scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Agritope has begun consultation with FDA on the subject cantaloupe lines.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Agritope's cantaloupe lines A and B and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 10th day of March 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–6345 Filed 3–15–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–019N]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Fresh Produce Subcommittee of the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold a public meeting on March 29, 1999, to review and discuss its ongoing work on sprouts.

DATES: The Fresh Produce Subcommittee will meet at 9:00 a.m. on March 29, 1999.

ADDRESSES: The public meeting will be held in Room 1813 Federal Office Building 8, 200 C Street, SW, Washington, DC 20240. Persons interested in making a presentation, submitting technical papers, or providing comments should contact Ms. Amelia L. Wright, Advisory Committee Specialist, Scientific Research Oversight Staff, Food Safety and Inspection Service, Department of Agriculture, Suite 6913 Franklin Court, 1400 Independence Avenue, SW, Washington, DC 20250–3700, or by FAX 202–501–7366. Comments and requests may be provided by e-mail to amelia.wright@usda.gov. Submit one original and two copies of comments to the FSIS Docket Clerk, Docket No. 99–019N, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. All comments submitted in response to this notice will be considered part of the public record and will be available for viewing in the Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Wright by March 24, 1999. All meeting rooms will be wheelchair accessible.

This meeting is open to the public; however, space is limited and will be on a first-come first-serve basis. Please register by March 24, 1999, by contacting Ms. Catherine M. DeRoever, Center for Food Safety and Applied Nutrition, Food and Drug Administration, by FAX 202–205–4970 or by e-mail cderoeve@bangate.fda.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Amelia L. Wright, Advisory Committee Specialist, Scientific Research Oversight Staff, Food Safety and Inspection Service at the address given above.

SUPPLEMENTARY INFORMATION:

Background

NACMCF provides advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on the microbiological safety and wholesomeness of food by assessing available data as it relates to the human health consequences of food safety. The Committee also provides guidance to the Departments of Commerce and Defense.

The Fresh Produce Subcommittee will be editing and revising its white paper on sprouts. Dr. Robert L. Buchanan, Senior Science Advisor, Center for Food Safety and Applied Nutrition, Food and Drug Administration, will be the subcommittee chair.

Done at Washington, DC, on March 9, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–6343 Filed 3–15–99; 8:45 am]

BILLING CODE 3410–DM–P

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, 1998, 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, 1996, through July 31, 1997. 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 16, 1999.

FOR FURTHER INFORMATION CONTACT: Juanita Chen (Dongbu), Becky Hagen (POSCO), Cindy Sonmez (Union), Steve Bezirganian, or James Doyle, AD/CVD Enforcement Group III—Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone 202/482–0409 (Chen), 202/482–1102 (Hagen), 202/482–0961 (Sonmez), 202/482–0162 (Bezirganian), or 202/482–0159 (Doyle), fax 202/482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''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 the regulations at 19 CFR Part 351 (1998).

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 1996/97 review period on August 4, 1997 (62 FR 41925). On August 29, 1997, respondents Dongbu Steel Co., Ltd. (''Dongbu'') and Union Steel Manufacturing Co., Ltd. (''Union'') requested that the Department conduct an administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Korea, 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. On September 2, 1997, petitioners in the original less-than-fair-value (''LTFV'') investigations (AK Steel Corporation; Bethlehem Steel Corporation; Inland Steel Industries, Inc.; LTV Steel Company; National Steel Corporation; and U.S. Steel Group—A Unit of USX Corporation) requested that the Department conduct administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea with respect to all three of the aforementioned respondents. We initiated these reviews on September 19, 1997 (62 FR 52092—September 25, 1997).

On August 31, 1998, the Department issued the preliminary results of the these administrative reviews. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Preliminary Results of Antidumping Duty Administrative Reviews, 63 FR 48173 (September 9, 1998) (''Korean Flat-Rolled 4th Reviews Prelim.''). The Department has now completed these administrative reviews in accordance with section 751 of the Act.

Scope of the Review

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 U.S. Customs purposes. The written descriptions remain dispositive.

The period of review (''POR'') is August 1, 1996 through July 31, 1997. These reviews cover sales of certain cold-rolled and corrosion-resistant carbon steel flat products by POSCO and the companies collapsed with POSCO (referred to collectively as ''the POSCO Group''), Dongbu, and Union.

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 normal value (''NV''), as described in Korean Flat-Rolled 4th Reviews Prelim., modified as noted in this notice.

Verification

We verified information provided by the POSCO Group with respect to its costs, including on-site inspection of facilities, the examination of relevant accounting and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the cost verification report. See Cost Verification Report—Pohang Iron and Steel Company, Ltd., from Bill Jones and Symon Monu to Christian Marsh (August 5, 1998).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from the POSCO Group, Dongbu, Union, and petitioners. The POSCO Group and petitioners requested a public hearing, which was held on October 29, 1998.

Comment 1: Home Market Credit Days

While the Department's preference is to calculate shipment-specific credit days based on the difference between shipment date and payment date, when actual payment dates are not readily accessible in respondents' accounting systems the Department may accept calculations based on the average age of accounts receivable. In these reviews, as in prior reviews of these antidumping duty orders, respondents' calculations of customer-specific credit days are based on the average age of receivables during the POR. Specifically, credit days for each customer equals average monthly POR receivables for the customer divided by average daily POR sales to the customer.

Petitioners argue that respondents' methodology is inherently flawed because it includes accounts receivable from prior periods as well as from the POR, and allocates those receivables only over sales made during the POR. Petitioners note that unless the volumes of sales and payments are stable over time, this method will distort the calculation of the credit period. Petitioners state that the potential for manipulation is particularly high when the calculation of credit expenses for U.S. sales is based on actual rather than estimated credit periods.

Petitioners argue that it is appropriate to analyze several years' worth of accounts receivable and sales data to determine whether the estimates are consistent with historical experience and, therefore, accurate. Petitioners note that such analysis is typical for calculations of warranty expenses, which are generally estimates of actual warranty expenses. Petitioners state that for Dongbu and Union the overall average credit period across all home market customers for two years' worth of aggregate data on accounts receivable and sales varied significantly from the overall average credit period across all home market customers for just one years' worth of such data.

Regarding the POSCO Group specifically, petitioners note that despite POSCO's statements before the U.S. Securities Exchange Commission regarding the importance of POSCO's stated credit terms, the Department neither utilized those stated credit terms for its credit days calculations nor explained why it did not. Petitioners argue that, contrary to POSCO's statements, POSCO did not charge and receive interest revenue in cases where customers substantially exceeded normal payment terms.

Petitioners argue that the Department should base the calculation of credit days on one of two alternative methodologies proposed by petitioners prior to the issuance of the preliminary results of these reviews: (1) calculating the credit periods as done by respondents but using several years' worth of data on accounts receivable and sales rather than just the data for the POR; or (2) using the POR accounts receivable and sales data, but excluding the accounts receivable resulting from prior periods' sales. Petitioners also note that the Department, in its preliminary results, rejected POSCO's arbitrary selection of credit days for several customers, but did not make any adjustments either for other aberrant calculations of credit days for POSCO customers or those for Union and Dongbu customers. Petitioners argue that if the Department chooses not to apply either of petitioners' proposed methodologies, it should at the very least reject calculated credit expenses based on aberrationally high credit days.

The POSCO Group argues that its reported home market credit expenses were based on the same methodology used for the calculation of credit days in prior reviews. The POSCO Group argues that it did not know the date of payment for each transaction, and that its credit days methodology does not yield systematically overstated or aberrant results. The POSCO Group argues that most customers maintain a fairly constant level of sales and accounts receivable activity. Regarding petitioners' allegations pertaining to the POSCO Group's stated credit terms, the POSCO Group states that the record indicates that the use of promissory notes for payment in Korea typically adds up to 30 additional days to a customer's payment terms and that, in any case, the POSCO Group's transaction-specific payment terms are merely guidelines and do not represent the actual payment dates for specific transactions. The POSCO Group states that it is a commercial reality that a company may not be able to charge, let alone collect, interest revenue from all of its customers for late payment. The POSCO Group notes that the Department's rejection of credit expenses for several customers does not indicate that the POSCO Group's entire home market credit methodology should be rejected.

Dongbu and Union argue that the existence of long credit periods for certain customers does not render their credit calculations distortive and unreliable, and state that they reported home market credit expenses based on the same credit days methodology in prior reviews. Dongbu and Union note that receivables balances during the POR may include unpaid balances from sales before the POR but, similarly, there will be sales during the POR with outstanding receivables after the POR. Dongbu and Union conclude that the balances brought into the POR from sales prior to the POR will not be markedly dissimilar from the balances carried forward from sales during the POR. Dongbu and Union argue that while the Department has, at times, used historical warranty figures because of the often periodic and intermittent nature of those expenses, credit, by contrast, is extended to one degree or another to most customers, and the Department does not compare POR credit expenses to prior experience. Dongbu and Union argue that the Department correctly noted, in its preliminary results, that the sample of customers it analyzed included aberrationally high credit days, and correctly did not apply a shorter period for those customers. Unlike for the POSCO Group, for which the Department rejected certain calculated credit days because they were arbitrarily selected by the POSCO Group, all of the calculated credit days for Dongbu and Union were based on the methodology as stated. Contrary to petitioners'

assertion, argue Dongbu and Union, there is no significant variation in the average credit periods across all home market customers using two years' worth of aggregate data on accounts receivable and sales compared to just one years' worth of such accounts receivable and sales data.

Department's Position: In its preliminary results, the Department recognized that respondents' methodology included accounts receivable from prior periods as well as from the POR, and allocated those receivables only over sales made during the POR. However, the Department agrees with Dongbu and Union that this methodology also includes sales during the POR with outstanding receivables after the POR. Petitioners implicitly accept this point in their argument that the methodology distorts the calculation of the credit period unless the volumes of sales and payments are stable over time. While it is certainly possible that for some customers the balances brought into the POR from sales prior to the POR will be ''markedly dissimilar'' from the balances carried forward from sales during the POR, it is not clear that any systematic credit-reporting distortion exists for the respondents in these reviews. The Department requested documentation from respondents supporting seemingly aberrant results for those customers with particularly long credit periods. The information provided by respondents, with one exception, indicates that respondents utilized the methodology as stated in their initial questionnaire responses and as employed in prior reviews. The only exception involved those few customers for which the POSCO Group arbitrarily set credit days equal to 365 days, in contradiction to its stated calculation methodology as described above.

Furthermore, the variation in average credit days for all customers based on one years' worth of data versus two years' worth of data was not significant enough to call into question the general reasonableness of the methodology utilized. That variation also does not justify using a non-customer specific calculation of credit days, given the preference of the Department to calculate imputed credit on as specific a basis as possible.

Variation between POSCO's stated credit terms and the actual calculated credit days for its customers may, and in fact did, provide a basis for analyzing the nature of POSCO's relationships with its customers. However, such variation does not justify using its credit policy as the basis for the calculation of credit days, given that the Department has accepted the inherent reasonableness of the respondents' methodology and the accuracy (with the exception noted above) of the data used as the basis for the calculation of credit days.

For its final results, the Department has continued to utilize the respondents' home market imputed credit expense methodology, and has also continued to deny any credit expense for sales by the POSCO Group to customers for which the POSCO Group arbitrarily assigned credit days of 365.

Comment 2: Interest Expenses as Part of Indirect Selling Expenses

Petitioners argue that the Department should deduct from CEP the interest expenses incurred by the U.S. selling affiliates of the POSCO Group, Union, and Dongbu. The statute requires that the Department deduct from CEP all selling expenses, including indirect selling expenses, defined as ''any selling expenses'' not deducted as commissions, direct selling expenses, or selling expenses that the seller pays upon behalf of the purchaser. See section 772(d) of the Act. The Statement of Administrative Action explains further that indirect selling expenses are expenses that ''would be incurred by the seller regardless of whether the particular sales in question are made, but reasonably may be attributed (at least in part) to such sales.'' See URAA Statement of Administrative Action, H.R. Doc. No. 103–316, at 824 (1994) (''SAA''). Petitioners argue that because a company incurs interest expenses to finance its selling activities (separate from the financing of accounts receivable), including interest expenses in the indirect selling expenses calculation is appropriate. Petitioners cite several cases in which the Department deducted from CEP interest expenses incurred by U.S. sales affiliates. See Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review, 63 FR 38373, 38381 (July 16, 1998) (''Cookware from Mexico''); Certain Fresh Cut Flowers from Colombia; Final Results and Partial Recission of Antidumping Duty Administrative Review, 62 FR 53287, 53294 (October 14, 1997); Certain Cold-Rolled Carbon Steel Flat Products from Germany; Preliminary Results of Antidumping Duty Administrative Review, 60 FR 39355 (August 2, 1995), unchanged in Certain Cold-Rolled Carbon Steel Flat Products from Germany; Final Results of Antidumping Duty Administrative Review, 60 FR 65264, 65281 (December 19, 1995) (''Cold-Rolled from Germany''); and Notice of Amended Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled Carbon Steel Flat Products from Korea; Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 63 FR 20572, 20573 (April 27, 1998). In Cookware from Mexico, 63 FR at 38381, the Department noted its practice of deducting respondent's depreciation, financial and bad debt expenses, which are considered related to respondent's sales of the subject merchandise and thus deducted from CEP pursuant to section 772(d)(1)(D). In Cold-Rolled from Germany, 60 FR at 39355, petitioners note, the Department included that portion of the interest expense attributable to the U.S. selling affiliate in calculating the U.S. indirect selling expense adjustment. In the present reviews, according to petitioners, the respondents sold subject merchandise in the United States through affiliated entities that performed various U.S. selling functions and, in addition to incurring expenses that the Department normally treats as indirect selling expenses, these affiliated entities incurred interest expenses that were related to these selling functions.

Petitioners argue that respondents have not demonstrated how the inclusion of interest expenses in indirect selling expenses would ''double-count'' the credit or inventory carrying cost deductions. Petitioners state that respondents simply assert that because most, if not all, of their U.S. affiliates' borrowing was short-term, their loans cover the financing of in-transit inventory and accounts receivable as well as activities unrelated to the sale of the subject merchandise. Petitioners argue that respondents did not demonstrate that the affiliates' borrowings covered such financing. Because money is fungible, petitioners argue, these borrowings could have been used for other purposes (e.g., payment of salaries of those involved with U.S. sales of subject merchandise).

Petitioners argue that the imputed credit expense and the interest expenses of the affiliates are not equivalent because the imputed credit expense adjustment is made to account for the time value of money between shipment and payment independent of whether or not a company incurs non-imputed interest expenses. Therefore, petitioners argue, the interest expense figure cannot be automatically attributed to the imputed credit expense, nor can the inclusion of interest expenses in indirect selling expenses automatically be deemed to constitute double-counting. Petitioners provide

calculations of the adjustments they claim are appropriate for the POSCO Group, Dongbu, and Union, based on the assumption that the interest expenses in total should be included in the calculation of the indirect selling expenses deducted from CEP. Petitioners also state that if the Department wrongly determines that some portions of these interest expenses relate to the financing of accounts receivable or to non-subject merchandise, then the Department must for each respondent deduct from CEP the portion of the interest expenses that do not relate to financing of accounts receivable or to non-subject merchandise. Petitioners provide estimates for such alternative adjustments to the reported indirect selling expenses of the U.S. affiliates of the POSCO Group, Dongbu, and Union.

The POSCO Group argues that the Department's standard practice is not to include interest expenses in indirect selling expenses because such inclusion would constitute double-counting. The POSCO Group cites several cases, including Final Determination of Sales at Less Than Fair Value: New Minivans from Japan, 57 FR 21937, 21956–57 (May 26, 1992) (''Minivans from Japan''), which the POSCO Group states articulate the Department's policy of not deducting U.S. affiliates' interest expenses from CEP. The POSCO Group cites several other cases, including Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review, 63 FR 13204, 13205 (March 18, 1998) (''Cold-Rolled from the Netherlands''), in which the Department did not in fact deduct such expenses from CEP. The POSCO Group argues that such a deduction would constitute double-counting, given that imputed credit expenses are deducted from CEP. The POSCO Group cites Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692, 31721 (July 11, 1991) (''AFBs from Germany'') as an example where the Department reduced interest expenses from indirect selling expenses to account for the portion of those expenses related to imputed credit and inventory carrying cost.

