms to the POR.

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<sup>3</sup> The actual name of Indorama's parent company is business proprietary, please see the Final Calc Memo.

In its February 22, 2005, response, IRCT stated that there is no formal structure and no audited consolidated financial statements at a higher level of consolidation than IRCT's reported parent company. Furthermore, IRCT stated that, other than a "loose family connection," there is no affiliation between IRCT and any other companies that may be affiliated with IRCT's parent company. In addition, IRCT stated that these companies do not produce or sell furfuryl alcohol and have no business relationship with IRCT. IRCT also noted that there was no common ownership or common management between any company affiliated with IRCT's reported parent company and IRCT.

Therefore, in accordance with the Department's normal practice, we have determined that the highest level of consolidation is IRCT's reported parent company. As a result, we have continued to base financial expenses on the financial data of IRCT's reported parent company for these results.

#### **Comment 5: Technical Services Adjustment**

##### *Petitioner's Argument:*

The petitioner argues that IRCT failed to provide credible evidence that the direct selling expense adjustment it claimed for technical services provided to a customer was actually a direct selling expense.

The petitioner argues that IRCT failed to provide any substantive evidence supporting the values it used to calculate and allocate the per-unit technical services expense it reported to the Department in its April 22, 2005, submission at Annexure 8. Furthermore, the petitioner argues that IRCT itself admits that the technical services provided are "not directly related to sales of foreign like product." See Petitioner's Case Brief, at 6.

Citing to the Department's Antidumping Manual, January 22, 1997, the petitioner argues that the Department's practice with regard to the granting of adjustments for technical services expenses is "{c}laims for technical services . . . are adjusted for as COS {circumstances of sale} to the extent that the variable costs can be segregated from the fixed costs. The allowable variable costs are usually travel expenses and contracted services by unrelated technicians . . . . Salaries of technicians employed by the exporter usually would not be allowed as a COS adjustment . . . . Therefore, they are usually indirect selling expenses." See Petitioner's Case Brief, at 6.

Therefore, the petitioner argues, the Department should reclassify the claimed technical service expense as an indirect selling expense because IRCT failed to provide evidence supporting the variable expenses incurred for its purported technical services. Similarly, the majority of the claimed technical services expenses pertain to certain expenses which the Department has excluded as an acceptable technical service expense. Lastly, IRCT admits that the claimed expense is not directly related to sales of the foreign like product.

*IRCT's Argument:*

IRCT argues that the Department correctly determined that a direct selling expense adjustment to normal value for technical services is appropriate for the preliminary results. Similarly, IRCT argues that it correctly calculated the adjustment amount by allocating the expenses over the reported period of review, rather than on a transaction-by-transaction basis.

Specifically, IRCT argues that it provided technical services to one of its customers in the home market at the customer's request to address problems with the physical characteristics of the product and the production efficiency of that customer. Accordingly, IRCT argues, these technical services were directly related to specific sales made by this customer. However, IRCT argues that it was unable to assign these expenses on a sale-by-sale basis and, therefore, allocated them to the sale of that customer. See IRCT's Rebuttal Brief, at 7.

IRCT argues that the Department's regulations provide for the allocation of expenses and price adjustments when transaction specific reporting is not feasible, provided that the Department is satisfied that the allocation method does not cause inaccuracies or distortions. IRCT argues that the Department has accepted the allocation of technical services in Notice of Final Results of Antidumping Duty Administrative Review: Roller Chain, Other than Bicycle, from Japan, 58 FR 52264 (October 7, 1993) and Notice of Final Results of Antidumping Duty Administrative Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, from the Federal Republic of Germany, 59 FR 31692 (July 11, 1991). Furthermore, the Department granted IRCT's request for a direct selling expense adjustment to normal value for technical services in the Notice of Preliminary Determination of Antidumping Duty Investigation: Furfuryl Alcohol from Thailand, 59 FR 65014 (December 16, 1994). See IRCT's Rebuttal Brief, at 6-7.

