

reseller. We examined the facts surrounding the U.S. sales process.

The sale of subject merchandise by Pannext in the United States during the POI was handled by PFC. PFC received purchase orders from, and sent order confirmations to, U.S. customers. PFC also issued all invoices and received payment from Pannext's customers. *See* Section A Questionnaire Response (January 29, 2003), and Section A Supplemental Questionnaire Response (March 3, 2003).

Because the contracts on which Pannext's U.S. sales were based were between PFC and its unaffiliated U.S. customers, and PFC invoiced and received payment from the unaffiliated U.S. customers, the Department preliminarily determines that Pannext's U.S. sales were made "in the United States" within the meaning of section 772(b) of the Act, and, thus, should be treated as CEP transactions. This is consistent with *AK Steel Corp. v. United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000).

We calculated weighted-average CEPs for Pannext's U.S. sales made in the United States through its U.S. affiliate. We based CEP on the reported gross unit prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for discounts, marine insurance, international freight, U.S. duties, and for foreign inland freight from the plant to the port of exportation in accordance with section 772(c)(2)(A) of the Act. Because marine insurance was provided by an NME company, we based it on a publicly available price list for India. *See* Factor Valuation Memorandum. To calculate inland freight, we multiplied the reported distance from the plant to the port of exit by a surrogate rail rate from India. In accordance with section 772(d)(1) of the Act, we deducted from CEP direct and indirect selling expenses (*i.e.*, credit and indirect selling expenses) that were associated with Pannext's economic activities occurring in the United States. *See* Proprietary Memorandum from Anya Naschak to Abdelali Elouaradia: Preliminary Determination Analysis Memorandum for Langfang Pannext Pipe Fitting Co., Ltd. and Pannext Fittings Corporation, dated May 28, 2003 (Pannext Analysis Memo).

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market

prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used factors of production, reported by respondents, for materials, energy, labor, by-products, and packing. *See* section 773(c)(3) of the Act.

The statute provides that in NME cases, the Department "shall determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise." *See* section 773(c)(1) of the Act. However, in the instant investigation, JMC, Pannext, and SLK have submitted information on the record that they do not keep records of the inputs of recycled scrap used in the manufacture of subject merchandise, which would be necessary to determine the quantity of recycled scrap used in producing one kilogram of subject merchandise as a factor of production. Further, respondents note that they do not record in the normal course of business the quantities of inputs required to produce each model of subject merchandise. Respondents note that they have reported their factors of production excluding the inputs of recycled scrap. Respondents have explained that their production line is a closed loop system, where in the ordinary course of business all scrap produced is simultaneously reintroduced into the production process. Therefore, it is the respondents' position that the Department should not include in its calculation a factor of production for recycled scrap because the offset would nullify any additional input quantity.

In an effort to determine the quantity of these inputs, the Department provided respondents with an opportunity to report recycled scrap as an input. First, the Department requested that all respondents adjust their reported factors of production by the control number (CONNUM)-specific yield loss ratios. Respondents have acted to the best of their ability to comply with this request. In their supplemental submissions, the respondents adjusted their factors of production to account for these yield loss ratios, and reported estimated yield loss ratios on a CONNUM-specific basis. However, respondents noted that they are only able to report estimated data, because these ratios are not inclusive of material lost due to spillage, slag, or evaporation in the melting process, and are based on a small number of tests,

rather than on actual CONNUM-specific data.

Second, the Department requested, at least twice, that each respondent separately report the quantity of recycled scrap reintroduced into the production process in order to account for the material lost in the production process. *See e.g.*, the Department's NME Questionnaire, dated January 8, 2003, at D-1, D-6, JMC Supplemental C and D Questionnaire, dated March 19, 2003, at page 7, Pannext Supplemental Section C and D Questionnaire, dated March 19, 2003 at pages 6-7, Pannext Second Supplemental C and D Questionnaire, dated April 23, 2003, at page 4, SLK Supplemental Section C and D Questionnaire, dated March 18, 2003, at page 6, and Memorandum from Ann Barnett-Dahl to the File, dated May 19, 2003. Respondents explained that they do not keep records on reintroduced scrap, and are therefore unable to provide the Department with the quantity of these inputs. *See e.g.*, JMC's Section D Questionnaire response, dated February 24, 2003, at pages 23-25, JMC's Section D Supplemental response, dated April 2, 2003, at pages 18-19, Pannext's Section D Supplemental response, dated April 11, 2003, at pages 16-17, Pannext's Section D Second Supplemental response, dated April 28, 2003, at pages 4-5, SLK's Section D Supplemental response, dated April 14, 2003, at pages 5-6.

However, it is the Department's practice to require the reporting of all inputs in the production process in the calculation of constructed value. When a party is unable to provide the Department with the requested information, section 782(c) of the Act requires a party to promptly notify the Department as to why it cannot comply with the Department's questionnaire. Section 782(c) also requires parties to suggest alternative forms in which they are able to comply with the request. *See China Steel Corporation and Yieh Loong v. United States*, Court No. 01-01040, Slip Op. 03-52 at 31-32 (May 14, 2003). In this investigation, the Department promptly requested that each respondent separately report the quantities of reintroduced scrap. Respondents have stated they are unable to provide the Department with the requested information, but they have not provided the Department with any alternate means of accounting for the unreported recycled scrap inputs. In lieu of an alternative provided by respondents, the Department must resort to partial facts available in the calculation of dumping margins in this case to account for the unreported input values.