DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 961]

Grant of Authority for Subzone Status: Lyondell-Citgo Refining Company, Ltd. (Oil Refinery); Harris County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Houston Authority, grantee of Foreign-Trade Zone 84, for authority to establish special-purpose subzone status at the oil refinery complex of Lyondell-Citgo Refining Company, Ltd., located in Harris County, Texas, was filed by the Board on April 15, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 32–97, 62 FR 24080, 5/2/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 84P) at the oil refinery complex of Lyondell-Citgo Refining Company, Ltd., located in Harris County, Texas, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050, #2710.00.2500, and #2710.00.45 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 6th day of March 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 & A–580–816]

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Final results of antidumping duty administrative reviews.

SUMMARY: On September 9, 1997, the Department of Commerce (''the Department'') published the preliminary results of the administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea. These reviews cover three manufacturers/exporters of the subject merchandise to the United States and the period August 1, 1995, through July 31, 1996. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Fred Baker (Dongbu), Steve Bezirganian (POSCO), Thomas Killiam (Union), Alain Letort, or John Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone 202/482–2924 (Baker), 202/482–0162 (Bezirganian), 202/482–2704 (Killiam), 202/482–4243 (Letort), or 202/482–0649 (Kugelman), fax 202/482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR part 351 (62 FR 27296—May 19, 1997) (''*Final Rules*''), do not govern these proceedings, citations to those regulations are provided, where appropriate, to explain current departmental practice.

Background

The Department published antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea on August 19, 1993 (58 FR 44159). The Department published a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty orders for the 1995/96 review period on August 12, 1996 (61 FR 41770). On August 30, 1996, respondents Dongbu Steel Co., Ltd. (''Dongbu'') and Pohang Iron and Steel Co., Ltd. (''POSCO'') requested that the Department conduct administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea; respondent Union Steel Manufacturing Co., Ltd. (''Union'') requested a review of corrosion-resistant carbon steel flat products only. On the same day, the petitioners in the original less-than-fair-value (''LTFV'') investigations (AK Steel Corp., Bethlehem Steel Corporation, U.S. Steel Group—a unit of USX Corporation, Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company, collectively referred to as ''petitioners'') filed a similar request. We initiated these reviews on

September 13, 1996 (61 FR 48862—September 17, 1996).

On October 7, 1996, the petitioners requested, pursuant to section 751(a)(4) of the Act, that the Department determine whether antidumping duties had been absorbed by the respondents during the period of review (''POR''). Section 751(a)(4) provides for the Department, if requested, to determine, during an administrative review initiated two years or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Act by the URAA.

The regulations governing these reviews do not address this provision of the Act. However, for transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's new antidumping regulations provides that the Department will make a duty-absorption determination, if requested, in any administrative review initiated in 1996 or 1998. *See* 19 CFR § 351.213(j)(2), 62 FR at 27394. As noted above, while the new regulations do not govern the instant reviews, they nevertheless serve as a statement of departmental policy. Because orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea have been in effect since 1993, they are transition orders in accordance with section 751(c)(6)(C) of the Act. As these reviews were initiated in 1996, the Department has acceded to petitioners' request that it conduct a duty-absorption inquiry.

The Act provides for a determination on duty absorption if the subject merchandise is sold in the United States through an affiliated importer. In these cases, all reviewed firms sold through importers that are ''affiliated'' within the meaning of section 751(a)(4) of the Act. We have determined that the following firms have dumping margins on the percentages of their U.S. sales, by quantity, indicated below:

Name of firm and class or kind of merchandise	Percentage of U.S. affiliate's sales with dumping margins
Dongbu:	
Cold-Rolled	65.34
Corrosion-Resistant	5.82
POSCO:	
Cold-Rolled	35.54
Corrosion-Resistant	14.64
Union:	
Cold-Rolled	[1]
Corrosion-Resistant	8.99

[1] No U.S. sales in POR.

We presume that the duties will be absorbed for those sales which were dumped. This presumption can be rebutted with evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duty. However, there is no such evidence on the record. Under these circumstances, we find that antidumping duties have been absorbed by the above-listed firms on the percentages of U.S. sales indicated. Although we afforded interested parties the opportunity to submit evidence that unaffiliated purchasers in the United States will absorb duties, no party availed itself of this opportunity.

On September 9, 1997, the Department published in the **Federal Register** the preliminary results of the third administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea (62 FR 47423). The Department has now completed these administrative reviews in accordance with section 751 of the Act.

Scope of the Reviews

The review of ''certain cold-rolled carbon steel flat products'' covers cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (''HTS'') under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

The review of ''certain corrosion-resistant carbon steel flat products'' covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc-, aluminum-, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

The POR is August 1, 1995 through July 31, 1996. These reviews cover sales of certain cold-rolled and corrosion-resistant carbon steel flat products by Dongbu, Union, and POSCO.

Verification

As provided in section 782(i)(3) of the Act, we verified information provided by the respondents using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Fair-Value Comparisons

To determine whether sales of the subject merchandise from Korea to the United States were made at less than fair value, we compared the export price (''EP'') or constructed export price (''CEP'') of the merchandise to the normal value (''NV''), as described in the ''Export Price (or Constructed Export Price)'' and ''Normal Value'' sections of *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results of Antidumping Duty Administrative Reviews,* 62 FR 47422 (September 9, 1997).

Since the publication of the preliminary review results, however, we have re-examined the facts of the record of these cases, our prior practice, and statutory definitions. As a result of our re-examination, we have concluded that treating certain transactions as indirect EP transactions is inappropriate. The Act defines the term ''constructed export price'' as ''the price at which the subject merchandise is first sold (or agreed to be sold) *in the United States* before or after the date of importation *by or for the account of* the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).'' In contrast, ''export price'' is defined as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation *by the producer or exporter* of the subject merchandise *outside of the United States.*'' Sections 772(a)–(b) of the Act (emphasis added). In these cases, the record clearly establishes that the respondents' affiliates *in the United States* were in most instances the parties first contacted by unaffiliated U.S. customers desiring to purchase the subject merchandise and also that the sales affiliates in question signed the sales contracts and engaged in other sales support functions. These facts indicate that the subject merchandise is first sold in the *United States* by or for the account of the producer or exporter, or by the affiliated seller, and that the sales in question are therefore CEP transactions.

Factors relevant to that analysis include: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. sales affiliate was limited to that of a processor of sales-related documentation and a communications link with the unrelated U.S. buyer. Where the facts indicate that the activities of the U.S. affiliate were ancillary to the sale (*e.g.,* arranging transportation or customs clearance, invoicing), we treated the transactions as EP sales. Where the U.S. affiliate had more than an incidental involvement in making sales (*e.g.,* soliciting sales, negotiating contracts or prices) or performed other selling functions, we treated the transactions as CEP sales. For company-specific details on the application of this methodology, please refer below to the ''Analysis of Comments Received'' section of this notice.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States,* 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (''CV'') as the basis for foreign market value when the Department finds home-market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ordinary course of trade to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign-market sales of merchandise identical or most similar to that sold in the United States to be outside the ordinary course of trade. Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Reviews'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

For purposes of these final review results, in accordance with the Department's regulations and the questionnaire issued to the respondents at the outset of these reviews, we have used the date of the invoice to the first unaffiliated purchaser in the United States as the date of sale, except for transactions where the date of invoice occurred after the date of shipment, in which case we used the date of shipment as the date of sale.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from Dongbu, POSCO, and Union, exporters of the subject merchandise (''respondents''), and from petitioners. POSCO requested a public hearing, which was held on November 7, 1997.

General Comments

Comments by Petitioners

Comment 1. Petitioners argue that the Department must deduct actual antidumping (''AD'') and countervailing (''CVD'') duties paid by respondents' affiliated importers from the price used to establish EP or CEP.

Department's Position. We disagree with petitioners. We continue to adhere to our longstanding practice as articulated in prior segments of these proceedings, which is not to make a deduction for antidumping duties. This practice was recently upheld by the Court of International Trade (''CIT'') in *AK Steel Corp., et al.* v. *United States,* CIT Slip Op. 97–160 (December 1, 1997).

Comment 2. Petitioners contend the Department's duty absorption determination in the preliminary review results is flawed for two major reasons.

First, petitioners assert that by inviting the parties to submit new factual information after verification in order to rebut its presumption that ''duties will be absorbed for those sales which were dumped,'' the Department undermined the statutory requirement that all information used in the final review results be verified. Petitioners argue that they were placed at a distinct disadvantage by the Department's decision to allow respondents to place information on the record which could not be verified. Petitioners argue that the Department's procedure is at odds with the ruling by the Court of Appeals for the Federal Circuit (''CAFC'') that ''the burden of production is properly placed upon the party in control of the necessary information.'' *See Creswell Trading Co. v. United States,* 15 F.3d 1054, 1060 (Fed. Cir. 1994). Although petitioners recognize that their concerns are no longer an issue in these reviews, since no party submitted information pursuant to the Department's request, they urge the Department to discard this poorly conceived method and to collect all relevant duty absorption evidence at the same time as it collects information necessary to complete its dumping analysis.

Second, petitioners believe the Department's methodology has the potential to understate the extent to which antidumping duties were absorbed. The Department's methodology, they argue, can give the casual reader the mistaken impression that the total amount of duties absorbed was limited to the dumped sales included in the final antidumping duty calculated. Because the overall dumping margin is weight averaged, petitioners contend, the true level of dumping and thus of duty absorption is significantly greater than the overall margin. To remedy this problem, petitioners suggest that the Department state its duty absorption finding as the percentage of sales dumped in conjunction with the average level of dumping *for those sales* (emphasis in the original). For example, if five percent of a respondent's sales were dumped, and the overall weighted-average dumping margin on the dumped sales was 40 percent, the Department should state that the respondent absorbed duties on five percent of sales at a margin of 40 percent.

Petitioners reject the alternative methodology suggested by POSCO, which would measure duty absorption not on a sale-specific basis but rather across all sales made during the POR. Petitioners argue that POSCO's proposal to determine duty absorption by comparing the average U.S. price to the average normal value is contrary to the statute, which mandates that, in administrative reviews, dumping margins be calculated by comparing the U.S. price and normal value of each entry. Similarly, petitioners argue that POSCO's proposal to include sales with negative margins in the calculation is contrary to the Department's long-standing practice of treating such sales as zero-margin sales. Petitioners maintain that calculating duty absorption levels on anything other than a transaction-specific basis undermines the presumption that ''current dumping margins calculated * * * in reviews may not be indicative of the margins that would exist in the absence of an order.'' Uruguay Round Agreements Act, Statement of Administrative Action (''SAA''), H.R. Doc. 103–316, Vol. I, 103rd Cong., 2nd Sess. (1994) at 885.

Respondents argue that the Department's preliminary duty absorption determination violates the letter and intent of both the statute and Article 11.1 of the Agreement on Implementation of Article VI of the General Agreements on Tariffs and Trade (1994) (''*UR Antidumping Agreement*''). It violates the statute, say respondents, because the statute recognizes that the antidumping law must be implemented in a fair manner. This is why the Department calculates dumping margins on a weighted-average basis, and measures dumping over the 12-month period in order to eliminate the effects of abnormal, outlying instances of dumping. It violates Article 11.1, assert respondents, because that article states that antidumping measures shall remain in effect only as long as and to the extent necessary to counteract injurious dumping.

Respondents maintain that the Department's current duty absorption methodology, as stated in the preliminary review results, would unlawfully make it more difficult for antidumping orders to be revoked by finding that duty absorption has occurred even in cases where the dumping margin is zero or *de minimis.* Respondents contend that the Department's present methodology implies that if a respondent, over a 12-month period, has not engaged in dumping but has one or two outlying sales which were dumped, then the Department will determine that not only has the respondent engaged in duty absorption, but at the magnitude of those one or two sales. Respondents claim that such a distorted result makes it more likely that the International Trade Commission (''ITC'') will prolong the existence of the order, in violation of Article 11.1. Indeed, say respondents, one could envision a situation where the Department would revoke an order due to three consecutive years of zero or *de minimis* margins, yet recommend that the ITC not grant a ''sunset'' revocation because of duty absorption found under this distortive methodology.

Respondents therefore recommend that the Department base a duty absorption determination on a respondent's overall pricing policies and not on individual, isolated instances of dumping. In addition, they contend the Department should include a credit for negative margins, in fulfillment of its Article 11.1 obligations.

Department's Position. After carefully considering petitioners' and respondents' conflicting views, we have left our duty absorption methodology unchanged from the preliminary results.

Contrary to petitioners' contention that we violated the statute by requesting new factual information after verification, our regulations allow us to request factual information from the parties at any time, even after verification. Had any party chosen to submit new factual information in response to our request in the preliminary results notice, we would have afforded the other parties an opportunity to comment in writing on such information. The issue of whether or not such information would have been verified is moot since we received no new factual information on duty absorption pursuant to our request.

We believe the approach suggested by petitioners is inappropriate because, as respondents point out, it would result in an artificially inflated duty absorption percentage and could mislead the ITC. In a hypothetical case where, out of 100 U.S. sales transactions, only one was dumped, but at a margin of 20 percent, petitioners apparently would have the Department determine that duty absorption had occurred at a rate of 20 percent on one percent of sales. We find this approach distortive and not mandated by either statute or regulation.

We also reject POSCO's suggestion that we offset sales with positive dumping margins with sales with negative dumping margins because doing so would disguise the fact that duty absorption may have occurred, thereby obfuscating our duty-absorption inquiry. In administrative reviews, negative dumping margins are systematically disregarded, because there is no basis in the antidumping law to use negative margins as an offset or a ''credit'' against positive margins.

Accordingly, for purposes of these final review results, we have left unchanged our duty absorption methodology.

Comment 3. Petitioners assert that in the event the Department reclassifies certain EP transactions as CEP transactions, it must ensure that these sales are reviewed in either the third or fourth administrative review, and not permit certain sales to escape review in their entirety as a result of the Department's practice of determining whether or not a sale is subject to review based on the date of sale rather than the date of entry.

Where reclassifying an EP sale as a CEP sale pushes that sale forward into the fourth administrative review, petitioners do not object. Where such reclassification, however, causes certain sales to be pushed backwards into the completed second review period, petitioners object strongly, because such sales will escape this review, which is contrary to the statutory provision that all entries be reviewed. *See* § 751(a)(2) of the Act.

Petitioners state that nothing prevents the Department from reviewing newly reclassified CEP sales even if the reported date of sale falls within the previous POR, since such transactions were not previously reviewed and will not be subject to review in the future.

Respondents retort that petitioners are requesting the Department simultaneously to administer the antidumping law in two different and mutually exclusive directions. On the one hand, they say, petitioners ask that the Department reclassify certain EP transactions as CEP transactions, yet at the same time they ask the Department to ignore its standard date-of-sale methodology with regard to those sales and revert to an EP date-of-sale methodology. Respondents affirm that this argument is internally inconsistent and unsupported by statute or regulations. If the Department (wrongfully) decides to reclassify the sales in question as CEP transactions, argue respondents, then it should use its standard date-of-sale methodology to determine whether those sales fall within the POR, even at the risk of those sales falling out of the POR.

Department's Position. We agree with petitioners. Although we have reclassified most of the respondents' U.S. sales as CEP transactions for purposes of these final review results, this change has no effect on the date of sale. As explained elsewhere in this notice (*see* the Department's Position to Comment 31, below), we have changed the date of sale for Dongbu and Union, but for reasons independent of the change from EP to CEP. There is no ''EP date-of-sale methodology,'' as respondents claim. Where sales are classified as CEP transactions but the date of sale occurs *prior* to importation, we generally cover all *entries* during the POR; where sales are classified as CEP transactions and the date of sale occurs *after* importation, we generally cover all *sales* during the POR. In these cases the earlier of these situations applies; therefore, we have analyzed all entries during the POR, and no sales were pushed backward into the completed second review period as a result of our changing the date of sale.

Company-Specific Comments

Comments by Petitioners

Comment 4. Petitioners argue that the Department erred in its calculation of Dongbu's U.S. imputed credit by not adding to it the bank fees for opening letters of credit. (These letter-of-credit fees are charges that Dongbu incurs on the international letters of credit for transactions between Dongbu and Dongbu U.S.A.) Furthermore, they argue that, for two reasons, the Department should use facts available for the bank fee amounts. First, they argue that certain verification exhibits demonstrate Dongbu's calculation of its average letter of credit fees (submitted in exhibit C–20 of its January 31, 1997, supplemental questionnaire response) grossly misstates the amount of bank charges. Second, they argue that Dongbu's reported letter of credit charges failed verification. To support this latter claim, petitioners cite the following quotation from the U.S. verification report:

> We discussed the bank charges for letter of credit transactions * * * We asked Dongbu to explain and document, for a sample transaction, how bank charges were calculated and allocated. Dongbu representatives were unable to volunteer a cogent explanation of how these charges were calculated, within a reasonable span of time. We therefore moved on to the next topic.

See September 16, 1997 verification report (revised and reissued on November 18, 1997) at 2.

Dongbu argues that its sample letter of credit calculation in exhibit C–20 of its supplemental questionnaire response did not fail verification, and that the verification exhibits fully support it. Furthermore, Dongbu argues that for two reasons the Department should not adjust the U.S. sales prices for letter of credit fees. First, Dongbu argues that the letter of credit fees are already included in Dongbu's reported imputed credit, and that to make an adjustment for the letter of credit fees in addition to the reported imputed credit would constitute double-counting an expense. It argues that because the imputed credit period begins with the date of shipment and ends with the date of payment, it covers the entire time the merchandise is in the accounts receivable ledgers of Dongbu, Dongbu Corporation, and Dongbu U.S.A. Therefore, Dongbu argues, the reported imputed credit incorporates all expenses associated with financing the intercompany payment, including the letter of credit charges.

Moreover, Dongbu argues that its reported imputed credit figure includes the entire cost of financing receivables by virtue of the use of the short-term interest rate of Dongbu U.S.A. as the interest rate in the calculation. The assumption in using Dongbu U.S.A.'s rate, Dongbu argues, is that it is representative of the cost of financing receivables during the entire time the receivables are outstanding. Thus, to add the actual charge for taking out the letter of credit in a case where credit cost is fully imputed would be tantamount to double-counting the cost of credit during the time covered by the letter of credit.

Dongbu further argues that the Department's precedent supports this interpretation. It cites a case where the Department stated that ''deducting both the actual [letter of credit] fees and the imputed costs (which include these fees) would be double counting.'' *See Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026, 19044 (April 30, 1996) (''*Bicycles*'').

Second, Dongbu argues that the Department should not adjust the U.S. price for letter of credit fees because the record shows that the actual cost of the charges associated with the international letters of credit is such a minor expense that it is unnecessary to adjust the U.S. price.

Petitioners argue that Dongbu is incorrect in stating that its letter of credit fees are already included in its imputed credit calculation, and that in fact the Department verified that these fees are not included in the imputed credit expense or separately reported elsewhere in Dongbu's responses. *See* the September 16, 1997 verification report (revised and reissued on November 18, 1997), at 2 (quoted above).

Petitioners argue that this verification finding is further supported by other record evidence, such as the fact that Dongbu receives letters of credit from the Korean Exchange Bank, but this bank is not listed as a lending institution bank in the credit expense calculation that Dongbu prepared.

Furthermore, petitioners argue that *Bicycles* is inapposite. In *Bicycles*, an affiliated U.S. importer paid fees to its corporate parent to cover interest charges on letters of credit, and the fees were already included in the reported credit expense. Here, petitioners argue, the Department verified that Dongbu did not include the letter of credit expenses in the imputed credit expense. Moreover, at issue in *Bicycles* were interest charges associated with letters of credit; here the issue is other types of expenses associated with letters of credit. Additionally, petitioners argue, at issue in *Bicycles* was the payment from the U.S. affiliate to its corporate parent. Here the issue is fees paid to unaffiliated lending institutions. Accordingly, petitioners conclude, *Bicycles* is inapposite.

Therefore, petitioners argue, bank fees associated with letters of credit must be deducted from U.S. price as direct selling expenses in accordance with *Porcelain-on-Steel Cookware from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 54616, 54618 (October 21, 1996) (''*Cookware*''). There the Department found that ''bank fees associated with the letter of credit transactions * * * are a direct selling expense * * * .'' Similarly, they argue, letter of credit fees were treated as direct selling expenses and deducted from U.S. price for both Union and POSCO in the preliminary results of this review, and therefore the Department must make a similar adjustment for Dongbu.

Petitioners further argue that Dongbu is incorrect in saying that the adjustment is small. They argue that Dongbu's calculation is flawed and understates the actual expense associated with letter of credit fees.

Department's Position. We agree with both parties in part. We agree with petitioners that we should deduct bank fees for letters of credit in addition to the calculated imputed credit figure. We do not agree with Dongbu's argument that an imputed credit figure covering the entire credit period inherently includes all credit/financing expenses. Where a respondent pays bank fees to finance a letter of credit related to a U.S. sale, we must adjust for these fees as they are direct selling expenses. Moreover, these fees are not implicitly included in the calculated imputed credit figure simply because the interest rate used is the interest rate of an American subsidiary.

Furthermore, adjusting for bank fees associated with letters of credit is consistent with our past practice. As petitioners point out, *Bicycles* is inapposite because it dealt with an interest payment between two affiliated companies. Here the expenses at issue are charges paid to an unaffiliated bank. As we stated in *Cookware,* ''[w]e determined that bank fees associated with the letter of credit transactions for certain U.S. customers are a direct selling expense and have made a COS [circumstance-of-sale] adjustment for these fees.'' *See Cookware* at 45618. We have followed this precedent in these final results of review, and have adjusted for bank fees as a direct selling expense. *See also Ferrosilicon from Brazil; Amended Final Determination of Sales at Less Than Fair Value,* 59 FR 8598 (February 23, 1994) and *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part,* 62 FR 1954, 1969 (January 14, 1997).

However, we do not agree with petitioners that Dongbu's reported letter of credit fees failed verification, or that it is necessary to resort to facts available. At verification the Department found no inconsistencies in Dongbu's computation, which is supported by the verification exhibits. Therefore, in these final results, we have used the letter of credit fees as Dongbu reported them.

