under section 776(a)(2)(A) of the Act, that we must base our determination for that company on the facts available.

Section 776(b) of the Act further provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information (*see* also the Statement of Administrative Action (''SAA''), accompanying the URAA, H. Doc. No. 316, 103rd Cong., 2d Sess. 870). Given its refusal to comply with the Department's request for information, AST has failed to cooperate to the best of its ability in this investigation. Therefore, the Department has determined that an adverse inference is warranted with respect to AST. As in the Preliminary Determination, the Department selected a margin of 45.09 percent, which was based on the highest margin alleged in the petition for any Italian producer. As discussed in the Preliminary Determination, the Department has, to the extent practicable, corroborated the information used as adverse facts available. Furthermore, no record evidence or argument has been submitted that would cause the Department to call into question the accuracy of the data in the petition. Therefore, we determine that the use of this margin as facts available for AST is appropriate.

For further discussion regarding the Department's use, and selection, of facts available for AST in this investigation, *see* Preliminary Determination, 63 FR at 59531–32.

### The All Others Rate

The foreign manufacturer/exporter in this investigation is being assigned a dumping margin entirely on the basis of facts otherwise available. Section 735(c)(5)(B) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated All Others rate for exporters and producers not individually investigated, including weight averaging zero and de minimis rates with the margins based on facts available. In this case, the margin assigned to the only company investigated is based on adverse facts available. Therefore, as stated in the Preliminary Determination, and consistent with the SAA at 873, we are using an alternative method. As our alternative, we are basing the All Others rate on a simple average of the margins in the petition, based both on price-to-price comparisons and constructed value. As a result, the All Others rate is 39.69 percent.

### Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(A) of the Act, we are directing the U.S. Customs Service (''Customs'') to continue to suspend liquidation of all entries of SSPC from Italy, that are entered, or withdrawn from warehouse, for consumption on or after November 4, 1998 (the date of publication of the Preliminary Determination in the **Federal Register**). We will instruct Customs to require a cash deposit or the posting of a bond equal to the percentage margins, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

| Exporter/manufacturer | Margin percentage |
|---|---|
| Acciai Speciali Terni SpA (AST) | 45.09% |
| All Others ..... | 39.69% |

The All Others rate, which we derived from the average of the margins calculated in the petition, applies to all entries of subject merchandise other than those exported by the named respondent.

### ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 19, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–7535 Filed 3–30–99; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–791–805]**

## Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Plate in Coils From South Africa

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

**ACTION:** Notice of Final Determination of Sales at Less Than Fair Value.

**EFFECTIVE DATE:** March 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Robert James at (202) 482–5222 or John Kugelman at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (April 1, 1998).

### Final Determination

We determine that stainless steel plate in coil (stainless coil) from South Africa is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

### Case History

We published in the **Federal Register** the preliminary determination in this investigation on November 4, 1998. See Notice of Preliminary Determination of Sales at Less Than Fair Value; Stainless Steel Plate in Coils From South Africa, 63 FR 59540 (Preliminary Determination). Since the publication of the Preliminary Determination the following events have occurred:

On November 5, 1998, the sole respondent in this investigation, Columbus Stainless (Columbus), requested postponement of the final determination, agreeing to the extension of preliminary measures, as required under section 735(a)(2) of the Tariff Act. Accordingly, we postponed the final

determination in this investigation on December 11, 1998. See Postponement of Final Antidumping Determinations: Stainless Steel Plate in Coils From Canada, Italy, Republic of Korea, South Africa and Taiwan, 63 FR 70101 (December 18, 1998).

The Department verified Columbus's section D (Cost of Production) questionnaire response between November 9 and 13, 1998 at Columbus's headquarters in Middelburg, South Africa; we then verified sections A (General Information), B (Home Market Sales) and C (U.S. Sales) of Columbus's responses on November 16 through 20, 1998. See Memorandum to Neal Halper, Acting Director, Office of Accounting; ''Verification Report on the Cost of Production and Constructed Value Data Submitted by Columbus Stainless,'' January 15, 1999 (Cost Verification Report) and Memorandum For the File; ''Verification of Columbus Stainless,'' January 14, 1999 (Sales Verification Report). Public versions of these, and all other Departmental memoranda referred to herein, are on file in room B–099 of the main Commerce building.

On December 4, 1998, Armco, Inc., J&L Specialty Steel, Inc., Lukens, Inc., North American Stainless, the United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union and Zanesville Armco Independent Organization, Inc. (petitioners) requested a public hearing in this case. However, on December 18, 1998, petitioners withdrew their request for a hearing and, as Columbus had not requested a hearing, none was held. On January 25, 1999, petitioners and Columbus filed case briefs in this matter; we received rebuttal briefs from petitioners and Columbus on February 1, 1999.

## Scope of the Investigation

For purposes of this investigation, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this investigation are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

## Period of Investigation

The period of investigation (POI) is January 1, 1997 through December 31, 1997.

## Fair Value Comparisons

To determine whether sales of stainless coil from South Africa to the United States were made at less than fair value, we compared export price (EP) to the normal value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Tariff Act, we calculated weighted-average EPs for comparison to weighted-average NVs or constructed values (CVs).