In addition, IRCT argues that there is nothing on the record of this case that suggests that the allocation methodology causes inaccuracies or distortions. Moreover, IRCT argues, the petitioner's claim that IRCT incorrectly allocated its claimed technical services, rather than applying these expenses on a sale-by-sale basis, is also without merit. IRCT argues that the Department's regulations provide that "the Secretary may consider allocated expenses and price adjustments when transaction specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions." See IRCT's Rebuttal Brief, at 6-7. IRCT argues that the Department accepted the allocation of home market technical services expenses as reasonable in Notice of Final Results of Antidumping Administrative Review: Roller Chain, Other than Bicycle, from Japan, 58 FR 52264 (October 7, 1993) and Notice of Final Results of Antidumping Administrative Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, from the Federal Republic of Germany, 59 FR 31692 (July 11, 1991).

Moreover, IRCT argues that, in its April 22, 2005, supplemental response, it explained that the types of technical service expenses it provided to this customer were directly related to specific sales of this customer, but that IRCT was unable to assign these expenses on a sale-by-sale basis.

See IRCT Rebuttal Brief, at 7. Therefore, IRCT argues, because these expenses were directly related to the sales to a specific customer and there is nothing on the record to suggest that the allocation methodology caused inaccuracies or distortions, the Department should continue to make an adjustment for IRCT's technical services expenses for the final results.

*Department's Position:*

We requested that IRCT provide a worksheet and explanation of its reported technical services expenses in our April 8, 2005, supplemental questionnaire. In its April 22, 2005, response, IRCT submitted a worksheet illustrating the method IRCT used to allocate the costs of the technical service expenses incurred by IRCT as well as an explanation of the nature of the technical services performed.

Section 773(a)(6) of the Act and 19 CFR 351.410 require the Department to make adjustments to normal value based on circumstances of sale, including technical services expenses. Although we found IRCT's illustration of its allocation methodology to be appropriate, it is not the Department's practice to consider certain expenses as a technical services adjustment when record evidence indicates that IRCT would incur these expenses regardless of whether the technical services were performed. See Notice of Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from the Netherlands, 53 FR 23431 (June 22, 1988). The cases cited by IRCT are inapposite because they do not address the issue of whether certain expenses included by IRCT in its calculation of technical services expenses can be properly considered to be technical service expenses. The cases noted by IRCT in its rebuttal brief refer merely to the Department's past practice with regard to the allocation of technical services expenses. Accordingly, we have removed these specific expenses from the allocated technical services expense for the final results. Similarly, we have added these certain expenses to IRCT's reported G&A expenses and have recalculated IRCT's reported G&A expenses. In addition, we have recalculated IRCT's reported technical services expenses and allocated these expenses over the quantity sold on this basis. For a detailed explanation of these adjustments, please see the Department's Final Calc Memo at page 4.

**Comment 6: Duty Drawback**

*Petitioner's Argument:*

The petitioner argues that the Department should disallow the duty drawback adjustment to export price it granted to IRCT for the preliminary results. The petitioner argues that the Department's established criteria for granting a duty drawback adjustment is to confirm that the import duty paid and the corresponding rebate payment are directly linked to, and dependent upon, one another. See Petitioner's Case Brief, at 7.

The petitioner argues that IRCT failed to establish the link between duty paid on imports of materials used in the production of the subject merchandise and the rebate granted for these

duties paid. Specifically, the petitioner argues, IRCT's narrative response on page 6 of its February 22, 2005, submission, as well as its statement that "there is no connection between the import duties paid or duty drawback received and these imports," undermines its argument that there is linkage between import duties paid and rebates granted. See Petitioner's Case Brief, at 7.

Furthermore, the petitioner argues, the import documentation cited by IRCT as supporting evidence is insufficient for meeting the Department's criteria for granting a duty drawback adjustment. The petitioner concedes that the import documentation submitted as part of IRCT's December 22, 2004, February 22, 2005, and June 13, 2005, responses indicates that IRCT paid duties on imports of raw material inputs. However, the petitioner argues, there is no evidence on the record of this case that supports IRCT's claim that it received drawback of import duties for these imported inputs. The petitioner notes that Annexure 6.2 of IRCT's February 22, 2005, response appears to be a segment of its general ledger which records duty drawback receipts for the POR. However, the petitioner argues, the date of the last account entry for drawback received in this chart is before the date of the payment of import duty for the referenced input. The petitioner argues that the Department cannot adjust the export price for drawback of import duties that, at the time, did not exist. See Petitioner's Rebuttal Brief, at 2.