Comment 5. Petitioners argue that the Department erred in treating all except one of Dongbu's U.S. sales as EP sales, rather than as CEP sales. They set forth three arguments to support this contention. First, they argue that it is Dongbu U.S.A.'s Los Angeles office (''DBLA''), and not Dongbu, that plays the primary role in setting the price to the ultimate U.S. customer. They state that the record demonstrates that virtually all sales contact with the U.S. customer occurs through DBLA, and that DBLA is actively involved in price negotiation. The only confirmation of price and product characteristics, petitioners argue, is the sales contract, which is signed by DBLA and the unaffiliated U.S. customer. Nothing on the document indicates Dongbu's or Dongbu Corporation's involvement in the sale, nor is either entity bound under the contract.

Given this lack of involvement on the part of Dongbu, petitioners argue, Dongbu's statement that Dongbu approves all sales over the telephone, but has no written document showing the approval, is ludicrous. If Dongbu's approval is no more than a telephone approval, they state, with no written documentation showing the sales transaction and its terms, it can be no more than *pro forma.*

Moreover, petitioners dismiss Dongbu's statement that there is little negotiation regarding price on the part of Dongbu because its loyal U.S. customers already know the prices based on past experience. Petitioners also state that it is demonstrably untrue, because over the course of three administrative reviews, Dongbu's antidumping duty rate has declined steadily. This means that either prices in the home market or the U.S. market have changed (or that Dongbu has inaccurately reported its sales and expenses). In the previous review Dongbu certified that its home-market prices do not fluctuate and have remained constant for extensive periods of time. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Reviews,* 62 FR 18404 (April 15, 1997) (''*Second Review Final Results*'') at 18409. As home-market prices have remained constant, and Dongbu's antidumping duty has not, this means, barring the intentional misreporting of data, that Dongbu's U.S. prices do in fact vary.

The falsity of Dongbu's claim regarding its role in the price negotiation process, petitioners argue, is demonstrated by the fact that Dongbu does not know the final price charged to the U.S. customer until long after the sale is completed. Furthermore, petitioners argue, the fact that Dongbu may give DBLA confirmation that it can produce merchandise ordered does not demonstrate Dongbu's involvement in the price negotiation.

Petitioners further argue that the only record evidence speaking to Dongbu's involvement in the sales negotiation relates to two sales transactions discussed at verification. In the first transaction, Dongbu rejected a sale ''because the specifications * * * were not acceptable.'' Petitioners argue that this production issue is completely irrelevant to the question of Dongbu's role in price setting. In the second transaction, Dongbu denied a request by an American customer for a discount due to a delayed shipment. As with the first transaction, petitioners argue, this denial does not demonstrate Dongbu's control of the price negotiation.

Petitioners argue that a more notable example of a discounted sale is observation 454, the sale which Dongbu reported as an EP sale and which the Department determined to be a CEP sale. There, they argue, the sales process was identical to all Dongbu's other U.S. sales which the Department treated as EP. For this sale, petitioners argue, DBLA located the U.S. buyer, negotiated the price, and arranged all other aspects of the sale. *See* Korean verification exhibit 13 at 21–22. Thus, petitioners argue, if the sales process for this sale qualifies as a CEP sale, as the Department has found, then the same sales process used for Dongbu's other U.S. sales must likewise be deemed CEP sales.

Secondly, petitioners argue that in addition to playing a significant role in the setting of prices, documentation on the record demonstrates that DBLA is also involved with almost every other stage of the U.S. transaction. Specifically, they argue, DBLA arranges and pays for cash deposits for regular duties and for countervailing and antidumping duties, takes title to the subject merchandise and serves as importer of record, clears the subject merchandise through customs, invoices the U.S. customer, collects payment from the U.S. customer, finances the sale to the U.S. customer, and arranges warehousing and demurrage in the United States. The extent of DBLA's involvement in the U.S. sales process, petitioners argue, is also demonstrated by the value of its indirect selling expenses relative to the value of Dongbu's indirect selling expenses in Korea on behalf of its home market and U.S. sales. An analysis of Dongbu's role on behalf of U.S. sales shows, they argue, that it is limited to confirming the availability of production capacity and characteristics, arranging export transportation, and issuing pro forma approvals of DBLA's sales terms to the unaffiliated U.S. buyer.

Finally, petitioners argue that the Department must classify Dongbu's U.S. sales as CEP transactions to be consistent with its analysis in *Certain Cut-to-Length Carbon Steel Plate from Germany; Final Results of Antidumping Duty Administrative Review,* 62 FR 18390 (April 15, 1997) (''*German Plate*''). There the Department identified seven functions performed by the respondent's U.S. affiliate. The Department determined that these seven functions warranted classifying and analyzing the affiliates' resales as CEP transactions. Petitioners argue that with the possible exception of customer credit checks, DBLA performs all of those functions as Dongbu's selling affiliate in the United States. Perhaps more important, petitioners state, record evidence demonstrates that, like the U.S. affiliate in *German Plate,* DBLA plays the central role in negotiating U.S. transaction price.

Dongbu argues that the U.S. sales the Department classified as EP transactions were correctly classified. First, they argue that the Department has considered and rejected petitioners' argument in the first and second administrative reviews of this order, and that nothing new—either factually or legally—has changed with respect to this issue since those reviews. Furthermore, they argue that the Department again examined this issue at the verifications in this review, and found nothing to support petitioners' argument.

Second, Dongbu argues that petitioners' assertions that DBLA engages in substantial selling functions, which include price negotiation, have no basis in the record and are at odds with the Department's findings in the sales verification reports. It is a matter of record, Dongbu argues, that the most significant selling activities related to U.S. sales occur in Korea, including sales negotiation, production scheduling, shipping scheduling, Korean brokerage, handling, and loading expenses, Korean inland freight, and ocean freight. Dongbu states that DBLA has no direct role in these arrangements and that these expenses are all incurred in Korea.

Furthermore, Dongbu argues that during the verification in Korea the Department examined and verified multiple transactions that demonstrated that Dongbu U.S.A. was merely a communications link, and that Dongbu approved the terms of all sales. One such sale, it argues, was the sale (cited by petitioners) in which Dongbu denied a requested discount from an American customer. Dongbu states that after receiving the request, it wrote directly to the U.S. customer, and explained that constant requests for discounts could warrant a termination of their relationship. Nothing could be more illustrative, Dongbu argues, of Dongbu U.S.A.''s function as a communication link and Dongbu's authority in setting the terms of sale. Dongbu also identifies observation 454 as another sale which serves as a prime example of Dongbu's ultimate authority over U.S. sales: in that transaction, Dongbu argues, it decided that a discount was appropriate, and confirmed the sale.

Moreover, Dongbu argues that there are fundamental differences in the relationship between Dongbu and its subsidiary and the relationship between the respondent and its sales affiliate in *German Plate*. In this regard the U.S. verification report dated December 16, 1997, says (at 2) that Dongbu U.S.A. ''act[s] solely as an intermediary, inasmuch as headquarters in Korea exercise[s] active authority over pricing and terms.'' In *German Plate,* the U.S. sales affiliate played a major role in negotiating price with customers. Thus, it argues, *German Plate* cannot serve as a basis to reclassify Dongbu's transactions as CEP.

Third, Dongbu argues that all of DBLA's sales activities which petitioners argue warrant reclassifying Dongbu's sales as CEP sales are consistent with EP classification. To act as importer of record, to receive purchase orders to forward to Seoul for approval, to issue sales contracts once the quantities and prices have been approved by Seoul, to borrow to finance accounts receivable, to handle billing and accounting functions, and to contact U.S. customers, are all, Dongbu argues, well within the scope of activities normally associated with acting as a communications link and document processor. Furthermore, they argue that the CIT has consistently upheld purchase price (''PP'') (now called ''EP'') classification in circumstances in which the related U.S. company undertook activities equal to, or far more extensive than, those at issue here. Dongbu cites the following four examples:

• PP classification was upheld where U.S. affiliate first shipped merchandise to independent warehouses whose cost was borne by U.S. affiliate, U.S. affiliate was importer of record, U.S. affiliate paid estimated antidumping duties on the merchandise, U.S. affiliate retained title prior to sale to the unrelated U.S. party, and U.S. affiliate received commissions for its role in the transactions. *Outokumpu Copper Rolled Products* v. *United States,* 829 F. Supp. 1371, 1379–1380 (CIT 1993), *appeal after remand dismissed,* 850 F. Supp. 16 (CIT 1994).

- PP classification was upheld where U.S. affiliate received purchase orders and invoiced related customer, U.S. affiliate was invoiced for and directly paid shipping company for movement charges, U.S. affiliate occasionally warehoused, at its own expense, and U.S. affiliate received ''substantial mark-up'' over price at which it purchased from exporter. *E.I. Du Pont de Nemours & Co., Inc.* v. *United States,* 841 F. Supp. 1237, 1248–50 (CIT 1993).
- PP classification was upheld where U.S. affiliate invoiced customers, collected payments, acted as importer of record, paid customs duties, and may have taken title to the goods when they arrived in the United States. *Zenith Electronics Corp.* v. *United States,* 18 CIT 870, 873–874 (1994).
- PP classification was upheld where U.S. affiliate processed purchase order, performed invoicing, collected payments, arranged U.S. transportation, and served as the importer of record. *Independent Radionic Workers* v. *United States,* CIT Slip Op. 95–45 (March 15, 1995).

For all of these reasons, Dongbu argues, the Department should reject petitioners' argument.

Department's Position. We agree with petitioners that Dongbu's U.S. sales should be treated as CEP transactions. In the final results of the prior reviews, in order to determine whether sales made prior to importation through Dongbu's affiliated U.S. sales affiliate (DBLA) to an unaffiliated customer in the United States were EP or CEP transactions, we analyzed Dongbu's U.S. sales to determine whether the following three factors were present: (1) whether the merchandise was shipped directly from the manufacturer (Dongbu) to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling affiliate (DBLA) was limited to that of a processor of sales-related documentation and a communications link with the unrelated U.S. buyer. We concluded that DBLA was no more than a processor of sales-related documentation and a communications link, and classified Dongbu's U.S. sales as EP transactions. *Second Review Final Results* at 18423.

As explained above in the ''Fair-Value Comparisons'' section of this notice, to ensure proper application of the statutory definitions, where a U.S. affiliate is involved in making a sale, we consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. The statement in the verification report, quoted by Dongbu, that Dongbu U.S.A. ''act[s] solely as an intermediary, inasmuch as headquarters in Korea exercise[s] active authority over pricing and terms' is not dispositive. Rather, the totality of the evidence regarding Dongbu's sales process demonstrates that DBLA's role is more than ancillary to the sales process.

We base this finding on several factors. First, we note that all of Dongbu's U.S. sales are made through DBLA, and that Dongbu's U.S. customers seldom have contact with Dongbu. Furthermore, it is DBLA (and not Dongbu) that writes and signs the sales contract. Though respondents claim that Dongbu approves all sales prices by telephone, such approval does not make DBLA's role in the sales negotiation process ancillary. Nor can we conclude that Dongbu's control over price discounts makes DBLA's role in the sales process ancillary. As with respondent A.G. der Dillinger Hüttenwerke (''Dillinger'') in *Plate from Germany,* there is no evidence that Dongbu was involved in the sales process at all until after its U.S. subsidiary made the initial arrangements.

Furthermore, we find that, in addition to playing a key role in the sales negotiation process, DBLA played a central role in all sales activities after the merchandise arrived in the United States. As petitioners have pointed out, these activities included issuing invoices, collecting payment, financing the sale to the U.S. customer, and arranging for warehousing and demurrage in the United States. Though Dongbu is correct that the CIT has upheld an PP (or EP) classification despite significant sales activities on the part of the U.S. subsidiary, that fact does not render these activities irrelevant in making this determination. These activities carried out by DBLA are both extensive and significant, as evidenced by the value of the indirect selling expenses incurred by DBLA relative to the value of the indirect selling expenses incurred by Dongbu. Further, the existence of significant selling expenses in the United States itself belies Dongbu's claim that the role of its U.S. affiliate was not meaningful. *See* Dongbu's January 31, 1997 submission, exhibit 22.

In *German Plate* we stated, ''We consider [the U.S. subsidiary] Francosteel's extensive involvement in negotiating respondent's U.S. sale during this review, along with Francosteel's other sales activities, to warrant classifying this sale as CEP.'' *German Plate* at 18392. For the same reasons, we have classified Dongbu's U.S. sales as CEP in these final results.

Comment 6. Petitioners argue that the Department erred with respect to Dongbu by classifying U.S. sales observation 440 as an EP sale, rather than a CEP sale. They argue that for three reasons this sale must be classified as a CEP sale. First, they argue that evidence on the record suggests it was not sold until after importation. They cite a statement contained in Dongbu's supplemental questionnaire response in which Dongbu stated that ''Dongbu U.S.A. generally issues the invoice and sends it to the customer about a week *before* the expected arrival of the merchandise at the port.'' *See* Dongbu's January 31, 1997 supplemental questionnaire response at 33 (emphasis in original). Based on this information and documentation contained in verification exhibit five (the verification exhibit associated with this sale), petitioners argue that observation 440 must have been sold after entry. Second, they argue that documents in verification exhibit five contain discrepancies which render Dongbu's reported contract date (which the Department used as the sale date in the preliminary results) demonstrably untrue. Specifically, they argue that the sales contract in that exhibit does not even pertain to observation 440. Third, they argue that evidence in verification exhibit five indicates that DBLA played the primary role in price negotiation.

Furthermore, petitioners argue that the Department should resort to facts available in determining the warranty and warehousing expenses for this sale because Dongbu did not report any expenses for warranty and warehousing, and because information on the record suggests that Dongbu did not even report the correct sales price on its U.S. sales tape.

Finally, petitioners argue that the Department should consider deducting warranty and warehousing expense amounts for all of Dongbu's U.S. sales. Their basis for this argument is that the Department discovered at verification that for two of six sales verified, Dongbu incurred additional, unreported sums for warehousing and warranty charges for discounts necessitated by late shipments. Petitioners believe, based on proprietary information on the record, that it is not unlikely that additional sales were canceled, and that Dongbu did not fully report expenses associated with those sales.

Dongbu argues that the petitioners have misrepresented what Dongbu reported as the date of sale. Dongbu states that the date it reported as the date of sale is not the contract date, but the date of the invoice between Dongbu and Dongbu Corporation. This date, it states, is before the entry date. Therefore, it argues, petitioners are incorrect in stating that there is evidence that the merchandise was not sold until after importation.

With respect to petitioners' second argument, Dongbu argues that the contract contained in verification exhibit five does cover observation 440. With respect to petitioners' argument that the Department should make an adjustment for unreported warehousing and demurrage charges, Dongbu argues that the Department verified all expenses for sale 440, and that there is therefore no reason to impose any additional charges on any of Dongbu's U.S. sales.

Department's Position. We agree with petitioners in part, and disagree with petitioners in part. As indicated in the Department's response to Comment 5, we have determined to treat Dongbu's sales as CEP sales in these final results. Observation 440 is no exception. However, we disagree with petitioners that we should make additional deductions from observation 440 or any of Dongbu's other U.S. sales for allegedly unreported expenses. We find no evidence that this sale was warehoused or that it incurred warranty expenses, or that Dongbu failed to report the correct sales price. Thus, there is only one U.S. sale for which Dongbu failed to report warehousing expenses, and these expenses Dongbu reported in its supplemental questionnaire response prior to verification. We found no other unreported expenses at verification. Therefore, we find no reason to make additional adjustments for warranty or warehousing expenses (beyond what Dongbu reported) for any of Dongbu's U.S. sales.

Comment 7. Petitioners argue that the Department erred in the calculation of Dongbu's U.S. imputed credit by using the bill of lading date as the start of the credit period, rather than the shipment date from Dongbu's production facility. They argue that in this review, unlike prior reviews, information is on the record demonstrating that there exists a significant time lag between the date of shipment from the factory and the bill of lading date. Thus, they argue, the Department is not bound by its decision in previous reviews to utilize the bill of lading date as the start of the credit period because the premise of that decision was that no discrepancy existed between the bill of lading date and the actual shipment date. The existence of the discrepancy, petitioners argue, distinguishes this case from *Melamine Institutional Dinnerware Products from Indonesia; Determination of Sales at Less Than Fair Value,* 62 FR 1719 (January 13, 1997) (''*Dinnerware*''), a case Dongbu has used to support its argument that the Department should use the bill of lading date as the start of the credit period. In *Dinnerware* the Department accepted the bill of lading date as the date of shipment because it verified that there was ''no evidence to indicate any difference between the date of factory shipment and the bill of lading date.'' *Dinnerware* at 1724. Such is not the case here, petitioners argue.

Petitioners further argue that it would be especially inappropriate to use the bill of lading date here because in a supplemental questionnaire the Department requested that Dongbu calculate imputed credit based on the actual shipment date, and not the bill of lading date, but Dongbu refused to do so. They argue that the Department should not reward such recalcitrance. As an alternative, petitioners recommend that the Department use the date of the commercial invoice from Dongbu to Dongbu Corporation as the shipment date. Use of this date, petitioners argue, would neither reward Dongbu for its recalcitrance nor be unduly adverse. In addition, petitioners argue, the Department determined at verification that the commercial invoice between Dongbu and Dongbu Corporation is ''prepared at the same time that Dongbu Steel ships the merchandise * * *.'' *See* the July 8, 1997 verification report at 4. As another possible alternative, petitioners suggest the Department add to Dongbu's reported imputed credit a credit amount reflecting the maximum period of time Dongbu estimated as existing between the date of factory shipment and the bill of lading date.

Dongbu argues the Department was correct in using the bill of lading date as the shipment date. It argues, based on the fact that it reported and the Department accepted the bill of lading date as the shipment date in all prior reviews of this order, that its action here was not the product of recalcitrance, but of reliance. It argues further that it was justified in its action, as explained in its supplemental questionnaire response, because of the difficulties associated with specifying shipment dates for particular transactions of the subject merchandise. The petitioners' appeal to equity, Dongbu argues, is ironic given that the equities here run plainly in favor of Dongbu. A change in practice at this stage, it states, would implicate the specter of arbitrariness in the Department's action.

Department's Position. We agree with petitioners in part. Unlike prior reviews of this order, the record of this review contains information that there is sometimes a significant difference between the date of shipment from the factory and the date of the bill of lading. Dongbu has stated that the bill of lading is consistently generated within a few days of actual shipment of the coil from the factory, but has also stated that the inventory carrying period is sometimes longer than a few days. *See* Dongbu's January 31, 1997 submission at 35. Given these facts, we can no longer use the bill of lading date as the shipment date in the credit calculation.

However, we also accept the argument Dongbu set forth in its January 31, 1997, supplemental questionnaire response that it would be an excessive administrative burden to report the shipment date for each sale because Dongbu does not have an automated system that links individual shipping invoices to commercial invoices and commercial invoice line items. Therefore, because its U.S. sales are sometimes shipped in lots from the plant to the port over a period of days, Dongbu would have to trace manually from coils reported on individual shipping invoices to the appropriate line items on commercial invoices. *See* Dongbu's January 31, 1997 supplemental questionnaire response at 3–4. Given the administrative burden of such a task, it would be inappropriate for the Department to resort to adverse facts available to represent the credit period.

Because we cannot use the bill of lading date as the shipment date, and because of the excessive administrative burden of reporting shipment dates for each sale, petitioners' suggestion that we use the date of the commercial invoice from Dongbu to Dongbu Corporation as the factory shipment date is not unreasonable. Our verification report states, ''At the same time that Dongbu ships the merchandise (or sometimes immediately thereafter), it prepares a * * * commercial invoice.'' *See* July 8, 1997 verification report at 4. Based on this information, we determine that the commercial invoice date is sufficiently close to the factory shipment date that it can serve as the start of the credit period without being adverse to Dongbu. Therefore, we have used this date in the credit calculation in these final results of review.

Comment 8. Petitioners argue that the Department erred in not making a deduction from Dongbu's export price for Korean warehousing expenses incurred on cold-rolled products. They argue that the statute requires that these expenses be deducted from U.S. price because it says that the price in the United States must be reduced by the amount of ''costs, charges, or expenses * * * incident to bringing the subject merchandise from the original place of shipment in the exporting country.'' *See* § 772(c)(2)(A) of the Act. Furthermore, petitioners argue, according to the SAA, warehousing expenses are included among movement expenses. It states that the movement expense deduction includes a deduction for ''transportation and other expenses, including warehousing expenses * * *.'' SAA at 823. Moreover, the Department itself, petitioners argue, stated in the comments to the new regulations that the statute requires the deduction of ''all movement expenses (including all warehousing) that the producer incurred after the goods left the production facility.'' *See Final Rules* at 27345.

Petitioners also argue that the reason the Department gave in prior reviews for not making the warehousing adjustment is not valid. In prior reviews, petitioners state, the Department failed to make the warehousing adjustment because it accepted Dongbu's characterization of these expenses as cost of manufacturing (''COM'') expenses. Petitioners argue that neither the statute nor the regulations permit exceptions to the mandatory nature of the deduction based on how the respondent characterizes the expenses or records them in its financial records. For the Department to make an exception here would be particularly unjust, petitioners argue, because the Department has not captured the warehousing expenses at issue in any direct price adjustment. To ''capture'' them in cost data, petitioners argue, would never result in a direct adjustment to price as mandated by the statute.

Dongbu argues that in accordance with its normal accounting practices which predate the antidumping duty orders, it reported these warehousing expenses as manufacturing overhead associated with its Seoul works. The cost of pre-shipment overhead of this kind, it argues, is no different from overhead expenses associated with temporarily storing semi-finished products between production lines. Therefore, it argues, to deduct them from U.S. price even though they are already accounted for in manufacturing overhead would constitute double counting. Thus, it states, in the prior review of this order the Department properly treated these costs as pre-shipment manufacturing costs, and not as selling expenses.

Dongbu also argues that if the Department does decide to deduct this expense as a direct expense, it should make the deduction only for cold-rolled products, and not corrosion-resistant products, because corrosion-resistant products are never stored in the warehouse. It further argues that the Department should also adjust the reported cost of cold-rolled products downward by an offsetting amount to avoid double-counting of expenses.