The POSCO Group characterizes the cases cited by petitioners as ''aberrant'' ones in which the direct issue of whether interest expense should be deducted from the price in the United States was apparently never briefed or litigated, or in which the deduction of interest expenses involved use of facts available. Furthermore, the POSCO Group notes that the Department determined in its preliminary results that the interest expenses should not be included in indirect selling expenses because virtually all of those interest expenses relate to the financing of receivables or to borrowings involving non-subject merchandise. The POSCO Group states that the interest rates it used to calculate the imputed credit expenses for sales by the U.S. sales affiliates reflect all of the short-term borrowings of the affiliates. The POSCO Group states that the long-term interest expenses of POSAM relate to enterprises not involved with entries of subject merchandise, such as its joint venture with U.S. Steel. Furthermore, the POSCO Group argues, the sales of such enterprises, contrary to petitioners' assertion, are not included in the denominator used for the calculation of the indirect selling expenses factor. Finally, the POSCO Group argues that inclusion of the interest expenses of the U.S. affiliates in indirect selling expenses would constitute double-counting because POSAM's interest expenses are reflected both in POSCO's cost of production (''COP'') and in the calculated total profit which is used as a basis for the determination of CEP profit.

Union argues that it demonstrated that the majority of the interest expenses of its U.S. affiliate, DKA, are incurred on behalf of non-subject merchandise, and that the remainder relate to the financing of accounts receivable for subject merchandise. Union notes that there is very little activity at DKA, beyond the inventory carrying and credit periods that are separately included in the CEP calculation, that is related to subject merchandise which could have been financed through borrowings. Union argues that in Cookware from Mexico, the U.S. affiliate only performed activities related to the sale of subject merchandise, but that DKA was engaged in numerous other activities, including exporting merchandise purchased in the United States. Union argues that in its preliminary results the Department followed its consistent practice, articulated in Minivans from Japan and reflected in prior reviews of the order on certain corrosion-resistant carbon steel flat products from Korea, of not including interest expenses when calculating indirect selling expenses. Union argues that it has demonstrated that DKA's interest expenses are primarily related to non-subject merchandise and long-term interest, and that including the remaining, small portion of U.S. interest expenses attributable to financing accounts receivable would double-count these expenses as the Department's imputed credit expense has already accounted for them.

Dongbu argues that the interest rate used for the calculations of imputed credit and inventory carrying cost were based on the interest expenses incurred by Dongbu USA on its short-term borrowings in the POR. Dongbu indicates that these expenses were incurred for financing receivables and inventory, and that deductions from CEP for these expenses were made through the imputed credit and the inventory carrying cost variables.

Department's Position: The Department disagrees with respondents' assertions that the Department's policy is to exclude interest expenses of U.S. sales affiliates from U.S. indirect selling expenses because imputed credit and inventory carrying cost expenses are already deducted from the U.S. starting price. As noted by petitioners, there are various cases in which the Department has stated explicitly that it was deducting both an amount of actual interest expenses and imputed expenses. Furthermore, petitioners are correct in stating that the Department deducts imputed credit expenses whether or not a company incurs non-imputed interest expenses. This practice accords with section 772(d)(1)(D) of the Act, which dictates that the Department deduct from the CEP starting price ''any'' indirect selling expenses associated with the sale of the subject merchandise in the United States.

The Department's decision in Minivans from Japan is consistent with a general principle that the deduction of imputed and certain actual interest expenses may constitute double-counting. However, interest expenses incurred by sales affiliates may relate to activity other than the financing of inventory or accounts receivable, and still be associated with sales of subject merchandise. In AFBs from Germany, cited by the POSCO Group, the Department indicated that it ''reduced interest expenses on the firm's books for a portion of the expense related to these activities {imputed credit and inventory carrying cost} to avoid double-counting'' (emphasis added), as those imputed credit and inventory carrying costs were being deducted from U.S. starting price. See 56 FR at 31721. This indicates that any reduction to actual interest expenses to avoid double-counting would not exceed the amount of the imputed expenses. As we stated in the final results of the prior reviews, ''{w}e do not agree with {respondent's}

argument that an imputed credit figure covering the entire credit period inherently includes all credit/financing expenses.'' See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170, 13175 (March 18, 1998) (''Korean Flat-Rolled 3rd Reviews Final'').

The Department under appropriate circumstances excludes some portion or all of a U.S. sales affiliate's interest expenses in its calculation of indirect selling expenses (as, for example, in Cold-Rolled from the Netherlands, 63 FR at 13205, which neither provides, nor was meant to provide, an exhaustive list of what may be included in indirect selling expenses). To the extent that a U.S. affiliate's interest expenses are associated with non-subject merchandise, the Department does not deduct them from the CEP starting price. We also note that, because the activities of U.S. sales affiliates differ considerably across cases, the Department must determine the appropriate universe of CEP deductions on a case-by-case basis. In this case, we excluded interest expenses associated with non-subject merchandise. Further, we reduced the remaining amount of interest expenses for an amount attributable to financing accounts receivable and inventory, leaving nothing left to include in the calculation of indirect selling expenses.

Comment 3: Movement Expenses and the Calculation of CEP Profit

Petitioners argue that the Department must implement the Court of International Trade (''CIT'') decision in *U.S. Steel Group—A Unit of USX Corp.* v. *United States,* Slip Op. 98–96 (Ct. Int'l Trade, July 7, 1998) by excluding movement expenses from the total expenses denominator used for the calculation of the CEP profit ratio. Petitioners argue that the total expenses denominator, like the U.S. expenses numerator of the CEP profit ratio, should only include expenses pertaining to the production and sale of the subject merchandise. Petitioners state that the calculation should not include movement expenses, which are neither production expenses nor sales expenses. Petitioners argue that this interpretation is consistent with the statute (see sections 772(f)(2)(B) and (C) of the Act) and supported by the legislative history (see SAA at 824) and the Senate Report, S. Rep. No. 103–412 at 66 (1994). Petitioners indicate that the very structure of the statute distinguishes between movement expenses (see section 772(c)(2)(A)), selling expenses (see section 772(d)(1)), and manufacturing expenses (see section 772(d)(2)).

Petitioners cite several cases in which movement expenses are distinguished from selling expenses. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from the Republic of South Africa, 62 FR 61084, 61091 (November 14, 1997). Petitioners note that the Department, consistent with longstanding practice, recognized these distinctions in these very reviews of steel from Korea when defining groups of reported expenses for the sales databases as movement or as selling expenses.

Petitioners argue that the inclusion of movement expenses in the total expenses denominator is unreasonable for the same reasons that the CIT indicated in U.S. Steel Group: it conflicts with past Department practice of distinguishing between movement expenses and production or selling expenses; it does not provide proportionality between the numerator and the denominator in the CEP profit ratio; and it is unnecessary because the Department has never explained why total actual expenses for determining total actual profit (the amount by which the CEP profit ratio is multiplied to determine total CEP profit) must be defined in the same manner as total expenses used in the denominator of the CEP profit ratio.

Finally, petitioners note that the Department deducts movement expenses from net price in calculating the gross amount of constructed value (''CV'') profit, but does not include movement expenses either in total COP (by which CV profit is divided to arrive at the CV profit ratio) or in total CV (by which the CV profit ratio is multiplied to arrive at the CV profit amount). Accordingly, petitioners note, the treatment of movement expenses in the derivation of the CV profit amount is in fact entirely consistent with the treatment of movement expenses in the calculation of CEP profit mandated by U.S. Steel Group.

The POSCO Group argues that the single CIT case that petitioners rely on is not binding on the Department, and is apparently wrongly decided. The POSCO Group asserts that it is the Department's consistent and standard policy to include movement expenses in the total U.S. expenses denominator of the CEP profit ratio. The POSCO Group states that the statute requires that all expenses be used in the ''total expenses'' calculations, and that the term ''production and sale'' is not a limiting term because no broader term could have been used. The POSCO Group argues that the U.S. Congress would have explicitly excluded movement expenses from the total expenses definition if it had intended that such a radical reading be given to the term ''total expenses.'' The POSCO Group states that, given that the subject merchandise must be moved to the United States in order to be sold, it makes sense to include those movement expenses in the CEP calculation.

Union and Dongbu argue that neither the statute nor the legislative history defines ''total expenses.'' Union and Dongbu note that the CIT, in U.S. Steel Group, held that the language defining total expenses is not entirely clear as to whether movement expenses should be included in the ''total expenses'' denominator. Union and Dongbu argue that if the Department seeks to determine what percent of ''total expenses'' is represented by the U.S. expenses, that total expenses amount must include all expenses, and not some subset of expenses. Union and Dongbu argue that the plain language of section 772(f)(2)(C) of the Act defines ''total expenses'' as ''all expenses,'' and that the statute assigns the profit to the additional CEP expenses only. Union and Dongbu note that petitioners do not object to other elements of cost, such as cost of manufacture (''COM'') and pre-import selling expenses, bearing their share of profit. Union and Dongbu state that movement expenses, like these other elements of cost (*e.g.*, COM and pre-import selling expenses), should not be assigned the CEP profit. In other words, Union and Dongbu reiterate, the statute seeks to deduct profit from the U.S. starting price only on those expense components that it has defined as additional CEP expenses. Union and Dongbu argue that the fact that the ''total expenses'' denominator is not defined specifically by the statute indicates that the prescription to include ''all expenses'' should be interpreted to mean just that. Furthermore, Union and Dongbu argue, the plain reading of ''all expenses * * * with respect to the production and sale'' would certainly include movement expenses, since transport of the merchandise is part of the sale.

Finally, Union and Dongbu state that the Department recognizes movement expenses as a cost in the calculation of CV profit, by either reducing the sales revenue by the amount of the freight and not including freight in the cost, or by leaving the sales price untouched and including freight in the COP. Union and Dongbu argue that the same principle applies to the calculation of CEP profit: movement expenses must

either be deducted from the sales prices in both markets or added to the COP in both markets.

Department's Position: We agree with respondents. The Department is currently appealing the CIT's decision in U.S. Steel Group, and will continue to follow its policy of including movement expenses in the denominator of the CEP profit ratio in accordance with its interpretation of section 772(f) of the Act. See Policy Bulletin 97.1, ''Calculation of Profit for Constructed Export Price Transactions'' (Sept. 4, 1997).

Nothing in the statute or its legislative history requires the Department to calculate a CEP profit ratio in the manner suggested by petitioners (*i.e.*, a ratio of total United States expenses to total expenses). To the contrary, the statute narrowly defines ''total United States expenses'' (the numerator) to include only commissions, direct and indirect selling expenses, expenses assumed by the seller on behalf of the purchaser, and the cost of further manufacturing.'' See sections 772(f)(2)(B) and (d)(1) and (2) of the Act. Because movement expenses may only be deducted from the U.S. starting price pursuant to section 772(c)(2)(A), the statute effectively prohibits their inclusion in the buildup of total United States expenses for purposes of the CEP profit ratio. The statute similarly excludes other types of expenses (*e.g.*, U.S. import duties) from the total United States expenses numerator because they are deducted under section 772(c) rather than section 772(d). See section 772(c)(2)(A) of the Act.

Unlike the definition of ''total United States expenses,'' the statute does not further define ''total expenses'' (the denominator) incurred in the production and sale of the merchandise. In fact, the CIT specifically acknowledged that ''the language defining total expenses is not entirely clear as to whether movement expenses should be included in the total expenses denominator.'' U.S. Steel Group, Slip Op. 98–96, at 14. However, section 772(f) of the Act requires the Department to use ''total actual profit'' in calculating the total CEP profit amount. Thus, to the extent that a producer/exporter and its U.S. affiliate incur movement expenses to deliver the merchandise to customers, these expenses must be included in total expenses in order to calculate actual profit. Indeed, this interpretation is based on the axiom that total profit equals total revenue minus total expenses, and resolves any confusion surrounding the definition of total expenses in favor of the inclusion of movement expenses. Accordingly, petitioners' argument that the Department distinguishes between movement and selling expenses in other aspects of the antidumping analysis is not persuasive. In short, all movement expenses incurred by the seller must be included in total expenses in order to calculate total profit accurately.

Petitioners' argument that including movement expenses in the denominator of the CEP profit ratio is unreasonable because it does not provide ''proportionality'' has no merit. The ratio is by definition the proportion of total expenses represented by total U.S. expenses, a subset of total expenses. In fact, the Department has properly calculated this proportion.

Further, we do not believe it is reasonable, as petitioners suggest, to interpret ''total expenses'' one way in calculating a respondent's actual profit, and another way in summing expenses for the denominator of the CEP profit ratio. Rather, the more reasonable approach is a unified reading of the CEP profit provisions in which the meaning of ''total expenses'' does not vary. Finally, petitioners' comparison of the Department's CV profit methodology with their proposed interpretation of the CEP profit calculation is unavailing. These calculations are performed under entirely different statutory provisions that involve different definitions. The essential question here is how reasonably to interpret the definition of total expenses for purposes of the CEP profit calculation. Because the statutory goal of accurately calculating total profit and allocating a portion of the total profit to CEP sales is served by the Department's current CEP profit methodology, we have continued to apply the methodology established in Policy Bulletin 97.1.

Comment 4: U.S. Date of Sale

The Department noted in its preliminary results that while it may use as date of sale a date other than the invoice date if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale, it preliminarily determined that there is no reason to depart from the Department's normal practice of using the invoice date. Accordingly, the Department used as date of U.S. sale the reported date of invoice from the U.S. sales affiliate to the first unaffiliated U.S. customer, and characterized this as typical for CEP sales. See Korean Flat-Rolled 4th Reviews Prelim., 63 FR at 48176.

Petitioners argue that the Department should determine that the contract date was the date of sale because the material terms of sale became final at that date. Petitioners also argue that the Department was incorrect in indicating that it has a distinct CEP date of sale methodology.

Petitioners state that the Department should not accept the separate date-of-sale methodology for EP and CEP sales urged by Union and Dongbu in its earlier responses (which was to adopt date of invoice to the U.S. affiliate as date of sale if the sale was classified as an EP transaction, and to adopt date of invoice by the U.S. affiliate to the unaffiliated U.S. customer if the sale was classified as a CEP transaction). Petitioners note that, in the third administrative reviews of these antidumping duty orders, the Department indicated that changing the classification of U.S. sales from EP to CEP transactions had no effect on the date of sale, and that there is no EP date-of-sale methodology, as claimed by respondents. See Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13174.

Petitioners note that CEP sales can be made either before or after the date of importation (see section 772(b) of the Act). As such, petitioners state, there is no reason to assume that the CEP sale was made after importation. Petitioners also state that assuming that the CEP sale was made after importation would violate the rule that the date of sale cannot occur after the date of shipment to the ultimate customer. Petitioners assert that the Department's general preference for using the invoice date as the date of sale is predicated on the assumption that the invoice date falls close to the date of shipment. In fact, in the third reviews of these orders, the Department determined that the shipment date relevant in this regard was the date of shipment from the factory in Korea, and not shipment from the U.S. port.

Petitioners state that the Department recently exercised its discretion to use a date other than invoice date as the date of sale in a case where the respondents' home market and U.S. sales processes appear to have been the same as those of Union, Dongbu, and the POSCO Group in these reviews. With regard to the appropriate date of sale for these sale processes, the Department stated:

> ''invoice'' dates in both markets, while the same in name, are materially quite different for purposes of determining price discrimination simply because the sales processes for the two markets are quite different. If we were to use invoice date as the date of sale for both markets, we would effectively be comparing home market sales in any given month to U.S. sales whose

material terms were set months earlier—an inappropriate comparison for purposes of measuring price discrimination in a market with less than very inelastic demand.