### *Transactions Investigated*

For its home market and U.S. sales Columbus reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. As explained in response to *Comment 2,* below, for this final determination we have continued to rely upon Columbus's invoice dates in the home and U.S. markets as the date of sale. However, should this investigation result in an antidumping duty order, we intend to scrutinize further this issue in any subsequent segment of this proceeding involving Columbus.

### *Product Comparisons*

In accordance with section 771(16) of the Tariff Act, we considered all products produced by the respondent covered by the description in the ''Scope of the Investigation'' section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in Appendix V of the Department's May 27, 1998 antidumping questionnaire.

### *Level of Trade*

In our preliminary determination we agreed with Columbus that one level of trade (LOT) existed for Columbus in the home market. Furthermore, we agreed with Columbus that its EP sales in the United States were at a single LOT, and that sales in both markets were at the same LOT. No party to this investigation commented on this issue and the Department has no new evidence to alter its conclusion. Therefore, as in the preliminary determination, we find that sales within or between the markets were made at the same LOT and, therefore, a LOT adjustment pursuant to section 773(a)(7)(A) of the Tariff Act is not appropriate.

## Export Price

We calculated the price of United States sales based on EP, in accordance with section 772(a) of the Tariff Act, because the subject merchandise was sold to the first unaffiliated purchasers in the United States prior to the date of importation and because record evidence did not support basing price on constructed export price (CEP). We calculated EP using the same methodology employed in the preliminary determination with the following exceptions:

Based on information discovered at verification we made deductions from EP for unreported credit memos issued on certain U.S. sales of subject merchandise; we have disregarded any such credit memos issued for home market sales. *See Comment 3,* below.

We also recalculated Columbus's inventory carrying costs (ICC) based upon revisions to Columbus's reported cost of manufacture (COM) arising from verification. See Memorandum to Neal Halper, ''Cost of production ('COP') and constructed value ('CV') Calculation Memorandum for Final Determination,'' March 19, 1999 (Cost Calculation Memorandum (Final)).

## Normal Value

### *Home Market Viability*

As discussed in the *Preliminary Determination,* in order to determine

whether the home market was viable for purposes of calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Tariff Act. As Columbus's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

*Cost of Production Analysis*

In response to a timely allegation by petitioners we conducted an investigation to determine whether Columbus made sales of the foreign like product during the POI at prices below its COP. In accordance with section 773(b)(3) of the Tariff Act we calculated the weighted-average COP based on the sum of Columbus's cost of materials, fabrication, general expenses, and packing costs. We relied on Columbus's submitted COP except in the following specific instances where the submitted costs were not appropriately quantified or valued:

We added depreciation expense to the reported COP and CV based on the ratio of depreciation expense to Columbus's variable overhead expenses. Likewise, we added certain additional depreciation expense to the reported COP and CV based on the ratio of this depreciation expense to variable overhead expenses. *See Comments 13* and *14*, below.

We increased the cost of Columbus's affiliated-party purchases of the raw material input ferrochrome. *See Comment 15.*

We increased Columbus's COP by adding the variances Columbus excluded from its reported costs. *See Comment 16.*

We reallocated variable overhead expenses based on differences in the cost of producing the subject merchandise arising from the differences in physical characteristics of specific plate products. *See Comment 17.*

We calculated a single COP for each product sold (*i.e.*, each CONNUM), weighted by quantity produced during the POI, rather than quantities sold, as originally reported by Columbus. *See Comment 18.*

Finally, we excluded certain selling expenses from the submitted general and administrative (G&A) expense ratio.

We compared the weighted-average COP for Columbus to home market sales prices of the foreign like product, as required under section 773(b) of the Tariff Act. In determining whether to disregard home market sales made at prices less than the COP we examined whether such sales were made (i) in substantial quantities within an extended period of time and (ii) at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, early payment and other discounts, and direct and indirect selling expenses.

Pursuant to section 773(b)(2)(C)(i) of the Tariff Act, where less than twenty percent of a respondent's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in ''substantial quantities.'' Where twenty percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determine such sales to have been made in substantial quantities, in accordance with section 773(b)(2)(C)(i) of the Tariff Act. In addition, we determine that such below-cost sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Tariff Act. In such cases, pursuant to section 773(b)(2)(D) of the Tariff Act, we also determine that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. Therefore, we disregard the below-cost sales. Where all sales of a specific product were at prices below the COP we disregard all sales of that product.

Our cost test for Columbus revealed that for certain products less than twenty percent of Columbus's home market sales were at prices below Columbus's COP. We retained all sales of those products in our analysis. For other products more than twenty percent of Columbus's sales were at prices below COP. In such cases we disregarded the below-cost sales, while retaining the above-cost sales for our analysis. See Memorandum For the File, ''Antidumping Duty Investigation on Stainless Steel Plate in Coils from the Republic of South Africa—Final Determination Analysis for Columbus Stainless,'' March 19, 1999 (Final Determination Analysis Memorandum).

*Price-to-Price Comparisons*

For those products with home market prices at or above the COP, we based NV on Columbus's sales to unaffiliated home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Tariff Act. We continued to make circumstance-of-sale (COS) adjustments in accordance with section 773(a)(6)(c)(iii) of the Tariff Act, with the following exceptions.