Department's Position. We agree with petitioners and Dongbu in part. We agree that we should make an adjustment to Dongbu's U.S. price for warehousing expenses incurred after the subject merchandise has left the Seoul plant. As the SAA specifies at 823, the URAA's mandate to deduct movement-related expenses specifically includes ''warehousing'' expenses. Further, our new regulations (which, though not binding on this review, embody our latest practice) state that ''[t]he Secretary will consider warehousing expenses that are incurred after the subject merchandise or foreign like product leaves the original place of shipment as movement expenses.'' *See* 19 CFR § 351.401(e)(2) (May 19, 1997). Here, the original place of shipment is Dongbu's Seoul production facility, and the warehouse is in Inchŏn. Therefore, because these warehousing expenses are incurred after leaving Seoul, they must be considered movement expenses, and they must be deducted from Dongbu's export price.

However, we agree with Dongbu that we should deduct these movement expenses only from the selling prices of cold-rolled products, and not corrosion-resistant products, because they are incurred only on cold-rolled products. Furthermore, we agree with Dongbu that it would be double-counting to include these expenses as both a movement expense and overhead. Therefore, in these final results we have deducted them from Dongbu's COM for cold-rolled products.

Comment 9. Petitioners argue that the Department erred by accepting Dongbu's calculation of inland freight costs incurred by an affiliated party in the home market, but not using a comparable formula for calculating transportation-related costs incurred by an affiliated party in the U.S. market. In the home market inland freight is incurred by Dongbu's affiliated entity Dongbu Express. In the U.S. market Dongbu's affiliate DBLA incurs expenses for arranging U.S. brokerage and handling, U.S. customs clearance, warehousing certain sales, and paying customs duties. Both of these entities contract with unaffiliated entities to perform the services. Petitioners argue that the Department erred by accepting Dongbu's reported home-market inland freight costs (which consist of the unaffiliated trucking company's charge to Dongbu Express plus a markup attributable to Dongbu Express' estimated overhead and profit), but not making a similar mark-up (and deducting that markup from U.S. price) for the profit DBLA realizes on its provision of transportation-related services.

Petitioners argue that, to the extent that DBLA charges amounts in addition to its costs for the transportation services, these amounts represent expenses incurred in bringing the merchandise from the place of shipment to the unaffiliated U.S. customer. Thus, petitioners argue, the mark-ups DBLA and Dongbu Express charge are identical in substance even though they may be different in form, and consistency requires that the Department treat them the same way. Moreover, they argue that the Department's failure to adjust for the markup is inconsistent with its treatment of an affiliated-party markup in its analysis of POSCO. Finally, they argue that because Dongbu has failed to report the amount of DBLA's markup on these sales, the Department should rely on facts available. Petitioners suggest that as facts available, the Department should apply to DBLA the markup percentage that Dongbu Express charges for its services. As an alternative petitioners argue that, if the Department refuses to make a markup adjustment in the U.S. market, it should also not make a markup in the home market.

Petitioners note that in the previous review the Department rejected this argument, and gave several reasons for this rejection. None of these arguments, petitioners state, withstand scrutiny. First, petitioners state, the Department argued that the sums DBLA paid to unaffiliated companies were already reported on the record. Petitioners argue that this is true, but irrelevant. Their argument, they state, is not that the cost to DBLA has not been fully reported, but that the ultimate cost to Dongbu for these services is understated, because it does not include the markup charged by DBLA.

Second, petitioners state, the Department argued that because the U.S. affiliate did not directly perform these services, but rather contracted for them, the adjustment should not be made. Petitioners argue that this statement too, though true, is irrelevant because neither Dongbu Express in the home market nor DBLA in the U.S. market directly perform the transportation services, but rather contract with unaffiliated service providers for them. Furthermore, POSCO's U.S. affiliates also do not directly perform the services in question, yet the Department made an additional deduction from U.S. price to account for markups.

Third, petitioners state that the Department argued that there was no legal basis for the deduction of profit on these services because ''U.S. profit deductions are allowed only in connection with CEP sales, and not EP sales.'' Petitioners see two flaws in this argument. First, they argue that the Department did not apply this argument to the deductions made for markups by POSCO's affiliates and Dongbu Express. Second, they state that it misconstrues the statute and petitioners' argument. They state that they do not seek the CEP deduction for profit earned in the United States which is provided for in section 772(f) of the Act. Rather, they ask that the Department fully account for all movement expenses because the statute requires that they be deducted in their entirety from U.S. price.

Dongbu argues that the Department rejected petitioners' argument in the second review of this order, and should do so here as well. It argues that there the Department determined that Dongbu's transactions with DBLA and Dongbu Express were not identical in substance, and that the expenses at issue were fully reflected in the brokerage fees paid by DBLA, and reported by Dongbu in its response. It argues that given no change in the factual record or the manner in which Dongbu reported these expenses, the Department should adhere to its past practice and reject petitioners' arguments on this issue. It notes too that the third reason upon which petitioners allege the Department based its determination (*i.e.*, that U.S. profit deductions are allowed only for CEP sales) was not a reason the Department gave to support its determination, but was a statement the Department used to summarize Dongbu's argument. Dongbu reiterates its position that there is no legal basis for deducting an amount for ''profit'' on these sales because U.S. profit deductions are permitted only in connection with CEP sales.

Department's Position. We agree with petitioners in part, and have changed our position from the preliminary results of this review and the final results of the prior review. Because the amounts paid to Dongbu Express in the home market and to DBLA in the U.S. market are both for the provision of transportation-related services, we believe that they are similar in substance. Accordingly, the more reasonable approach for these final results is to treat these expenses in the same way.

However, we do not agree with petitioners' preferred approach for treating the two markups identically. We are not satisfied from the information on the record that the markups between Dongbu and its affiliates in either market reflect arm's-length market values. Given the closeness of the affiliation between Dongbu and the affiliated entities at issue, we cannot presume the arm's-length nature of the markups, nor can we be certain that they are not simply intra-company transfers of funds. However, petitioners' suggestion that we use Dongbu Express's markup for export services as a surrogate for DBLA's markup for import services is inappropriate. The use of a surrogate for missing information is not justified where, as here, we never requested the respondent to provide the missing information, and where there are other options. Given the facts of this situation, we have determined that in this review we will adopt petitioners' alternative suggestion of not making a markup adjustment in either the U.S. or home markets.

Comment 10. Petitioners argue that the Department erred in granting Dongbu a home market adjustment which Dongbu allegedly mischaracterized in its submissions. They base their argument that Dongbu mischaracterized this adjustment on the following allegations:

- The expense is identified differently in Dongbu's financial statements and in the list of general expenses (contained in Dongbu's questionnaire response) from the way it is identified in Dongbu's claim for an adjustment;
- The Department's translator translated the name of the adjustment differently at the Korean verification than Dongbu translated it in its various submissions;
- There is a distinction in how Dongbu treats the expense with respect to its end-user customers (on the one hand) and its distributor customers (on the other hand).

Petitioners argue that Dongbu should be held to the way it characterizes these adjustments in its own financial records and agreements. Moreover, they argue, where the proper translation of a particular term is disputed, it is appropriate for the Department to rely upon its own translator, as it did in the second review of this order. *See Second Review Final Results* at 18411. Furthermore, petitioners argue that Dongbu's stated rationale for the distinction in treatment is not supported by evidence on the record. At the verification, Dongbu stated that the rationale behind the distinction is that distributors tend to buy in larger quantities than do end-users. *See* July 8, 1997 verification report at 10. Petitioners' analysis (submitted in its case brief) allegedly demonstrates that this rationale is not supported by Dongbu's sales listing. Finally, petitioners argue that because Dongbu mischaracterized the adjustment, the Department should use adverse facts available with respect to it.

Dongbu argues that petitioners' argument is not supported by record evidence. First, it argues that information on the record demonstrates that it does not, contrary to petitioners' argument, differentiate the expense at issue by class of customer. Second, it argues that the record of the review regarding the circumstances surrounding the expense should dispel any confusion resulting from translation questions. Third, it argues that petitioners are inconsistent in their own translation of the name of the expense.

Department's Position. We agree with Dongbu. Based on analysis not capable of public summary, we have determined that no basis exists in the record evidence to reject Dongbu's characterization of the requested adjustment. *See* the Department's final results analysis memorandum for additional information.

Comment 11. Petitioners argue, based on information given in the verification report, that Dongbu has understated its depreciation expense by not including the expenses related to the revaluation of depreciable assets. As a result, petitioners argue, Dongbu understated its cost of production and constructed value. Therefore, petitioners argue, in the final results the Department should revise Dongbu's costs upward to reflect the increase resulting from the company's revaluation of depreciable assets.

Dongbu argues that petitioners have misstated the amount of the difference as given in the verification report. It argues that given the insignificance of the difference, the Department correctly determined that it was appropriate to accept the reported depreciation expenses without adjustment.

Department's Position. We agree with petitioners in part. We agree that

Dongbu's reported depreciation is understated, and should therefore be adjusted. However, we agree with Dongbu that petitioners' case brief misstates the amount of the understatement. The correct amount is shown in the July 8, 1997 verification report at 14–15. In these final results we have adjusted Dongbu's reported depreciation to reflect the revaluation of the depreciable assets.

Comment 12. Petitioners argue that there is overwhelming evidence on the record demonstrating that BUS and POSAM were much more than mere ''processors of sales-related documentation'' or ''communication links'' for POCOS's and POSCO's U.S. sales. Petitioners note that the Department, in its preliminary results of *German Plate*, identified several functions performed by the respondent's U.S. affiliate that warranted classifying and analyzing the affiliate's resales as CEP transactions. Petitioners argue that, with the possible exception of customer credit checks, both BUS and POSAM performed all of those functions as POCOS's and POSCO's sales affiliates in the United States, and other functions as well.

Petitioners state that record evidence and POCOS's and POSCO's own statements during verification demonstrate that, like Dillinger's U.S. affiliate, BUS and POSAM play the central role in negotiating U.S. transaction prices. Regarding BUS, petitioners cite statements in the Department's report of the verification of the POSCO Group conducted in Korea (''Korea verification'') that petitioners claim indicate, in contradiction to later statements made at the verification of BUS (''California verification''), that BUS could suggest prices to be charged to the U.S. customer and that BUS was involved in the establishment of quarterly base prices it would pay for the subject merchandise. Petitioners cite statements made by company officials and noted in the Department's California verification report that are seemingly contradictory: that BUS needed to know the quarterly base prices in order to be sure that it would not lose money, and that POCOS decided whether particular sales would be completed, and the prices, without input from BUS. Petitioners question the extent to which the U.S. customers are aware of POCOS pricing, given BUS's statement at the California verification that the U.S. customers were not informed of the quarterly base prices, and petitioners question how those U.S. customers could have proposed bid prices that were never rejected unless they consulted with BUS on the setting of the prices. Petitioners also argue that the fact that BUS is not controlled by POCOS provides further support for the conclusion that BUS acts independently to set transaction prices in the United States, and note that the respondent provided no tangible evidence of contact between U.S. customers and POCOS with regard to pricing.

Petitioners argue that POSAM, like BUS, had considerable discretion in the setting of U.S. prices. Petitioners note that there is no evidence to suggest that any price proposed by a U.S. customer was ever rejected by POSCO, even though POSAM claimed at the verification of POSAM (''New Jersey verification'') that the U.S. customers were not aware of the quarterly base prices that had been provided to POSAM by POSCO.

Petitioners argue that the Department's New Jersey verification report demonstrates that the format of the computer spreadsheet files containing POSAM's U.S. sale cost breakdowns indicates that POSAM actively determined the amount of profit it would realize on its sales. Petitioners argue that this conclusion is supported by the fact that the profit field amounts were entered into the files as discrete figures, rather than being calculated by a formula as a residual between POSAM's selling price and its costs.

Petitioners argue that the record shows that, with the exception of POSCO sales to one specific U.S. customer, in which it was clear that POSAM was not included in the sales process, BUS and POSAM had the primary role with respect to every aspect of each transaction, and assumed the sole responsibility for the most significant portions of each transaction. Petitioners state that in addition to having significant discretion in pricing and active involvement in negotiating the terms of sale for each transaction, BUS and POSAM also arranged for a variety of expenses characterized by the Department under the broad category of movement expenses. Petitioners state that BUS and POSAM served as the importers of record, took title to the merchandise, and handled other administrative issues pertaining to the U.S. customers.

Finally, petitioners argue that the levels of involvement of BUS and POSAM in the U.S. sales are consistent with the substantial amount of selling, general, and administrative expenses (''SG&A'') these companies incurred during the POR.

The POSCO Group argues that its U.S. sales should be classified as EP sales because POSAM and BUS function as communications facilitators for U.S. sales, and POSCO and POCOS set the terms of sale, including price, for U.S. sales. The POSCO Group notes that the Department determined in its second review final results that these entities operated as communications facilitators, and that the existence of sales contacts between the U.S. customers and these U.S. affiliates indicates nothing more than this limited role in the process nor establishes that the affiliates played any role in the actual setting of the prices. The POSCO Group also argues that POSAM and BUS did not participate in negotiation of other key sales terms for U.S. sales, citing as evidence of this a sale examined at the California verification for which POCOS required that the product characteristics of the merchandise requested by the U.S. customer be changed.

The POSCO Group argues that in numerous previous cases, including the first and second reviews of these orders, respondents' sales were classified as EP (or formerly purchase price) sales when their U.S. affiliates undertook activities identical to, or even in addition to, those undertaken here by POSAM and BUS. *See, e.g., Brass Sheet and Strip from the Netherlands; Final Results of Antidumping Duty Administrative Review*, 61 FR 1324, 1326 (Jan. 19, 1996); *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 61 FR 18547, 18551, 18562 (Apr. 26, 1996); *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rods from France*, 58 FR 68865, 68869 (Dec. 29, 1993) (''*Wire Rod from France*''); *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland*, 56 FR 56363, 56371 (Nov. 4, 1991); and *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France*, 58 FR 37125, 37133 (July 9, 1993). The POSCO Group argues that functions such as maintaining contact with customers requesting price quotations, invoicing customers, collecting payment from the customer, maintaining relationships with customers, serving as importer of record, arranging and paying cash deposits for antidumping and countervailing duties, arranging and paying for brokerage, and minimal roles in U.S. transportation services, are activities commonly undertaken by an affiliated selling entity that acts as a communications link. The POSCO Group also states that the petitioners' case brief does not mention numerous functions performed by the Korean manufacturers in the sales process.

With regard to the setting of prices, the POSCO Group states that record evidence indicates that negotiations with each customer for each individual sale typically began in one of two ways: the customer may suggest a price to POSCO or POCOS in the initial inquiry, which POSAM or BUS forwards to the Korean manufacturer; or if the customer does not suggest a price, POSAM or BUS, based on their knowledge of the quarterly base price already established by POSCO, sometimes suggest a price to POSCO or POCOS for the sale when transferring the inquiry to Korea. The POSCO Group states that the record indicates that POSAM and BUS did not negotiate with U.S. customers, but rather simply transmitted information to the U.S. customers and to the Korean entities. The POSCO Group argues that the record shows that U.S. customers were not notified of the quarterly base prices to POSAM and BUS, and that U.S. customers' bid prices were based in part not on those quarterly base prices but, rather, on knowledge of past pricing by POSCO and POCOS. Given the small number of U.S. customers and their ongoing, long-term relationship with POSCO and POCOS, the POSCO Group explains, those customers do not need guidance from POSAM or BUS regarding what their price offer should be.

The POSCO Group argues that the fact that POSAM and BUS are informed in advance of the quarterly base price is irrelevant, and that the record is clear that POSCO and POCOS do not consult with the U.S. affiliates with regard to the setting of those quarterly base prices. The POSCO Group states that the U.S. affiliates need to be able to estimate quarter by quarter the general value of transactions for cash flow purposes, insuring for example that they have adequate credit available to support their business. The POSCO Group cites statements by company officials at the U.S. verifications that neither POSAM nor BUS provided input to the manufacturers as to the setting of the quarterly base prices for the U.S. market, and that neither POSAM nor BUS provided those quarterly base prices to the U.S. customers.

The POSCO Group argues that the fact that a POSAM official ''entered'' the value for the POSAM markups into its cost spreadsheets is no indication that POSAM has an influence over the magnitude of that amount, but rather that these markup values were in fact residual amounts that were calculated elsewhere prior to computer entry.

The POSCO Group states that because there is no commercial reason to maintain records of an unsuccessful transaction and because POSAM's and BUS's communications with POSCO and POCOS, respectively, regarding customer price offers often occur by telephone, the fact that there is a lack of written proof of a rejection by POSCO or POCOS of a U.S. customer price offer is not surprising.

The POSCO Group states that the Department's verification report refers to various instances in which U.S. customers were in direct contact with POSCO and POCOS. The POSCO Group cites company official statements made at verifications in Korea and California that a POCOS official dealt directly with U.S. customers and, therefore, petitioners' claim that the record contains no evidence of contact between U.S. customers and POCOS is incorrect.

The POSCO Group challenges what it characterizes as petitioners' claim that POSCO's sales did not ''go through POSAM'' to the one specific customer whose sales petitioners state were correctly classified as EP sales in the preliminary results. The POSCO Group argues that POSCO's sales to that U.S. customer were no different than any other U.S. sales and that under petitioners' own logic, therefore, all of POSCO's U.S. sales are EP sales.

The POSCO Group challenges the petitioners' argument that the levels of SG&A incurred by POSAM and BUS indicate they are more than a communications link. The POSCO Group states that sales of subject merchandise account for only a small fraction of the U.S. affiliates' total sales, so the bulk of SG&A is clearly related to non-subject merchandise; that POSAM and BUS are selling entities only, whereas POSCO and POCOS are both selling and manufacturing entities; and that petitioners erroneously compare POSAM's and BUS's total SG&A expenses only to POSCO's and POCOS's selling expenses.

The POSCO Group argues that the key facts that led the Department to reclassify certain U.S. sales as CEP sales in *German Plate* are not present in these reviews. The POSCO Group indicates that in the German case the affiliate of the respondent Dillinger essentially negotiated all sales in accordance with the respondent's limited guidelines, that the U.S. affiliate had the power to negotiate and set the price for the respondent's single U.S. sale, that the foreign parent only set a minimum price floor after considering the order information provided by the U.S. affiliate, and that the U.S. affiliate was the one that negotiated with the single U.S. customer to try to obtain the best price. *German Plate* at 18391–92. The POSCO Group argues that POSAM and BUS, like the affiliates in other cases cited by the Department in *German Plate* as differing from Dillinger's affiliate, did not have or exercise such authority. See *E.I. Du Pont de Nemours & Co.* v. *United States,* 841 F. Supp. 1237, 1249–50 (CIT 1993), and *International Radionic Workers of America* v. *United States,* CIT Slip Op. 95–45 (March 15, 1995). Finally, the POSCO Group argues that in another case the Department classified sales as EP sales even though the U.S. affiliate participated in the sales negotiations with U.S. customers, because the U.S. affiliate did not have the flexibility to set the price or terms of sale and acted only as a processor of sales-related documentation. *Wire Rod from France* at 68869.

Department's Position. We agree with petitioners that respondent's U.S. sales (with the exception of those made to one customer) should be classified as CEP transactions. In the final results of the prior reviews, in order to determine whether sales made prior to importation through the POSCO Group's affiliated U.S. sales affiliates (POSAM and BUS) to an unaffiliated customer in the United States were EP or CEP transactions, we analyzed the POSCO Group's U.S. sales in light of three criteria: (1) whether the merchandise was shipped directly from the manufacturer (POSCO or POCOS) to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the functions of the U.S. sales affiliates (POSAM and BUS) were limited to those of processors of sales-related documentation and communications links with unrelated U.S. buyers. We concluded that BUS and POSAM were no more than processors of sales-related documentation and communications links, and classified the POSCO Group's U.S. sales as EP transactions. *Second Review Final Results* at 18433.

In this case, the record shows, and petitioners do not contest, that the first two criteria have been met. Consequently, the third criterion, pertaining to the level of affiliate involvement in making sales or providing customer support, is the determining factor in this instance. As explained above in the ''Fair-Value Comparisons'' section of this notice, to ensure proper application of the statutory definitions, where a U.S. affiliate is involved in making a sale, we normally consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. The record evidence here suggests that it is POSCO's and POCOS's roles that may be ancillary to the sales process (except with respect to one customer of POSCO, as noted below), and that in any case the record does not demonstrate that the U.S. affiliates' involvement in making the sales were incidental or ancillary.

We base this finding on several factors. First, we note that POSCO and POCOS's U.S. sales (with the exception of those to one U.S. customer) were made through POSAM and BUS, respectively, and that U.S. customers seldom had contact with POSCO or POCOS. The record establishes that POSAM and BUS were typically the parties contacted first by unaffiliated customers desiring to purchase the subject merchandise and also that POSAM and BUS sign the sales contracts. Such facts indicate that the subject merchandise is first sold in the United States by or for the account of the producer or exporter, or by the affiliated seller, and therefore that the sales in question are CEP transactions.

In addition to their key involvement in the U.S. sales process, the U.S. affiliates also played a central role in the sales activities after the merchandise arrived in the United States, including many of the criteria cited in *German Plate.* While the CIT has upheld a PP (or EP) classification despite such activities on the part of the U.S. subsidiary, that fact does not render these activities irrelevant in making this determination. While we disagree with petitioners' assertion that the record demonstrates that POSAM and BUS acted independently to set U.S. transaction prices and the other key terms of sale, the respondent's claim that the U.S. affiliates had no role in the setting of prices is not demonstrated by the record either.

The respondent's claim regarding the lack of U.S. affiliate involvement in the negotiation of prices is actually called into question by various factors. For example, the respondent did not provide tangible evidence of price rejection by POSCO or POCOS. With respect to other terms of sale, POCOS's apparent rejection of the product characteristics proposed by a U.S. customer only suggests that BUS is not autonomous with respect to the sales process and that BUS does not have all information regarding the production process, not that BUS's role in the process is ancillary.

While the fact that the ''markup value'' cell in POSAM's cost spreadsheets, unlike numerous other values, was entered by hand rather than as a formula does not appear to be relevant, a possible interpretation would be that the affiliate does in fact have some type of input into the magnitude of the markup it earns on the sales. More importantly, though, neither respondent's submissions nor its statements at verification explain the inconsistency of statements made during the California verification with respect to BUS's need to know the quarterly base prices.