See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 63 FR 32833, 32835–6 (June 16, 1998) (''Pipe from Korea''). As in that case, petitioners argue, the Department should determine that for the POSCO Group, Dongbu, and Union the only dates which are substantively equivalent for purposes of measuring price discrimination are the invoice date in the home market and the contract date in the U.S. market. All three respondents reported that their U.S. sales are made to order, and that once the order is confirmed, the U.S. affiliate issues a sales contract or order confirmation setting forth the essential terms of sale. The merchandise is then produced to order and shipped to the U.S. customer. For all three respondents, there are typically delays of several months between the contract date and the date of invoice to the unaffiliated U.S. customer. The sample sales documents in the responses indicate that there were no material changes to the terms of sale after issuance of the sales contract. In the home market, however, as with the respondent in Pipe from Korea, the sales of Union and Dongbu are from inventory, and once the order is received the merchandise is shipped and the invoice issued almost immediately.

Petitioners argue that because the respondents did not report the contract date for their U.S. sales, the Department should resort to facts available to estimate a contract date. Petitioners state that for all three respondents the reported date of shipment from Korea is generally the closest reported date to the contract date.

The POSCO Group notes that the Department used date of invoice as date of sale in the final results of the third reviews of these orders, that petitioners stated explicitly on the record of the fourth reviews that they were not questioning POSCO's date of sale methodology in the fourth reviews, and at no time in these fourth reviews did the Department or petitioners suggest that POSCO should report the contract/order confirmation as date of sale. The POSCO Group argues that use of invoice date as date of sale is consistent with Department regulations. The POSCO Group argues that the Department's proposed regulations (see Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7330–1 (February 27, 1996) (''Proposed Regulations'')) and the Department's original questionnaire in these fourth reviews (at page 4 of Appendix I) indicate there are generally two exceptions to the Department's preference for invoice date as date of sale: (1) if a sale is made pursuant to a long-term contract; and (2) if an exceptionally long period of time passes between the invoice date and shipment date. The POSCO Group notes that the Department applies a different date of sale in such cases only when the different date of sale ''better reflects the date on which the exporter or producer establishes the material terms of sale.'' See 19 CFR 351.401(i).

The POSCO Group also argues that use of invoice date as date of sale is consistent with Department practice. In addition to the Department's use of invoice date as date of sale in the third reviews of these orders, the Department also used invoice date in other recent cases where various petitioners argued that agreement dates were more appropriate: Brass Sheet and Strip from the Netherlands: Notice of Preliminary Results of Antidumping Duty Administrative Review, 63 FR 25821, 25822 (May 11, 1998) (''Brass from the Netherlands''); Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 63 FR 55578, 55588 (October 16, 1998) (''Pipe from Thailand''); Certain Steel Wire Rope from Mexico; Final Results of Antidumping Duty Administrative Review, 63 FR 46753, 46755 (September 2, 1998) (''Wire Rope from Mexico''); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon from Chile, 63 FR 2664, 2667 (January 16, 1998) (''Salmon from Chile''); and Certain Stainless Steel Wire Rod from India; Final Results of New Shipper Antidumping Duty Administrative Review, 62 FR 38976, 38978–89 (July 21, 1997) (''Wire Rod from India'').

The POSCO Group argues that the Department cannot use facts available against a respondent where the Department never requested the information, and that it would be unfair to POSCO to seek a change in the date of sale for the first time as a result of arguments in petitioners' brief because there is not adequate time for POSCO to provide information in order for the Department to fully analyze this issue. For these reasons alone, the POSCO Group argues, petitioners' arguments on date of sale should be rejected.

The POSCO Group argues that petitioners' apparent proposal to use two different dates of sale for the two markets would directly contradict the Department's finding in a recent case, in which the Department rejected petitioners' argument for use of confirmation date as U.S. date of sale because to do so would have established different bases for date of sale in the U.S. and home markets, and because the terms of sale in the United States could change after the order confirmation date. See Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany: Final Results of Antidumping Duty Administrative Review, 63 FR 13217, 13226 (March 18, 1998) (''Small Pipe from Germany''). For one of the U.S. sales for which the POSCO Group provided sales documentation, the POSCO Group notes that the quantity ultimately shipped to the customer varied enough from the originally ordered quantity to reflect a change in the terms of sale. This distinguishes these reviews from the sole precedent cited by petitioners, Pipe from Korea.

Finally, the POSCO Group agrees with petitioners that there is no CEP date of sale methodology, but notes there is no evidence that the Department used any such methodology in its preliminary results. Rather, the POSCO Group argues, the Department simply followed its normal practice of using invoice date as date of sale, a practice developed to foster predictability of outcomes and ease in reporting and verifying information.

In their rebuttal briefs, Union and Dongbu state that in the third reviews of these orders the Department ''used the date of invoice to the first unaffiliated purchaser in the United States as the date of sale,'' and that in the preliminary results of these fourth reviews the Department again decided to use the date of invoice from the U.S. sales affiliate to the first unaffiliated U.S. customer. Union and Dongbu argue that the preamble to the Department's final regulations note that this date-of-sale methodology promotes predictability of outcomes, and that invoice date is the best indicator of the date of sale because the terms are fixed when the seller demands payment (*i.e.*, when the sale is invoiced). Union and Dongbu argue that the fact that sales terms are rarely altered after the initial agreement is quite distinct from a finding that they are ''finally established'' at that date. Whether they are rarely or frequently changed does not diminish the fact that they could, and sometimes do, change, which means that they are not finally established as of the date of contract. Furthermore, Union and Dongbu argue,

it is burdensome to both respondents and the Department to report and verify contract dates.

Union and Dongbu argue that if the Department follows the precedent of Pipe from Korea because the sales processes in that case were comparable to those in these reviews, then it should also classify the U.S. sales of the three respondents in these reviews as EP sales, given that the U.S. sales of the respondent in the pipe case were classified as EP sales. Furthermore, Union and Dongbu note that the Department only requested that Union provide contract dates in its sales databases. Union notes that use of these dates would contradict the date of sale methodology used in the final results of the prior review, where the same fact pattern existed. Dongbu notes that facts available cannot be used for its date of sale because the Department did not ask it to report contract dates.

Finally, Union and Dongbu argue that the Department did not employ a new CEP date of sale methodology in its preliminary results but, rather, simply noted that it was typical for the date of sale of CEP sales to be the date of the invoice to the unaffiliated U.S. customers.

Department's Position: While we agree with respondents that it is the Department's normal practice to use invoice date as date of sale, we disagree with the respondents' assertions regarding the circumstances in which the Department is to resort to use of invoice date as date of sale. Long-term contracts and exceptionally long periods of time between invoice date and shipment date are examples of situations where reliance upon invoice date as date of sale would be inappropriate as date of sale, regardless of convenience. In most of the cases cited by the POSCO Group (Brass from the Netherlands, 63 FR at 25822; Pipes from Thailand, 63 FR at 55587–88; Wire Rope from Mexico, 63 FR at 46755; and Wire Rod from India, 62 FR at 38979), the Department indicated that it was using invoice date as date of sale because it had no reason to believe that the terms of sale were established on some other date. In Salmon from Chile, no clear reason for use of date of invoice is indicated, but it is evident that use of the date of invoice was in accordance with policy, and no party suggested otherwise.

Nevertheless, even if documentation from a few sample U.S. sales suggests that essential terms of sale did not change after initial contract date, this does not demonstrate that essential terms of sale were not subject to change after initial contract date, or that essential terms of sale did not in fact change after initial contract date for significant numbers of sales. The Department has no basis to conclude that essential terms of sale were set and not subject to change at the initial contract date. Consequently, we do not agree with petitioners' assertion that the appropriate U.S. date of sale, for these reviews, is contract date. While we agree with petitioners that the Department has no CEP-specific date-of-sale methodology, and that the determination that the U.S. sales were CEP sales does not preclude a date of sale prior to invoice date to the unaffiliated U.S. customer, we have determined that it would not be appropriate to consider contract date as U.S. date of sale for the reasons noted above.

However, it is clear that for U.S. sales, unlike home market sales, a significant amount of time may elapse between shipment from Korea and invoicing of the unaffiliated customer. There is also nothing on the record to suggest that terms of sale were subject to change after the merchandise was shipped from Korea. Neither petitioners nor respondents have asserted that the essential facts relating to date of sale have changed between the third and fourth administrative reviews of these orders, and respondents in fact refer to the appropriateness of the Department's U.S. date-of-sale determination in the third reviews in their arguments pertaining to the fourth reviews. The Department stated in its final results for the third reviews that ''we 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'' (see Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13172–73). This methodology was consistent with the Department's general use of invoice date as date of sale, and its recognition that both the setting of essential terms of sale and the amount of time between shipment and invoicing are also relevant. There is no evidence on the record that terms of sale were subject to change after the invoicing of the U.S. customers by the U.S. affiliates, but this date in certain instances can be considerably later than the shipment date from Korea. Therefore, in these final results we have followed the Department's methodology from the final results of the third reviews, and have based date of sale on invoice date from the U.S. affiliate, unless that date was subsequent to the date of shipment from Korea, in which case that shipment date is the date of sale. Consistent with this approach, we have calculated imputed credit for U.S. sales based on the length of time between shipment from Korea and payment by the unaffiliated U.S. customer.

Comment 5: Exporter Price (''EP'') vs. Constructed Export Price (''CEP'')

The POSCO Group argues that the Department erred in categorizing its U.S. sales as CEP sales. The POSCO Group argues that such classification is unsupported by the record evidence and contrary to consistent Department practice. The POSCO Group indicates that the functions of the U.S. affiliates were limited to those of processors of sales-related documentation and communications links with the unaffiliated U.S. buyers, and that their role was only ancillary in the sales process. The POSCO Group argues that POSCO and POCOS approved or disapproved primary terms of sale for U.S. customers, and that the U.S. affiliates did not set prices with those unaffiliated U.S. customers. The POSCO Group argues that the Department's findings in the second reviews of these orders, in which the Department treated its U.S. sales as EP sales, are consistent with this description of the limited role of the U.S. affiliates.

The POSCO Group states that its U.S. sales meet the three-part criteria considered by the Department in classifying transactions as EP sales: (1) the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) this was the customary commercial channel of trade between the parties involved; and (3) the U.S. sales affiliates were mere processors of sales related documentation and communications links with unaffiliated customers in the United States. The POSCO Group argues that since they have met the Department's three-part test, there is a long line of Department and court precedent classifying these transactions as EP sales and the Department should reclassify POSCO's and POCOS's U.S. sales as EP sales. The POSCO Group cites *Independent Radionic Workers of America* v. *United States*, 19 CIT 375 (1995); *Zenith Electronics Corp* v. *United States*, 18 CIT 870, 873–75 (1994); Industrial Phosphoric Acid from Belgium, 63 FR 25830, 25831 (May 11, 1998); and Circular Welded Non-Alloy Steel Pipe from Korea, 62 FR 55574, 55579 (October 27, 1997).

While the POSCO Group acknowledges that the Department found the U.S. sales of its affiliates to be CEP sales in the final results of the third

reviews of these orders, the POSCO Group contends that finding was incorrect. Furthermore, the POSCO Group states that the fourth reviews are distinguished from the third reviews in that sample documentation for a fourth review period POSCO U.S. sale indicates that the customer contacted POSCO directly, and that POSCO itself rejected price terms. The POSCO Group also notes that sample documentation for a fourth review period POCOS U.S. sale indicates that the sale did not proceed until POCOS's confirmation of the customer's inquiry. The POSCO Group also argues that there is no evidence in the fourth reviews indicating that the U.S. affiliates had any input on the price charged to U.S. customers, which the Department incorrectly asserted did exist in the record of the third reviews (see Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13183). The POSCO Group also notes that, unlike in the third reviews, in the fourth reviews it provided all of the direct and indirect selling expenses incurred by the U.S. sales affiliates, and the POSCO Group argues that these expenses clearly show that the levels of SG&A attributable to sales of subject merchandise through those affiliates are an insignificant portion of total SG&A of those affiliates.

The POSCO Group notes that the Department treated as EP transactions sales made by POSAM in Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Korea, 63 FR 40404 (July 29, 1998) (''Wire Rod from Korea''). In that case, the Department found: that ''POSAM had no substantial involvement in the sales process, such as sales negotiation, providing technical support, or handling warranty claims, with respect to subject merchandise;'' that ''POSAM does not negotiate sales terms with U.S. customers, but rather relays pricing information'' between the Korean producer and the U.S. customer; that for each sale examined at verification the Korean producer ''ultimately accepted or rejected the sales price;'' and evidence of indirect contact between the Korean producer and the U.S. customer (see *id.* at 40419). The Department found that the functions performed by POSAM, ''document processing and other ancillary activities related to the sales of subject merchandise to the U.S. customer (*e.g.*, clearing customs, arranging for U.S. transportation, issuing invoices, and collecting payment),'' were consistent with a classification of sales as EP sales, and that ''POSAM had no substantial involvement in the sales process.'' *Id.* The POSCO Group argues that this analysis is consistent with that for the U.S. affiliates in these reviews, given that they did not negotiate prices but merely relayed pricing information, and that they did not provide technical support, handle warranty claims, or accept or reject the price for all sales of subject merchandise.

The POSCO Group also notes that the Department treated as EP transactions sales made under similar circumstances in Certain Welded Stainless Steel Pipe from Taiwan; Final Results of Administrative Review, 63 FR 38382 (July 16, 1998) (''Pipe from Taiwan''). In that case, the POSCO Group notes, the U.S. affiliate did not play a major role in the sales negotiation process or the selling activities, was not responsible for setting the prices of U.S. sales, and did not control the markup it earned on the resale of the goods purchased in back-to-back deals for the foreign parent (*id.* at 38385). The Department found that the functions performed by the U.S. affiliate in that case, ''issuing invoices, collecting payment, paying antidumping duty deposits, and taking title to the subject merchandise after entry into the United States' (*id.* at 38386) were consistent with the classification of the sales as EP sales, and these functions were the same as those performed by the U.S. affiliates in these fourth reviews.

Finally, the POSCO Group cites several cases in which it claims that the U.S. affiliates were more involved in the sales process than the affiliates in these fourth reviews, but for which the U.S. sales were classified as EP sales. Some of the additional functions performed by the affiliates in those cases included limited advertising, processing certain warranty claims, warehousing, and provision of technical services.

Union argues that the facts surrounding the activities undertaken by Union's U.S. affiliate have not changed from the third reviews and are not in dispute. Union attached to its brief pages from the third review verification reports as evidence of the limited role played by its U.S. affiliate, noting that verifications were not conducted for the fourth reviews. Union disagrees with the Department's decision in the final results of the third reviews to treat its U.S. sales as CEP sales, and argues that the Department must reclassify its fourth review U.S. sales as EP sales.

Dongbu argues that the facts surrounding the activities undertaken by its U.S. affiliate have not changed from the third reviews. Dongbu attached to its brief pages from the third review verification reports as evidence of the limited role played by its U.S. affiliate. Dongbu argues that should the CIT agree that the Department erred in its classification of Dongbu's sales in the third review as CEP sales, the Department will likewise have to reclassify its fourth review U.S. sales as EP sales.

Petitioners note that Union and Dongbu present no new argument why their U.S. sales should be treated as EP sales rather than CEP sales, and that they accept that the nature of the transactions in this regard was the same as in the third reviews, in which the Department found that the U.S. sales were in fact CEP sales.

Regarding the POSCO Group, petitioners note that the Department found its U.S. sales in the third reviews to have been CEP sales, and that the POSCO Group, like Union and Dongbu, had stated affirmatively on the record of the fourth reviews that its U.S. affiliates performed the same functions during the fourth review period as they did during the third review period. Furthermore, the Department had conceded as erroneous its determination in the second reviews that the POSCO Group's U.S. sales were EP sales rather than CEP sales in the appeal process before the CIT. Petitioners note that the Department even prior to its preliminary determinations in these fourth reviews, in its April 10, 1998, supplemental questionnaire, had instructed the POSCO Group to report its U.S. sales as CEP transactions.