As Columbus had no short-term rand-denominated borrowings, we recalculated home market credit expenses (and ICC) using publicly-available interest rates released by the South African Reserve Bank, as confirmed in the International Monetary Fund's International Financial Statistics series. *See Comment 5.*

We have reclassified certain home market advertising expenses as indirect selling expenses and, with the exception of direct advertising expenses incurred on sales of 3CR12 steel, are not deducting Columbus's advertising expenses from NV as a COS adjustment. *See Comment 7.*

Finally, we removed computer programming language calculating a ''commission offset'' to NV for commissions on U.S. sales based upon the conclusions outlined in response to *Comment 4.*

*Price-to-CV Comparisons*

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. See section 773(e)(1). In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in South Africa. We calculated the cost of materials, fabrication, and general expenses based upon the methodology described in the *''Cost of Production Analysis''* section, above. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses from NV and adding U.S. direct selling expenses.

**Currency Conversion**

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

**Analysis of Interested Party Comments**

*Issues Relating to Sales*

*Comment 1: Use of Facts Available.* Petitioners press for the use of partial adverse facts available in calculating Columbus's antidumping margin for this final determination, insisting that Columbus ''failed to provide material information requested by the Department,'' and that much of the information Columbus did provide could not be verified. According to petitioners, these failures taint a broad range of both the sales and cost data submitted by Columbus during the course of this investigation. As examples petitioners charge Columbus with, *inter alia:*

- Failing to report properly home market and U.S. post-sale price adjustments;
- Failing to provide a verifiable short-term interest rate for rand-denominated loans for calculating home market credit and ICC and, further, failing to inform the Department of the nature of its actual borrowing during the POI;
- Improperly omitting certain expenses in its reported COP and CV data [1];
- For one raw material input, ferrochrome, reporting prices paid to an affiliated party which do not reflect arm's-length prices, and refusing to provide either the affiliate's COP for ferrochrome or its prices to unaffiliated customers for comparison purposes;
- Failing to account for the different work stations and processing times required in the production of each specific stainless steel plate product;
- Calculating weighted-average COP and CV data on the basis of sales quantity rather than production quantity, as required by the Department; and
- Failing to reconcile reported COP and CV to Columbus's audited financial statements.

*See* Petitioners' Case Brief, January 25, 1999, at 2 and 3.

Considered together, petitioners aver, these deficiencies necessitate the use of adverse facts available for all missing or unverifiable data. Further militating for the use of facts available, petitioners continue, is that each of these deficiencies was only disclosed during the Department's sales and cost verifications, in spite of numerous opportunities afforded Columbus by the Department to submit correct data in the form required. *Id.* at 4.

According to petitioners, ''Columbus's behavior in this investigation cannot be characterized as a good faith effort to comply with the Department's investigation.'' Petitioners' Case Brief at 5. For example, petitioners contend that despite the Department's initial and supplemental requests for information on post-sale price adjustments in the home and U.S. markets, Columbus submitted no such data; however, petitioners note, at verification Columbus ''was able to provide . . . 'a complete listing of all credit and debit notes issued during calendar 1997.' '' *Id.* at 5, quoting the Department's Sales Verification Report at 35. Similarly, petitioners insist, the Department repeatedly requested that Columbus submit its average COP and CV data weighted on the basis of production quantities, as required by the Department. Instead, petitioners charge, Columbus used sales quantity as the weighting factor, withholding the production quantity until Columbus provided it in the course of the Department's cost verification (*i.e.*, over a month after the Department's preliminary determination). Petitioners charge Columbus with repeatedly failing to supply requested information in a timely manner, only to produce the information ''with no apparent difficulty'' once the Department uncovered the omissions during the sales and cost verifications. *Id.* at 6.

In light of what petitioners characterize as incomplete, untimely, and unverifiable sales and cost information, petitioners urge the Department to find that Columbus ''failed to satisfy the requirements of section 782(e) of the (Tariff) Act.'' [2] *Id.* Following the statutory language, petitioners detail these alleged failings: first, according to petitioners, Columbus untimely submitted its COM. Second, petitioners charge Columbus with failing to provide cost data which could be reconciled with Columbus's audited financial statements. Third, petitioners allege, Columbus's responses are so incomplete they cannot reliably serve as a basis for reaching the final determination in this investigation. Fourth, petitioners suggest that the sales and cost verifications proved that Columbus failed to act to the best of its ability in responding to the Department's requests for information. Finally, petitioners aver, the Department cannot use the data as submitted by Columbus without undue difficulty, arguing, for example, that it would be ''unduly burdensome'' for the Department to search out appropriate arm's-length short-term interest rates as surrogates for the rates reported by Columbus. Petitioners' Case Brief at 6 and 7.