Furthermore, the respondent's claim that the absolute and relative levels of SG&A incurred by the U.S. affiliates with respect to U.S. sales of subject merchandise are well below those of their non-subject merchandise operations is unsupported by the record, at least in part because the respondent did not provide information concerning selling expenses incurred in the United States. The POSCO Group chose not to report the indirect selling expense and inventory carrying cost information in its U.S. sales response, despite the fact that such reporting for U.S. sales of subject merchandise was requested in the Department's original questionnaire. When the Department indicated in a supplemental questionnaire that it may use facts available to determine these expenses if they were not reported by the POSCO Group, the POSCO Group again failed to report those expenses. The POSCO Group's response was as follows:

> ''POSCO notes that it is not reporting these expenses because the Department has not notified POSCO that it believes that the sales at issue are not export price sales, and it does not want to burden the record with unnecessary data. POSCO's U.S. sales are export price sales and the Department ruled in the less than fair value determination and in the second review preliminary results that they were export price sales. POSCO has cooperated fully and will continue to cooperate fully with the Department. If the Department believes that it might reverse its practice from that in prior determinations, POSCO is willing to submit these expenses.'' *See* the March 3, 1997 supplemental Section C questionnaire response at 21.

The POSCO Group incorrectly assumed that the Department was required to meet certain preconditions before requesting and obtaining the information in question. The Department may solicit any information it reasonably believes may be relevant to its determinations, and is not obligated to solicit this information three or more times, especially given that there are statutory deadlines to which we must adhere. At least in part as a result of the respondent's choice not to report the information we requested, we cannot determine the extent of U.S. selling expenses pertaining to sales of subject merchandise. We cannot presume that the information the POSCO Group failed to provide would support a conclusion that the operations of POSAM and BUS with respect to the U.S. sales of subject merchandise were ancillary. Further, we are using the aggregate information as the basis for estimating the unreported U.S. indirect selling expenses.

We reject the POSCO Group's claim that the petitioners' admission that sales by POSCO to one U.S. customer were correctly classified as EP sales also suggests that all of the POSCO Group's U.S. sales should be classified as EP sales. For the sales to the one customer in question, POSAM was clearly not involved in the initial negotiations and the primary work relating to setting of price and other terms of sale. Given the information from the record indicating POSCO's substantial involvement in those sales and a very limited role for POSAM (*see, e.g.,* Exhibit 45 of the Korea Verification report), we are not reclassifying sales to that one customer as CEP sales.

Comment 13. Petitioners argue that the Department erred in its calculation of constructed value in its cold-rolled programming for the POSCO Group. Petitioners indicate that the Department deducted the variable representing credit expenses attributable to the gross unit price of the merchandise (''CRED1CV'') twice in the calculation of CV.

The POSCO Group argues that this point is moot, given that normal value will not be based upon CV if the Department reverses its erroneous adjustment for alleged discrepancies in reporting methodology for cold-rolled product thickness.

Department's Position. We agree with petitioners that the Department erred in its calculation of CV by deducting CRED1CV twice. We have corrected the programming to reflect this change.

Comment 14. Petitioners argue that the Department should reverse its methodology and apply the major input and fair value provisions to transfers of substrate between POSCO, POCOS, and PSI. Petitioners note that the collapsing of entities does not negate the applicability of statutory provisions regarding affiliated persons. Petitioners state that the statute provides explicitly that the major input and fair value provisions are to be applied to transactions between affiliated persons, and that both the legislative history and public policy support the application of these provisions to all transactions involving transfers of substrate between affiliates. Petitioners assert that the statute is silent with respect to the collapsing of entities for purposes of review, and consequently a decision to collapse entities cannot override the definition of ''affiliated persons'' which is explicitly mandated by statute.

Petitioners assert that applying the major-input or fair-value provisions selectively based on the purported extent of affiliation would be contrary to the express language of the statute and regulations, would have the effect of reading these provisions out of the statute in certain cases, and would preclude the transparency and predictability of the law.

Petitioners argue that collapsing is done when the Department finds that one party has a sufficient degree of control over another to create a significant possibility of price manipulation by the controlling party, and the Department's inherent authority to collapse two entities stems from several requirements: the need to review an entire producer or reseller, and not merely part of it; the need to ensure that antidumping margins are calculated as accurately as possible; and the need to prevent circumvention of antidumping duty orders by the establishment of alternate sales channels. *See Queen's Flowers de Colombia et al.* v. *United States*, CIT Slip Op. 97–120 (August 25, 1997), at 7–8. Petitioners conclude that collapsing is done to ensure that all of a respondent's U.S. sales are included in the calculation of dumping margins, and that such a determination has no bearing on the Department's treatment of affiliated party transactions within the meaning of the fair-value and major-input provisions of the statute. A determination to collapse entities merely indicates that one party has sufficient control over another to be in a position to manipulate the controlled party's pricing decisions, but this does not mean that the two parties are so closely intertwined that one may be deemed to be merely a division of the other or that the separate corporate identities of these two entities suddenly cease to exist.

Petitioners state that when the Department issued regulations to implement the URAA, it had the opportunity to limit the application of the major-input and fair-value provisions, but did not. Petitioners state that the legislative history is silent as to any limitation on the application of the major-input rule. Petitioners indicate that the methodology used by the Department in this instance would require in each case that the Department determine whether affiliated companies are operated as ''divisions'' of a whole, which would be burdensome, compared to simply applying the major-input rule and fair-value provisions to all affiliated parties.

Petitioners note that the statute explicitly precludes use of the COP to value transfers of substrates between affiliates if the transfer price is greater than the COP. Therefore, the Department has the discretion to ignore the transfer price to use a higher market value, but does not have the discretion to ignore transfer price in order to employ a lower value.

Petitioners note that the application of the major-input rule would not result in double-counting. Application of the major-input rule may result in an increase to a respondent's reported costs, but these adjusted costs also are used subsequently to calculate respondent's profits, and to the extent that costs are increased, the calculated profits are reduced. Furthermore, petitioners state that POCOS's profit is captured in the input price, and POSCO's profit is captured in the CV calculation.

Petitioners note that the Department in its analysis completely ignored the fact that the three companies (POSCO, POCOS, and PSI) are indisputably separate and distinct legal corporate entities, unlike in the case of *Certain Forged Steel Crankshafts from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 61 FR 54613 (October 21, 1996) (''*Crankshafts*''). In that case, the entities in question were divisions of the same corporation; in this one, POSCO, POCOS and PSI are indisputably separate corporate entities, and neither POCOS nor PSI is wholly-owned or controlled by POSCO. Petitioners cite various examples of factors affected by whether or not entities are divisions of another company or are separate entities, and which the Department should take into account if it chooses to ignore the distinction between these entities: Financing costs; tax impacts on working capital; and insurance costs.

Petitioners indicate that in applying the major-input and fair-value provisions, the Department should determine ''fair value'' for each specific control number (''CONNUM''), based on a comparison of POSCO's sales to POCOS, and POSCO's sales to all unaffiliated companies.

Petitioners argue that if the Department continues to wrongly reject the application of the major-input and fair-value provisions, it must be consistent and find POSCO and Union Steel to be affiliated. If the Department treats POCOS and POSCO as one entity, petitioners argue, it must treat POSCO and Union as affiliated parties, because there is no doubt that Union and POCOS are affiliated.

The POSCO Group argues that the Department addressed these same petitioner arguments in the final results of its second reviews, noting that the POSCO Group (encompassing POSCO, POCOS, and PSI) represents one producer of subject merchandise, that a decision to treat affiliated parties as a single entity requires that transactions among the parties also be valued based on the group as a whole, that transfers of substrate between the group companies should be valued at the cost of manufacturing the substrate, and that because the POSCO Group is one entity for these final results, the major-input rule and fair-value provisions of the Act cannot apply because there are no transactions between affiliated persons. *See Second Review Final Results* at 18430–31.

The POSCO Group argues that it would be inappropriate to apply the fair-value and major-input provisions under the unusual circumstances presented in this case because the Department is reviewing the cost of transactions within a single entity. The provisions apply only to transactions between persons, not when the Department is examining one producer or a single entity. By collapsing the POSCO entity for purposes of the dumping and cost analysis in this proceeding, the POSCO Group argues, the Department has determined that there are no transactions between affiliated persons under the language of the major-input or fair-value provisions of the statute. The POSCO Group argues that this is consistent with the Department's decision in *Crankshafts* at 54614. The POSCO Group argues that the Department's practice of collapsing parties into a single entity for its analysis was a well-known practice that existed before Congress applied the fair-value provision and major-input rules to the COP, and had Congress intended for these provisions to apply to transactions within a collapsed entity, it would have drafted the provisions to cover transactions between ''affiliated and collapsed persons.'' The POSCO Group challenges petitioners' argument that the Department has to apply the major-input and fair-value provisions to a collapsed entity because the regulations do not proscribe their application in such an instance, arguing that the regulations by definition serve as general guidelines, and do not spell out the specific application of every rule contained in the regulations. Furthermore, the POSCO Group argues that 19 C.F.R. § 351.407(b) explicitly allows for the Department's discretion in the use of these provisions, and the agency that has the most experience and is most expert in analyzing these issues recognizes that there are limits to how closely it should scrutinize transactions within a single collapsed entity. The POSCO Group also challenges petitioners' assertion that there is a continuum of affiliation, upon which collapsed entities reside; the POSCO Group states that under Department case law and common sense, parties are either unaffiliated, affiliated, or collapsed, and that these categorizations are mutually exclusive.

The POSCO Group states that petitioners, in challenging the reliability of the prices paid for inputs transferred among controlled entities, have in fact provided support for the Department's decision to value the inputs based on the objectively verifiable cost of the input. The POSCO Group rejects as irrelevant petitioners' argument that the provisions should be applied because calculating the COP based on POSCO's substrate production costs is difficult and requires numerous allocations between products, cost centers, and divisions.

Regarding the issue of whether or not the application of the major-input rule would result in double-counting, the POSCO Group argues that petitioners mischaracterized the POSCO Group's argument that it raised in the second administrative review. The POSCO Group argues that, contrary to the assertion of petitioners, profit is not to be included in the calculation of cost of production. The POSCO Group states that by using the transfer price from POSCO to POCOS, the Department would be double-counting SG&A and including an artificial element of profit, thereby resulting in more home market sales being found to be below cost than should be the case, and thus affecting the calculation of NV. The POSCO Group states that using transfer prices to value POSCO substrate used by POCOS would result in POSCO's profit and SG&A that are reflected in the sales to POCOS being included in the calculation of costs applied to POSCO sales, given that costs for each CONNUM are a weighted-average across each collapsed company. The POSCO Group argues that this is inappropriate because the statute does not provide for profit to be included as an element of the COP, and the portion that is SG&A would already be in POSCO's reported costs in the COP buildup. Furthermore, the POSCO Group argues, petitioners' methodology would lead to the illogical result of more sales failing the cost test if POSCO's internal sales of substrate earned a higher profit, even though actual costs remain unchanged.

For instances where CV is used as the basis for NV, the POSCO Group argues, the aforementioned use of transfer prices would distort the calculation of profit. The POSCO Group states that, in its calculation of profit for CV, the Department only uses sales that are above the COP. Because, as argued earlier, costs would be overstated were transfer prices from POSCO to POCOS to be used (because of allegedly inappropriate additional amounts of SG&A and profit), the Department would inappropriately discard lower value home market sales, because of the cost test, prior to the Department's calculation of CV profit.

Regarding petitioners' assertion that POSCO and Union be treated as affiliated parties, the POSCO Group argues that petitioners' case brief makes no factual or legal arguments whatsoever concerning why the Department should find POSCO to be affiliated with Union. The POSCO Group notes that the Department, in the second administrative reviews of the orders, rejected this petitioner assertion and the arguments upon which it was based, and concluded that this decision was not inconsistent with its decision not to apply the fair-value and major-input rules to the collapsed POSCO entity.

Department's Position. In our preliminary results in these reviews, as in the second administrative reviews, we treated the entire POSCO Group as one entity for cost purposes. The Department clearly has discretion in its application of the major-input and fair-value provisions, as admitted by petitioners with respect to *Crankshafts*. A more rigid interpretation of the statute, as proposed by petitioners, would imply that the Department could not make a distinction for wholly-owned entities either, as such an entity would also, under the Department's definition, be ''affiliated'' with its owner.

We recognize that different types of affiliation exist, and that different treatment of such relationships may be appropriate. The Department also rejects the POSCO Group's assertion that adjustments to POCOS costs cannot be acceptable because they affect whether or not POSCO sales pass the cost test. The nature of collapsing POSCO and POCOS is that POCOS's costs affect whether or not POSCO sales pass the cost test, given that each CONNUM's costs are a weighted average of the costs for that product across all collapsed companies.

However, because we are treating these companies as one entity for our analysis, intra-company transactions should be disregarded. As noted in our final results in the second administrative reviews, the decision to treat affiliated parties as a single entity necessitates that transactions among the parties also be valued based on the group as a whole and, as such, among collapsed entities the fair-value and major-input provisions are not controlling.

As noted by the POSCO Group, the petitioners have not in these reviews demonstrated why Union Steel should be considered affiliated with POSCO. The POSCO Group is treated as one entity for various purposes, but they of course maintain their distinction as separate legal entities. Unlike the relationship of POSCO to POCOS, there is no evidence that POSCO or Union control or influence each other's operations, and there is no indication on the record of any type of interaction between POCOS and Union Steel relating to subject merchandise.

Comment 15. Petitioners argue that the POSCO Group failed to incorporate into its submitted costs general and administrative expenses associated with severance benefits. Petitioners cite information in POSCO's U.S. SEC report indicating that POSCO calculated an estimate of its exposure relating to these benefits, which was still in litigation, but under Korean generally accepted accounting principles (''GAAP'') did not need to reflect this estimated expense in its financial statements.

The POSCO Group argues that POSCO incurred no current expenses for these unresolved severance benefits claims. The POSCO Group asserts that the Department made an adjustment for severance benefits in the final results of the second administrative reviews because POSCO was required by a final Korean court decision to establish a reserve for additional severance benefits. The POSCO Group argues that in those reviews the Department attributed such expenses to G&A even if they related to years prior to the review in question. The severance benefits that petitioners argue should be included for the third reviews have not been incurred, and POSCO has only a future contingent liability for potential exposure from the unresolved litigation. The POSCO Group argues that under the plain language of the statute the Department is not authorized to adjust POSCO's G&A costs based on such potential exposure, as the costs should be calculated based on records that ''reasonably reflect the costs associated with the production and sale of the merchandise'' (*see* section 773(f)(1)(A) of the Act), and the Department is limited to using ''a method that reasonably reflects and accurately captures all of the actual costs incurred in producing and selling the product under investigation or review'' (SAA at 835).

The POSCO Group argues that the Department did not adjust for similar speculative potential liabilities in another case, where the Department decided that there was no justification for adjusting costs to include potential royalty payments which were speculative, that the respondents were under no legal obligation to pay, and for which the respondents had incurred no current expenses. *See Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memories of One Megabit and Above from the Republic of Korea,* 58 FR 15467, 15479 (March 23, 1993) (''*Semiconductors*'').

Department's Position. We agree with the POSCO Group that we should not increase the respondent's costs by the potential expenses in question, as Korean GAAP does not require that they be recorded as expenses, and it has not been demonstrated that the absence of this estimated potential expense is distortive. We further believe that it would be unreasonable to impute to POSCO costs that, depending on the outcome of the litigation, it may not incur.

Union

Comment 16. Petitioners argue that Union failed to provide complete information regarding its U.S. affiliates, by failing to identify in its responses the existence of two different corporate entities, one being the Union America division of DKA (hereinafter ''UADD''), the other, which petitioners contend respondent concealed, Union Steel America Inc. (hereinafter ''UAC''). Petitioners further argue that Union refused to provide selling expense, financial, or sales information for UAC. Petitioners argue that the Department should apply adverse facts available and make a direct adjustment to Union's export price to account for any expenses incurred by UAC and possible unreported U.S. sales.

Petitioners argue that ''[t]hroughout this administrative review, Union Steel hid from the Department the existence of two separate ''Union Americas.' '' Petitioners argue that the distinction between the two corporate entities, and the existence of UAC as a separate entity, was not made clear until the home market sales verification in May of 1997, by which time it was too late, petitioners argue, for the Department to obtain and verify sales information for UAC specifically.

Petitioners point out that UAC has separate expenses for U.S. operations from those of UADD, and that these separate expenses were not duly reported as indirect selling expenses. Petitioners note that the Department's supplemental questionnaire of April 18, 1997 instructed the respondent to ''[r]evise [its] reported selling expenses to include expenses, both direct and indirect, incurred by Union America with respect to Union's U.S. sales.''

Petitioners argue that the Department clearly intended to elicit information on expenses specifically tied to UAC, as the supplemental questionnaire followed on petitioners' own notification to the Department, in a letter of April 9, 1997, that UAC's financial statements contained expenses that had not been reported by Union. Petitioners note also that the Department's request asked for copies of each type of report that respondent submitted to Korean or U.S. national or local tax authorities, ''for affiliates involved with the manufacture and sale of subject merchandise in the United States and Korea,'' as well as the chart of accounts for Union America.

Petitioners contend that by not furnishing these documents as requested for UAC in addition to UADD, despite multiple opportunities to do so in the course of the present and the preceding reviews, Union evaded the Department's request and failed to provide the requested information.

Because Union only divulged the separate identity of UAC, as distinct from UADD, during the verification in May, petitioners argue, sales and expense information of the former remains unverified. Petitioners state that, respondent's claims notwithstanding, UAC must have performed functions during the POR, as its financial statements contain expenses and revenues. Petitioners argue that the revenues must be presumed to correspond to sales of subject merchandise.

As a result of Union's failure to provide requested information about UAC's expenses and operations as a separate entity in a timely manner, petitioners argue, the Department was not able to verify data pertaining to UAC, still does not know all the facts concerning UAC, and has been precluded from performing a proper analysis of UAC.

Petitioners argue that because Union failed to report expenses incurred by UAC despite the Department's requests, the Department, as facts available, should presume that any SG&A appearing on UAC's financial statement in 1995 and 1996 were costs incurred within the POR and were directly related to the subject merchandise.

Petitioners note that Union did provide a printout for UAC's monthly sales income statement for June and July of 1995, but claim that there is no evidence that respondent also provided the verifiers with the documentation necessary to test the accuracy of the document, either by testing the underlying computer program or tying the printout to invoices.

Because Union has stated that all its reported sales were made through UADD, petitioners argue, the Department should assume that any sales made by UAC were additional, unreported sales of subject merchandise. The petitioners urge the Department to derive a surrogate quantity based on the weighted-average value of reported sales, and to apply to that surrogate quantity a rate of 64.5 percent, the highest rate from the petition in the LTFV investigation.

In rebuttal, Union argues that it clearly and unequivocally identified its relationship with UAC and provided the Department with requested information pertaining to UAC. Union argues that petitioners have mischaracterized the record, and states that it informed the Department in its response, at the outset of the review, of its corporate relationship with UAC and of UAC's lack of a role in the manufacture and sale of subject merchandise. Union further argues that the Department verified that UAC and UADD are separate corporate entities and that the Department confirmed that UAC has no involvement in the manufacture of subject merchandise. Respondent argues that for this reason, it had no information to report with regard to any purported selling activities of the subject merchandise by UAC, and that the Department should dismiss petitioners' claim.

Referring to its submission of October 1995 submission and other documents, including a verification report, in connection with the preceding review, Union argues that the Department clearly understood the distinction between UAC and UADD at least as early as October 1995. In the current review, Union argues, it discussed the corporate relationship between Union and UAC at page 5 of its response, where it stated that UADD had taken over the selling functions for U.S. sales of subject merchandise, and that UAC continued to exist as a separate corporation but had no activity relating to the manufacture and sale of the merchandise under review.

Union also points to UAC's 1995 audited financial statement, submitted with Union's Section A response, and to UAC's 1996 statement, provided at the Korean verification, as further evidence of timely disclosure of the corporate identity of UAC and of UAC's complete disassociation from the manufacture and sale of the subject merchandise. Thus, respondent argues, it had placed on the record of the present review in October of 1996 the information which petitioners claim it withheld, ten months prior to the U.S. sales verification in August of 1997.

With regard to whether the information concerning UAC was duly reported, Union argues that there is no reason under the statute that Union need submit any further information regarding UAC, because it is not involved in any way in the production or sale of subject merchandise. Concerning verification, Union argues that the Department did verify that UAC in fact does not produce or sell subject merchandise. Union cites in this regard the Department's Korean verification report, which addresses the assignment of UAC's former functions to UADD and the inactive status of UAC.

Regarding whether UAC made sales of subject merchandise, Union argues that the record shows that all such revenue had been earned on or before June 30, 1995, prior to the POR, as evidenced by UAC's financial statements submitted with its response and at the Korean verification.

Concerning whether the general expenses which UAC showed in its income statement should be allocated to its U.S. sales in the present review, Union argues that because UAC's involvement with sales of subject merchandise ended with the second review, these general expenses, which it characterizes in any case as ''trivial,'' are not associated with third review sales of subject merchandise.

Department's Position. We agree with Union. The record demonstrates that Union revealed the existence of the two corporate entities in question and did not understate its reportable expenses. On the basis of Union's submissions and our verification thereof, we are satisfied that Union shifted the responsibility for selling subject merchandise in the United States from UAC to UADD, and that the former was not involved with such sales during the POR.

Comment 17. Petitioners argue that there are numerous instances throughout Union's sales database in which it failed to report U.S. warehousing expenses. The first such omission which petitioners allege concerns sales for which the terms were reported as being ''delivered.'' For all these sales, petitioners argue, a time gap between reported entry date and date of shipment from the dock signifies that respondent must have incurred, and must have failed to report, warehousing or demurrage expenses.

The second omission which petitioners allege Union made concerns warehousing expenses for sales with terms of sale of ''W&D,'' *i.e.,* ''warehoused and delivered to customer site.'' Petitioners note that for a certain subset of this type of sale, there is an apparent inconsistency: when inland freight expenses were incurred in the United States, and when merchandise apparently was not picked up for several or more days, warehousing expenses must also have been incurred and yet were not reported.

The third omission which petitioners allege concerns sales with terms different from those mentioned above, and with delays between entry dates and shipment to the U.S. customer, but for which Union did not report any warehousing or demurrage expenses. Petitioners argue that these sales must have involved either demurrage or warehousing expenses. Petitioners further argue that respondent failed to provide proof, at verification, that such expenses were not in fact incurred.