Petitioners argue that the POSCO Group misstates the Department's CEP test when it implies that its U.S. sales are EP because its affiliates do not independently negotiate or approve sales to unaffiliated customers. Rather, the Department analyzes whether or not the role played by the U.S. affiliates was ''ancillary'' in the sales process. As long as the U.S. affiliate plays an active role in bringing about the U.S. sale, that sale will be classified as a CEP transaction even if the foreign parent does play some role in the sales process. Petitioners note that even if POSCO had some contact with a U.S. customer in a particular sale, which they assert is not established by the record, it does not demonstrate that POSAM was not involved in negotiating price terms for the underlying sale, or that POSAM was not involved in the sales process in more than an ''ancillary'' way more generally for U.S. sales. Petitioners note that the POSCO Group does not even argue that POCOS had direct contact with any of its customers.

Petitioners distinguish between the sales processes in these reviews and those in the other cases cited by the

POSCO Group. Petitioners note that in Wire Rod from Korea, 63 FR at 40418, the Department indicated that the Korean exporter had direct and substantive contact with U.S. customers (export strategy meetings wherein substantive terms of sale, payment and delivery terms were discussed and from which the exporter established its quarterly price lists). Petitioners note that in Pipe from Taiwan, 63 FR at 38385–6, the Department indicated that the respondent's customers had frequent direct contact with the producer in Taiwan, and that the producer itself responded directly to customers' price inquiries. Petitioners state that these aspects of the aforementioned two cases were not present in the reviews at issue here.

Petitioners argue that the level of general expenses incurred for subject vs. non-subject merchandise is not relevant for determining the importance of the U.S. affiliates in the sales process for subject merchandise and, given that the POSCO Group reported indirect selling expenses by dividing all such expenses by total sales, the percentage of indirect selling expenses borne by all of the affiliates' U.S. sales, subject or non-subject, will be the same. Furthermore, the functions performed by the U.S. sales affiliates for non-subject merchandise sales are not relevant in this context, either. Rather, the more appropriate comparison would be of indirect selling expenses incurred by POSCO and POCOS vs. those incurred by the U.S. affiliates for the same sales.

Department's Position: We agree with petitioners that the U.S. sales of Dongbu, the POSCO Group, and Union during the POR should be classified as CEP, rather than EP, transactions.

As noted by petitioners and all three respondents, the essential facts surrounding the activities of respondents' U.S. sales affiliates did not change from the third to the fourth administrative review periods. In the third reviews, based in part upon extensive verifications of the U.S. sales affiliates of Dongbu, POCOS, POSCO, and Union, the Department determined that U.S. sales for these companies were properly classified as CEP, rather than EP, transactions. Specifically, the Department concluded:

> 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.

Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13172.

In continuing to find that CEP classification is appropriate, and as petitioners note, U.S. sales affiliates need not be determined to have independently set U.S. prices and other terms of sale for those affiliates' involvement to be deemed more than ancillary. Rather, the Department must examine the totality of the circumstances surrounding the U.S. sales process, and assess whether the reviewed sales were effectively made ''in the United States'' for purposes of section 772(b) of the Act. Accordingly, in this analysis, neither the magnitude of indirect selling expenses incurred, nor the performance of a specific sales function—such as actual negotiation—is controlling. We stress that the Department's approach does not constitute a departure from its practice, or abandonment of the three-part sales classification test. Rather, this approach gives effect to the third prong of the test—whether the U.S. affiliate is more than a mere processor of sales-related documentation and communication link.

Turning to the evidence in this case, the U.S. affiliates: (1) Take title to the subject merchandise; (2) invoice and receive payment from their unaffiliated U.S. customers; (3) arrange for other aspects of the transactions, including Customs clearance, brokerage, and freight; and (4) serve as a source of information about the producer/exporters' products.

More specifically, the POSCO Group notes that its U.S. sales affiliates assist in the negotiations between the manufacturer and the unaffiliated U.S. customers, and U.S. customers contact POSAM to initiate discussions concerning the base price and total quantity. POSCO and POCOS provide the U.S. affiliates quarterly base prices for U.S. sales. The POSCO Group's U.S. sales affiliates also arrange for various functions related to transporting the merchandise to the unaffiliated U.S. customer. While those U.S. sales affiliates may not incur expenses for the publication of product brochures/catalogues, those items are made available to U.S. customers at the offices of the U.S. affiliates. Additionally, POSAM performs certain unspecified procurement services in the United States for certain specialized purchases. As we stated in the final results of the previous reviews, ''it is POSCO's and POCOS's roles that may be ancillary to the sales process . . ., and that in any case the record does not demonstrate that the U.S. affiliates' involvement in making the sales were incidental or ancillary.'' *Id.* at 13183.

With respect to Dongbu, the organizational structure of its U.S. affiliate, Dongbu USA, indicates that Dongbu USA staff are involved with selling subject merchandise. Dongbu USA issues sales contracts to the U.S. customers. Dongbu USA also processes shipment-related documentation and arranges for the U.S. broker to enter the merchandise, thereby incurring costs associated with these functions. It is also solely responsible for payment of antidumping and countervailing duty deposits. While Dongbu Steel may arrange for publication of product brochures and other company literature, these items are available at Dongbu USA. As we stated in the final results of the previous reviews, ''the totality of the evidence regarding Dongbu's sales process demonstrates that {Dongbu USA's} role is more than ancillary to the sales process.'' *Id.* at 13177.

With respect to Union, its U.S. affiliate, Dongkuk International (''DKA''), arranges with commissioned agents in the United States to refer customers to DKA. The initial discussion regarding customer orders is generally conducted over the phone between DKA and the customers. DKA advises the U.S. customers about Union prices based on information DKA receives from Union. Union employees at DKA may also offer comments to Union in Korea about the circumstances relevant to a particular sale. DKA issues sales contracts to the U.S. customers. DKA also arranges for banking services that relate to the U.S. sales process. Furthermore, DKA processes warranty claims, arranges warehousing and transportation at the customer's request, and prepares for the release of the merchandise to the customer when it arrives at the U.S. port. As we stated in the final results of the previous reviews, ''{t}he 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 {DKA}.'' *Id.* at 13190.

Importantly, no record evidence shows that the Korean manufacturers/exporters in this case were involved in the U.S. sales processes to the extent the respondents were in cases in which we have found EP treatment appropriate. See, *e.g.*, Pipe from Taiwan, 63 FR at 38386 (unaffiliated U.S. customers maintained direct contact with the foreign exporter or producer); Wire Rod from Korea, 63 FR at 40418 (producer held an export strategy meeting with its

U.S. customers wherein substantive terms of sale, payment, and delivery terms were discussed, and during which the producer established its pricing policy based on quarterly price lists); and Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13183 (POSCO had substantive direct involvement in the sales to one U.S. customer, while POSAM's role was very limited). Rather, the only inference supported by the record is that, in virtually all instances, the producer/exporters' export departments merely approved sales offers forwarded by their U.S. affiliates. That the Korean export departments theoretically could have intervened to a greater extent does not alter the conclusion that, during the POR, a substantial portion of the sales process occurred in the United States. Therefore, U.S. sales during the fourth POR are properly treated as CEP sales.

Comment 6: U.S. Sales Universe

Dongbu contends that the Department incorrectly excluded certain U.S. sales made outside the POR, but entered during the POR, from its margin calculation. Dongbu argues that the Department requested all of Dongbu's U.S. sales entered during the POR and thus should include all reported sales in its final margin calculation. Dongbu argues that the CIT has upheld the practice of reviewing and assessing dumping duties on all entries of the merchandise made during the POR, regardless of when the entered merchandise was sold, in *Helmerich & Payne, Inc.* v. *United States*, Slip Op. 98–134 (Ct. Int'l Trade Sept. 17, 1998). Dongbu notes that while the Department will only use sales within the POR to calculate dumping duties in CEP situations where sales cannot be tied to entries, this situation does not exist in this case as Dongbu can tie its U.S. sales to entries. Dongbu also argues that consistency in the Department's reporting requirements will avoid confusion in the fifth administrative review.

Petitioners state that they take no position on the issue. However, petitioners argue that if the Department decides to include all of Dongbu's U.S. entries for the POR, the Department must do the same for the POSCO Group and Union as well. Petitioners assert that while the POSCO Group has reported the necessary information for such an analysis, Union has not. Petitioners note that Union has not provided contemporaneous home market sales for most of the U.S. sales of merchandise that entered during the POR which had a date of sale after the POR. In such an instance, the Department would be required to use facts available for all of Union's unmatched U.S. sales. Petitioners argue that if the Department decides to review all entries during the POR, then the Department should resort to adverse facts available for Union and apply the 10.74 percent rate assigned to Union in the first administrative review. Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 61 FR 18457, 18568 (April 26, 1996).

Department's Position: We agree with Dongbu that we should base our analysis on entries during the POR, although we note that the CIT decision in Helmerich & Payne does not mandate such a methodology. Rather, that decision stands for the proposition that the Department has discretion in EP situations to review and assess duties on entries within the POR, regardless when the corresponding sales occurred. Helmerich & Payne, Slip Op. 98–134, at 18–21. We also agree with petitioners that we should apply this methodology to the analysis for all respondents in these reviews. Where it is possible, and not excessively burdensome to respondents, to tie sales made prior to entry to entries, as in these reviews, the Department generally prefers to conduct its reviews based on POR entries, even if this means reviewing some sales made outside the POR.

Furthermore, we reject petitioners' contention that facts available must be applied for Union in this context. Given the date-of-sale methodology outlined earlier in this notice, there are no U.S. sales for which Union has failed to report contemporaneous home market sales.

Comment 7: Overruns

Petitioners argue that the Department should exclude certain low-priced home market sales of Dongbu in the final results as overruns. Petitioners argue that although Dongbu did not identify its overrun sales, it essentially admitted that it has such sales in correspondence to the Department in a letter from Dongbu's attorneys dated March 9, 1998. Petitioners argue that while Dongbu had notice that the Department requires overrun information, Dongbu intentionally failed to provide overrun information by eliminating its ability to identify overruns when installing its new computer system during the prior POR. In support of this argument, petitioners cite to Dongbu's May 18, 1998 submission, in which Dongbu states that it eliminated its overrun indicator because it felt the figure was not commercially significant and had no purpose.

Petitioners argue that the Department is required by the statute to rely on facts available when necessary or requested information is missing from the record. Petitioners argue that because Dongbu failed to report its overrun sales, which are necessary for proper price comparisons and analysis, the Department should rely on the facts available to calculate a figure for Dongbu's overruns. Petitioners note that the Department has previously used partial facts available where Dongbu has failed to report the necessary data. Petitioners reference the third administrative review where, when Dongbu reported the bill of lading date instead of the required date of shipment from the factory, the Department used a date closer to the date of shipment from the factory, rather than the date offered by Dongbu. See Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13178. Petitioners suggest that the Department categorize a percentage of Dongbu's lowest-priced home market sales as overruns, and base that percentage upon the percentage of POSCO's total sales that were classified as overruns, and exclude those newly classified overrun sales as outside the ordinary course of trade. Petitioners note that the Department excluded other sales because they ''resemble sales excluded by the Department in prior reviews as overruns'' (see the August 31, 1998 Memorandum from Lisette Lach to the File (''Dongbu Prelim. Analysis Memo'') and Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404, 18441 (April 15, 1997) (''Korean Flat-Rolled 2nd Reviews Final'').

In rebuttal, Dongbu argues that the Department correctly rejected petitioners' request to exclude certain Dongbu sales as overruns. Dongbu argues that the statement from the Department's preliminary determination relied upon by petitioners, stating that the Department had in past reviews excluded overruns for Dongbu, is factually incorrect. Dongbu asserts that the Department has never excluded Dongbu's prime grade overruns as outside Dongbu's ordinary course of trade. Dongbu argues that Petitioners have no legal support for suggesting that the Department similarly exclude overrun sales for Dongbu as it has excluded overrun sales for POSCO and Union. Dongbu argues that the Department's ordinary course of trade analysis focuses on the particular company. See Gray Portland Cement and Clinker from Mexico: Final Results

of Antidumping Duty Administrative Review, 63 FR 12764, 12772 (March 16, 1998) (''Cement from Mexico—March 1998''). Dongbu also argues that determinations on overrun sales for other companies have no bearing on the determination for Dongbu. See 19 CFR 351.102 (definition of ordinary course of trade).

Dongbu asserts that it produces almost exclusively for inventory in the home market, and, therefore, the only possible overruns arise from made-to-order production for export. Dongbu argues its product coding system has never had an overrun category. Dongbu explains that its previous product coding included a digit identifying the market for which unpainted galvanized products were produced, making it possible to identify which ones were produced for export that were sold in the home market. However, Dongbu argues that identification of overrun sales of these products had no bearing on the sales, because it was the quality and condition of the merchandise that was significant with respect to the conditions under which they were sold. Dongbu claims that the Department acknowledged this by never excluding Dongbu's sales of prime grade unpainted galvanized product overruns. In 1995, Dongbu eliminated the digit because it found the digit served no useful commercial purpose and the quantities involved did not justify the cost of tracking the information. Dongbu argues that petitioners' claim that Dongbu deliberately eliminated the digit to avoid having to report overrun sales is unsupported, as the Department has always determined that Dongbu's prime grade sales of overrun material were within Dongbu's ordinary course of trade.

Dongbu points out that even without an overrun category, the information needed to code home market sales of export specification material is on the record. Dongbu explains that if the second digit of the code is other than K or D, the sale of unpainted galvanized product is of export specification material. Dongbu states that there is no overlap between such sales and the ones petitioners request to be excluded. Dongbu also argues it has shown such sales are within the ordinary course of trade by demonstrating that: (1) with few exceptions the same customers purchased sales of export and domestic specification material; (2) the average quantity of the sale of export material was the same or higher than the quantity of domestic specification material; and (3) there is no definitive trend in the prices and profit ratios for domestic specification versus export specification material. See Dongbu's Supplemental Response, B–2 and B–3, and Attachment B–34 (May 18, 1998). Dongbu argues that this three-step analysis must be followed if the Department intends to exclude Dongbu's sales of overrun material. Laclede Steel Co. v. United States, 18 CIT 965 (Ct. Int'l Trade 1994).

Department's Position: We have determined that none of Dongbu's sales should be classified as overruns for purposes of the Department's analysis in these reviews. We find no basis for excluding a block of home market sales from the analysis simply because they are the lowest priced sales, and petitioners have not presented sufficient reasons for determining any of the sales in question were overruns, and therefore excludable as outside the ordinary course of trade. In its May 18, 1998 submission, Dongbu indicated that it did not have a separate classification for overrun material, and that the eliminated indicator presumably recorded whether or not the product was originally produced for the export market. Even if the information that Dongbu eliminated from its coding system might have enabled an educated guess as to what home market sales were of overruns, which has not been established by the record, there is no evidence on the record that Dongbu changed its coding system to avoid having to report overruns.

Comment 8: Certain Sales Outside the Ordinary Course of Trade

Petitioners argue that if the Department does not exclude Dongbu's low-priced sales as overruns, it should exclude what petitioners have identified as Dongbu's aberationally priced sales. Petitioners state that in its preliminary results, the Department excluded certain Dongbu home market sales as outside the ordinary course of trade, based on two factors: (1) the sales were made at aberrational prices; and (2) Dongbu characterized the sales as insignificant quantities and related to slow moving merchandise. See Korean Flat-Rolled 4th Reviews Prelim, 63 FR at 48174–75. Based on these two factors, petitioners identified over one thousand Dongbu home market sales with prices which petitioners argue are significantly less than Dongbu's POR weighted-average sales price. Petitioners state that the Department only excluded a few of these aberrational sales even though Dongbu itself, in its July 6, 1998 submission, identified the sales as ''insignificant quantities'' of ''slow moving prime grade material.'' Petitioners argue that, based on the Department's factors for exclusion of home market sales, and based on Dongbu's own characterization of the sales, all of the over one thousand sales in question should be excluded from the analysis.