According to petitioners, the numerous material discrepancies in Columbus's questionnaire responses require the Department to make the adverse inferences called for in section 776(b) of the Tariff Act. Petitioners view these deficiencies, affecting such ''core'' issues as the cost test, calculation of CV, differences-in-merchandise (difmer) adjustments, and other sales adjustments, as clear demonstration that Columbus failed to act to the best of its ability by cooperating with the Department's requests for information. Citing the Statement of Administrative Action (SAA) accompanying the URAA, petitioners note that the Department ''may employ adverse inferences about missing information to ensure that a party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' Petitioners' Case Brief at 8, quoting the SAA, as reprinted in H.R. Doc. No. 103–316 (1994). Therefore, petitioners conclude, the Department must apply adverse facts available ''to situations where Columbus was unable to provide any evidence in support of its response.'' *Id.*

Columbus objects to these characterizations of its behavior in this proceeding, accusing petitioners of ''occasional lapses of reason.'' Columbus's Rebuttal Brief at 1. Petitioners' sole end, Columbus maintains, is to persuade the Department to disregard verified information and to ''punish'' Columbus through the use of ''unreasonable adverse inferences.'' Columbus rejects petitioners' efforts to ''paint Columbus in the blackest of colors, making wild claims of 'non-cooperation' that have absolutely no basis in fact.'' This proceeding, Columbus suggests, is an investigation, not ''a math test, for which the student is taken to task for every mistake.'' *Id.*

Columbus denies each of petitioners' contentions that it acted in bad faith, submitted untimely or incomplete information, or failed to cooperate by acting to the best of its ability in this proceeding. Petitioners' charges, Columbus maintains, ''are either

[1] The precise nature of these expenses necessitates reference to business proprietary information. For a full discussion of these issues, see the Cost Verification Report.

[2] Briefly, section 782(e) of the Tariff Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by (the Department)'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information, and the Department can use the information without undue difficulties.

demonstrably false or are so distorted as to be unreconcilable with the facts.'' Columbus's Rebuttal Brief at 2.

Each claim of verification ''failures'' posited by petitioners, Columbus insists, is either untrue or represents an ''inadvertent omission.'' *Id.* at 3. However unfortunate, Columbus submits, Columbus corrected these omissions immediately upon discovery. In Columbus's view there is no justification for disregarding Columbus's submitted and verified information in favor of facts available. In fact, Columbus maintains, petitioners attempt to use Columbus's responsiveness in identifying and correcting problems at verification as evidence that Columbus was uncooperative. Such a view, Columbus argues, ''perversely twists'' Columbus's cooperation, especially when considering that Columbus was undergoing a simultaneous countervailing duty investigation before the Department and a separate antidumping proceeding brought by the European Union. *Id.* at 4.

Columbus maintains that under the terms of sections 776 and 782 of the Tariff Act the Department must clear several statutory hurdles prior to resorting to facts available. Section 776(a), Columbus notes, limits the use of facts available to those situations where (i) necessary information is not on the record, (ii) an interested party withheld or refused to provide requested information, (iii) an interested party significantly impeded the proceeding, or (iv) the submitted information cannot be verified. Further, section 776(b) allows the use of adverse inferences only where ''an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.'' Columbus's Rebuttal Brief at 5 and 6. Finally, Columbus argues, even in cases where a respondent's submitted information fails to meet all of the Department's requirements section 782(e) of the Tariff Act provides that the Department will ''not decline'' to use that information if:

(1) The information is submitted by the deadline established for its submission,

(2) The information can be verified,

(3) The information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

(4) The interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and,

(5) The information can be used without undue difficulties.

Columbus's Rebuttal Brief at 6, quoting section 782(e) of the Tariff Act.

The use of adverse facts available in the instant case, Columbus avers, would meet none of these statutory requirements. According to Columbus, the record demonstrates that all necessary information was on the record, that Columbus responded in a timely manner by providing requested information, that Columbus did not impede the investigation, and that the Department was able to verify the submitted information. Any use of facts available, let alone adverse facts available, Columbus argues, would be ''illegal.'' *Id.*

Columbus contends that the ''punitive'' use of facts available has been rejected by the courts. *Id.* at 7, citing *Magnesium Corporation of America* v. *United States,* 938 F. Supp. 835, 903 (CIT 1996), and *Taiwan International Standard Electronics, Ltd.* v. *United States,* 899 F.2d 1185, 1190 (Fed. Cir. 1990). Further, Columbus maintains, the use of adverse inferences is especially unwarranted here, as Columbus ''*never* refused to cooperate.'' *Id.* (original emphasis). The use of adverse facts available in this case, Columbus continues, would also be contrary to Departmental practice in cases where a cooperative respondent nevertheless provided a deficient response. Columbus's Rebuttal Brief at 9, citing *Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy,* 61 FR 30326, 30329 (June 14, 1996). Columbus also cites *Circular Welded Non-Alloy Steel Pipe From South Africa,* (61 FR 24271, 24272, May 14, 1996), where the Department found a respondent's questionnaire response ''unusable for purposes of margin calculations,'' yet did not draw adverse inferences in assigning facts available. *Id.*

Columbus concludes by asserting that ''there is no justification or support whatsoever for the use of 'facts available' against Columbus,'' and urges the Department to incorporate Columbus's verified data into this final determination. Columbus's Rebuttal Brief at 11.

*Department's Position:* While the Department uncovered several deficiencies in Columbus's sales and cost data during the two verifications conducted at Middelburg, we believe petitioners' characterization of Columbus's cooperation throughout this proceeding is overdrawn. We agree with petitioners that Columbus, as described in the comments that follow, committed a number of errors in compiling its responses and in certain cases failed to follow the instructions provided in the Department's questionnaires. We have addressed each of these alleged shortcomings below and have, where appropriate, resorted to facts otherwise available, including adverse facts available, when faced with irreparable shortcomings in Columbus's responses. Overall, however, we find that Columbus attempted to cooperate in this proceeding and that the deficiencies in its responses, considered either singly or collectively, do not merit the application of adverse facts available in every instance.