Petitioners argue that for all sales with a gap between entry and U.S. shipment dates, where no warehousing or demurrage and handling expenses were reported, the Department should calculate a facts available adjustment, based on the highest per-diem demurrage and handling expense which the company reported in its response. Further, petitioners argue that for all sales with terms of W&D, the Department should, as facts available, account for the possibility that warehousing expenses might have been incurred after the second shipment date (which in fact occurred for one particular transaction) by making a downward adjustment to reported U.S. price based on the highest reported warehousing expense.

In rebuttal, Union argues that it fully reported its U.S. warehousing and inland freight expenses, that petitioners are factually incorrect, and that the Department verified the expenses in question to the full extent it considered necessary, finding no discrepancies. Union notes that the Department found no unreported expenses of the type imagined by petitioners. Union argues that the Department, not petitioners, determines what constitutes adequate verification, that petitioners err in thinking verification procedures and documents are limited to those discussed in the report, and that the explanations provided at the verification were included in the report precisely to answer petitioners' concerns on these subjects, as expressed prior to the verification.

Concerning gaps between entry and invoicing to the U.S. customer for certain sales, Union states that the free warehousing which it is allowed accounts for nearly all the sales in question. For one of the sales with a lengthy gap of this type, Union argues, the Department investigated and found that there were special circumstances that led to the greater time period with no warehousing costs.

As for sales with W&D terms, but no warehousing expense indicated, respondent states that the freight amounts which appear for the 11 sales discussed by petitioners corresponded to actual freight expenses, that petitioners are wrong to suppose that warehousing expenses must have been incurred, that the expenses for these sales were correctly reported, and that warehousing expenses were not incurred for them.

Department's Position. We agree with Union that there is no evidence that it failed to report the expenses in question. We were aware of petitioners' interest in establishing that warehousing and inland freight expenses were reported fully and properly, and their interest in understanding why such expenses were not incurred in particular instances. Accordingly, at verification, we examined relevant records with particular attention to these questions. We found no evidence that Union failed to report warehousing and inland freight expenses as incurred. Union's explanations and the documentation we examined at verification are both consistent with the response data. We verified that free warehousing was allowed for certain sales as Union claimed. For the sale with an especially long gap, we examined the documents supporting Union's explanation of the special circumstances. Similarly, for the sales made under W&D terms for which respondent reported no warehousing expenses, we verified that the expenses were correctly reported and that no warehousing expenses were incurred which were not reported.

Comment 18. Petitioners argue that Union failed to report U.S. inland freight expenses for some U.S. sales. Petitioners' point concerns two data fields for this category of expense, one called INLFPWU (hereafter ''P''), the other INLFWCU (hereafter ''C''). Petitioners state that the Department's questionnaire called for reporting freight expenses as follows.

For CEP sales, the P column should show freight expenses incurred on shipments from the U.S. port of entry to the affiliated reseller's U.S. warehouse or other intermediate location, and the C column should show expenses incurred on shipments from the affiliated U.S. reseller to the unaffiliated U.S. customer. For EP sales, petitioners argue, the P column should show expenses from the port of entry to an intermediate location and the C column should show expenses incurred on shipments from the port of entry or an intermediate location to the unaffiliated U.S. customer.

Petitioners note that Union claimed to conform to the above requirements in its initial response, and did report that the P column contained amounts for ''occasional cases in which a customer requests delivery to a warehouse or its own facility,'' and the C column contained either freight from port to customer, when sales terms were ''delivered,'' or freight from a warehouse to a customer's location, when sales terms were ''W&D.'' However, petitioners argue, there are inconsistencies and omissions in Union's reporting of freight expenses for certain sales for which the terms were ''DEL'' (delivered) and for certain others for which the terms were ''W&D'' (warehoused and delivered). Petitioners argue that certain of respondent's U.S. sales which would be expected to show expense amounts in both the C and the P fields by virtue of the terms of sale reported, do not show expense amounts in the C field.

Petitioners note that the Department requested, in a supplemental questionnaire, that Union report charges for shipment to the customer where the terms indicated delivery to the customer was provided. Petitioners take issue with Union's answer to that request, which was that for those sales for which no inland freight was reported in the C column, inland freight was reported in the P column. Petitioners note that this answer contradicts the response, in which Union held that all sales for which the terms were ''DEL'' showed freight expenses reported in the C field. Petitioners argue that it remains totally unclear what Union has reported with respect to freight expenses for sales with delivery terms of ''DEL.''

The freight expense reporting for sales with ''W&D'' terms, petitioners argue, is similarly confused. Petitioners suggest that record evidence strongly suggests that Union simply neglected to report freight expenses incurred in delivering merchandise from the warehouse to the customer. Petitioners assert that Union was unable to provide documentation at verification to show that it fully reported all U.S. inland freight expenses. Petitioners question why certain sales with ''W&D'' terms have freight reported in the C column but not the P column.

Petitioners argue that because respondent failed to provide the Department with a logical, coherent, and consistent explanation for its failure to fully report U.S. inland freight expenses, and failed to produce evidence at verification to support its claims, the Department should apply adverse facts available for unreported U.S. inland freight expenses. Petitioners suggest that the Department should apply the highest reported corresponding per-ton rate incurred to sales where terms are ''W&D'' and where no expense amount appears in either the C or P columns. For sales with terms marked ''DEL,'' petitioners argue, and where Union did not report any amount in either the C or P columns, the Department should insert the highest reported corresponding per-ton rate. Finally, petitioners argue that in instances where a significant number of days elapsed between entry and shipment to the customer, the Department should make an adjustment for freight to the warehouse, and from the warehouse to the customer, based on the highest reported rate for each.

In rebuttal, Union argues that of those sales which petitioners highlight as having terms that ''should'' imply freight, most had ''DEL'' terms, *i.e.*, were delivered to a warehouse, and did have freight reported in the ''P'' field, indicating that Union delivered the merchandise to a warehouse. In its response, Union stated that ''for the occasional cases in which a customer requests delivery to a warehouse or its own facility, U.S. inland freight has been reported on a transaction-by-transaction basis.''

For the other sales which petitioners suggest ought to have borne freight expenses, those with ''DEL'' terms, Union argues that it reported freight in the ''C'' field. Union explains that the choice of field depended on whether a sale was delivered to a warehouse or to the customer's site.

Union states that the only other sales about which petitioners raise concerns in their brief are transactions with ''W&D'' terms but no freight in the ''C'' field. Respondent states that these were simply picked up by customers from the warehouse, as called for in the terms of sale. Union further states that nothing in the record would support a reversal of the Department's verification findings.

Union answers petitioners' concerns on the verification of its sales transactions by observing that petitioners cannot cite one instance of Union failing to provide requested documents or other information, nor any evidence of unreported expenses for any of the sales examined at verification. Union characterizes petitioners' concerns in this regard as speculation.

Department's Position. We agree with Union. We verified that these expenses were fully reported, and the record of the review is consistent with Union's submissions and explanations. Petitioners' concerns about the possibility of unreported freight and warehousing expenses are not supported by any instances of verification discrepancies or documentation problems.

Comment 19. Petitioners raise the following concerns with respect to six transactions which the Department traced at verification:

- Union failed to prove that it did not incur certain warehousing or demurrage and/or inland freight expenses;
- Union failed to provide adequate documentation of its claims and explanations as to sales terms;
- documentation which Union provided at verification raises the possibility that additional expenses for further processing may have been incurred but not reported;
- there are apparent inconsistencies between the reported sales terms and the reported expense amounts; from the reported sales terms it would appear some expenses were incurred but not reported.

Union answers that petitioners' concerns are again merely speculative. Union further notes that petitioners' concerns come late, since the home market verification report in question was available over two months prior to the U.S. verification, so that petitioners could have requested further investigation of these matters at that time.

Department's Position. We agree with Union that petitioners' concerns are speculative in nature and are not supported by the record evidence, including our verification findings. We are satisfied with Union's explanations, in its rebuttal brief, of the particular facts and circumstances of the sales in question. The response data and the documentary evidence from verification are consistent with Union's explanations in its rebuttal brief and with its response submissions.

Comment 20. Petitioners argue that Union's U.S. affiliate, UADD, plays an active and substantive role in the U.S. sales process, that this role is not only greater than that of a mere processor of documents, but greater than that of Union itself with respect to U.S. sales. Petitioners argue that the Department should therefore classify all of Union's U.S. sales as CEP sales, rather than EP sales, and, consistent with that action, deduct all of Union's direct selling expenses, indirect selling expenses and allocated profits from the reported gross unit price when calculating CEP.

Petitioners summarize the three criteria for EP sales, as distinct from CEP sales, as follows: (1) The merchandise is not inventoried in the United States; (2) the commercial channel at issue is customary; and (3) the selling agent is not substantively more than a processor of sales-related documentation, or a communications link. Petitioners argue that all three of these criteria must be satisfied for a sale to qualify as an EP sale, then argue that in this case the Department must focus on the last of the three, *i.e.,* the role of the U.S. affiliate in the U.S. sales process, and urge the Department to do so in the context of Union's customary selling practices. Petitioners argue that Union's U.S. affiliates perform significant selling functions in the United States and that its U.S. sales must be classified as CEP sales.

Petitioners cite Department precedent and record evidence on the importance of the role of Union's U.S. affiliates in the U.S. sales process, and argue that the activities performed by these affiliates parallels those performed in *German Plate* by Francosteel, the U.S. affiliate of the German respondent (Dillinger). Petitioners summarize the activities performed by Francosteel as these were evaluated by the Department in that review, citing (1) Price negotiation and maximization, (2) establishing contact with the customer, (3) providing credit, (4) obtaining purchase orders, (5) invoicing, (6) taking title, and (7) acting as the importer of record. Petitioners state that the Department found in that review that Francosteel performed the above functions and was thus more than a mere processor of sales documents and communications link. Petitioners argue that in the instant review Union's U.S. affiliate performs even more functions than Francosteel.

Petitioners cite a home-market sales verification exhibit, in which only intra-corporate transfer prices appear, and argue that this exhibit shows that UADD negotiates price without the Korean parent's involvement or its knowledge of the prices that were ultimately charged to the unaffiliated U.S. customers. Petitioners argue that at both the home-market and the U.S. verifications, the instances which Union provided as evidence of the Korean parent's control and involvement in the setting of prices paid by customers were essentially hand-picked and have not been shown to reflect the normal sales process. Furthermore, petitioners argue, these examples fail to document the parent's role in price-setting even for these selected examples. Petitioners argue that the exhibits thus supplied show only rejections based on limitations of production capacity, or unsatisfactory intra-corporate transfer prices.

Petitioners argue that the U.S. verification report, which mentions further examples of sales that the verifiers examined and where the parent initially disapproved certain terms, quantities, and prices, does not make clear what examples were examined, since the verifiers did not take exhibits for these sales. Petitioners suggest that these examples may be sales that were refused on the basis of transfer price or production capacity, not because of the price to the ultimate U.S. customer.

Petitioners assert that aspects of UADD's commissionaires' roles, and the role of UADD in appointing commissionaires, as reflected in commissionaire agreements, shows that UADD has authority over the sales process, and that UADD establishes the first contact with U.S. customers. Petitioners argue that the gap in timing between UADD's payment to Union in Korea and UADD's collections from U.S. customers, shows that UADD provides credit to U.S. customers.

Petitioners argue that UADD is responsible for handling purchase orders obtained directly from its U.S. customers, that UADD's commission agents, according to their contracts with UADD, may participate in the sales process actively, and that the commissionaires work directly for UADD. Petitioners also argue that the commission agent agreements contain clauses suggesting that UADD can make pricing decisions. Petitioners argue that UADD invoices its U.S. customers. Petitioners argue that UADD takes title to the subject merchandise, acts as the importer of record, and in so doing takes on a role so significant that, like Francosteel in the Dillinger review cited above, it rises above the role of a mere communications link and processor of sales-related documentation.

Petitioners argue that UADD's selling functions far outweigh those performed by Union itself, ''which appear not to include anything more than producing and shipping the merchandise.'' Petitioners cite the following functions which UADD performed in the POR:

- Certain price agreement negotiations;
- Processing sales and import documents;
- Processing certain warranty claims;
- Paying customs and antidumping duties;
- Arranging warehousing and transportation at the customer's request;
- Accepting and reselling returned merchandise; and
- Engaging in communications with, and acting as point of contact for, U.S. customers.

Petitioners further argue that based on certain accounting records UADD ''may carry inventories of the subject merchandise.'' Petitioners cite also some additional selling functions, which were ''revealed'' to have been performed by UADD in the prior review, pertaining to market research, planning, finding U.S. sales, negotiating purchase terms, maintaining customer relations, procurement services, and arranging and paying for post-sale warehousing and transportation to customers.

In rebuttal, Union argues that petitioners fail to come up with any new arguments on this issue, severely distort the factual record, mischaracterize Union's sales process, and rely on sheer speculation. Union points to the final results of the first and second reviews, in which the Department rejected the same arguments by the petitioners. Union also points to the verifications, particularly the U.S. verification, of which the report discusses the Department's examination of the authority which the Korean-based Export Team exercised over pricing and sales terms. Union states that nothing has changed regarding the assignment of selling functions between the Korean and U.S. affiliates. Union reviews the sales process as documented in its response and the verification report, and points to record evidence supporting the claim that UADD has no price negotiating ability.

Union further argues that no changes in the applicable law governing EP sales have emerged to alter the Department's position. Union contends that *German Plate* had an unusual aspect, in that the affiliated sales intermediary engaged in extensive price negotiations. Union cites Exhibit 3 of the U.S. verification report which shows an instance where Union disapproved a particular price and dictated a price different from that requested by the U.S. customer, via UADD. Union cites the U.S. verification report's description of the sales process as it relates to the determination, by the Export Team in Korea, of the final price to the unaffiliated U.S. customer. Union distinguishes these facts from those in

German Plate, where the Department found the foreign manufacturer's role in the sales process to be minimal, whereas the affiliated sales intermediary essentially negotiated all sales. Union points to the Department's finding at verification that the Union controlled all the terms of sale, price and otherwise, and notes that the Department reviewed four months of correspondence to test the accuracy of Union's statements that it approves prices for all sales. Union notes that the Department found nothing inconsistent with the responses, and that the Department found that Union sometimes rejected sales based on price and other terms.

Concerning selling activities, Union notes that information on the record in this review confirms that, as the Department found in prior reviews, the commission agreement which establishes commission rates was drafted and controlled by Union. Union disputes petitioners' assertion that for at least one U.S. customer UADD has authority to adjust prices, and cites to its questionnaire response which states that Union itself retains that authority in full.

Union argues that UADD's role in accepting payments from U.S. customers, and arranging for the extension of credit to them, is in keeping with the Department's definition of a sales processor. Regarding warehousing and transportation, Union retorts that UADD arranges for these services but does not directly provide them. Concerning warranty claims, Union confirms that UADD processes these, but notes that Union sales personnel in Korea decide all claims. Union similarly confirms that UADD receives purchase orders, but explains that, as the Department verified, it then forwards these directly to Union, which is responsible for approving the sale or proposing alternative terms or prices.

With respect to the other selling functions enumerated by petitioners, Union confirms that UADD invoices U.S. customers, takes title to merchandise, pays duties and fees, and serves as a communications link and point of contact for U.S. customers. All of these functions, Union argues, are in keeping with the Department's definition of a sales processor, as discussed in the final results of the prior review.

Concerning instances when UADD accepts and resells returned merchandise, Union states that such instances have properly been reported as CEP transactions.

Department's Position. We agree with petitioners that Union's U.S. sales should be treated as CEP transactions. In the final results of the prior reviews, in order to determine whether sales made prior to importation through Union's affiliated U.S. sales affiliate (UADD) to an unaffiliated customer in the United States were EP or CEP transactions, we analyzed Union's U.S. sales in light of three criteria: (1) whether the merchandise was shipped directly from the manufacturer (Union) to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling affiliate (UADD) was limited to that of a processor of sales-related documentation and a communications link with the unrelated U.S. buyer. We concluded that UADD was no more than a processor of sales-related documentation and a communications link, and classified Union's U.S. sales as EP. *Second Review Final Results* at 18439.

As explained above in the ''Fair-Value Comparisons'' section of this notice, to ensure proper application of the statutory definitions, where a U.S. affiliate is involved in making a sale, we normally consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. The totality of the evidence regarding Union's sales process demonstrates it is Union's role that is ancillary to the sales process, and not that of UADD.

We agree in large part with petitioners that UADD fulfills several of the criteria cited in *German Plate*, including price negotiation, initial customer contact with respect to individual sales, credit, purchase orders, invoicing, title and importation. We agree that the verification results are not dispositive. The few instances which Union offered of disapproved prices and terms do not establish that UADD's involvement in the selling functions was ancillary. The authority which Union's export team exercised over the final terms does not amount, in the end, to placing all of the primary selling function in Korea. Indeed, the paucity of evidence that the home office played any role in the sales process reinforces petitioners' argument as to UADD's active role, as does the fact that UADD employed the services of independent agents in the United States. Therefore, we concur with petitioners that UADD's role in the sales process is more than ancillary.

Union's argument that the U.S. affiliate in *German Plate* engaged in extensive price negotiations is true, but does not nullify the fact that UADD is significantly involved in price negotiations and the other selling functions discussed above from the onset of client contact in each sale. We also note that the higher proportion of indirect selling expenses incurred in the United States in connection with Union's U.S. sales of subject merchandise, as opposed to those incurred in Korea, supports petitioners' contentions. Further, the existence of significant selling expenses in the United States itself belies Union's claim that the role of its U.S. affiliate was not meaningful. *See* Union's February 21, 1997 response at Volume II, Exhibit C–20. For the foregoing reasons, we have classified Union's U.S. sales as CEP transactions in these final results.

Comment 21. Petitioners argue that the Department should make several adjustments to Union's COP and CV data. Because of Union's affiliation with POSCO, petitioners argue, the Department should make an adjustment for Union's purchases of substrate from POSCO to ensure that they reflect fair value and are above POSCO's COP. Petitioners argue that in the preliminary results the Department wrongly concluded with respect to POSCO that the fair-value and major-input provisions of the statute do not apply to POSCO's affiliated transactions with POCOS; if the Department retains this approach, petitioners argue, then to be consistent it must also consider Union to be affiliated with POSCO.

Petitioners argue that the substrate which Union purchases from POSCO represents a major input and so must be assigned a value equal to the highest of (1) the transfer price from POSCO to Union, (2) POSCO's production cost, or (3) the market value. Invoking this last provision, petitioners argue that the Department should adjust Union's substrate costs by the difference between the price it paid POSCO and market value, as evidenced by purchases from unaffiliated entities.

Addressing the issue of whether POSCO and Union are affiliated, Union cites to the final results of the second review, where the Department determined that POSCO had not been shown to control Union. Union argues that petitioners offer no new evidence to buttress their presumption that Union and POSCO are affiliated or to cause the Department to revise its view on this point.

Department's Position. We agree with Union. We examined the basis for petitioners' concerns about the possibility of control of Union by POSCO in the prior review. We found insufficient evidence then in support of petitioners' assertion that the business relationship between POSCO and Union satisfies the Act's new affiliation criteria at sections 771(33)(E→G). *Second Review Final Results* at 18417–18. No new evidence or argument has been offered in these reviews, and we again find that petitioner's assertion is not supported; therefore, for purposes of these final results, we have again treated Union and POSCO as unaffiliated. Accordingly, our position with regards to the fair-value and major-input provisions of the statute is that these do not apply.

Comment 22. Petitioners argue that the Department should reject Union's change in depreciation methodology because it is contrary to longstanding Department precedent and practice and is contrived. Citing the Department's position in *Semiconductors*, as well as the decision of the CIT in *Micron Technology, Inc. v. United States,* CIT Slip Op. 95–107 (June 12, 1997) (''*Micron*''), petitioners argue that a similar fact pattern is in evidence, that the change in methodology in accounting for depreciation expense understates respondent's fixed overhead, that the Department should reject the change for the same reasons as in *Semiconductors*, and increase respondent's fixed overhead amounts by a specific percentage rate. The petitioners suggest a rate, which they calculate on the basis of net asset value of the assets in Exhibit 9 of the Korean verification report, multiplied times a standard flat annual depreciation rate for assets with a remaining useful life of eight years. Petitioners argue that the Department should use the difference in percentage derived from this example and apply the differential to all of Union's fixed overhead expenses.

In rebuttal, Union argues that petitioners' suggested method would double-count depreciation expenses, and notes that its auditors and the Korean tax authorities both approved the changes in depreciation methodology. Union argues that petitioners provide no argument in support of their thesis that it is distortive to depreciate the remaining value of assets when such a change in method is adopted.

Union argues that if the Department wishes to use costs based on a double-declining balance method, the proper costs to use would be those contained in Union's supplemental response, which were verified, rather than those which would be obtained by relying on the straight-line method costs which were submitted later. Union also notes that if the Department wishes to use the later, straight-line data, petitioners' suggested ratio is too high, and would need to be decreased to reflect the actual proportion of depreciation within fixed overhead. Union supplies the revised factor which it claims the Department would need to make the adjustments using the correct ratio of depreciation to total fixed overhead expense.

Department's Position. We agree with petitioners that Union's change in depreciation methods understates overhead and that there are similarities in the instant case with the facts of *Semiconductors* and the related court decision, *Micron.* We also agree that, even if Union's change in methodology is made according to local accounting standards, the Department may still find the change to be distortive and decline to use the revised costs. We note that the CIT in *Micron* found that:

> Commerce was entirely justified in concluding that Samsung's methodology, as implemented, distorted depreciation expense during the POI to the extent that Samsung used the full useful life of the asset rather than the remaining useful life at the time of the change in depreciation method.

Union's adoption of a new depreciation method similarly would entail a restatement of asset values and depreciation expenses over multiple years, including years for which an investigation and subsequent reviews have already been conducted. The restatement would therefore also mean that ''greater costs were attributed to products manufactured before the change than subsequent to the change.'' *Semiconductors* at 15479. Thus, here, as in *Semiconductors,* we find that ''the basis used for the financial statement, even if stated in accordance with Korean GAAP at the time of the change, would be distortive for purposes of our antidumping analysis.'' *Id.*

Accordingly, we have determined not to accept Union's reported depreciation expense. Instead, for purposes of these final review results, we applied petitioners' suggestion, in part, by compensating for the accounting change; we also took into account Union's concern that we reflect the accurate proportion of depreciation within overhead, and used the amount indicated by multiplying Union's fixed overhead expenses times the ratio of straight-line (non-restated) depreciation in fixed overhead.