Dongbu argues that the Department was correct not to exclude the other home market sales identified by petitioners as outside the ordinary course of trade. Dongbu argues that the Department has already concluded that it would be inappropriate to remove a broad portion of Dongbu's low-priced sales from the dumping analysis (see Korean Flat-Rolled 4th Reviews Prelim, 63 FR at 48174). Dongbu argues that price alone cannot be the dispositive factor. Dongbu points out that in petitioners' example, where the Department excluded certain low-priced sales for Union, such exclusions were of sales which Union made in place of a credit adjustment. Dongbu argues that Dongbu's low-priced sales were not made in place of a credit adjustment. Dongbu also argues that if Dongbu's low-priced sales are to be excluded, then so must its high-priced sales, as they also deviate from Dongbu's average home market price. Finally, Dongbu argues that exclusion of home market sales identified by petitioners as aberrationally low-priced amounts to rejection of the sales-below-cost test.

Dongbu applies a similar rationale in arguing that the Department erred in its exclusion of four sales from its preliminary analysis. Dongbu takes issue with the Department excluding four of its home market sales as outside the ordinary course of trade. Dongbu argues that the sales were identical in nature to over one thousand home market sales that petitioners suggest should be excluded but which the Department chose not to exclude in its preliminary results. Dongbu argues that the four sales failed neither the cost test nor the arm's-length test. Dongbu also argues that the excluded sales do not fall under the other circumstances in which the Department has excluded sales as outside the ordinary course of trade (such as overruns, different types of product, or unusual or unique sales). *Laclede Steel Co.* v. *United States*, 19 CIT 1076 (1995); *Cement from Mexico*—March 1998, 63 FR 12770–72; *Thai Pineapple Public Co.* v. *United States*, 946 F. Supp. 11, 15–17 (Ct. Int'l Trade 1996). Dongbu argues that the purpose of the ordinary course of trade provision was to prevent unrepresentative or irrational dumping margins. SAA at 834. While Dongbu concedes that the four exclusions are significant for Dongbu because, as a result of the exclusion, the weighted-average dumping margin increased to above *de*

minimis, Dongbu argues that the roughly one percentage point increase is neither an unrepresentative nor an irrational result.

Dongbu argues that the four excluded sales were not of overrun material nor similar to overrun sales, stressing that overrun material is basically excess material produced as part of a specific order. Dongbu asserts that the excluded sales consist of material with Korean, not U.S., specifications, and were produced for inventory, not to order. Dongbu argues that, contrary to the Department's comparison in its analysis memorandum, such sales do not compare with low-priced sales excluded for another respondent in an earlier review. See Dongbu Prelim. Analysis Memo at 9–10. In that earlier review, the merchandise was found to be obsolete, thinner than planned, or priced especially low to compensate a customer for previous payments. See Korean Flat-Rolled 2nd Reviews Final, 62 FR at 18441. Dongbu argues that the Department's comparison fails because Dongbu's sales do not have any of said characteristics, and thus the sales should not be excluded. Dongbu argues that, furthermore, a determination of what is outside the ordinary course of trade for another respondent is irrelevant in analyzing Dongbu's sales because the Department has stated that ''[i]n an ordinary course of trade inquiry, the pertinent issue is whether the conditions and practices are normal for the company in question.'' See Cement from Mexico—March 1998, 63 FR at 12772.

Dongbu also argues that merely because the sales were below the average per unit price and below the cost of production (see Dongbu Prelim. Analysis Memo at 10) does not make them aberrational; the low-priced sales merely reflect an unremarkable statistical fact. Dongbu argues that the sales already survived the cost test in section 773(b)(1) of the Act, which identifies sales below cost. Under the cost test, the sales were not disregarded as below COP because they were not made in substantial quantities (20 percent or more of Dongbu's home market sales of the product). Dongbu complains that the Department cannot then apply a second cost test which excludes sales for being made in insignificant volumes.

Dongbu argues that the Department has never rejected Dongbu's classification system, which classified the sales at issue as prime merchandise. Dongbu further asserts that it demonstrated, in its July 6, 1998 submission, that the merchandise sold had no defects, and that the merchandise was not overrun material. Dongbu argues that the merchandise was slow-moving because of its color, that it is common business practice to sell the merchandise at a reduced price, and that such transactions are not extraordinary. Dongbu argues that both the Department and petitioners acknowledged that there were over one thousand of these sales during the POR. Dongbu argues that while the Department concluded that it would be inappropriate to exclude such a broad portion of relatively low-priced Dongbu home market sales as overruns, neither could such a large number of sales be excluded as outside the ordinary course of trade other than by failing the cost test. Dongbu complains that the Department concluded that the four sales used by petitioners as examples were made under unusual circumstances, when over one thousand sales were made under the same circumstances. Dongbu argues that in doing so, the Department is following the petitioners' agenda for arbitrary margin creation.

Dongbu argues that there are sales which are the same percentage above the average price as the excluded sales are below the average price. Dongbu asserts that if petitioners' argument—that the low-priced sales should be excluded because they are likely matches for U.S. sales—is accepted by the Department, then the Department should also exclude Dongbu's high-priced sales as well as they are also likely matches for U.S. sales. Dongbu notes that the Department has declined to exclude high-priced sales in the past, because the respondents therein did not explain the unique, unusual or extraordinary circumstances placing the sales outside the ordinary course of trade. See Industrial Nitrocellulose from France: Final Results of Antidumping Duty Administrative Review, 63 FR 49085, 49087 (September 14, 1998); Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy, 63 FR 49080, 49082 (September 14, 1998). In applying the same standard to its low-priced sales, Dongbu argues that the over one thousand sales cited by petitioners, including the four excluded by the Department in its preliminary analysis, are not extraordinary or unique under common sense and ordinary business practice. In arguing that the Department has taken two different standards for excluding low and high-priced sales, Dongbu notes that the CIT has stated that the Department may not impose arbitrary standards in its ordinary course of trade analysis. *Koenig & Bauer-Albert* v. *United States,* Slip Op. 98–83, at 40, n. 8 (Ct. Int'l Trade June 23, 1998). Dongbu argues that by ignoring Dongbu's classification of the four sales as prime grade material, the Department has created an artificial category of only the four sales. Dongbu argues that by doing so, the Department is establishing a precedent under which parties can cherry-pick a database to identify sales that create or eliminate margins.

In their rebuttal, petitioners state that the Department correctly excluded four of Dongbu's low-priced sales as outside the ordinary course of trade. Petitioners argue that the Department made the exclusions in accordance with the law. Petitioners assert that the SAA and legislative history support a finding that Congress and the Administration intended for the ordinary course of trade provision to apply to more than just below cost sales. SAA at 834; H.R. Rep. No. 103–826(I), at 76 (1994); S. Rep. No. 103–412, at 61 (1994); Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 17153 (April 9, 1997) (''Cement from Mexico—April 1997''). Petitioners argue that Dongbu incorrectly limits the scope of the ordinary course of trade provision to below-cost sales and affiliated customer sales. Petitioners argue that, unlike Dongbu, the Department properly applied the legal standard providing for exclusion of transactions sold at aberrational prices in order to avoid basing normal value on sales which are extraordinary for the market in question, particularly when the use of such sales would lead to irrational or unrepresentative results. SAA at 834; S. Rep. No. 103–412, at 61 (1994); and Cement from Mexico—April 1997 at 17154.

Petitioners also argue that Dongbu fails to address, or addresses in an insufficient context, many of the factors on which the Department based its decision. The Department excluded Dongbu's sales because the sales: (1) were aberrationally low-priced compared to other sales of the same CONNUMH; (2) were made at prices comparable to Dongbu's non-prime merchandise; (3) were made at prices below the average cost of Dongbu's steel inputs; (4) had characteristics similar to overruns; and (5) were of insignificant quantities and involved slow moving merchandise. See Korean Flat-Rolled 4th Reviews Prelim, 63 FR at 48175.

Petitioners disagree with Dongbu's claim that the Department created an artificial category in order to make the exclusions. Petitioners argue that the Department merely found the low-

priced sales to have characteristics similar to overruns excluded in prior reviews. Petitioners also argue that Dongbu mistakes a factor in the Department's ordinary course of trade analysis as a second cost test. Petitioners argue that the Department did not create a second cost test, but, rather, the Department merely considered the sales of merchandise at below substrate costs as one factor in the total circumstances considered under the ordinary course of trade provision. Petitioners argue that Dongbu's blank assertion that the excluded sales were in its ordinary course of trade is unsupported by the evidence on the record and identified by the Department. Petitioners also argue that rather than ignoring Dongbu's classification system of prime and non-prime merchandise, the Department followed the classifications in finding that the price of the excluded prime sales were comparable to prices of Dongbu's sales of non-prime merchandise. Petitioners argue that such comparable pricing supports a finding that the sales were aberrational and properly determined to be outside the ordinary course of trade.

Petitioners take issue with Dongbu's accusation that petitioners are margin shopping, and note that aberrationally low-priced home market sales of Dongbu were in months which affect the matching to U.S. sales. Petitioners argue that excluding the sales follows Congressional intent and avoids irrational or unrepresentative results. Petitioners note that Dongbu had more than one hundred thousand home market sales of corrosion-resistant merchandise, yet exclusion of only four such sales raised the dumping margin from 0.13 percent to 1.47 percent. Thus, petitioners argue, the inclusion of such sales in the margin calculation would lead to unrepresentative results.

Petitioners also assert that Dongbu incorrectly states that the Department excluded only the four sales used by petitioners as examples when, in fact, petitioners did not identify one of the four sales excluded by the Department (see petitioners' August 7, 1998 submission at 2–6). Additionally, Petitioners argue that Dongbu fails to support its argument that if the Department excludes low-priced sales, it should similarly exclude high-priced sales. Petitioners argue that Dongbu did not identify the sales to be excluded and that no evidence exists to show that any high-priced sales were made outside the ordinary course of trade.

While Dongbu takes the position that the four sales were improperly excluded when there were over one thousand similarly low-priced sales which were not excluded, petitioners, as noted above, argue that the four sales were properly excluded and that the Department should exclude the other approximately one thousand sales as well. Petitioners note that those additional sales represent less than one percent of Dongbu's total home market sales. Petitioners also note that while Dongbu claims that the Department concluded that it would be inappropriate to exclude such a broad portion of relatively low-priced Dongbu home market sales as overruns, the referenced statement had nothing to do with the Department's exclusion of Dongbu's aberrationally low-priced sales. See Korean Flat-Rolled 4th Reviews Prelim, 63 FR at 48174. For these reasons, petitioners argue that Dongbu fails to address and refute the facts relevant to the Department's proper determination that the sales were outside Dongbu's ordinary course of trade.

Department's Position: We agree with petitioners that the four sales the Department excluded from its preliminary analysis should continue to be excluded because they were outside the ordinary course of trade. However, we disagree with petitioners regarding the additional approximately one thousand sales.

As an initial matter, contrary to claims of both Dongbu and petitioners, the four sales in question are not comparable to the other approximately one thousand sales cited by petitioners because there is significantly greater information on the record regarding the unusual nature of the four sales than there is regarding the approximately one thousand other sales. Petitioners asserted in their case brief that these other sales, like the four sales in question, involved insignificant quantities of slow-moving merchandise sold at aberrational prices, but in fact the Department's analysis of the four sales in question, both in Dongbu Prelim. Analysis Memo and as noted below, went beyond those factors, in part because of the greater information on the record for those four sales. Similarly, while Dongbu in its case brief proposed equivalent treatment between the four low-priced sales and an unspecified group of high-priced sales, we note that the paucity of information on the record regarding the claimed high-priced sales would have precluded any analysis of whether those sales were outside the ordinary course of trade. Our analysis in the preliminary results focused on more than just relative prices, as does the additional analysis provided below.

We also disagree with Dongbu's assertion that the Department's preliminary analysis applied a second cost test. The analysis below also clearly accounts for costs in a way consistent with other ordinary course of trade analyses that is independent of the Department's cost test and, furthermore, it clearly examines several factors in addition to cost considerations. Also, contrary to Dongbu's assertions, our analysis was specific to Dongbu's circumstances and not based on any conclusion that the four sales in question constituted non-prime merchandise or overrun merchandise. The analysis below is comparable in these respects and in accordance with the the Department's regulation pertaining to ordinary course of trade, which indicates that examples of sales that the Department might consider as being outside the ordinary course of trade are sales or transactions sold at aberrational prices. See 19 CFR 351.102.

In reviewing our preliminary conclusions for the final determination, we have analyzed factors we presented in detail in Korean Flat-Rolled 2nd Reviews Final, 62 FR at 18437 with respect to sales outside the ordinary course of trade. That analysis specifically related to production overruns and the determination of whether sales identified as overruns were outside the ordinary course of trade, and was based on various precedents. See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products From Australia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 14049, 14050–51 (March 29, 1996) (''Australian Corrosion-Resistant Steel''), and Certain Welded Carbon Steel Standard Pipes and Tubes From India, Final Results of Antidumping Duty Administrative Reviews, 56 FR 64753, 64755 (December 12, 1991).

Although that analysis concerned production overruns, this test is also useful in evaluating the fact pattern for the four Dongbu sales in question because the test provides objective factors which are revealing as to whether certain sales are so unusual as to be outside the ordinary course of trade. Those factors are: (1) whether the home market sales in question did in fact consist of production overruns; (2) whether differences in physical characteristics, product uses, or production costs existed between overruns and ordinary production; (3) whether the price and profit differentials between sales of overruns and ordinary production were dissimilar; and (4) whether the number of buyers of overruns in the home-

market and the sales volume and quantity of overruns were similar or dissimilar in comparison to other sales. Again, while we have not concluded that the four Dongbu sales in question were overruns, in this instance there cannot be any ''overruns'' *per se* because of the limitations of Dongbu's internal classification system. In any case, though, the statute does not require that sales be categorized as overruns, or any other particular designation, in order to be found as outside the ordinary course of trade. Therefore, we examined the last three of the critical factors noted above.

Regarding differences between the four Dongbu sales in question and Dongbu's other sales with respect to physical characteristics, product uses, or production costs, Dongbu has clearly indicated that it was an unpopular paint color that distinguished these sales from other sales of painted corrosion-resistant merchandise. Paint color is obviously a physical characteristic, though not one acknowledged in the Department's model matching hierarchy. Furthermore, if the color were so unpopular that Dongbu had to price the merchandise at extremely low prices in order to find buyers, it is reasonable to presume that the buyer intended to use the product in a way that differed from that of the vast majority of customers who were not interested in that color. Furthermore, in regard to price and profit differentials, the prices of the four sales were: (1) Well below those of other home market prime sales of the CONNUMs in question; (2) comparable to prices of Dongbu's non-prime merchandise, which by definition possessed some type of physical imperfections; and (3) well below even the cost of Dongbu's hot-rolled steel inputs, which, to be transformed into the painted corrosion-resistant merchandise had to undergo various costly processes, including cold-rolling, coating with metal, and painting (which are the most important product characteristics in the Department's model matching hierarchy for corrosion-resistant carbon steel flat products). Consequently, consistent with the detailed analysis in the Dongbu Prelim. Analysis Memo at 9–10, very large price and profit differentials exist between the sales in question and other prime sales of the CONNUMs in question. Finally, the quantity of sales and number of customers in question constitute a small fraction of the corresponding totals for Dongbu's sales as a whole. Regarding the four Dongbu sales in question, the unpopularity of the paint color is itself an indication of how such merchandise, even at rock-bottom prices, could only attract limited customers.

In conclusion, the fours sales in question were sufficiently unusual, according to the standards indicated above, to be characterized as outside the ordinary course of trade. Consequently, the Department has continued to exclude them from its analysis.