The petitioner also argues that the Department should not grant IRCT's request for a duty drawback adjustment for the importation of machinery parts. Specifically, the petitioner argues, the essential criteria for granting a duty drawback adjustment is that the imported article in question upon which the import duty is paid must be exported. Conversely, the petitioner argues, imported machinery parts, even if used in the machinery used to produce subject merchandise, are not exported. Therefore, these imported machinery parts are not eligible for drawback of imported duties. See Petitioner's Rebuttal Brief, at 2-3.

On this basis, the petitioner argues the Department should disallow a duty drawback adjustment because IRCT failed to provide substantive evidence supporting the linkage between import duties paid and rebates granted. Similarly, the petitioner argues, the Department should continue to deny a duty drawback adjustment as requested by IRCT for the import duties paid on machinery parts.

*IRCT's Argument:*

IRCT argues that, while the Department correctly granted a duty drawback adjustment for imports of one of the inputs used in the production of furfuryl alcohol, the Department erred in denying a duty drawback adjustment for imports of all raw material inputs used in the production process. Similarly, IRCT argues, the Department erred in denying IRCT's claimed duty drawback adjustment on the import of "machinery parts and other consumables." See IRCT's Case Brief, at 3-4.

IRCT argues that the petitioner's arguments are misguided. IRCT argues that the petitioner misunderstands IRCT's position with regard to duty drawback. Most importantly, IRCT argues

that its statement, that “there is no connection between import duties paid and drawback received and these imports” in its February 22, 2005, submission is intended to explain only that there is no direct linkage between the import values of the specific items IRCT used in the production of the subject merchandise and identified in its submission and the total value of import duties paid and duty drawback received on all of IRCT’s imports. IRCT’s intention was not to give the impression that there was no linkage between duties paid and rebates received on the import of raw material inputs at all. See IRCT’s Rebuttal Brief, at 9.

Furthermore, IRCT argues that the petitioner’s argument ignores additional evidence on the record set forth in Annexures 6, 6.1 and 6.2 of the February 22, 2005, response and Annexure 3 and of IRCT’s section D response relating to import duties paid and the linkage between those import duties and duty drawback. Particularly, IRCT argues, the charts and import documentation included in these attachments demonstrate that IRCT paid duties on the imports of all raw material inputs used in the production of the subject merchandise as well as on “consumables and spare parts for which IRCT also claimed a duty drawback adjustment.” See IRCT’s Rebuttal Brief, at 9-10.

IRCT claims that the Department based its determination to deny IRCT’s request for a duty drawback adjustment on imports of a second raw material input on the fact that the Department could determine that IRCT paid duties on only one of the raw material inputs used in the production of furfuryl alcohol from the record evidence in this case. IRCT states that the chart it included as Annexure 6.1 of its June 13, 2005, submission details import duties paid by IRCT on imports of inputs used in the production of furfuryl alcohol on a entry-specific basis. In this chart, IRCT claims that one of the line items directly refers to duties paid on one of the raw material inputs used in the production of furfuryl alcohol. IRCT argues that the import documentation included in Annexure 3 of its December 22, 2004, response contains an invoice that details the duties IRCT paid on a second raw material input used in the production of furfuryl alcohol for which the Department did not grant IRCT a duty drawback adjustment. See IRCT’s Case Brief, at 2-3.

IRCT also argues that its claim for a duty drawback adjustment for spare parts and machinery is consistent with the Act. IRCT argues that, to the best of its knowledge, the Department has never denied a duty drawback adjustment specifically on the basis that the import subject to duty drawback was not a raw material. See IRCT’s Case Brief, at 4. Moreover, IRCT argues that section 772(c)(1)(B) of the Act does not distinguish between raw materials and other imported inputs in asserting that:

(c) Adjustments for export price and constructed export price.

The price used to establish export price and constructed export price shall be----

(1) increased by----

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(B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, ...

See IRCT's Case Brief, at 4.