Comment 23. Petitioners argue that the Department should reduce Union's claimed offset for revenue from the sale of scrap, which Union based on theoretical amounts related to its production yield ratios, to reflect instead Union's actual scrap generation rate. Petitioners base their argument on verification results which indicated, petitioners argue, that the recovery rate which Union used was not accurate. Petitioners suggest a percentage by which they urge the Department to adjust the scrap offset to reflect the difference they describe.

Union answers that the difference in the numbers compared by petitioners can be accounted for by changes in work-in-process (''WIP'') inventory. Union argues that scrap temporarily stored on the floor, prior to entering inventory, would not be accounted for immediately as it is produced, and that any change in the amount of scrap WIP inventory between the beginning and the end of the cost reporting period would not be captured in the production figures reviewed at verification. Union argues that the Department's test was a reasonableness check, not an attempt to recalculate the quantity of scrap through another means, and Union believes that the amount noted at verification falls within reasonable limits for such a by-product.

Alternatively, Union argues, if the Department determines it should reduce the reported scrap quantity, then it should adjust yield rates simultaneously, multiplying each by a factor of 0.84, then re-compute COP and CV based on the revised scrap and yield totals.

Department's Position. We agree with petitioners that it is more appropriate to use the corrected scrap recovery rate as discovered at verification. Accordingly, for these final results, we have adjusted the scrap rate as petitioners suggest; we have also revised the yield rate in keeping with Union's concern regarding the need for consistency in these two factors.

Comment 24. Petitioners argue that, as in the second review, the Department should revise Union's submitted costs to account for differences between submitted costs and actual costs of manufacturing (costs based on Union's financial statements).

Union argues that the difference in costs is less than petitioners assert once the change in accounting methodology is accounted for. Union also argues that the difference between the two sets of costs, *i.e.*, its questionnaire response costs and its financial statement costs, are trivial, and the Department's tests at verification were only to determine the reasonableness of Union's submissions.

Department's Position. We agree with petitioners. The record shows that there is a noticeable difference between the actual manufacturing costs (from the audited financial statements) and the manufacturing costs submitted by Union. The difference is not trivial since we disagree with the change in depreciation method which Union argues would narrow the cost difference. Our verification test is not only a test of the reasonableness of a respondent's submissions but also a check on accuracy. When we find, as we did here, that submitted costs are less than actual costs, and when the information which would allow us to use the more accurate cost figure is on the record and is easily incorporated into our analysis, we have no reason not to use the more accurate figure. Accordingly, we have applied the corrected cost figure as suggested by petitioners.

Comment 25. Petitioners argue that the Department should account for the difference between costs which Union incurred during its fiscal period and the higher costs it incurred during the POR. Petitioners note that the Department allowed Union to report costs based on its corporate record-keeping period provided that this methodology did not distort the calculation of costs. Petitioners argue that the analysis which Union provided demonstrates that its methodology has a ''noticeable'' impact on the calculation of costs, reducing them by a percentage difference which petitioners assert is significant, unlike the difference in the same costs in the prior review. Petitioners urge the Department to revise Union's submitted costs to include a specific adjustment for the effect of Union's use of its record-keeping period.

In rebuttal, Union argues that for the sake of consistency with past practice, and relative ease of submission and of verification, Union requested that the third review cost reporting be on the same basis as the prior reviews, July through June, a difference of one month from the August-July POR. Union argues that it gave evidence showing that this method would not distort costs and that the Department did not find the method distortive, though Union concedes that the Department also later requested it to submit its costs for the POR itself rather than for the fiscal year.

Union argues that petitioners are wrong in at least two respects, since they have not supported their claim that the change in reporting period had a noticeable effect on submitted costs, and since the Department concluded previously that the choice of periods was not distortive. Concerning the magnitude of the difference in average unit costs, Union explains that it could be due to a change in the product mix, even if all unit costs remained unchanged. Union argues that the case has proceeded on the basis that the change in periods was not distortive, and petitioners cannot now claim differently.

Department's Position. We agree with petitioners that the POR costs are indeed higher than the fiscal-year costs, as is shown by Union's own information. When we allowed Union to report on the basis of a different period we also requested the information which would permit us to compare the reported numbers to those of the POR and to apply the latter if these were different enough to affect the results of our analysis, as we found they were. We disagree with Union's argument that petitioners failed to support their claim that the change in reporting period had a noticeable effect, and we disagree with the characterization of the change as less than noticeable. Finally, the argument that the difference in costs could have arisen from a difference in product mix is unpersuasive: the potential effect of the change is noticeable, and we find it is therefore more reasonable to revert to the actual POR data. Accordingly, for purposes of these final results, we based our margin calculations on the POR costs rather than on the fiscal period costs.

Comment 26. Petitioners argue that the Department should revise Union's submitted interest expense to account for expenses incurred by the Dongkuk Steel Mill (''DSM'') group. Petitioners argue that it is the Department's longstanding policy to employ the financial expense incurred by the consolidated entity, not the unconsolidated entity, in calculating the interest expense component of COP and CV. Petitioners note that the Department obtained the necessary consolidated rate information from Union but failed to apply it in the preliminary results. Accordingly, petitioners argue that, for purposes of these final results, the Department should substitute the consolidated rate for the rate initially supplied by Union.

In rebuttal, Union concedes that it is Department policy to use the interest expense of the entity at the highest level of consolidation, but argues that Union is not further consolidated with any other entity, and its financial statements represent the highest level of consolidation. Union notes that at the petitioners' request, it provided the financing costs for DSM and DKI in its supplemental response, but that this does not signify that Union's interest costs are in any way consolidated with those of the other two firms. Union argues that the Department correctly applied its practice in the preliminary results and should continue to do so in the final results.

Department's Position. As in the prior review, where the same issue arose (though in the prior review the issue concerned all general and administrative expenses (''G&A'') rather than merely interest expenses), we agree with petitioners. The ownership and affiliation ties at issue have not substantially changed. It is our practice to include a portion of the G&A expense incurred by the parent company on behalf of the reporting entity. We disagree with Union's arguments that Union's financial statements reflect the highest level of consolidation. Since Union is affiliated with the DSM group, we agree with petitioners that a portion of the interest expenses for the DSM group should be allocated to Union's costs. Accordingly, for these final results, we applied the interest expense ratio suggested by petitioners.

Comment 27. Petitioners note that the Department recently changed its policy regarding the calculation of interest expense for CV, and no longer includes imputed credit expenses or inventory carrying cost expenses in its calculation of CV, but uses the same interest expense ratio as it does for COP. In support of this argument, petitioners cite *Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 61 FR 69067, 69075 (December 31, 1996) and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part: Dynamic Random Access Memory Semiconductors of One Megabyte or Above from the Republic of Korea*, 62 FR 39809, 39822 (July 24, 1997). Accordingly, petitioners argue, for the final results the Department should ensure that the interest expense ratio used for CV reflects this new policy. Union offers no rebuttal.

Department's Position. We agree with petitioners and have amended our calculations accordingly for these final results.

Comment 28. Petitioners argue that the Department asked Union to ''provide an analysis that compares year-end adjustment amounts provided in [its] responses to the amounts reported in [its] audited financial statement,'' but that the Union failed to provide this analysis. Petitioners note that such an analysis would have enabled the Department to determine whether the submitted costs reflect the year-end adjustments which are included in the financial statements, but which are not always incorporated in the normal accounting system. Petitioners argue that since Union neglected to provide the analysis, ''the Department should apply facts available and increase Union's submitted costs by 8 percent (or $\frac{1}{12}$).''

In rebuttal, Union argues that the July 1995–June 1996 costs which it submitted included the full year-end adjustments for 1995 in accordance with Department practice. Union later supplied audited year-end 1996 adjustments when these became available. Union argues that petitioners have not claimed any significant changes from 1995 to 1996 in kind or in number, other than the change in depreciation method, to which petitioners have objected. Union argues that petitioners' claim that it failed to provide relevant information has no support in the record.

Union further points out that the Department verified its responses, including 1996 year-end adjustments, with its full cooperation.

Department's Position. We agree with Union. Union provided the information we requested as it became available, and the year-end adjustments in question were duly verified. We see no need for the application of facts available in this instance.

Comment 29. Petitioners note that in its deficiency questionnaire, the Department requested that Union revise its submitted G&A and interest expense calculations to make them consistent with the Department's final results in the second administrative review, with respect to the scrap revenue offset. Petitioners argue that Union failed to do so, causing a critical inaccuracy in the Department's analysis. Petitioners urge the Department to apply facts available and to use the financial statement entries for ''Sales—Other'' and ''Non-operating Income '' Miscellaneous'' as offsets to the cost of sales.

Union argues that to be consistent with the Department's calculation of costs on a per-unit basis, a different, lower, adjustment would be called for, but that, if the Department begins adjusting the denominator for the cost of manufacturing, it must also take into account the fact that the denominator includes an offset for duty drawback, which unit costs do not include. Union suggests that there is a rough balance between the scrap and drawback adjustments, but that if both are made, the cost of manufacturing would decrease.

Department's Position. We agree in part with each party. We agree with petitioners that Union failed to make the adjustments to the G&A and interest expense calculations we requested. We agree with Union that for consistency, all relevant factors must be duly reflected in the revised expense ratios. For these final results, therefore, we have used revised expense ratios that are consistent with the prior review and which incorporate the relevant adjustments suggested by Union.

Comment 30. Petitioners urge the Department to increase Union's submitted G&A expenses to take account of corporate overhead expenses of DSM, as in the final results of the second review. In rebuttal, Union argues that nothing in the record suggests that DSM provides goods or services to Union, and that petitioners' argument should be rejected.

Department's Position. We agree with petitioners. It is our practice, as we stated in the final results of the prior reviews, and as mentioned above in the Department's Position on Comment 26 in connection with interest, to include a portion of the G&A incurred by the parent company on behalf of the reporting entity. For these final results, therefore, we allocated a portion of DSM's G&A to Union's G&A.

Respondents' Comments

Comments by Dongbu and Union

Comment 31. Dongbu and Union argue that the Department erred in using the contract date, rather than the commercial invoice date, as the date of sale for their U.S. sales. They base this argument on several considerations. First, they argue that the Department's stated rationale for using the contract date as the date of sale is fallacious. In the preliminary results the Department stated:

> The questionnaire we sent to the respondents on September 19, 1997 (*sic*) instructed them to report the date of invoice as the date of sale; it also stated, however, that ''[t]he date of sale cannot occur after the date of shipment.'' Because in these reviews the date of shipment in many instances preceded the date of invoice, we cannot use the date of invoice as the new regulations prescribe.

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Preliminary Results of Antidumping Duty Administrative Review, 62 FR 47422, 47425 (September 9, 1997) (''*Preliminary Results*''). Dongbu and Union state that this rationale is factually incorrect. They state that for Dongbu there are no instances in which shipment date preceded invoice date. As for Union, it acknowledges that only three line items in the U.S. data base have a shipment date prior to the invoice date, but state that this reporting was a trivial data input error which the Department should ignore. Furthermore, it states that these three line items all pertain to a single shipment, and that the reported shipment date preceded the invoice date by only one day.

Second, Dongbu and Union state that using the contract date as the date of sale was inconsistent with the Department's regulations and recent case law, citing 19 CFR § 351.401(i):

> In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

Dongbu and Union argue that the invoice date is presumptively the date of sale, and that exceptions to this presumption must be narrowly drawn. Furthermore, they argue that the preamble to the regulations makes explicit the Department's intent to restrict the exceptions to the presumption when it says that the regulations put parties ''on notice'' that ''in the absence of information to the contrary, the Department will use date of invoice as the date of sale.'' *Final Rules* at 27349.

Furthermore, they argue that recent case law demonstrates the Department's intention to restrict the exceptions to the presumption. As an example, they cite *Stainless Steel Wire Rod from India; Final Results of New Shipper Antidumping Review,* 62 FR 38976 (July 21, 1997) (''*Wire Rod from India*''), in which the Department rejected a petitioner's argument that the Department should use the purchase order date, rather than the invoice date, as the date of sale. There the petitioner based his argument on the allegation that there was too long an interval—presumably several months—between the purchase order date and the invoice date. However, the Department, citing its proposed regulations, stated that alternatives to invoice date are acceptable where there are long-term contracts or where there is an ''exceptionally long lag time between date of invoice and shipment date.'' *See Wire Rod from India* at 38979. In *Wire Rod from India,* however, the Department noted that there were no long-term contracts and the lag between purchases and invoices during the period of review is not considered exceptionally long. Dongbu and Union note, however, that if in this instance the Department uses the contract date as the date of sale, there is a much longer lag between the sale date and invoice date.

As a further demonstration of recent Departmental practice, Dongbu and Union cite to *Seamless Pipe from Germany; Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 47446 (September 9,

1997) (''*Seamless Pipe*''). There the Department rejected a respondent's use of the date of invoice as the date of sale in the home market and the ''date of order confirmation'' as the date of sale in the U.S. market. Instead, the Department used the shipment date and stated that ''[s]ince there can be several months between order confirmation and shipment, using shipment date in both markets puts home market and U.S. sales on the same basis for date of sale.'' Dongbu and Union argue that the Department's date of sale determination in the preliminary results of this review cannot be reconciled with its determination in *Seamless Pipe* because there it used the shipment date as the date of sale in the home market and the contract date as the date of sale in the U.S. market, and thus placed home market and U.S. sales on entirely different bases.

Third, Dongbu and Union argue that the Department's determination to use contract date as the date of sale is inconsistent with its determination to use date of shipment as the date of sale for POSCO. They argue there is no apparent justification for treating Union and Dongbu differently from POSCO. Both Union and POSCO have a shared sales channel. They argue that the Department has not articulated any reason that the contract should be used as the date of sale for Union, but that the shipment date should be used as the date of sale for POSCO.

Fourth, Dongbu and Union argue that the Department's determination with respect to Union in this review is inconsistent with its determination in the first administrative review of this order. There the Department determined that it was inappropriate to use the date of contract as the date of sale, and instead used the date of shipment, basing its decision on the fact that quantities changed between order and shipment. Moreover, Dongbu and Union note that unlike this review, the Department in the first review had stated no preference for using invoice date as date of sale.

For all of these reasons Dongbu and Union state that the Department should use the invoice date as the date of sale. For those limited instances in which the date of shipment preceded the date of invoice, they argue, the Department should use shipment date as the date of sale, as this most clearly implements the Department's narrowly construed exceptions to the invoice date preference.

Petitioners argue that the Department was correct in using the contract date as the date of sale for both Union and Dongbu.

They argue, first, that Dongbu and Union misinterpreted the Department's statement in the preliminary results notice (cited above) that there were many instances in which the date of shipment preceded the date of invoice. Petitioners claim that this statement referred not, as Dongbu and Union believe, to the date of invoice between Dongbu and Union and their U.S. affiliates, but between their U.S. affiliates and their U.S. customers. Thus, petitioners argue that Dongbu's and Union's comments regarding the lag time between contract dates and invoice dates are inapposite.

Second, petitioners argue that the proposed regulations give the Department the latitude to use a date other than the invoice date as the date of sale. The proposed regulations state that the invoice date ''may not be appropriate in some circumstances'' for use as the date of sale. *See Notice of Proposed Rulemaking and Request for Public Comment,* 61 FR 7308, 7330 (February 27, 1996) (''*Proposed Regulations*''). Petitioners argue that one such circumstance would be where the potential for manipulation exists; that potential, they argue, exists where, as here, the invoices are between affiliated parties. Indeed, given the Department's traditional scrutiny of affiliated-party transactions, petitioners argue, it is not unreasonable to assume that the preference stated in the *Proposed Regulations* for using the invoice date as the date of sale applies only to invoices between unaffiliated parties.

Third, petitioners argue that reliance on Dongbu's reported date of invoice would be particularly unwise. The Department's verification report, petitioners argue, indicates that the commercial invoice from Dongbu Steel to Dongbu Corporation (which Dongbu reported as its date of sale) is not a formal accounting record, but is prepared for purely collateral purposes, such as securing payment on letter of credit sales. This invoice, therefore, is not corroborated by reference to unaffiliated parties or even by reference to Dongbu Steel's own internal accounting records. Thus, petitioners argue, the date reflected on this invoice cannot be verified from Dongbu's accounting records, and does not meet the Department's verification requirements.

Fourth, petitioners argue that the Department should reject, with respect to Dongbu, Dongbu's and Union's proposal that the Department use the shipment date as the date of sale if it refuses to use the invoice date as the date of sale. Petitioners argue that because Dongbu reported the bill of lading date as the date of shipment, and not the date of shipment from its manufacturing plant, the reported shipment date is subsequent to the invoice date, which even Dongbu acknowledged. Therefore, petitioners argue, the Department cannot use it as the date of sale. Thus, with respect to Dongbu, petitioners argue that there was no other date on the record that the Department could use as the date of sale other than the contract date.

Fifth, petitioners note that the Department's determination regarding the correct date of sale is consistent with its determination in the most recently completed review of this order. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 51882, 51885 (October 4, 1996).

Department's Position. We agree with Dongbu and Union that we should use the invoice date as the date of sale. While petitioners are correct that the *Proposed Regulations* give the Department the latitude to use a date other than the date of invoice as the date of sale, Dongbu and Union are also correct that our current practice with respect to the selection of the date of sale adheres to the our regulations and recent case law. Our current practice, in a nutshell, is to use the date of invoice as the date of sale unless there is a compelling reason to do otherwise. The reason underlying this preference is that typically the material terms of sale are established on that date. *See* 19 CFR 351.401(i).

In these cases, there is no record evidence indicating that a date other than the invoice date is the date after which the essential terms of the sale could not be changed. Moreover, the fact that Dongbu's reported invoice date is not a ''formal accounting record'' does not, contrary to petitioners'' argument, make it unverifiable. We are not using the date of invoice between affiliated parties, but rather the date of invoice to the first unaffiliated purchaser in the United States, as the date of sale. In light of the foregoing, after reconsidering our use of the contract date as the date of sale in the preliminary results, we now find no compelling reason to deviate, in these cases, from the Department's current practice of using the invoice date as the date of sale.

Comments by Dongbu

Comment 32. Dongbu argues that the Department erred in determining that one of its U.S. sales was a CEP transaction rather than an EP transaction. The sale at issue is one in which the U.S. customer who ordered the material canceled the purchase while the material was on the water *en route* from Korea to the United States. Dongbu subsequently resold the material to another customer (for a discount) after it entered U.S. customs territory. Between the time of its arrival and its subsequent resale, DBLA incurred warehousing and demurrage charges on this shipment.

Dongbu argues that for two reasons the Department should classify this sale as an EP sale for the final results. First, it argues that information gathered at verification conclusively demonstrates that Dongbu (and not DBLA) bore the cost of all the warehousing and demurrage charges and the discount, and was thus ultimately responsible for the disposition of the merchandise.

Second, Dongbu argues that the sale was not in Dongbu's normal business channel. Thus, classifying this sale as a CEP sale, Dongbu argues, is inconsistent with *Seamless Pipe* in which the Department considered the role that unusual transactions should play in determining whether an exporter sells on an EP or CEP basis. In deciding the proper classification, the Department examined the four criteria consistently applied in making this determination. The first two criteria, and the ones relevant to this discussion, Dongbu states, are: (1) Whether the merchandise is shipped directly to the unaffiliated buyer without being introduced into the affiliated selling affiliate's inventory, and (2) whether this procedure is the customary sales channel between the parties. In *Seamless Pipe* the Department found that application of these criteria was an insufficient basis to classify sales as CEP sales. The Department stated:

> In applying the first two criteria to the present review, we found that for the majority of sales, the merchandise was shipped directly to the unaffiliated U.S. customer without being introduced into MPS's [the respondent's affiliated sales agent's] inventory. We found that MPS occasionally buys for its own inventory, but we did not find any subject merchandise purchased for inventory during the POR. In addition, several sales were warehoused upon arrival in the U.S. when the original customer canceled its order * * *. The Department verified that the terms of sale during the POR were CIF duty paid to a port of entry near the customer's plant, and that MPS did not take physical possession of the shipment, except in the unusual instance described above.

Seamless Pipe at 47448. In *Seamless Pipe* the Department ultimately determined, based on the third and fourth criteria, that the sales were all CEP. However, Dongbu states that what this citation shows is that the existence of a few unusual transactions was not sufficient evidence to classify the U.S. sales as CEP sales. It argues that the decision in *Seamless Pipe* to consider the way the majority of sales were made is a much more reasonable application of the criteria, particularly considering that the ultimate responsibility for the sale was borne by Dongbu.

Petitioners argue that the Department correctly classified the sale at issue as a CEP sale. They cite the statutory definitions of EP and CEP sales:

> [T]he term ''export price'' means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation * * *. Section 772(a) of the Act.
>
> [T]he term ''constructed export price'' means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation. Section 772(b) of the Act.

Petitioners argue that Dongbu's argument ignores these statutory definitions under which all sales made after importation must be classified as CEP transactions. They argue further that even if it were appropriate for the Department to consider selling functions in making this determination, the sale would still be a CEP sale because all relevant sales activity occurred in the United States.

Finally, petitioners argue that *Seamless Pipe* is inapposite. There, they state, the vast majority of U.S. sales were sold prior to importation, and the Department thus applied its three-prong test to determine whether those sales were properly classified as EP or CEP transactions. There is no indication in the notice, petitioners state, that the Department applied that test to those sales which had been sold after importation. Rather, in its discussion of the three-prong test, the Department noted that the only incidences of warehousing involved those sales which had been resold due to customer cancellations.

Department's Position. We disagree with Dongbu. As indicated above in the Department's response to Comment 5, we have treated all of Dongbu's U.S. sales as CEP sales in these final results. Therefore, Dongbu's argument that the sale at issue was an ''unusual transaction'' is moot. Furthermore, the statutory definition of a CEP sale requires that the sale at issue be classified as a CEP sale because it was sold after importation into U.S. customs territory. That it was Dongbu, rather than Dongbu U.S.A., that bore the costs of the U.S. warehousing and demurrage is not determinative.