Petitioners appear to portray Columbus's alacrity at verification in identifying and correcting problems at verification as evincing bad faith as, in petitioners' telling, Columbus had the correct information in its possession all along yet withheld it from the Department. We agree that Columbus clearly failed to respond completely to each item in the Department's questionnaire (by not reporting credit memos, for example) and we have treated these shortcomings appropriately. However, Columbus, a first-time respondent to our questionnaires, attempted to comply with our requests for information. The record indicates that for the most part the errors and omissions in Columbus's responses were inadvertent in nature. In certain instances Columbus readily conceded errors in its response, such as its failure to include depreciation costs in its COP and CV data.

For the purpose of this final determination, therefore, we have continued to rely upon Columbus's submitted sales and cost data, adjusted appropriately for any errors or omissions on Columbus's part.

*Comment 2:* Date of Sale. Both petitioners and Columbus offer arguments concerning the proper date of sale for this investigation. In the Preliminary Determination the Department relied upon the invoice date as the date of sale, in keeping with the Department's regulatory preference for using the invoice date as the date of sale absent evidence ''that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' 19 CFR 351.401(i).

Petitioners argue that in this case all material terms of sale are set at the time Columbus issues its order acceptance, a document confirming the quantity, price, grade, dimensions, and payment and sale terms of each order, to its customer. Petitioners further note that nothing in the regulations requires the Department to accept the invoice date as the date of sale in all cases. Citing

Certain Welded Carbon Steel Pipes and Tubes From Thailand, 63 FR 55578 (October 16, 1998) (Carbon Steel Pipes From Thailand), petitioners argue that the Department accepts the invoice date as date of sale ''unless the record evidence demonstrates that the material terms of sale, i.e., price and quantity, are established on a different date.'' Petitioners' Case Brief at 10, quoting Carbon Steel Pipes From Thailand at 63 FR 55587 and 55588. Even more on point, petitioners suggest, is the Department's ruling in Circular Welded Non-Alloy Steel Pipe From the Republic of Korea, 63 FR 32833 (June 16, 1998) (Korean Non-Alloy Steel Pipe) which cites the Department's discretion to ''abandon the use of invoice date'' if doing so prevents ''inappropriate comparisons via the strict use of invoice date as the date of sale.'' *Id.*, quoting Korean Non-Alloy Steel Pipe at 63 FR 32835.

According to petitioners, the situation with respect to Columbus closely mirrors that found by the Department in Korean Non-Alloy Steel Pipe. Referring to the Department's findings during the sales verification of Columbus, petitioners note that upon receipt of an order Columbus conducts certain internal technical and credit checks and then issues an order acceptance reflecting the customer's purchase order number, customer information, payment and sales terms, quantities and prices. This demonstrates clearly, petitioners maintain, that the essential terms of sale are established upon issuance of the order acceptance. Such a conclusion, petitioners continue, is supported by Columbus's technical manager, who opined during a plant tour conducted as part of verification that changes to a production order are extremely rare once the order acceptance has been issued.

Columbus in its Case Brief argues, contra petitioners, that the invoice date represents the only appropriate date of sale for purposes of the final determination because ''there can be changes to the price, volumes, specifications, or delivery terms (including partial non-delivery) up until that date.'' Columbus's Case Brief at 17. Further, Columbus avers, use of the invoice date is consistent both with Columbus's internal records kept in its ordinary course of business, and also with generally-accepted accounting principles (GAAP) in South Africa. Columbus suggests that, contrary to petitioners' assertions, the Department's sales verification found specific examples during the POI of changes to the material terms of sale occurring at points between the order acceptance date and the invoice date. Columbus's Case Brief at 18, citing the Sales Verification Report at 7 through 9. ''This discussion,'' Columbus insists, ''should settle the matter.'' *Id.*

With respect to the comments of Columbus's Technical Manager, Columbus dismisses the importance of these statements. According to Columbus the key to this passage in the Sales Verification Report is the qualifying phrase ''to (his) knowledge . . .'' Columbus insists that ''many changes to the order . . . have nothing to do with the technical specifications of the product ordered. The technical manager would have no way of knowing about—and would not care about—such changes.'' Columbus's Case Brief at 18. Furthermore, Columbus avers, a customer's change in technical specifications could be satisfied by drawing merchandise from another order or from stock on hand; clearly, such changes in the material terms of sale would have no effect whatever upon Columbus's production schedule. *Id.* Columbus suggests that the resolution to this controversy over date of sale lies in Columbus's sales documentation and the Department's discussions with sales rather than production personnel. Accordingly, Columbus concludes, the Department should continue to use the date of invoice as the date of sale.

*Department's Position:* Petitioners have presented cogent arguments in this case in support of using the order confirmation date as the date of sale. They have pointed out that the respondent is a mill which largely produces the merchandise under investigation to fill specific orders. Therefore, as petitioners see it, once the mill has scheduled the casting of a specific stainless slab for rolling to a given stainless coil, little room remains for altering the essential terms of sale.