Comment 9: Dongbu Express Home Market Freight Expense

Dongbu reported the amount it is charged by its affiliate, Dongbu Express Co., Ltd. (''Dongbu Express''), as home market freight expense. Petitioners point out that this amount includes not only the unaffiliated trucking companies' charge to Dongbu Express, but also a markup of Dongbu Express' estimated overhead and profit. Petitioners point out that the Department made an adjustment for such a markup in the previous administrative review by deducting the markup from Dongbu's reported home market freight expense. Petitioners point out that the Department did not make such an adjustment in this administrative review when calculating its preliminary results. Petitioners assert that the Department should make an adjustment in its final determination in order to be consistent with the prior review. Petitioners suggest that the Department divide Dongbu's reported home market freight expense by one plus a factor reflecting the markup.

Dongbu argues that the Department was correct not to adjust Dongbu's inland freight cost for the markup of Dongbu Express. While Dongbu recognizes the Department made adjustments in the third administrative review, Dongbu states that the circumstances in the third review do not exist in the fourth review. Dongbu points out that in the third review, the Department was concerned that similar mark-ups for services on export sales were excluded from the analysis. Dongbu argues that the Department has determined in this fourth review that all relevant mark-ups were included. Dongbu also points out that the Department made no such adjustment for the first or second administrative reviews. Dongbu notes that in those reviews, Dongbu Express worked only for Dongbu. Because Dongbu could not show transactions with unaffiliated customers, Dongbu compared Dongbu Express' mark-up for export sales to those for domestic sales to show the affiliated party transactions were at arm's length. In the third review, Dongbu was able to provide evidence, along with the mark-up data, that Dongbu and unaffiliated customers pay the same price to Dongbu Express. However, Dongbu felt that the focus remained ''inexplicably'' on the mark-up.

In the fourth review, Dongbu asserts that it has again presented evidence that it pays Dongbu Express the same price for freight as unaffiliated companies. Dongbu's November 14, 1997 Response at 27 and Attachment B–9. Dongbu notes that a preferred method of the Department in testing the arms-length nature of transactions is comparing prices charged to affiliated and unaffiliated parties. While Dongbu feels the relevance of the mark-up is moot, Dongbu nevertheless argues that the mark-up data affirms an arms-length transaction, as the mark-up on export transactions is higher than the mark-up for domestic transactions. Dongbu's March 9, 1998 Supplemental Response at Attachment B–30. Dongbu also argues that all similar mark-ups have been included in the deductions to CEP. For these reasons, Dongbu argues that the Department properly deducted the total freight cost reported by Dongbu for home market and export sales.

Department's Position: While it is true that Dongbu Express is affiliated with Dongbu, the reported Korean inland freight expenses for both home market and U.S. sales include the Dongbu Express markups. In response to a Department request for additional information, Dongbu provided markup data in its March 9, 1998, supplemental questionnaire response. That information suggests that the markups for export sales were not significantly lower than those for domestic sales, and that on a percentage basis they were higher for export sales than for domestic sales. To the extent, if any, that Dongbu Express' markups were not at arm's-length, it appears that the magnitude of the markups were comparable for both home market and U.S. sales. Consequently, it does not appear that the magnitude of the markups has a systematically biased effect on the results, and we have not adjusted our calculations of the home market freight expenses.

Comment 10: Inventory Carrying Costs

Petitioners argue that the Department inadvertently set its margin program to read inventory carrying costs as zero, which resulted in a program failure to deduct inventory carrying costs from the calculation of net U.S. price. Dongbu argues that the costs at issue arise from holding the merchandise between production in Korea and shipment to the U.S., and from when the merchandise was on the water. Dongbu states that it reported these expenses as

inventory carrying costs incurred in the country of exportation, as required by the Department.

Department's Position: We agree with the respondent that the inventory carrying costs in question relate to time prior to entry into the United States, and are not to be deducted from the CEP starting price. However, as noted elsewhere in this notice, the period in question (e.g., between shipment from Korea and entry into the United States) is treated as part of the period in which imputed credit costs are incurred. As stated at 19 CFR 351.402(b), the Department ''will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States.''

Comment 11: U.S. Indirect Selling Expenses

Petitioners argue that the Department incorrectly applied an adjustment designed to revise the reported indirect selling expenses for U.S. sales incurred in the United States (variable ''INDIRSU'') to the reported indirect selling expenses for U.S. sales incurred in Korea. Petitioners also argue that the allocation used to determine the amount of U.S. indirect selling expenses does not appear to be derived from any specific source, and petitioners propose a corrected revised ratio based on their August 7, 1998 submission at 22. Petitioners also argue that the denominator of the correction factor used by the Department in its preliminary results is not consistent with the data that were reported in the Dongbu's U.S. sales database; petitioners cite the factor that was actually used by respondent for the reported INDIRSU, and state that the Department should incorporate this factor as part of the basis for the recalculation of INDIRSU.

Dongbu agrees with the petitioners that the Department did not apply the adjustment to INDIRSU, but, rather, to indirect selling expenses incurred in Korea. Dongbu states that the latter expenses are incurred by Dongbu in selling to its subsidiary and should not be deducted from the U.S. starting price, as such expenses are not related to the economic activity in the United States (see Antifriction Bearings (Other Than Tapered Roll Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 62 FR 54043, 54054 (October 17, 1997)). Dongbu also agrees with petitioner that the denominator of the correction factor used by the Department in its preliminary results was not consistent with the data that were reported in its U.S. sales database, and Dongbu agrees with petitioners on the actual correct factor.

In any case, though, Dongbu states that no adjustment to INDIRSU should have been made. Dongbu notes that the Department decided an adjustment was required because it believed certain expenses, such as freight, should be deducted from the denominator used to derive the portion of common expenses to be allocated to subject merchandise. Dongbu argues that these expenses, such as the salaries of people arranging freight, are included in the common expense salaries, and that the fact that these expenses related in large part to products other than flat-rolled does not take away from the fact that the common expenses related to these categories.

Furthermore, Dongbu argues that petitioners' proposed change to the allocation ratio used to determine the total amount of U.S. indirect selling expenses reflects petitioners' desire to calculate the indirect selling expense ratio solely on the basis of sales value. Dongbu argues that using a straight sales value approach, which would assign expenses solely on the basis of price, is not indicative of the efforts made by Dongbu USA for the merchandise in question, and that the Department has recognized that when it is necessary to split common expenses among products that the allocation key should be in relation to the expenses being allocated (see Pipe from Korea, 63 FR at 32846–47.

In rebuttal, petitioners argue that Dongbu has shown no correlation between direct expenses and indirect expenses such that direct expenses incurred should serve as an allocation methodology for common indirect selling expenses related to all products. Petitioners also argue that, were there such a correlation, such expenses would not be indirect selling expenses as they could be assigned to products based on a direct identification methodology. Petitioners also argue that Dongbu's assertion that the common expenses being allocated by the derived ratio relate in part to these direct expenses is unsupported. Petitioners argue that Dongbu USA's financial statements do not provide any description about the majority of the common indirect selling expenses at issue.

Department's Position: We agree with both petitioners and respondent that the incorrect denominator was used for the adjustment factor developed by the Department for its preliminary results and that the Department applied the adjustment factor to the wrong variable in its preliminary results. We agree with Dongbu that we should not have deducted indirect expenses incurred in Korea from U.S. starting price. We have corrected our programming accordingly.

Regarding the calculation of the numerator of the adjustment factor, the Department presented its methodology in the Dongbu Prelim. Analysis Memo at 3 and in the two pages of the ''Worksheet for DONGBU USA Indirect Selling Expense Ratio'' attachment to that memorandum. The Department used Dongbu's basic methodological approach, as outlined in Exhibit C–37 of its May 18, 1998 submission, which accounted for portions of total expenses it characterized as indirect selling expenses that could be assigned to flat-rolled steel (including subject merchandise), those that could be assigned to other products, and those which were common to all products. We disagree with petitioners' assertion that an ability to attribute certain expenses to a type of product implies that such expenses must be direct, rather than indirect, expenses; for example, the salary of a secretary devoted only to work pertaining to subject merchandise could be attributed to subject merchandise, but would not under normal circumstances be categorized as a direct expense. However, as discussed below, the Department excluded certain expenses (''freight-out,'' ''warehousing,'' ''packing,'' and ''insurance (Transportation)'') from the calculations of flat-rolled indirect expenses and of other product indirect expenses. Those expenses are typically categorized by the Department as other than indirect selling expenses, and it is not clear from the record the extent to which a portion of those costs cited by Dongbu reflect expenses that could be categorized as indirect selling expenses (e.g., salaries of those arranging for freight). As a result, the Department derived a different factor than Dongbu to use as the basis for allocating a portion of total common expenses to flat-rolled products.

Dongbu did not demonstrate that there are expenses associated with the excluded categories, such as for salaries of personnel arranging freight, in the common expenses. Dongbu had not reported INDIRSU in its November 14, 1997 questionnaire response, and in response to the Department's supplemental follow-up question regarding indirect selling expenses, Dongbu indicated that it provided worksheets for the additional expenses, but did not elaborate on the content of those worksheets (see page A–7 of Dongbu's May 18, 1998 submission). The worksheets did not indicate any

common expenses associated with the expenses in question (e.g., freight-out, etc.), and Dongbu did not demonstrate that there is any correlation between the direct expenses in question and common indirect selling expenses related to all products. Consequently, we are continuing to exclude those expenses not appropriately characterized as indirect expenses from the calculations, and thus have continued to use the numerator of the adjustment factor that we calculated in our preliminary results.

Comment 12: Depreciation

Union argues that the Department should accept Union's reported depreciation expenses based on net asset value (original acquisition cost less accumulated depreciation), as this is in accordance with Korean GAAP. Regarding the method of depreciation, Union argues that the Department retroactively applied the straight-line method to the original acquisition cost less salvage value, which resulted in a distortion of the depreciation expense for the current POR. Union further explains that the Department's present application of the straight-line method is distortive in that the Department double-counts a portion of the previously recognized depreciation. Union asserts that unlike Final Determination of Sales at Less than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea, 58 FR 15467, 15470 (March 23, 1993) (''DRAMs from Korea''), the Department in this proceeding captured a higher depreciation expense in the first and second reviews resulting from Union's use of double-declining balance method in those two reviews. For this reason, Union argues, the Department should accept Union's reported depreciation expense with net asset value (original acquisition cost less accumulated depreciation to date) as a depreciable base. By accepting Union's reported depreciation expense, the Department avoids double-counting and only accounts for depreciation that has not been formerly recognized in previous reviews.

Second, Union asserts that the only plausible reason for the Department to reject Union's reported depreciation costs is the nonconformance of Union's treatment of depreciation to U.S. GAAP. Union disputes the Department's possible stand on this issue by claiming that the determining factor for acceptance of a cost accounting methodology is whether the methodology is in accordance with local GAAP, even if the local GAAP proves to be at times contradictory to the U.S. GAAP.

Finally, Union asserts that the Department's treatment of Union's depreciation is also not in accordance with U.S. GAAP, as it creates inconsistency between the balance sheet and income statement. In applying a straight-line methodology to Union's asset values, the Department increased Union's assets without a simultaneous adjustment to Union's income statement. Therefore, in order to maintain consistency with the balance sheet and income statement under the present approach, the Department should perform an upward adjustment to Union's stated income (an adjustment equal to the sum effects of the restatements of depreciation from double-declining balance to straight-line depreciation).

Petitioners assert that the Department should sustain its preliminary determination on this issue of depreciation in the final results, as the Department properly adjusted Union's reported depreciation expenses in those preliminary results. Petitioners state that the Department's adjustments in the preliminary results were made in a way consistent with its adjustments in Korean Flat-Rolled 3rd Reviews Final. Petitioners note that in the third reviews, the Department rejected Union's methodology because of its distortive effect on the margin analysis. See Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13191. Petitioners allude to ''Use and Measurement of Costs Under U.S. Antidumping Law,'' International Trade Resources, 24 (1995), by Christian Marsh and John Miller in support of their position that the Department relies on U.S. GAAP when evaluating exporter's reported costs to determine whether these costs truly reflect costs associated with the production and sale of the merchandise. Petitioners further argue that the Department should reject Union's application of the straight-line methodology on its face, as this accounting methodology uses the net value of the asset rather than the original acquisition cost as the depreciable base, resulting in an inconsistency with U.S. GAAP.

Petitioners cite the similar fact pattern in DRAMs from Korea as a basis for rejecting Union's claimed depreciation expenses. Petitioners state that the Department's method does not count depreciation expenses reported in previous reviews in the present review but, rather, it accurately measures the current period's depreciation expenses based on the original cost of assets and their useful lives.

Department's Position: We agree with petitioners that Union's change in depreciation methods from double-declining to straight-line understates overhead and distorts our margin analysis. As in Korean Flat-Rolled 3rd Reviews Final and in the preliminary results of these reviews, we continue to reject Union's use of a straight-line method of depreciation using the net asset value as the depreciable base. Union's 1996 financial statements include a special note referring to the shift to straight-line depreciation, indicating that it constitutes an explicit change to Union's depreciation methodology rather than a development of its pre-existing depreciation methodology. See Exhibit A–11 of Union's October 8, 1997 Section A response at 16. Even if a change in depreciation methodology is consistent with local accounting standards, the Department may reject the change due to its distorting effect in our margin analysis. In regard to Union's argument that an offset be made to the Union income statement, see Comment 14, below.

Comment 13: Restatement of the Useful Lives of Certain Assets

Union argues that the Department should accept the longer useful lives of its certain assets for the calculation of depreciation expense, as such a change is in accordance with the Korean GAAP and the company's actual financial structure. Union claims that by not recognizing the longer useful lives of assets, the Department uses a ''front-loaded'' depreciation calculation methodology in which the Department attributes a higher depreciation expense to the current POR rather than attributing those very depreciation expenses to later years when Union actually incurs them. Union argues that Department's non-recognition of Union's extended useful lives of its assets leads to a distortion as the Department deviates from the use of respondent's financial statements and rather establishes a methodology applicable only for purposes of the antidumping order.

Petitioners argue that the Department properly rejected Union's estimates of the useful lives of assets. According to the petitioners, respondents failed to justify the change in the useful lives of assets other than to state that the change in question is in accordance with the relevant provisions of the Korean Corporate Tax Law. Petitioners noted similar cases in which the Department found this justification meager in nature (see, e.g., 64K Dynamic Random Access Memory Components (64K DRAM's)

from Japan: Final Determination of Sales at Less Than Fair Value, 51 FR 15943, 15944 (April 29, 1986)); and, Erasable Programmable Read Only Memories (EPROMs) from Japan; Final Determination of Sales at Less than Fair Value, 51 FR 39680, 39684–86 (Oct. 30, 1986)). Finally, petitioners argue that the number of years for which assets are depreciated under specific tax purposes may not accurately reflect the actual useful lives of the assets in question.

Department's Position: We agree with petitioners. We decline Union's revised useful lives of its assets in the absence of sufficient justification for the extension in the useful lives of Union's assets other than that the change in the useful lives of assets is in accordance with the Korean tax laws. The Department considers Union's original useful lives of its assets to be the proper estimation of Union's useful lives of its assets and therefore continues to calculate Union's depreciation costs on the basis of Union's original useful lives of assets.

Comment 14: G&A and Financing Expenses Reflecting Depreciation Adjustment

Union argues that if the Department intends to use its current depreciation methodology in its final margin calculations, then the Department should make a corresponding reduction to the G&A and financing expense ratios to reflect the greater COM that results from the increased depreciation expense. In doing so, the Department should change the G&A and financial expense ratios calculated from the financial statements by increasing the COM denominator by the percentage increase in the unit COMs. Petitioners did not comment on this issue.

Department's Position: We agree with respondents that an adjustment to the COM value used to calculate G&A and interest expenses is required for consistency with the depreciation methodology followed by the Department in its preliminary results. G&A and interest expenses are calculated by multiplying COM by distinct G&A and interest expense factors. Those factors, in turn, are based on the expenses in question (G&A or interest) divided by cost of goods sold (''COGS''). For Union for the final results of these reviews, we have implemented Union's suggestion by using the unrevised Union COM values as the basis for calculation of G&A and interest expenses. Alternatively, we could have used the adjusted COM values (reflecting the recalculation of depreciation) and attempted a corresponding upward adjustment to the COGS denominator of the factors, but the effects of such adjustments would be offsetting. The Department's methodology is simpler, and the effects are comparable to those of the more complicated alternative approach just described.