IRCT argues that, because it is involved in the production of only furfuryl alcohol, all imports relate to the production of the subject merchandise. IRCT also argues that it clearly detailed in its December 22, 2004, response that it paid sufficient duties on these imports and demonstrated clearly the linkage of these duties to the drawback received for the Department to determine that the duty drawback is appropriate for spare parts and machinery. Therefore, IRCT argues, the Department should adjust the export price to include a duty drawback adjustment for both raw material inputs and all spare parts and machinery used in the production of furfuryl alcohol for the final results.

*Department's Position:*

Section 772(c)(1)(B) of the Act stipulates that the price used to establish EP or CEP shall be increased by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States. In determining whether a duty drawback adjustment is appropriate, the Department applies a two pronged test establishing that: (1) the import duty paid and the corresponding rebate payment are directly linked to, and dependent upon, one another; and, (2) that the company claiming the adjustment can demonstrate that there were sufficient imports of the imported raw material to account for the drawback received on the exports of the manufactured product. The Court of International Trade has consistently found this test to be reasonable. See Rajinder Pipes v. United States, 70 F. Supp. 2d 1350, 1358 (CIT 1999); see also Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Turkey, 69 FR 53675 (September 2, 2004) and accompanying Issues and Decision Memorandum at Comment 1.

In response to IRCT's initial request for a duty drawback adjustment in its October 18, 2004, response, the Department distributed supplemental questionnaires to IRCT requesting supporting documentation with explanations and illustration of how this supporting documentation related to IRCT's response and to the Department's December 8, 2004, February 10, 2005, and June 6, 2005, supplemental questionnaires. In IRCT's February 22, 2005, response at Annexure 6, IRCT submitted a chart detailing the total quantity and value of two raw material inputs which IRCT imported during the POR. IRCT submitted, as Annexure 6.2, details of import duty paid during the POR. In addition, IRCT also submitted a ledger as Annexure 6.2 of the same submission identifying the amount of total duty drawback accrued during the POR on all sales.

In its original October 18, 2004, submission, IRCT submitted as evidence supporting its claim for a duty drawback adjustment a chart detailing the invoice number, quantity of the shipment, and duty drawback received in Thai Baht for each invoice. The Department requested that IRCT clarify how the information presented in this chart satisfied the Department's two-pronged criteria for granting a duty drawback adjustment. IRCT submitted a chart in its January 18, 2005, response detailing the quantity and value of the raw materials it imported during the POR on which it was granting a duty drawback adjustment. IRCT also mentioned the value, in Thai Baht, of total duty paid and the drawback received on, both U.S. and total, sales during the POR. In addition, it submitted sample documentation of a payment advice for each raw material detailing the amount of duties paid for the input as well as two additional invoices. The Department was unable to determine the nature of one of these invoices because it was in Thai. The second invoice appeared to be the sales invoice from the source from which IRCT purchased the raw materials imported.

The Department noted that none of the figures identified by IRCT as the amount of duty paid on imports, the duty drawback received on imports, and total quantity and value of imports of the two raw material inputs imported during the POR matched the source documents that IRCT submitted as supporting evidence. Therefore, the Department requested, in its February 10, 2005, submission, that IRCT submit documentation supporting the total quantity and value of the raw materials inputs it claimed in its submission were appropriate. Similarly, the Department requested that IRCT clarify how the figures that it submitted for the total value of import duties paid and duty drawback received in its December 22, 2004, submission related to the total quantity and value of the two raw materials, for which IRCT was claiming a duty drawback adjustment, it submitted as part of the same submission.

In its February 22, 2005, response, IRCT submitted a chart as Annexure 6 detailing the quantity and value of purchases of raw materials imported during the POR. The quantity and value for imports of only the raw materials matched that submitted in its December 22, 2004, chart. IRCT also submitted a chart detailing the total amount of duty paid on raw materials imported during the POR as Annexure 6.1. In this chart, there is no reference to import duties paid on either of the raw materials imported by IRCT during the POR in the "item description," "customers duty baht," or "party" columns. There is a reference to one of the raw materials for which IRCT is claiming a duty drawback adjustment in a line-item at the bottom of the chart instructing the reader to add the duty paid on deemed imports of this raw material to the total duty paid as described in the chart. IRCT provides no substantiation for these "deemed imports" of the raw material. In Annexure 6.2 of the same submission, IRCT submitted what appears to be a computer printout of transactions recorded in account 3311 "other income" for the POR. IRCT argues that this chart contains the total drawback received during the POR for imports used in the production of all exports on an entry-specific basis. The Department summed the total value of these transactions and noted that it matched the figure submitted as "Total Drawback received/accrued during the POR of all the export including USA sales" in its December 22, 2004, submission. The Department was unable to make any kind of connection between the invoice numbers noted in this account ledger and the source documentation submitted in its