Columbus, for its part, has presented arguments that the material terms of sale are subject to change at any time between the order acceptance and invoice dates and has indicated that not all such changes would be reflected in the production department's order acceptance (for example, in cases where Columbus satisfied a changed order by either drawing merchandise from a different order already in production or from inventory, or in any cases involving price changes). Further, Columbus has noted that changes in prices ''may be influenced by a number of factors, such as a change in market circumstances, a delay in production and therefore delivery, a non-conformance to quality, or a change in the circumstances of the buyer.'' Columbus's November 2, 1998 supplemental response at 3. Indeed, we observed evidence of each of these types of changes during the Department's sales verification. When pressed at verification Columbus was able to produce specific examples involving both subject stainless coil and non-subject cut-to-length stainless steel where the material terms of sale did, in fact, change after the order acceptance date and before final shipping and invoicing. See, e.g., the Sales Verification Report at 7 through 9 and Appendix III.

The Department's regulations establish a rebuttable presumption that the invoice date will serve as the date of sale unless record evidence demonstrates ''that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' 19 CFR 351.401(i). ''Our current practice, in a nutshell, is to use the date of invoice as the date of sale unless there is a compelling reason to do otherwise.'' Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 63 FR 13170, 13194 (March 18, 1998) (Korean Cold-Rolled Flat Products). After reviewing the evidence of record in this proceeding we have reached several conclusions. First, we agree with Columbus's assertion, borne out at verification, that its internal records and financial statements do not recognize a sale until dispatch and invoicing. For example, in an exchange with the Department over this issue Columbus noted that no merchandise leaves the mill (and, hence, no invoice will be issued) until Columbus has in hand a guarantee of payment, be it an irrevocable letter of credit or the extension of credit backed by an insurance policy against non-payment. Columbus stressed that ''[i]t is that clear—no payment, no sale.'' Columbus's November 2, 1998 supplemental response at 4. Second, we find that Columbus has presented evidence that the material terms of sale are, in fact, subject to change after the order confirmation date. As noted, Columbus presented examples from the POI where either quantity or price or both changed after the order acceptance had been issued, but prior to the invoice date, including one reported U.S. transaction selected at random by the Department for a ''surprise'' sales trace. Thus, as we concluded in Korean Cold-Rolled Flat Products, ''there is no record evidence indicating that a date other than the invoice date is the date after which the essential terms of sale could

not be changed.'' Id. at 13195 (emphasis added).

Petitioners' citation to Carbon Steel Pipes From Thailand is instructive in this matter. In that case petitioners argued for use of the respondent's contract date as the date of sale noting that by using the invoice date ''(1) a different set of sales will be evaluated, (2) in a country subject to currency devaluation or inflation, the sales value may be distorted, and (3) incorrect dates lead to incorrect matching, all of which ultimately distorts the antidumping duty margin.'' Id. at 55587. The Department disagreed with petitioners in that case concluding that ''[p]etitioners'' claim that the contract date fixes prices and quantities is not supported by record evidence.'' Id. at 55588. As to the specific objections raised in Carbon Steel Pipes From Thailand to relying upon the invoice date as opposed to the order confirmation date, Columbus has adduced evidence that shifting to one or the other date of sale will not effect a substantive change in the Department's analysis. While a change to order acceptance date would mean that some transactions currently listed as taking place early in the POI would be omitted from our analysis, whereas other transactions presently considered as falling after the POI would be included, the resultant overall volumes under either scenario are comparable. See Columbus's November 2, 1998 supplemental response at 6 and Appendix 1. Furthermore, the relative lag between order acceptance and invoice dates on home market and U.S. sales do not differ to a significant degree.[3] Thus, the universe of sales subject to our analysis would not change substantially were we to opt for the order date as the date of sale. As for the second point noted in Carbon Steel Pipes From Thailand, the South African rand was stable against the U.S. dollar throughout our POI, as were interest rates in South Africa. Thus, concerns about devaluation and inflation are not at issue. As for the third point concerning model matching, the evidence of record indicates that Columbus sold the same limited number of grades of stainless steel in both the home and U.S. markets, thus attenuating fears that our model matches have been skewed by reliance on invoice date. As we concluded in Stainless Steel Wire Rod From Italy, ''(g)iven the circumstances and the fact that we compared POI-average NVs to POI-average EPs, we find that no material distortion exists in our price-to-price comparisons.'' Notice of Final Determination of Sales At Less Than Fair Value: Stainless Steel Wire Rod From Italy, 63 FR 40422, 40425 (July 29, 1998).[4]

The record does not indicate that changes in the essential terms of sale between order acceptance and invoice dates occur with high frequency. However, there is sufficient evidence of record that changes can and do occur to militate against petitioners' contention that we must abandon the presumptive date of sale identified in the Department's regulations in favor of using Columbus's order acceptance date. Therefore, because Columbus's internal records kept in its normal course of business do not recognize any sale until the invoice is issued, and because Columbus has presented evidence that the essential terms of sale can and do change between issuance of the order acceptance and subsequent invoicing, we have continued to rely upon Columbus's reported invoice dates as the dates of sale for this final determination. In the event this investigation should result in the publication of an antidumping duty order, however, we intend to re-examine this issue thoroughly in any subsequent review involving Columbus.