Comment 15: Home Market Warehousing Expense

Union argues that the Department should treat home-market warehousing as a movement expense rather than an indirect selling expense. In this current review, Union states that it reported warehousing expenses in a single field in accordance with the Department's questionnaire instructions, rather than in separate fields as pre-sale and post-sale warehouse which would have been consistent with the first and second reviews. Union asserts that the Department should follow its practice in the former review and its intended policy as contemplated in the URAA by deducting warehousing expenses from home-market price rather than performing a circumstance of sale adjustment. *See* SAA at 827.

Petitioners also state that the home market warehousing is properly treated as a movement expense rather than as an indirect selling expense. Petitioners assert that it is the Department's longstanding practice to differentiate among expenses related to production, selling and movement expenses. Therefore, for the above stated reason, warehousing expenses categorized as movement expenses should not be included in the total expense denominator of the Department's CEP profit calculation.

Department's Position: Dongbu indicated in its November 14, 1997 Section B response at 24 that for most home market sales involving warehousing, the customers would request that a shipment from the Pusan factory be temporarily stored at the warehouse. While for some sales the warehousing appears to have been prior to sale, the Department's original questionnaire did not distinguish pre-sale from post-sale warehousing, and the Department did not subsequently request additional information in this regard. We have determined that the warehousing expenses in question are best characterized as post-sale movement expenses, and have adjusted our programming to reflect this determination. Regarding petitioners' arguments pertaining movement expense and CEP profit, this issue is addressed elsewhere in this notice (see Comment 3).

Comment 16: POSCO Representative Product Group (''RPG'') Costs and Use of Facts Available

While petitioners agree with the Department's preliminary conclusion that the POSCO Group's submitted costs should be rejected, they argue that the Department incorrectly relied on a non-adverse approach to apply facts available in deriving its COM. Petitioners argue that, given the POSCO Group's repeated false and misleading statements regarding its cost and production records, the Department should have applied an adverse inference in its selection of facts available. Petitioners claim that the Department should use as total adverse facts available the highest rates previously calculated for this respondent, 17.70 percent and 14.44 percent ad valorem for corrosion-resistant and cold-rolled products, respectively.

Petitioners assert that the POSCO Group failed to act to the best of its ability and, pursuant to Department practice, it is irrelevant whether or not the POSCO Group intended to mislead the Department. See Elemental Sulphur from Canada: Final Results of Antidumping Duty Administrative Review, 62 FR 37958, 37968 (July 15, 1997) (''Sulphur from Canada''). In the cited case, the Department made no pronouncement on respondent Mobil's intentions while assigning adverse facts available for respondent's failure to cooperate to the best of its ability. Petitioners claim that the following statements made by the POSCO Group were misleading: (1) That its submitted costs reflect actual production quantities; (2) that it lacks and does not maintain production data necessary to allocate POSCO production quantities to a single, specific control number (''CONNUM''); (3) that it may not retain detailed production data once production is completed, and (4) that its production records do not identify all relevant product characteristics and thus do not allow production quantities to be assigned to single specific CONNUMs. Petitioners claim that the Department's cost verification report provides evidence that these POSCO Group statements were inaccurate. Petitioners argue that the POSCO Group impeded the Department's ability to conduct this review by not disclosing until verification that it generated and maintained detailed production records. Petitioners claim that the POSCO Group's failure to inform the Department of its detailed production data prevented the Department from obtaining the correct weighting factors

for POSCO's RPG costs, and properly requesting and then verifying revised costs based on the correct weighting factors. Petitioners argue that the situation in the instant case is analogous to that encountered by the Department in Sulphur from Canada and Certain Cut-to-Length Carbon Steel Plate from Mexico: Preliminary Results of Antidumping Duty Administrative Review, 63 FR 48181, 48182 (September 9, 1998) (''Steel Plate from Mexico''). In both of those cases, petitioners note, the respondent withheld critical information until verification, which prevented the Department from performing adequate testing and quantifying the magnitude of any distortion present in the reported costs.

Petitioners argue that the three reasons cited by the Department for using a non-adverse approach are all fatally flawed, and not supported by substantial evidence. First, petitioners claim that, contrary to the Department's conclusion, POSCO's submitted costs have never been reconciled to its books and records. Petitioners argue that the Department reconciled POSCO's RPG costs, rather than the submitted costs, to the company's financial statements. As a result, petitioners argue, the submitted costs could be significantly understated because of the distortive weight-averaging methodology employed by the POSCO Group to report costs. Second, petitioners argue that POSCO's methodology results in a systematic overstatement of POSCO's production quantities, relative to its affiliates, and thus resulting in an understatement of reported costs for the POSCO Group. Petitioners also argue that, by assigning the total production quantity of certain RPGs to multiple CONNUMs, the POSCO Group's submitted costs are understated because the weighting of RPGs within a CONNUM is distorted. Third, petitioners argue that the allocation methodology relied upon for facts available by the Department (''the matrix'') is demonstrably distorted and incorrect. Petitioners note that the allocation methodology of the matrix excluded sales to the United States and third countries, and thus the sales quantities used in the matrix for weighting did not approximate actual production. Finally, petitioners argue, the Department must find another source of facts available for POSCO's affiliated companies. The costs of manufacturing for these affiliates are based in large part on POSCO's costs, which the Department has rejected, and the allocation methodology used for the preliminary results did not adjust these costs.

The POSCO Group argues that its submitted cost methodology is reasonable and that the Department properly rejected petitioners' arguments to use adverse facts available in the preliminary results. The POSCO Group asserts that its methodology is neutral, mechanical, objective, and reports costs to the greatest level of detail permitted by the RPG system, the company's normal cost accounting system. The POSCO Group argues that its submitted cost methodology was used and verified by the Department, without exception, in all prior administrative reviews. The POSCO Group also claims that neither petitioners nor the Department have ever raised any question with regard to the POSCO Group's weighting methodology in prior reviews. The POSCO Group notes that its methodology was necessary since the RPG physical characteristics do not correspond exactly to those in the Department's questionnaire.

The POSCO Group claims that it cooperated fully with the Department during this review and that adverse facts available is not warranted. The POSCO Group argues that its initial submission accurately described its reporting methodology and its use of actual production quantities to calculate CONNUM-specific costs. The POSCO Group claims that it properly informed the Department that its records would not allow it to comply with the Department's request to allocate production quantities to a single, specific CONNUM. The POSCO Group argues that its statement that actual production data do not identify all physical characteristics referred to its production records maintained in the ordinary course of business (i.e., its mill certificate database). The POSCO Group claims that, as the Department verified, it was unable to use raw production data in its existing form due to the massive size of the database which is in storage on computer tape. The POSCO Group asserts that raw production data are only maintained for use in the rare instances that a warranty claim is made, and that such data are generally not accessed even in those instances. The POSCO Group reiterates that it would be practically impossible to use its raw production data to identify CONNUM characteristics and calculate relevant production quantities. Because of the enormous burden of work that would be required to use raw production data, the POSCO Group argues, it has answered truthfully that its production records do not allow it to assign production quantities to specific CONNUMs.

The POSCO Group argues that the cases cited by petitioners are inapposite and that the respondents in those cases withheld from the Department the existence of actual substantive cost data and entire cost systems upon which a cost response could be constructed. In this case, the POSCO Group claims, the Department properly found that the POSCO Group cooperated and acted to the best of its ability in supplying information requested by the Department. In the case of Sulphur from Canada, the POSCO Group asserts that the respondents therein failed to disclose critical facts regarding the existence of an entire cost system that could have been used to calculate costs. Moreover, the POSCO Group states that the Department concluded that the respondents' data ''did not verify,'' while claiming that its own data were fully verified. In the case of Steel Plate from Mexico, the POSCO Group argues that the respondent failed to provide cost data from its normal accounting system, failed to include significant costs for various cost centers, and failed to reconcile submitted costs to its financial accounting system. The POSCO Group argues that none of these deficiencies applies in the instant case. The POSCO Group also notes that it, by contrast, included all relevant production costs, reconciled its submitted costs to its financial accounting system, and the Department was able to fully verify its submitted information. Because the facts in the cited cases are so different from those in the instant case, the POSCO Group argues that adverse facts available is not appropriate.

In addition, the POSCO Group claims that the matrix prepared before the cost verification addressed and resolved the problem of POSCO's costs being overstated relative to its affiliates. The POSCO Group argues that petitioners' criticisms of the matrix are groundless. The POSCO Group asserts that the matrix methodology was designed by the petitioners to ensure that each ton of production would only receive a weight of one, even though an individual RPG was assigned to multiple CONNUMs. The POSCO Group claims that the matrix methodology meets that objective and ensures that POSCO is not given undue weight in averaging its production costs with those of its affiliates. The POSCO Group asserts that the fact that the matrix methodology produces results entirely consistent with its submitted methodology confirms that there is no distortion arising from any differential in costs among the POSCO Group companies. The POSCO Group argues that, in preparing the matrix, the use of

home market sales is more than representative, since the home market constitutes more than seventy percent of total company sales. The POSCO Group asserts that the submitted matrix provides an accurate analysis of the distribution of production quantities relative to CONNUMs. The POSCO Group argues that the inclusion of third country sales in the matrix would have presented a massive burden on POSCO that the Department could not reasonably expect POSCO to bear. The POSCO Group also claims that the inclusion of U.S. sales would not have changed the results of the matrix in a meaningful way.

Department's Position: We have reconsidered our position in the preliminary results and, in accordance with section 776(b) of the Act, we have applied adverse facts available to calculate the POSCO Group's COM in these final results. We agree with petitioners that the POSCO Group failed to act to the best of its ability by making misleading statements and by failing to cooperate fully with the Department during this proceeding. The most critical instance of this occurred when the POSCO Group, in response to a specific and direct question, did not reveal its ability to report production quantities on a CONNUM-specific basis. As a result, the Department did not learn until the cost verification that POSCO generates and maintains detailed production records which identify all relevant product characteristics. Furthermore, we agree with petitioners that if the availability of this data had been disclosed by the POSCO Group when the Department inquired as to its availability, the Department would have had the opportunity to request that the POSCO Group provide corrected COP and CV data.

In reconsidering our position in the preliminary results, we have performed a more detailed analysis to measure the potential distortion inherent in the POSCO Group's submitted cost methodology. We have now concluded that the POSCO Group's reported costs could potentially be understated by a substantial amount and the amount of this potential understatement cannot be estimated with much precision.

Section 776(a)(2)(A) of the Act directs the Department to apply facts available in instances where the respondent has withheld information requested by the Department. In a supplemental questionnaire issued by the Department on March 13, 1998, we did not restrict our inquiry to POSCO's mill test certificate database, but rather stated, ''[e]xplain whether POSCO's *production records* allow production quantities to be assigned to a single specific CONNUM, as defined by the Department'' (*emphasis added*). We also asked, ''[a]re POSCO production quantities available at a greater level of detail than the level at which costs are maintained in the* * *RPG cost accounting systems?'' We then requested that the POSCO Group use such detailed production quantities, if available, to recalculate its COP and CV. In response to these inquiries, the POSCO Group stated in its May 8, 1998 submission that ''while a company such as POSCO may have data on certain product characteristics during the production process itself, once production is completed, all of the detailed data may no longer be retained. Finally, not all of the product characteristics required by the Department may be identified by using actual production data.'' *See,* cost supplemental response at 10. Also, the POSCO Group stated on page 11 of that response that the company ''is unable to report production quantities on a CONNUM-specific basis.'' The direct, specific responses above indicated that POSCO does not generate, and does not have in its possession, any records which would allow it to identify production quantities using the Department's selected product characteristics (*i.e.,* on a CONNUM-specific basis). At the cost verification, however, the POSCO Group revealed that such records are actually generated at the time of production and these detailed records are retained on computer tape after they are downloaded from POSCO's production control computer system. As noted in the Department's cost verification report from Bill Jones and Symon Monu to Christian B. Marsh, dated August 5, 1998: ''Company officials explained that the production database maintains production data at a very detailed level, including all of the physical characteristics identified by the Department.'' *See,* cost verification report at 9. When Department verifiers inquired as to why such information had not been used to report costs, POSCO officials stated that it was not possible to access production data for the entire 12-month review period due to capacity limits on their computer systems. In its case brief, the POSCO Group asserts that the Department verified its inability to use raw production data in its existing form, due to the size of the stored database. This, however, is an incorrect statement. Because we did not learn of the existence of POSCO's detailed production data before verification, we were unable to design verification procedures to determine whether or not the company was capable of accessing and using such data to report costs.

The detailed production data are of major importance in this case because they could have been used to allocate the company's production costs, which are maintained at the RPG level, to the CONNUMs that are determined using the Department's selected physical characteristics. Products recorded within an RPG often have different physical characteristics and therefore would be classified under multiple CONNUMs. We noted that the average costs of different RPGs within a single CONNUM can vary by a substantial amount, and therefore the weighting of RPGs can have a material impact on the company's reported costs.

We agree with petitioners' claim that the matrix, or allocation methodology relied upon by the Department for the preliminary results, is substantially flawed and therefore should not be relied upon for the final results. As noted by petitioners, the matrix prepared by the POSCO Group did not use worldwide sales quantities to allocate its RPG costs to CONNUMs; instead, the POSCO Group used only home market sales quantities to prepare the matrix. As a result, sales to the United States and third countries were not used in any way to allocate RPG costs. While POSCO claims that it does not have shipment quantities for sales to third countries, and therefore was not able to include such sales in preparing the matrix, nonetheless the absence of these sales renders the matrix unusable. As noted by POSCO, nearly thirty percent of company sales were made outside the home market and the exclusion of such sales means that the shipment quantities used in the matrix are not a reasonable surrogate for total production quantities.

We agree with petitioners that the determining factor in our assignment of adverse facts available should be the POSCO Group's failure to act to the best of its ability. As we stated in Sulphur from Canada, 62 FR at 37968, our application of adverse facts available is ''not based in any manner on any belief in this company's intentions.'' The POSCO Group claims that it was referring to the production records maintained in the ordinary course of business, such as the mill certificate database, when it stated that actual production data did not identify all physical characteristics. Such a qualifying statement, however, was not present in the POSCO Group's response and, thus, we believe it was impossible

to know or assume that the POSCO Group's response was limited in the manner described. As noted, the supplemental cost questions posed by the Department did not indicate that we were referring only to the mill certificate database and detailed production data are, in fact, maintained by the company.

We disagree, however, with petitioners' assertion that we should apply total adverse facts available in calculating the POSCO Group's dumping margin. Aside from its misleading statements relating to the existence of detailed production records, the POSCO Group appears to have been cooperative with the Department throughout the rest of the proceeding. We disagree with petitioners' assertion that the Department never reconciled POSCO's submitted costs to its books and records. With the exception of the weight-averaging problem identified by the Department, POSCO's RPG costs reconciled to its books and records. The purpose of our reconciliation procedures is to ensure that all costs from the company's normal accounting system have been captured in the company's reported costs. As outlined in the cost verification report and noted in the preliminary results, we performed verification testing to satisfy ourselves that this objective was met. The issue at hand relates specifically to the weight-averaging of these costs in deriving CONNUM-specific costs. Although we agree with petitioners' assertion that the POSCO Group's reporting methodology results in an overstatement of POSCO's production quantities, relative to its affiliates, we do not agree that this necessarily results in a systematic understatement of costs. This would only be the case if, for each CONNUM, POSCO's costs were lower than its affiliates' costs, and we found that this is not true in every instance. Moreover, the POSCO Group is correct in that the submitted allocation methodology had been used by the POSCO Group and accepted by the Department in previous reviews. For the above reasons, we have concluded that adverse facts available should be used, but total adverse facts available is not warranted.