December 22, 2004, submission as proof of duty drawback. In addition, in its February 22, 2005, response, IRCT made statements that seemingly contradict its argument that a duty drawback adjustment is appropriate.

In its August 22, 2005, case brief and August 29, 2005, rebuttal brief (which was rejected and resubmitted on November 2, 2005), IRCT explained how Annexure 6.1 of its June 13, 2005, response identifies the duty paid on imports of both inputs used in the production of furfuryl alcohol. Furthermore, IRCT sufficiently demonstrated how the source documentation it submitted as part of its December 22, 2004, supplemental questionnaire response supported the values it reported for duties paid on the import of these inputs. See IRCT's Case Brief, at Exhibit 1. In addition, IRCT demonstrated how the documentation submitted as Annexures 6, 6.1 and 6.2 of its February 22, 2005, and Annexures 3 and 4 of its December 22, 2004, section D response illustrate that IRCT also received rebate payments from the Government of Thailand linked to the duties paid on imports of these inputs used in the production of furfuryl alcohol. Therefore, in accordance with section 772(c)(1)(B) of the Act, we have determined that IRCT's reported imports of raw material inputs are eligible for a duty drawback adjustment.

With regard to IRCT's importation of spare parts and machinery, however, in accordance with section 772(c)(1)(B) of the Act and past Department practice, we continue to determine that IRCT's imports of spare parts and machinery are not eligible for a duty drawback adjustment. Specifically, the second prong of the Department's two-pronged test for granting a duty drawback adjustment stipulates that the Department must confirm that "the company claiming the adjustment can demonstrate that there were sufficient imports of the *imported raw material* to account for the drawback received on the exports of the manufactured product." By definition, spare parts and machinery are not raw materials used in the production of the subject merchandise (*i.e.*, consumed in the production of the subject merchandise). See *Rajinder Pipe & Tube v. United States*, 70 F. Supp. 2d, 1350, 1358 (CIT 1999).

Therefore, for the final results, we will adjust IRCT's reported export price to reflect the duty drawback received as a rebate of the duties paid on imports of the two material inputs consumed in the production of furfuryl alcohol. Also, the Department will continue to deny IRCT's request for a duty drawback adjustment on the importation of spare parts and machinery.

#### **Comment 7: Packing Costs**

##### *IRCT's Argument:*

IRCT argues that the Department erred in adjusting the value of IRCT's reported packing expenses on U.S. sales for the preliminary results calculations. IRCT argues that it stated in its section C response that it reported packing expenses incurred on U.S. sales in Thai Baht per metric ton. Specifically, IRCT argues that, in Annexure C-9 of its section C response, it reported that it paid for both material and labor in Baht and the approximate quantity shipped per ISO container was 20.5 metric tons. IRCT argues that it used this information to calculate a packing

expense incurred on U.S. sales (“PACKU”) in Thai Baht per metric ton.

IRCT argues that it is unclear why the Department concluded that IRCT reported U.S. packing expenses in U.S. dollars per metric ton. Therefore, because IRCT correctly reported packing expenses incurred on U.S. sales in Thai Baht per metric ton, IRCT argues that the Department should remove the adjustment it made to PACKU for the preliminary results at the final results in this review.

*Petitioner’s Argument:*

The petitioner did not comment on this issue.

*Department’s Position:*

We agree with IRCT. For the Preliminary Results, the Department miscalculated IRCT’s reported packing expense. Therefore, for the final results, we have removed the adjustment we made to IRCT’s reported packing expense for the preliminary results. See Final Calc Memo at page 6.

**RECOMMENDATION**

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

AGREE \_\_\_\_\_ DISAGREE \_\_\_\_\_

\_\_\_\_\_  
Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date