Comments by POSCO

Comment 33. The POSCO Group argues that in its preliminary results the Department erroneously disallowed an adjustment for post-sale warehousing expenses incurred in connection with certain sales made through the Pohang Service Center (''PSC''). The POSCO Group claims that the Department verified the calculation of this allocated expense in its review of a pre-selected home market sale, and the Korea verification report does not indicate that any of the data reviewed with respect to this sale, including that relating to post-sale warehousing expenses, was not verified or otherwise raised concerns for the Department.

Department's Position. As noted by the POSCO Group, pages 20 and 21 of Korea verification Exhibit 29 contain information detailing how a calculation of the expense in question was made. Neither the information in this exhibit, nor the Department's writeup of its review of this transaction in its verification report, indicates whether the values and per/ton calculated amounts are based on POSCO's payment to PSC, or, alternatively, on the expenses actually incurred by PSC. As noted by the Department in its September 2, 1997, preliminary analysis memorandum at 6, ''it is not clear from the record what that amount represents.'' Furthermore, the Department had not been made aware of even the basic information relating to these alleged expenses prior to verification, although the Department's original questionnaire asked for a complete explanation of all parties involved in the provision or receipt of post-sale warehousing with respect to the respondent's home market sales, as well as other information pertaining to such services. By introducing this topic for the first time during the Department's review of the pre-selected sale in question, the POSCO Group prevented the Department from conducting a timely inquiry into the nature of these transactions, including whether or not the warehousing services allegedly provided by PSC were at arm's length. Consequently, we are continuing to disallow this adjustment for the final results.

Comment 34. The POSCO Group argues that the Department should not have disallowed a portion of reported post-sale warehousing provided for certain home market sales by a company in which POSCO owns a small stake. The POSCO Group argues that there is no evidence on the record to support the Department's apparent assumption that the expense was not made at arm's length, and that the Department should correct its calculation of post-sale warehousing by eliminating the reduction to that expense utilized in the preliminary review results for the transactions in question.

Petitioners argue that the absence of information on the record is due to the POSCO Group's failure to supply information demonstrating that the transaction was at arm's length, despite the fact that the Department had made a similar downward adjustment to this expense in the previous review. Petitioners argue that it is the POSCO Group's burden to demonstrate the arm's-length nature of such transactions, and consequently the Department should maintain the adjustment that it made in its preliminary results.

Department's Position. We agree with petitioners. The record does not demonstrate the arm's-length nature of a certain part of the reported post-sale warehousing expense for transactions involving the affiliated party in question. In our preliminary results, we reduced this reported expense by only a small portion of the part of the expense associated with the affiliated party, to reflect POSCO's ownership stake in that company. We have continued to make this adjustment in our final results. *See* Preliminary Results Analysis Memorandum for the POSCO Group, September 2, 1997, at 6.

Comment 35. The POSCO Group argues that it reported all movement expenses associated with U.S. sales, and that the Department should not deduct from U.S. price any portion of the markups charged by AKO and BUS. The POSCO group states that these deductions contradict the plain language of the statute and the Department's uniform practice in prior cases, including all prior steel cases, and that, if accepted, the Department's reasoning reflects a major shift in practice that would have to be applied in all instances in cases where sales are made through affiliated parties, including Union and Dongbu.

The POSCO Group argues that the Department's deduction of a portion of the markups charged by AKO and BUS constitutes a reduction of the price of EP sales for profit, which is contrary to the law, and if adopted would impact the vast bulk of the Department's dumping cases. The POSCO Group states that the law only allows for a deduction for profit from CEP. The POSCO Group states that it is not aware of a single other instance involving the steel industry or any other industry in which the Department deducted profit earned by affiliated parties on the purchase and resale of subject merchandise.

The POSCO Group argues that the Department's long-standing policy concerning EP sales is to utilize the price paid by the first unaffiliated U.S. customer, and to deduct only direct selling expenses from that price, and that the Department disregards transactions between affiliated parties, such as between POCOS and AKO and BUS, when calculating EP. The POSCO Group cites as an example *Certain Iron Construction Castings from Canada: Final Determination of Sales at Less Than Fair Value,* 51 FR 2412 (January 16, 1986) (''*Castings*''), where the Department rejected petitioners' request that a markup earned by a related U.S. distributor be deducted from purchase (now export) price.

The POSCO Group notes that AKO and BUS perform no movement services themselves but pay unaffiliated customs brokers to perform the services at issue. The POSCO Group states that in the final results of the second review and the preliminary decision in this review, the Department refused to deduct any portion of markup earned by U.S. affiliates for Dongbu or Union sales because those affiliates, likewise, did not provide movement services themselves but utilized customs brokers or other unaffiliated parties to perform movement services. The POSCO Group notes that in the final results of the second administrative reviews the Department determined that Union's U.S. affiliate did not directly perform the brokerage and handling services but rather employed brokers to do so, that all U.S. brokerage and handling expenses incurred by the affiliate on behalf of Union were fully reported, and that there is no legal basis for deducting an amount for U.S. profit on these sales because U.S. profit deductions are only allowed in connection with CEP sales, not EP sales. *See Second Review Final Results* at 18441. The POSCO Group states that for Dongbu the Department noted that the cost of arranging for U.S. brokerage and handling, U.S. Customs clearance, payment of customs duties, and for being the importer of record, are reflected in the brokerage fees paid by the U.S. affiliate, Dongbu USA.

The POSCO Group states that BUS paid the customs broker a fixed fee that covers the customs brokers' administrative and overhead costs incurred in arranging for and paying those expenses, and that applying a markup to those expenses to allegedly reflect BUS's overhead in effect improperly double counts those overhead expenses because the flat fee already paid to the customs broker includes any overhead and general expenses incurred in arranging for and paying for those expenses. Furthermore, the POSCO Group states that the Department deducted a portion of the markup purportedly relating to inland freight costs, and that this was factually incorrect because BUS in fact performed no U.S. inland freight services, nor did it even arrange for those services.

The POSCO Group argues that the Department's purported justification for the deduction is incorrect because the Department never asked for information relating to other supposed expenses incurred by AKO and BUS that the Department is associating with movement services. The POSCO Group indicates that the Department refused such information at verification that allegedly showed that no adjustment was necessary because the purported expenses, like those incurred by POSTRADE and POSAM in relation to U.S. sales, were *de minimis.*

Similarly, the POSCO Group argues that the Department's apparent reasoning that AKO's entire markup should be deducted because AKO only performs movement services is incorrect because AKO performs no movement services. The POSCO Group states that AKO performed the same services and played the same role for POCOS as POSTRADE did for POSCO. The POSCO Group alleges that the Department verified that POSTRADE incurs no additional expenses for movement services, and that the Department as a result determined that POSTRADE's markup should not be deducted, citing the Department's statement in its preliminary analysis memorandum that POSTRADE and POSAM ''incurred virtually no additional expenses as a result of the services in question.'' Furthermore, the POSCO Group asserts that there is no information on the record contradicting its assertion in its Section C supplemental questionnaire response at 25 that AKO was not involved in any activities associated with the movement of subject merchandise to POCOS's U.S. customers, but rather that AKO only helps generally to facilitate communications between POCOS and the U.S. customers, transferring documents between BUS and POCOS, and that AKO took title to the merchandise for U.S. sales and relinquished it in back-to-back transactions by issuing invoices to BUS. Therefore, the POSCO Group concludes, there is no rationale for the Department's deduction of the markup earned by AKO.

The POSCO Group argues that the Department's reasoning that AKO's and BUS's markups should be deducted because they are only indirectly affiliated with POCOS, while POSTRADE and POSAM are wholly-owned by POSCO, creates an artificial distinction between wholly-owned and affiliated firms that has no legal or factual basis. The POSCO Group also states that the Department made no such distinction for indirect affiliation for Union in either the final results of the second administrative reviews or in the preliminary results of these reviews, choosing not to make any adjustment for markups earned by its U.S. affiliate. The POSCO Group states that there is no basis in the law for the notion that profits should be deducted from ''indirectly'' affiliated parties, whereas they should not be deducted for transactions between wholly-owned parties. The POSCO Group claims that if this rationale is accepted, the Department would need to create an entirely new methodology for something called ''indirectly affiliated'' parties, a distinction which the statute does not make. The POSCO Group states that two parties either are or are not affiliated, and the ''degree'' of affiliation is irrelevant to the dumping analysis. The POSCO Group claims that the Department's decision in *Certain Internal Combustion Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 57 FR 3167, 3179 (January 28, 1992) (''*Forklifts*'') to deduct the markups made by an affiliated trading company was due to the fact that the markups represented actual expenses relating to movement of the subject merchandise, a situation which the POSCO Group asserts is not the case in these proceedings.

The POSCO Group states that the Department uniformly looks at the costs to the collapsed entity consisting of affiliated parties rather than to the transfer prices between affiliated parties. For example, the Department routinely disregards commissions between affiliated parties because it considers such commissions to be mere intra-corporate transfers of funds. *See Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia*, 60 FR 6980 (February 6, 1995) (''*Roses*''). The POSCO Group states that in *Timken* v. *United States*, 630 F.Supp. 1327, 1342 (CIT 1986) (''*Timken*''), the CIT held that the statutory deduction for commissions did not require the Department to also deduct the profit earned by a U.S. subsidiary. The POSCO Group states that the Department's decision to deduct the entire markup earned by AKO and a portion of the markup earned by BUS flies in the face of this logic and constitutes the deduction of profit earned by related parties on EP sales.

In any case, the POSCO Group argues that the Department's resort to an adverse facts available calculation based upon a third party's data is highly inappropriate because it did not request such information for AKO and BUS, that it refused such information when it was supplied at verification, and because the Department verified that the alleged ''unreported movement expenses'' for POSAM and POSTRADE were *de minimis*, and therefore should have used this information as the most accurate and reasonable ''facts available'' for the AKO/BUS purported ''unreported movement expenses.'' Furthermore, the POSCO Group states that the Department, in utilizing information from Dongbu Express as the basis for the adjustment for BUS, erred in that BUS, unlike Dongbu Express, is not a freight forwarder. The POSCO Group asserts that Dongbu Express actually performs transportation services, while BUS does not.

Furthermore, in applying the Dongbu Express data to BUS, the POSCO Group asserts that the Department utilized an inappropriate methodology, and suggests several alternatives that utilize Dongbu Express public information from the record. Finally, the POSCO Group asserts that the Department, in applying the Dongbu Express data to BUS, utilized incorrect calculations, and presents what it characterizes as more reasonable alternative applications utilizing Dongbu Express public information from the record.

Petitioners retort that the Department properly deducted from U.S. price the markups charged by AKO and BUS for their role in arranging for the provision of movement-related services. Petitioners cite *Final Determination of Sales at Less Than Fair Value: Certain Internal-Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552 (April 15, 1988), and *Second Review Final Results* at 18433–18435, as precedents for such a deduction from U.S. price. Furthermore, petitioners note that the precedent was in fact established in the first administrative reviews of these orders with respect to Dongbu Express, a party affiliated with Dongbu Steel, for instances involving home market sales of that respondent. Petitioners argue that the POSCO Group is correct in its determination that the Department acted inconsistently across respondents on this issue in its preliminary results, but was wrong in its prescription for eliminating the inconsistency. Petitioners indicate that this inconsistency should be rectified not by dropping the adjustment for AKO and BUS, but by deducting from U.S. prices the markups charged by all of the respondents' Korean and U.S. affiliates to the extent that they can be linked to movement-related services.

Petitioners argue that even if it is assumed that the affiliates in question do not function as freight forwarders or customs brokers, they do act as intermediaries between the producers and the independent providers of movement-related services for U.S. sales. Contrary to certain claims of the POSCO Group, petitioners state, these affiliates do incur additional expenses and earn profit for performing this type of liaison and coordination function pertaining to movement services. Petitioners note that the Department previously has determined that intermediaries between the respondent and independent providers of movement-related services, such as Dongbu Express, incur expenses and earn profits that constitute legitimate movement-related expenses. Petitioners note that given that the affiliates of POSCO and of POCOS serve as intermediaries in a manner substantially identical to that of Dongbu Express, their markups charged for arranging for movement-related services also are legitimate movement expenses that must be included among the others for U.S. sales.

Petitioners state that the record establishes that the affiliated Korean and U.S. trading companies do perform movement-related services and incur expenses in the process in addition to what they are billed by the independent providers of movement-related services. Petitioners also state that it is clear that POSAM and BUS act as intermediaries between POSCO and POCOS and the independent movement-related service providers, and as such are integrally involved in the movement of subject merchandise. Consequently, the POSCO Group's characterization of the markups of the trading companies as solely intra-company profit is incorrect, because they also capture actual expenses. Petitioners argue that the record does not establish that the expenses incurred by AKO and BUS in providing movement-related services were *de minimis*. Regardless of the magnitude of those expenses, though, petitioners note that the entire portion of the markup that can be attributed to such services, including both profit and expenses, should be deducted from U.S. price. The Department has included in its deduction from home market price for Dongbu the entire payment to Dongbu Express, reflecting both the amounts paid by Dongbu Express to independent providers and its markup (which itself includes additional Dongbu Express expenses and Dongbu Express profit). Consequently, petitioners argue, the Department should deduct the entire markup on movement-related services for POSAM, POSTRADE, AKO, and BUS, as a proxy for the amount of markup that the respondent would have to pay if it employed an independent party to arrange for movement-related services.

Petitioners argue that the Department should deduct POSAM's markups from POSCO's U.S. selling prices. Petitioners note that the Department, in its preliminary results, concluded that the amount of actual expenses incurred by POSAM in arranging for the provision of movement-related services, after the elimination of ''internal transfers'' between POSAM and POSCO, was not sufficiently material to warrant the calculation of an adjustment. Petitioners argue that this conclusion apparently is based on POSCO's flawed calculation during verification of the amount of actual expenses POSAM purportedly incurred in arranging for movement-related services. Petitioners argue that POSCO provided no explanation of how it determined the total expense pool used in the calculation of POSAM's markup, and therefore the Department should use POSAM's total SG&A as the appropriate basis for the calculation. Petitioners also question as unsupported by the record the percentage factor POSCO claimed at the Korea verification as the appropriate basis for determining the portion of the total expense pool to be attributed to the expenses in question. Finally, petitioners question the POSCO Group's cited total quantity of steel used to determine the per-ton expense, indicating that the quantity used was significantly larger than the total quantity of subject merchandise (cold-rolled and corrosion-resistant) reported in the databases.

The POSCO Group, responding to petitioners' arguments regarding the POSAM markup, states that petitioners' arguments are moot because there is no basis for the deduction of any markup for the affiliated parties in question. Nevertheless, the POSCO Group argues that the portion of the markup that constitutes an internal transfer cannot possibly be deducted from U.S. price, and the POSCO Group asserts that POSAM did not incur any movement expenses that it did not report in its tape submission. The POSCO Group argues that even under the Department's ''stretched rationale,'' the only direct movement expenses even theoretically at issue would be those *de minimis* telephone and fax charges incurred by POSAM to contact customs brokers, and the Department's Korea verification Exhibit 41, its Korea verification report, and its preliminary analysis memorandum demonstrate these expenses were in fact *de minimis*. The POSCO Group argues that petitioners' challenge to the data in verification Exhibit 41 is based on the faulty assumption that the costs indicated in that exhibit should be compared to POSAM's overall SG&A expenses, when sales of subject merchandise account for only a small portion of POSAM's sales, and petitioners' incorrect assumption that indirect expenses indicated in verification Exhibit 41 should be relevant, when in fact the Department is only concerned with direct expenses if it is trying to estimate movement expenses. The POSCO Group says it obviously was not able to segregate out telephone and fax charges relating solely to imports of subject merchandise versus imports of all merchandise, so the total pool of expenses is for imports of all merchandise, and the corresponding quantity figures used in the calculation of the per-ton expense are for all imports.

Department's Position. We examined at verification the actual additional unreported movement expenses incurred by POSCO's affiliates (*e.g.*, expenses associated with telephone calls from POSAM to customs brokers). Because the actual unreported movement expenses are insignificant in relation to the prices of each respondent's merchandise, we are making no special adjustment to U.S. price for them. *See* section 777A(a)(2) of the Act. There is no evidence that POCOS's affiliates had any substantive unreported movement expenses, either. In any case, such unreported movement expenses for POSCO and POCOS will be accounted for in the additional deductions made from U.S. price resulting from our reclassification of all of the POSCO Group's U.S. sales (except for those made to one customer, as also noted earlier) as CEP sales, as such expenses are reflected in the trading companies' SG&A expenses that we are using as a basis for estimating the U.S. indirect selling expense variable.

With respect to the profit earned by those affiliates, we have determined those profits should be disregarded as an internal transfer. There is nothing unique about the affiliations between the manufacturers and the trading companies that would warrant a departure from this standard practice. Consistent with our practice in cases such as *Roses*, for purposes of these final results we are treating the profits earned by the affiliates as a result of these back-to-back transactions as intracorporate transfers of funds, and are thus making no adjustments to CEP to account for them.

Comment 36. The POSCO Group argues that the Department erred in adjusting POSCO's reported cold-rolled costs for alleged discrepancies in thickness. First, the POSCO Group states that its submitted costs accurately reflect the Department's required thickness product characteristic. POSCO's RPG system tracks products' thicknesses in bands that overlap various Department model-match characteristic thickness bands, and for instances where more than one RPG thickness band crossed into a Department thickness band, the POSCO Group says it reported costs reflecting each RPG thickness included in that Department thickness band.

The POSCO Group asserts that the Department erred in its conclusion that POSCO had been inconsistent in its application of this methodology. The Department's assertion that the POSCO Group had failed to include the costs of one RPG thickness band group of products in the calculation of costs for a certain CONNUM (possessing a specific Department thickness band) was based on the Department's failure to take into account that while POSCO sells products and tracks cost data on a nominal basis, the Department's thickness bands are specified in the questionnaire in actual terms. The POSCO Group notes that exhibit SD–12 of the March 3, 1997, supplemental submission indicates that the RPG system is based on nominal thickness.

The POSCO Group also argues that the Department, even if it persists in incorrectly characterizing the situation as a reporting inconsistency, was not justified in applying an adverse adjustment to the reported costs for the CONNUM in question, that the Department had not requested the necessary information and cannot penalize a respondent because it does not maintain its records in a manner in which the Department would prefer, and that the Department had access to data that would allow a less unreasonable adjustment.

Petitioners argue that the Department should make additional adjustments to POSCO's submitted cost information consistent with its sampling methodology. Petitioners argue that a large proportion of the CONNUMs reviewed contained problems involving understatements of cost to the POSCO Group's benefit. They cite, in addition to the example noted by the Department in its preliminary results, an example where the POSCO Group followed its stated methodology so that a thicker, and hence probably a less costly, RPG grouping that barely overlapped into a Department thickness category was utilized in that calculation of costs for CONNUMs possessing thicknesses in that Department thickness category band. Because this is an indication that the problem may be pervasive, petitioners argue, the Department should make additional adjustments to CONNUMs exhibiting similar overlapping of RPG and Department thickness categories for both cold-rolled and corrosion-resistant products.

The POSCO Group reiterates that petitioners, like the Department, have failed to convert POSCO's nominal thickness information to an actual-thickness basis. The POSCO Group also argues that the petitioners have suggested that the POSCO Group should have altered its reporting methodology for certain unspecified instances. The POSCO Group argues that such an approach would have been subjective and would undoubtedly have raised concerns precisely because it would be ripe for manipulation. The POSCO Group argues that there is no evidence supporting petitioners' observation that a thinner RPG is more expensive to produce than a thicker RPG, and that the record demonstrates that the differences in costs between individual RPGs may not be due solely to differences in thickness. The POSCO Group argues that there is no basis for such an adjustment to corrosion-resistant CONNUMs either, and that there is no basis for any adverse adjustment such as that suggested by petitioners.

Department's Position. We agree with the POSCO Group that in its preliminary results the Department failed to account for the fact that POSCO's thickness groupings are based upon nominal thickness, as was noted in Exhibit SD–12 of the March 3, 1997, submission. When conversions are made to account for this, it is clear that there was in fact no discrepancy, and that the Department erred in making any adjustment to the POSCO Group's costs with respect to the thickness of cold-rolled merchandise. For the final results, we have removed the programming language that adjusted the costs for the CONNUMs at issue. The parties' other arguments, therefore, are moot.

Comment 37. The POSCO Group argues that the Department should reduce POSCO's reported costs by the amount of the requested startup adjustment for extraordinary costs associated with the startup phase of a facility. The POSCO Group states that the statute requires the Department to make an adjustment for startup operations where the producer is using new production facilities or producing a new product that requires substantial additional investment, and where production levels are limited by technical factors associated with the initial phase of commercial production.

The POSCO Group argues that a substantial investment was required to increase significantly its capability of producing a certain range of products. The POSCO Group claims that it has demonstrated it was using new facilities and manufacturing new products at those facilities during the POR, and as such POSCO met the first prerequisite for a startup adjustment under the statute.

The POSCO Group argues that the second prerequisite, that production levels during the POR were limited by technical factors associated with the startup, was also fulfilled, as demonstrated by data provided on the record. The POSCO Group asserts that POSCO's Korea verification exhibit 37 indicates at 3 that production was limited during the initial months so that the products would meet required stringent quality standards before full production ensued. The POSCO Group argues that it is clear that other factors unrelated to startup, such as demand, business cycles, chronic production problems, or seasonality do not account for the limited production quantities. It argues that demand was consistently high, with POSCO's other lines operating at full capacity and that production from the new line rose steadily throughout the startup period. POSCO noted that it was clear as of October 1996 that it had reached full capacity.

The POSCO Group states that the costs for products manufactured on this line were allocated over only a very small amount of production, and that this naturally resulted in abnormally high unit production costs for the affected merchandise. The production from the facility during the POR accounted for only a small percentage of total production of the general type of product, but, the POSCO Group notes, the Department requires that respondents provide a single weighted-average CONNUM-specific cost, regardless of the facility; consequently, the POSCO group states, it provided data showing the impact on the CONNUM-specific cost. The POSCO Group asserts that based on facts essentially identical to those in this case the Department recently granted a startup adjustment. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors from Taiwan,* 62 FR 51442, 51448 (October 1, 1997). The POSCO Group states that the adjustment factors listed in Korea verification Exhibit 1 should be used to reduce the reported costs.

Petitioners argue that the Department should reject the POSCO Group's claim for a startup adjustment because, contrary to the POSCO Group's assertions, it has not met the statutory requirements for receiving such an adjustment, which are to demonstrate that it is using new production facilities or producing a new product that requires substantial additional investment, and that the production levels associated with the startup are limited by technical factors associated with the initial phase of commercial production. *See* section 773(f)(1)(C) of the Act.