To apply adverse facts available to the weight-averaging problem, we calculated adjustments to the COM for CONNUMs for which we have detailed RPG data, and then applied those adjustment factors to the COMs for the rest of the CONNUMs in the COP and CV databases. For the CONNUMs for which we have detailed RPG detail, although we do not know POSCO's third country sales quantities, the company's POR home market and U.S. sales quantities are on the record. The combined sales of each CONNUM to the home market and the United States during the POR represents the minimum quantity produced by POSCO of that CONNUM. We assigned the most costly RPGs to the weighted-average cost calculation of each CONNUM to the extent of home market and U.S. sales quantities. We then re-weighted POSCO's costs with the other producers using POSCO's home market and U.S. sales quantity. The resulting adjusted COMs for those CONNUMs, compared to the reported COMs for them, result in adjustment factors that we applied to the COMs for the remaining CONNUMs in the COP and CV databases. See the March 8, 1999, Final Cost Calculation Memorandum from William Jones to Neal Halper.

Comment 17: Major Input Rule

Petitioners argue that the Department inappropriately failed to apply the major input rule (section 772(f)(3) of the Act) to transactions between POSCO and its affiliated parties. Petitioners state that the Department, in its antidumping duty questionnaire, asked POSCO to provide information on transfer price, cost of production, and fair value for major inputs transferred between affiliated parties. Petitioners note that two of POSCO's affiliates, POCOS and PSI, purchased major inputs from POSCO during the review period, and thus the major input rule must be applied to these transfers. Petitioners also argue that, since the POSCO Group failed to provide the requested information, the Department should use facts available to value transfers between POSCO and its affiliates.

The POSCO Group argues that, in this and the two prior reviews, the Department has already rejected petitioners' arguments to apply the major input rule. See, e.g., Korean Flat-Rolled 3rd Reviews Final. The POSCO Group states that the Department has ''collapsed'' POSCO, POCOS, and PSI into a single entity for the third successive review, indicating that it is now well-settled Department practice to not apply the major input rule to transactions within a single collapsed entity. The POSCO Group argues that, in such circumstances, it is consistent with the statute to not apply the major input rule because the statute requires application of the rule only to transactions between persons.

Department's Position: We agree with the POSCO Group. It is now well-settled Department practice not to apply section 773(f) to transfers within a collapsed entity. Rather, because we are treating POSCO and its affiliated producers as a single producer for purposes of the antidumping analysis, we find it appropriate to value the substrate inputs at issue according to POSCO Group-wide weighted-average costs, just as we attribute all POSCO Group home market and U.S. sales to the entity as a whole. As the Department stated in the third 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.'' Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13185. See also Stainless Steel Wire Rod from Korea; Final Determination of Sales at Less Than Fair Value, 63 FR 40408, 40419–21 (July 29, 1998). The POSCO Group did not provide the data related to the major input issue in response to the Department's original generic questionnaire, and the Department did not request that information in its supplemental questionnaires, consistent with the Department's determination in Korean Flat-Rolled 3rd Reviews Final that such information was not needed. The CIT recently affirmed this practice, holding that ''Commerce reasonably determined that it should act consistently with its collapsing determination and not apply inconsistent solitary provisions, thereby arbitrarily increasing respondents' liability.'' *AK Steel Corp. et al.* v. *United States*, Slip Op. 98–159 (Ct. Int'l Trade Nov. 23, 1998), at 28.

Comment 18: Arm's Length Nature of Post-Sale Warehousing

The POSCO Group argues that the Department erred in reducing POSCO's post-sale warehousing expenses for certain home market sales. The POSCO Group states that the Department incorrectly concluded that the rental payments made to an affiliated party for use of a warehouse owned by that party were not at arm's length. The POSCO Group argues that it did provide specific evidence that said rental payments were at arm's length.

Petitioners argue that the Department appropriately reduced the POSCO Group's reported post-sale warehousing expense, as the POSCO Group never provided the underlying studies upon which its claim was based. Therefore, the Department had no choice but to adjust the submitted expense.

Department Position: We agree with petitioners that the POSCO Group did not establish that the payments in question were at arm's length. In its July 31, 1998 supplemental questionnaire

response, the POSCO Group stated that in establishing charges for the facility, the owner considered such factors as rental rates charged at similar facilities (as identified from government studies); however, the POSCO Group did not provide the information from those government studies. The POSCO Group also stated in that response that Exhibit S–11 contains internal documentation identifying the factors used to establish the rental rates for the facility, documentation supporting the relevant criteria considered, and the relevant pages of the written rental contract between POSCO and the affiliated party in question. However, it is not clear how the information in the exhibit relates to the establishment of arm's-length prices or what the relevant criteria are; furthermore, the POSCO Group failed to provide translations for large portions of the submitted contract. As a consequence, we sustain our preliminary determination that the POSCO Group has failed to adequately support its claim that the warehousing payments in question were at arm's length.

Comment 19: Adjustments to Costs for Coating Weight and Quality

The POSCO Group argues that the Department erred in adjusting its reported costs to account for differences in product coating weight and substrate quality. The POSCO Group claims that, consistent with its normal cost accounting system, POSCO submitted costs that reflect the average costs for products with different coating weights. Similarly, the POSCO Group states, POCOS submitted costs that reflect the average costs for products with different substrate qualitites, consistent with its normal accounting records. The POSCO Group argues that the Department should accept the averaging of coating weight and substrate quality costs since general and administrative costs are applied as an average and the labor and overhead costs for POCOS and PSI are calculated as an average, and these methodologies are accepted by the Department. The POSCO Group argues that the Department inappropriately applied facts available simply because POSCO and POCOS do not maintain records that account for the specific differences in coating weight and substrate quality, respectively. The POSCO Group cites a previous case in which the Department declined to penalize a company for failing to maintain its accounting records in a particular manner. 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, 13820 (March 28, 1996). In the cited case, the Department allowed the respondent to report costs for one production location as a proxy for costs at a different location. The POSCO Group argues that the same factors which led the Department to accept that respondent's costs, including that respondent's verified inability to determine specific costs, are present in the instant case. The POSCO Group argues that the Department has previously adjusted a respondent's submitted costs, based on its normal accounting practices, only where the Department has determined that such normal practices resulted in an unreasonable allocation of production costs. See DRAMs from Korea at 15472.

Petitioners argue that the Department properly adjusted the POSCO Group's submitted costs to account for differences in coating weight and substrate quality. Petitioners state that the POSCO Group's arguments regarding this issue are essentially identical to those raised in prior reviews. See Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13201. Petitioners argue that, as in the prior reviews, the Department should reject the POSCO Group's claims and adjust the submitted costs to account for cost differences associated with these physical characteristics.

Department's Position: We agree with petitioners. It is appropriate for the Department to account for significant cost differences associated with differences in physical characteristics. The coating weight and quality characteristics are relatively high in the Department's model-matching hierarchy, and the POSCO Group companies distinguish these characteristics in their selling practices. Although the POSCO Group suggested an alternative methodology at verification, its submitted costs did not reflect the differences associated with these two characteristics. The adjustments made by the Department for coating weight and quality reflect a methodology comparable to that used in the final results of the second and third administrative reviews. Furthermore, regardless of the POSCO Group's characterization of this adjustment as adverse facts available, we have simply adjusted the POSCO Group's reported costs to more accurately reflect the costs of producing the products. As in the previous two reviews, the Department has relied upon the respondent's normal accounting systems, except to the extent that doing so would result in an unreasonable allocation of production costs and a possible distortion of the dumping margin. The non-adverse nature of these adjustments is demonstrated by the fact that the methodology results in a decrease in the costs of some products, while increasing the costs of other products. Furthermore, the use of POCOS data to adjust the costs of POSCO production for coating weight, and the use of POSCO data to adjust the costs of POCOS production for quality, is reasonable because they are sister companies within the same collapsed group.

We note that we have made a slight adjustment to our recalculations of these adjustments to reflect the fact that we are no longer using the matrix utilized to adjust POSCO costs. See the March 8, 1999, Final Cost Calculation Memorandum from William Jones to Neal Halper.

Comment 20: Startup Adjustment

The POSCO Group claims that the Department erroneously failed to grant, or even to consider, its requested startup adjustment because the Department claimed its effect was insignificant. The POSCO Group argues that the Department should address the merits of its startup adjustment claim and should grant its request. The POSCO Group argues that record evidence supports its assertion that it has satisfied the requirements for a startup adjustment, as defined in section 773(f)(1)(C)(ii) of the Act. Specifically, the POSCO Group claims that abnormally high production costs were incurred at a new facility during the review period due to startup operations, and that these higher costs resulted from production levels that were limited by technical factors associated with the initial phase of commercial production. The POSCO Group claims that establishing its new production line required substantial effort and investment, and that the new line was still in the startup phase from July through October 1996. The POSCO Group asserts that the new production line enabled it to produce merchandise in new dimensions, and alluded to the Department's alleged awareness of width as one of the most important characteristics of flat-rolled steel products. During this initial phase, the POSCO Group argues that it was necessary to carefully monitor and analyze the output from its new line to ensure that quality standards were met, before increasing to commercial production levels. The POSCO Group notes that it limited production well below the line's normal capacity during the startup period to permit such monitoring and to allow calibration of

the new equipment to avoid output variations. According to the POSCO Group, this limiting of production levels reflects the impact of technical factors as defined in the Act. The POSCO Group claims that record evidence also demonstrates that the new line's production levels were not limited by any factors other than startup, since demand for its products was strong, no chronic production difficulties were experienced, and operating performance on the new line improved steadily throughout and subsequent to the startup period. Finally, the POSCO Group argues that the effect of its requested startup adjustment was not ''insignificant,'' as characterized by the Department in its preliminary results. The POSCO Group argues that the Department's regulations define an insignificant adjustment as, ''any individual adjustment having an *ad valorem* effect of less than 0.33 percent* * *of the export price, constructed export price, or normal value, as the case may be.'' See 19 CFR 351.413. Therefore, the POSCO Group claims, the Department erred when it measured the startup adjustment's impact on the overall dumping margin. The POSCO Group points out that the Department's cost verification report indicates that the startup adjustment would reduce submitted normal values by more than 0.33 percent. The POSCO Group further notes that the Department allowed adjustments in this instant case with an even smaller impact than the requested startup adjustment.

Petitioners argue that the Department properly rejected the POSCO Group's startup adjustment claim in its preliminary results. Petitioners assert that the startup adjustment claim should continue to be rejected because the Department rejected the POSCO Group's startup adjustment claim in the prior review for the very same production line, finding that the startup adjustment requirements had not been met, and because the POSCO Group has not submitted any new evidence to support its claim in the instant review. Petitioners further argue that the POSCO Group has admitted to beginning commercial production before the current review period and that, according to the legislative history, the startup period ends when commercial production begins.

Department's Position: We have conducted an analysis of the POSCO Group's startup adjustment claim for the final results. In its preliminary results, the Department asserted that the startup claim would have an insignificant impact on the dumping margin and, therefore, it was not necessary to consider the startup adjustment claim. We agree with the POSCO Group that this conclusion was inappropriate because, as POSCO notes, our regulations define an insignificant adjustment as, ''having an *ad valorem* effect of less than 0.33 percent* * *of the export price, constructed export price, or normal value, as the case may be.'' *See* 19 CFR 351.413. Since the startup adjustment would, if granted, reduce the COM for certain products by more than 0.33 percent, we have considered the appropriateness of the POSCO Group's startup adjustment claim.

We have determined, however, that the statute's requirements for granting a startup adjustment have not been met by the POSCO Group, and we therefore have not applied the startup adjustment to calculate the POSCO Group's COP and CV. In this case, the POSCO Group has claimed that the installation of a new production line at one of its two works constitutes a new facility at which new products are manufactured, and that the claimed startup adjustment should be applied to products manufactured on this new line. The POSCO Group also claimed a startup adjustment for this same production line in the previous review. As in that review, we find that this new line does not produce a ''new product,'' and does not constitute a ''new production facility,'' as required by the startup adjustment provision. *See* section 773(f)(1)(C)(ii)(I) of the Act.

The line produces merchandise similar to that manufactured on numerous other lines by the POSCO Group. Contrary to the POSCO Group's claim that the Department is aware that width is one of the most important characteristics of flat-rolled steel products, width is not among the most important characteristics indicated in the Department's product characteristic hierarchy. More importantly, POSCO Group product brochures, submitted in Exhibit 8A in its October 10, 1997 Section A response, indicate a similar range of widths produced on other lines. Furthermore, virtually all of the alleged addition in width range provided by the new line falls within a single broader width range defined by the Department's product characteristic hierarchy and in which most of the overall width range of the lines in question fall. Finally, we disagree with the POSCO Group's assertion that the output of the line in question constitutes a new product even in the POSCO Group's narrow definition of the term, given that the POSCO Group already possessed the capability of slitting wider coils to the allegedly narrower widths that can be processed on the line in question.

As to a new production line constituting a new facility, the SAA sets a high standard for startup adjustment claims when it states that, ''New production facilities' includes the substantially complete retooling of an existing plant. Substantially complete retooling involves the replacement of *nearly all production machinery* or the equivalent rebuilding of existing machinery.'' SAA at 836 (emphasis added). The SAA clearly states, therefore, that the startup adjustment should only be applied when substantial modifications have been made to an entire production plant. When determining whether substantial modifications have been made the Department must consider, along with other factors, the extent to which the improvements relate to the total production process. In the instant case, the new line is but one of many processing steps necessary to produce corrosion-resistant products performed by the POSCO Group. We also note that, although the equipment in question is large and expensive, its relative size to the other production equipment involved in the production of corrosion-resistant products at the POSCO Group is small. Therefore, we do not believe that the installation of this equipment constitutes the substantial retooling of one of the POSCO Group's facilities and, therefore, does not meet the standard established in the SAA.

Regarding the second prong of the startup test (*see* section 773(f)(1)(C)(ii)(I) of the Act), we note that POSCO officials did, as revealed in the cost verification report, discuss alleged technical factors associated with the initial phase of commercial production. However, because the POSCO Group did not satisfy the first prong of the statutory test, we are precluded from granting the claimed startup adjustment.

Final Results of Reviews

As a result of these reviews, we have determined that the following margins exist for the period August 1, 1996 through July 31, 1997:

Producer/manufacturer/exporter	Weighted-average margin
Certain Cold-Rolled Carbon Steel Flat Products	
Dongbu	No U.S. entries in POR
POSCO	0.00

Producer/manufacturer/exporter	Weighted-average margin
Union	No U.S. entries in POR
Certain Corrosion-Resistant Carbon Steel Flat Products	
Dongbu	1.49
POSCO	0.16
Union	0.14

The Department shall determine, and the U. S. Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the same sales. The rate will be assessed uniformly on all entries of that particular company made during the POR. The Department will issue appraisement instructions directly to the U.S. Customs Service.

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 rates for the reviewed companies named above will be the rates for those firms as stated above, except for POSCO (and its collapsed affiliates) and Union, which had *de minimis* margins, and whose cash deposit rates are therefore zero; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate will continue to be 14.44 percent (for certain cold-rolled carbon steel flat products) and 17.70 percent (for certain corrosion-resistant carbon steel flat products), which were the ''all others'' rates in the LTFV investigations. See 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 Korea, 58 FR 37176 (July 9, 1993), as amended by Amendment 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 Korea, 58 FR 41083 (August 2, 1993).

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, 37350 (July 9, 1993) will be subtracted from the cash deposit rate for deposit purposes.

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) 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 serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.306 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 8, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–6279 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products from Japan.

SUMMARY: On September 8, 1998, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period August 1, 1996 through July 31, 1997. We gave interested parties an opportunity to comment on our preliminary results. As a result of these comments, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Contact Doreen Chen or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington,DC 20230; telephone: (202) 482–0408 or (202) 482–3818 respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are 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 351 (62 FR 27379, May 19, 1997).