*Comment 3:* Post-Sale Price Adjustments. Columbus and petitioners both comment in their case and rebuttal briefs upon the Department's findings at verification concerning certain unreported post-sale price adjustments. During the POI Columbus issued credit notes (i.e., credit memos) adjusting prices on certain transactions either as a result of price discrepancies or quality complaints. However, Columbus's questionnaire responses did not include a claim for home market credit notes, nor did Columbus report any credit notes for its U.S. sales. At verification the Department discovered a limited number of these credit notes relating to Columbus's home market and U.S. sales of stainless coil.

Columbus insists that the failure to report credit notes on sales of subject stainless coil stemmed from an inadvertent oversight. In Columbus's view, these omissions ''were minor, were not to the benefit of Columbus, did not impede the investigation, and were remedied as soon as they were discovered.'' Columbus's Case Brief, Executive Summary at page i. Columbus attributes its failure to include these credit notes in its sales database to an absence of any direct link in Columbus's accounting system between the credit notes and the applicable invoice.

Columbus urges the Department to consider these credit notes in reaching its final determination in this case. However, Columbus asserts that the credit notes warrant differing treatment depending upon the market in which they were issued. Credit notes issued for home market sales, Columbus insists, should be treated as direct adjustments to price, as these represent corrections to incorrect price surcharges. In contrast, Columbus argues that credit notes issued for U.S. sales of subject coil should be afforded treatment as indirect selling expenses, as they represent voluntary ''goodwill payments'' arising from quality complaints. According to Columbus, credit notes on U.S. sales do not represent price adjustments, as the original price had been agreed upon and paid. Further, they do not arise from warranty payments since, Columbus insists, subject plate is not sold under warranty. Columbus's Case Brief at 2. Therefore, Columbus notes, it is under no legal obligation to issue these credits. Id. at 3. Citing Dry Cleaning Equipment From West Germany; Preliminary Results of Antidumping Duty Administrative Review, 52 FR 2124 (January 20, 1987), Columbus maintains that it is the Department's practice to treat voluntary goodwill payments as indirect selling expenses.

Petitioners argue to the contrary that Columbus did, in fact, have a means of linking all credit notes issued during the POI to the original sales invoices. Petitioners assert that Columbus ''admitted'' that it could tie these credit notes to their applicable invoices through the Mill Production Order (MPO), a document generated for each order in Columbus's normal course of business. Petitioners' Case Brief at 13, citing the Sales Verification Report at 35. Petitioners argue that Columbus ''was aware that it had debit and credit notes that could and should have been reported to the Department in its home and U.S. market sales files.'' However, petitioners continue, Columbus ''unilaterally decided not to report these data to the Department.'' *Id.* Accordingly, petitioners suggest that as partial facts available the Department should make adjustments only for debit notes issued in the home market and for credit notes issued on U.S. sales.

In its rebuttal brief petitioners reject Columbus's characterization of this omission as ''minor and inadvertent.'' The Department's analysis, petitioners

[3] The exact numbers of days for the respective markets is business proprietary information. See Columbus's November 2, 1998 submission.

[4] It must be noted that in making this argument the Department agreed with petitioners that the customer's purchase order date, rather than respondent CAS's invoice date, represented the appropriate date of sale; that said, the point is no less relevant to the instant proceeding.

argue, hinges on determining the prices actually paid for the merchandise in the respective markets. According to petitioners, Columbus cannot rely upon the ''excuse'' that it has no direct link between its credit notes and the original invoices, suggesting that this is ''true of many adjustments to price required by the statute.'' Petitioners'' Rebuttal Brief at 13. Petitioners renew their proposal that the Department as adverse facts available consider only credit notes issued on U.S. sales and disregard those reported on home market sales. Further, in adjusting for the U.S. credit notes, petitioners urge the Department to disregard Columbus's ''invitation'' to treat these as indirect selling expenses: ''[c]redit and debit notes are properly regarded as adjustments to gross price.'' Id. Petitioners also dismiss Columbus's suggestion that its U.S. credit notes were not price adjustments ''since the price had been agreed to and paid.'' *Id.* at 14, quoting Columbus's Case Brief at 2 and 3. Rather, petitioners continue, by issuing a credit note Columbus was agreeing to a modification of the original price in response to customer complaints; in keeping with the Department's practice, petitioners conclude, these credit notes must be applied to particular sales.

*Department's Position* We agree with petitioners. The Department routinely asks respondents for information concerning billing adjustments and post-sale price adjustments during antidumping proceedings. For example, the Department's original antidumping questionnaire in this investigation asked Columbus to ''[r]eport any price adjustments made for reasons other than discounts or rebates. State whether these billing adjustments are reflected in your gross unit price.'' Antidumping Questionnaire, May 27, 1998, at page B–20 (home market) and C–18 (United States). Columbus's response for the home market: ''This field is not applicable. No price adjustments were done after invoicing. The price as reflected on the invoice is the price paid by the customer.'' Columbus's July 20, 1998 questionnaire response at B–27. Likewise for its U.S. sales Columbus reported that ''(n)o price adjustments were made after invoicing.'' Id. at C–27. For both markets Columbus stated that it did not offer any discounts other than home market early payment and distributor discounts. Columbus also reported that it granted no rebates and incurred no warranty or technical service expenses in either market. Id. at B–30, B–41, B–42, and C–29 and C–46.