Regarding the first prong, petitioners state that evidence on the record clearly demonstrates that POSCO's purported "startup" operations do not constitute "new production facilities," nor do they result in production of a "new product" that requires substantial additional investment. Petitioners note that the SAA at 836 defines "new production facilities" to include "the substantially complete retooling of an existing plant," and that "[m]ere improvements to existing products or ongoing improvements to existing facilities will not qualify for a startup adjustment." Petitioners state that the addition is simply of one line amidst others in the same facility, "a mere addition to an already existing facility," and that the POSCO Group has not shown that the new line is comprised of different machinery requiring different technicians or workers, or whether the production process differs from that of other lines.

Petitioners characterize the expansion of capacity resulting from the line as insufficient grounds for a startup adjustment, as the SAA states at 836 that an expansion of the capacity of an existing production line could be considered for a startup adjustment only if the expansion constitutes such a major undertaking that it requires the construction of a new facility, and that it results in a depression of production levels below previous levels due to technical factors associated with the initial phase of commercial production of the expanded facilities. The petitioners state that no new facility was constructed, and that the POSCO Group admits that overall production levels did not decrease during the POR.

Petitioners argue that the POSCO Group also failed to demonstrate that its purported ''startup'' operations resulted in production of a ''new product.'' Petitioners note that the SAA at 836 defines a ''new product'' to include ''one requiring substantial additional investment, including products which, though sold under an existing nameplate, involve the complete revamping or redesign of the product.'' Petitioners state that while the POSCO Group claims that the new line produces or is capable of producing products with different physical characteristics for a specific class of end-users, the POSCO Group admitted at verification that its other lines could also be used to manufacture products with those same characteristics and for the same end-users. Petitioners state that the POSCO's Group's reported sales databases indicate that it produced substantial quantities of products with such physical characteristics prior to the operation of the new line. Petitioners also note that POSCO's product brochures pre-dating the new line explicitly indicate that the products with the characteristics in question were previously available, and thus should not be considered ''new'' to respondent's production. Furthermore, petitioners argue that the magnitude of the investment in the new line, relative to that of POSCO's total value of property, plant, and equipment, was not a ''substantial additional investment,'' as is required by the SAA in order for the startup adjustment to be considered in the context of a ''new product.'' Finally, petitioners argue that the SAA at 836 indicates that improved or smaller versions of a product will not render the product a ''new product,'' and that the products to which the POSCO Group refers would be disqualified on this basis.

Regarding the second prong, petitioners state that evidence on the record clearly demonstrates that POSCO's production levels were not affected by its ''startup'' operations, and that the POSCO Group failed to demonstrate that ''technical factors'' negatively affected production. As noted earlier, petitioners argued that production levels were not depressed, and in fact they note that information on the record demonstrates that the difference between the monthly average production for the startup period as defined by the POSCO Group and the monthly production level for the line in question at the end of this period only represents a very small percentage of total estimated production of corrosion-resistant products. With regard to the influence of technical factors upon production levels, petitioners argue that the POSCO Group, in its own case brief, acknowledged that POSCO experienced no chronic production difficulties, and that it experienced no significant technical difficulties preventing it from bringing the line in question to commercial production levels in relatively short order.

Petitioners state that the SAA provides that to the extent necessary the Department would consider other factors, such as historical data reflecting producers' experiences in producing the same or similar products, and whether factors unrelated to startup operations may have affected the volume of production, such as market conditions of supply and demand, or seasonality or business cycles. SAA at 836–7. However, petitioners argue, the POSCO Group provided no such support, but rather only unsupported claims. For example, petitioners challenge the POSCO Group's assertion in its case brief that POSCO's substantial experience in starting up similar operations is relevant in helping explain what might be characterized as low initial production levels in this instance.

Petitioners argue that if a startup adjustment is granted, it cannot cover a period beyond May 1996, given the reported production levels for June 1996 and the POSCO Group's statement in its March 3, 1997, Supplemental Section D response at 31 that the company completed test production at the end of May 1996 and followed this testing period with commercial production. Petitioners also argue that any such adjustment would need to be limited to the specific operation in question, and that, because such information is not available on the record, the actual amounts of the adjustment cannot be calculated.

Department's Position. We agree with petitioners that the POSCO Group failed to demonstrate that it is entitled to a startup adjustment for the line in question. The POSCO Group's assertions regarding the output of the line constituting a ''new product'' are contradicted by the record. For example, the POSCO Group's databases and product brochures indicate that the POSCO Group manufactured products such as those produced from the new equipment prior to its installation. The POSCO Group indicated at verification ''that the new line is capable of processing thinner and narrower merchandise than its other galvanizing lines, and that the intended uses of steel produced on the new line were for home appliances'' produced by companies such as two Korean manufacturers, but the POSCO Group conceded upon later questioning ''that the galvanized steel produced on its other lines could also be used for home appliances.'' June 27, 1997, Korea verification report at 2. The information noted at verification also indicates that the product range of the line in question is basically comparable to that of other POSCO Group lines with respect to dimensions.

If the products in question were truly new, as the POSCO Group has argued, assertions regarding the consistently high demand for POSCO's other products and its high capacity utilization at other lines would be irrelevant with respect to the second prong of the startup cost test, which requires that the production levels were limited by technical factors. The demand and supply associated with POSCO's other galvanizing lines could be unrelated to the supposedly thinner products being manufactured for appliance manufacturers on the new line. Furthermore, if the products were in fact new, there is no reason for distributing an adjustment concerning products in CONNUMs allegedly targeted to Korean appliance manufacturers to all galvanized products, including products in other CONNUMs purchased by U.S. customers. As noted by petitioners, such line-specific information is not available on the record.

In addition, it is not clear that the new line in question constitutes a new facility, as required by the new startup adjustment provision. The line is one of many producing merchandise similar to that manufactured on numerous other lines by POSCO and POCOS. The POSCO Group provides no convincing evidence that the new line should be considered ''new production facilities'' or ''the substantially complete retooling of an existing plant.''

The POSCO Group's assertion that it met both prongs of the requirement fails on other grounds. Even accepting that the general demand for POSCO galvanized merchandise, relative to overall capacity, was high, the POSCO Group has not demonstrated that production levels on the new line were limited by technical factors. At verification in Korea, the Department ''requested additional information pertaining to the claimed startup adjustment'' (June 27, 1997, Korea verification report at 2), and the POSCO Group provided what is contained in Korea verification Exhibit 37. The POSCO Group is incorrect in its assertion that that exhibit indicates at 3 that production was limited during the initial months so that the products would meet required stringent quality standards before full production ensued. That page provides no information detailing the reasons for the variations in monthly output. Furthermore, even assuming that production levels were limited by technical factors (as also noted by petitioners), it is not clear from the record when commercial production levels were reached.

Because the POSCO Group has not met both conditions for being granted a startup adjustment, we have not made such an adjustment in the final results.

Comment 38. The POSCO Group argues that the Department erred when it adjusted POCOS's reported costs for quality. The POSCO Group argues that POCOS's cost accounting system does not track the quality of the input, so an adjustment was not warranted. The POSCO Group argues that, when reporting costs, the Department requires that companies rely on the actual costs as recorded in the normal accounting system if that system is in accordance with the foreign country's GAAP and it is clear that the figures do not distort the dumping calculations. *See Ferrosilicon from Brazil; Final Results of Antidumping Duty Administrative Review,* 61 FR 59407, 59409 (November 22, 1996) (''*Ferrosilicon*''). The POSCO Group notes that in many cases where respondents have not relied on their normal accounting system to report costs, the Department has applied adverse facts available. *See Certain Cut-to-Length Carbon Steel Plate from Sweden; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 51898, 51899 (October 4, 1996) (''*Swedish Plate*''). The POSCO Group argues that the Department has only adjusted a respondent's reported costs which are based on its normal accounting system where the Department determined that those normal practices resulted in an unreasonable allocation of production costs. *Semiconductors* at 15472. The POSCO Group argues that in cases where a company has been unable to provide costs at the level of detail requested by the Department, the Department has accepted the reported costs where it was satisfied that those costs nonetheless reasonably reflected the actual costs of producing the subject merchandise during the POR. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 13815, 13817 (March 28, 1996). The POSCO Group characterized cost differences between commercial, drawing, and deep drawing products as ones ''perceived'' by the Department. Finally, based on a reference elsewhere to the Department's preliminary adjustment for coating weight costs, the POSCO Group seemingly characterized the adjustments made by the Department for quality as the use of adverse facts available.

Petitioners argue that the facts in these reviews for this issue are identical to those in the second administrative reviews, where the Department made a similar adjustment to the POSCO Group's reported costs. Petitioners argue that the adjustment in question is not adverse, though the Department would have been justified in making the adjustment based upon adverse facts available because the POSCO Group did not provide product-specific cost information as requested by the Department and, in not doing so, it did not act to the best of its ability to comply with the Department's request for information. *See* section 776(b) of the Act.

Petitioners' argue that the POSCO Group's reference to *Ferrosilicon* is inapposite because the Department's decision to use the respondent's reported costs in that case was based upon the conclusion that the figures did not distort the dumping calculations, which clearly is not so in this case. Petitioners argue that submitted cost data for POSCO, which accounts for quality differences, suggest that failure to account for quality differences may lead to significant understatement of certain products' costs. Petitioners state that the POSCO Group's reference to *Swedish Plate* is also inapposite, because the Department resorted to facts available in that case not because the respondent failed to rely on its normal cost accounting system or developed a new cost system just for purposes of reporting, but rather ''[b]ecause the company was unable to reconcile the submitted cost data to its normal accounting books and records.'' *Id.* at 51899.

Furthermore, petitioners argue that the Department's use of facts available in *Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Brazil,* 58 FR 37091 (July 9, 1993) (''*Flat-Rolled Steel from Brazil*'') supports the Department's preliminary decision in these reviews. In the Brazilian case, petitioners note, the Department found that the respondent had improperly aggregated its production costs based on certain product characteristics, and submitted production costs which included the average cost of extras, with the result that, according to the Department, the respondent's submitted costs, as averaged over several different products, ''did not appropriately specify the cost of individual extras, as required by the Department.'' *Id.* at 37097.

Finally, petitioners note that if POCOS is selling products with different quality characteristics, it presumably would take this fact into account in pricing its products.

Department's Position. The Department has relied upon POCOS's normal accounting system, except to the extent that it determined that doing so would result in an unreasonable allocation of production costs and a possible distortion of dumping margins. The apparent inability of POCOS to distinguish costs on the basis of quality indicates that its reported costs do not reflect the actual costs of producing the subject merchandise at the level of detail desired by the Department. The quality characteristic is relatively high in the Department's model-matching hierarchy, and the POSCO Group companies distinguish between qualities in their selling practices. The presence of non-trivial differences between costs of CONNUMs produced by POSCO that differ in terms of the Department's hierarchy only for quality supports the contention that this is a characteristic for which differences should be reflected in costs, and the Department's approach in *Ferrosilicon* would not be appropriate here.

As noted in the Department's September 2, 1997, preliminary analysis memorandum at 7, the adjustment made to the costs for POCOS commercial, drawing, and deep-drawing qualities reflected a methodology comparable to that used in the final results of the second administrative reviews. At no time during these reviews did the POSCO Group suggest an alternative methodology, even though the Department's questionnaire indicated that the POSCO Group should report a single weighted-average cost for each unique product as represented by a specific CONNUM. However, because POCOS does not track costs based on quality, and because the Department did not insist that the POSCO Group devise a methodology to estimate differences in POCOS costs for quality, the use of adverse facts available, such as that used in *Swedish Plate* and in *Flat-Rolled Steel from Brazil,* would not be appropriate. The non-adverse nature of the adjustment the Department made in its preliminary results is demonstrated by the fact that the Department utilized data from POSCO CONNUMs that were chosen based on their aggregate production quantity, rather than on the magnitude of the differences in cost, and upon the fact that the methodology utilized resulted in the costs of some CONNUMs being decreased, while the costs of others were increased. *Id.* at 8. Furthermore, the Department's use of POSCO data to adjust the costs of POCOS production for quality is reasonable because the Department has collapsed these companies. The POSCO Group, in fact, urged the Department to base POCOS's substrate input costs upon POSCO's actual costs of producing that input, and the use of POSCO's costs as a basis for adjusting reported POCOS costs for quality is consistent with this approach.

Comment 39. The POSCO Group asserts that the Department, in its preliminary results, penalized the POSCO Group for submitting average costs for merchandise with different coating weights. The POSCO Group states that these average costs reflect the treatment of coating weight in POSCO's normal accounting system, that the Department had no basis for applying adverse facts available for different coating weights, and that the same arguments that it made for the Department's adjustments for quality apply to this issue. The POSCO Group argues that the costs reported were consistent with POSCO's accounting system. The POSCO Group states that based upon its experience in the distribution of produced coating weights, the product distribution of POSCO galvanized products is ''skewed toward one value,'' and cites figures that it alleges are based upon reported home market sales information. Consequently, the POSCO Group argues, its decision not to track such costs is reasonable and its normal system not distorting. The POSCO Group argues that average costs for specific costs are often reported to and accepted by the Department.

The POSCO Group argues that the Department's methodology for calculating the adjustment for coating weight of POSCO products is erroneous, in that it was based upon information derived from POCOS production. The POSCO Group argues that even if one were to assume that coating weight cost differences at POCOS are the same as at POSCO, the Department's applied cost differentials for each coating weight implicitly assumes that POSCO's distribution of production of coated products is identical to that of POCOS. The POCOS Group argues that if the Department continues to adjust for POSCO coating weight differences, it should base its cost differential adjustments upon the distribution of production of POSCO coated products.

Petitioners argue that, as in the case of the adjustment for quality, the Department's adjustment for the POSCO Group's failure to account for the distribution of coating weight costs across different products was appropriate. Petitioners state that the POSCO Group did not report to the best of its ability, and that its reported costs distort the dumping analysis. Petitioners state that reported data for POCOS, which tracks costs by coating weight, indicate that the costs of certain products may be significantly understated if coating weight is not taken into account. Petitioners contest the POSCO Group's assertion regarding the distribution of POSCO production by coating weight, and the POSCO Group's conclusions from these data regarding the acceptability of the reported costs for POSCO products and the appropriateness of the Department's adjustment based upon POCOS production.

Petitioners counter the POSCO Group's statement that the Department often accepts the use of average costs for various items, such as labor, overhead, and SG&A, noting that it is the Department's clear practice to reject averages in cost reporting where it prevents the use of product-specific costs in its margin calculations, and that the Department usually prefers weighted averages to simple averages.

Finally, petitioners note that if POSCO is selling products with different coating weights, it presumably would take this fact into account in pricing its products.

Department's Position. The Department has relied upon POSCO's normal accounting system, except to the extent that it determined that doing so would result in an unreasonable allocation of production costs and a possible distortion of dumping margins. The apparent inability of POSCO to distinguish costs on the basis of coating weight indicates that its reported costs do not reflect the actual costs of producing the subject merchandise at the level of detail desired by the Department. The coating weight characteristic is relatively high in the Department's model-matching hierarchy, and the POSCO Group companies distinguish between coating weights in their selling practices. The presence of non-trivial differences between costs of CONNUMs produced by POCOS that differ in terms of the Department's hierarchy only for coating weights supports the contention that this is a characteristic for which differences should be reflected in costs, and the Department's approach in *Ferrosilicon* would not be appropriate here.

As noted in the Department's September 2, 1997, preliminary analysis memorandum at 8, the adjustment made to the costs for POSCO coating weights reflected a methodology comparable to that used in the final results of the second administrative reviews. At no time during these reviews did the POSCO Group suggest an alternative methodology, even though the Department's questionnaire indicated that the POSCO Group should report a single weighted-average cost for each unique product as represented by a specific CONNUM. However, because POSCO does not track costs based on coating weight, and because the Department did not insist that the POSCO Group devise a methodology to estimate differences in POSCO costs for coating weight, the use of adverse facts available, such as that used in *Swedish Plate* and in *Flat-Rolled Steel from Brazil,* would not be appropriate. The non-adverse nature of the adjustment the Department made in its preliminary results is demonstrated by the fact that the Department utilized data from POCOS CONNUMs that were chosen based on their aggregate production quantity, rather than on the magnitude of the differences in cost, and upon the fact that the methodology utilized resulted in the costs of some CONNUMs being decreased, while the costs of others were increased. *Id.* at 8–9.

The Department's use of POCOS data to adjust the costs of POSCO production for coating weight is reasonable because the Department has collapsed these companies. The POSCO Group in fact urged the Department to base POCOS's substrate input costs upon POSCO's actual costs of producing that input, and the use of POCOS's costs as a basis for adjusting reported POSCO costs for coating weight is consistent with this approach. Basing an adjustment upon a distribution of POSCO products, as the POSCO Group requests, is not feasible for the simple reason that POSCO does not track costs for coating weight. A completely neutral redistribution of costs relating to coating weights is not possible. Furthermore, basing an adjustment to costs upon verified cost information such as the Department did in its preliminary results is preferable to basing one upon unsubstantiated assertions about production that the respondent has founded upon ambiguous references to sales data and introduced late in the proceedings in its case brief.

The POSCO Group could have proposed alternative methodologies earlier in the process, and in fact did not immediately provide all of its information pertaining to POSCO tracking of coating weights. In its original questionnaire response, the POSCO Group failed to identify the meaning of certain digits in the POSCO RPG product code. Asked about those digits in a supplemental questionnaire, the POSCO Group stated that they related to coating weight and were not utilized for cost purposes (see the March 3, 1997, Section D supplemental questionnaire response at 22–23), but this explanation significantly understated the extent to which such information had been previously utilized. Id. and the June 27, 1997, Korea verification report at 10–11.

Comments by Union

Comment 40. Union contends that the Department improperly classified Union's post-sale warehousing expenses as indirect selling expenses, instead of as movement expenses, contrary to Department practice.

Department's Position. We agree with respondent and have adjusted our analysis accordingly for these final results.

Comment 41. Union asserts that the Department improperly reclassified certain EP sales as CEP sales on the basis of some reported expenses, which appeared to suggest that further processing had been incurred, whereas the amounts in question merely reflected demurrage and handling, a fact which was reported in Union's response.

Petitioners do not agree that the Department can conclude that there was no further processing done on subject merchandise in the United States. Petitioners mention that Exhibit 29 of Union's home-market verification report, in which a warehousing provider enumerated its policies, together with the absence of certain warehousing-related charges on a sale examined at verification, suggests that further processing must have been performed. Petitioners also reiterate their argument that all of Union's U.S. sales should be reclassified as CEP sales due to the active role it alleges UADD played in selling subject merchandise.

Department's Position. This comment is moot as a result of our reclassification of most of Union's U.S. sales as CEP transactions, as explained above in the ''Fair-Value Comparisons'' section of this notice and in the Department's Position in response to Comment 20.

Final Results of Reviews

As a result of these reviews, we determine that the following margins exist for the period August 1, 1995 through July 31, 1996:

Producer/manufacturer/exporter	Weighted-average margin (percent)
Certain Cold-Rolled Carbon Steel Flat Products	
Dongbu	1.21
POSCO	0.63
Certain Corrosion-Resistant Carbon Steel Flat Products	
Dongbu	0.60
POSCO	0.53
Union	0.39

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. As discussed above, because the number of transactions involved in this review and other simplification methods prevent entry-by-entry assessments, we have calculated exporter/importer-specific assessment rates. With respect to both EP and CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the U.S. Customs Service to assess the resulting percentage margins against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of the reviewed sales is not necessarily equal to the entered value of entries during the POR (particularly for CEP sales), use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of certain cold-rolled and corrosion-resistant carbon steel flat products from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates stated above, except for Union, which had a *de minimis* margin, and whose cash deposit rate is therefore zero; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in a previous segment of these proceedings, the cash deposit will be the company-specific rate published for the most recent segment; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the most recent segment of these proceedings; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or the LTFV investigation, the cash deposit rate will continue to be 14.44 percent (for certain cold-rolled carbon steel flat products) or 17.70 percent (for certain corrosion-resistant carbon steel flat products), which were the ''all others'' rates established in the LTFV investigations. *See Flat-Rolled Final* at 37191.

Article VI¶5 of the GATT (cited earlier) provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.'' This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations; Certain Steel Products from Korea* (58 FR 37328—July 9, 1993), which is 0.05 percent *ad valorem*, will be subtracted from the cash deposit rate for deposit purposes.

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

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

This notice also is the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations (19 CFR 353.34(d)). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply is with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations (19 CFR 353.22).

Dated: March 9, 1988.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–6883 Filed 3–17–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 9, 1997, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), August 1, 1995, through July 31, 1996. We gave interested parties an opportunity to comment on our preliminary results. We also issued a supplemental questionnaire on December 18, 1997, on the issues of reimbursement and level of trade. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–0405 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1997, the Department published in the **Federal Register** (62 FR 47418) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (58 FR 44172, August 19, 1993), as amended pursuant to Court of International Trade (CIT) decision (61 FR 47871, September 11, 1996). On December 5, 1997, the Department published in the **Federal Register** (62 FR 64354) a notice of extension of the time limit for completion of this review until March 9, 1998. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (1997).

Scope of This Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The POR is August 1, 1995, through July 31, 1996. This review covers entries of certain cold-rolled carbon steel flat products from the Netherlands by Hoogovens Staal B.V. (Hoogovens).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from the respondent (Hoogovens) and petitioners (Bethlehem Steel Corporation, U.S. Steel Company (a Unit of USX Corporation), Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company).

Comment 1: Petitioners argue that Hoogovens failed to segregate properly its warranty and technical service expenses into direct and indirect portions, as required under the law. Where a respondent fails to report warranty and technical service expenses in direct and indirect components, petitioners claim that the Department's practice is to treat the expenses as direct in the U.S. market, and to deny any adjustment in the home market. According to petitioners, the CIT has upheld this policy on several occasions. See *RHP Bearings* v. *United States*, 875 F. Supp. 854, 859 (CIT 1995).

Petitioners argue that the three categories of warranty and technical service expenses Hoogovens identified and reported as part of indirect selling expenses (the amount of credit notes issued to customers to satisfy claims of defective merchandise, the cost of returned merchandise, and travel