The Department's supplemental questionnaire asked several follow-up questions concerning both discounts and rebates in the home market. In its September 8, 1998 supplemental questionnaire response Columbus reiterated that it granted no rebates during the POI and noted that its export-promotion discounts did not apply to POI sales of subject merchandise. See Columbus's September 8, 1998 response at 26 and 27; see also the Department's Sales Verification Report at 51 (''Columbus did not include technical or warranty expenses in its home market or U.S. sales listings.'').

At commencement of the Department's sales verification on November 16, 1998, consistent with our standard practice, we provided Columbus with the opportunity to submit any corrections of minor errors discovered while preparing for verification. Columbus submitted a single correction pertaining to its indirect selling expenses; Columbus again did not report any credit notes or price adjustments on either U.S. or HM sales. However, several days into the verification, during a lengthy discussion of quantity and value, Columbus produced a list of home market and U.S. credit notes. Columbus acknowledged that it ''had made no provisions for credit or debit notes or returns,'' and further allowed that it could link any such credit or debit notes to the original invoices through the MPO, a document generated in its ordinary course of business. See Sales Verification Report at 35.

The findings at verification amply demonstrate that Columbus not only issued credit notes pertaining to sales of subject plate in coil during the POI, but had the means to link each credit note to the appropriate invoice through the MPO. The record is also clear that Columbus reported none of these notes in spite of our manifest instructions that it do so. In view of the evidence of record we find that Columbus failed to act to the best of its ability in responding to this portion of the Department's original antidumping questionnaire. Section 776(a)(2) of the Tariff Act holds that if an interested party withholds information that has been requested by the Department or fails to provide such information by the deadlines for submission, the Department shall use the facts otherwise available in reaching its final determination. See Section 776(a)(2)(A) and (B). Further, pursuant to section 776(b) of the Tariff Act, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department ''may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.''

Furthermore, we find that the caveats set forth in section 782 governing the use of facts otherwise available are inapplicable in the instant case. In response to our direct requests that Columbus report home market and U.S. billing adjustments, rebates, and technical and warranty expenses, Columbus answered specifically that none of these applied to Columbus's sales during the POI. At no time prior to verification did Columbus acknowledge that it did, in fact, issue credit notes pertaining to quality complaints involving subject merchandise, nor did Columbus ever plead that it was unable to submit information regarding these ''inapplicable'' price adjustments. Furthermore, subsection 782(e) is inapposite as the Department is not ''declin[ing] to consider information that is submitted'' by Columbus. Columbus failed to submit this information in response to our requests. However, the information was belatedly provided by Columbus during the November 1998 verification and verified by the Department at that time.

Accordingly, as facts available in the instant case we have allocated each U.S. credit note to its applicable invoice and have deducted a transaction-specific per-ton amount for those credit notes. Furthermore, as an adverse inference, we are disallowing all credit notes claimed by Columbus for sales in the home market. As the SAA makes clear, the Department ''may employ adverse inferences about missing information to ensure that a party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' SAA, as reprinted in H.R. Doc. No. 103–316 (1994). Columbus ignored our specific instructions that it report billing adjustments, including ''any price adjustments made for reasons other than discounts or rebates.'' Thus, to insure that Columbus does not ''obtain a more favorable result,'' we are allowing the U.S. credit notes while adopting the adverse inference that Columbus issued no credit notes in the home market. *See, e.g., Gray Portland Cement and Cement Clinker From Mexico*, 62 FR 17148, 17166, (April 9, 1997) (home market freight expenses disallowed because respondent's ''reported data (were) inconsistent with the Department's explicit instructions'').

*Comment 4:* U.S. Commissions. Claiming that it pays commissions in the U.S. market but none in the home market, Columbus notes that the Department's practice in such situations is to make an adjustment to NV—the

''commission offset''—to account for the U.S. commission. Columbus's Case Brief at 1, citing section 19 CFR 351.410(e) of the Department's regulations. The Department, in fact, described this offset in its October 27, 1998 Preliminary Analysis Memorandum. However, Columbus maintains, Columbus's reported gross unit prices for its U.S. sales do not include the commission amounts. Accordingly, Columbus asks that the Department add U.S. commissions to the gross unit U.S. prices before making price-to-price comparisons. Columbus notes that although the Department discovered at verification that Columbus had made ''a small overstatement'' of the commissions, nevertheless, Columbus concludes, ''the Department was able to verify the correct calculation of this commission.'' *Id.* at 2 and n. 1.

Petitioners ''do not disagree with Columbus's suggestion'' to add U.S. commissions to the gross unit U.S. price. Petitioners' Rebuttal Brief at 1. However, petitioners assert that if the Department does so, it must also add U.S. commissions to the calculation of NV and CV to ensure the proper consideration of U.S. commissions in the Department's final determination.

*Department's Position*: We disagree with both Columbus and petitioners. Columbus's position notwithstanding, we do not find the adjustments claimed as U.S. commissions are commissions at all for purposes of an antidumping analysis. As instructed in the Department's questionnaire, Columbus reported in its U.S. sales listing its first sales to unaffiliated customers in the United States. See, e.g., Columbus's June 24, 1998 section A response at 17 through 19. In its supplemental response Columbus, noting that it considers these unaffiliated customers as its agents, nonetheless stated that it invoices and sells the merchandise to these customers and receives payment from them. These companies then resell the product to their unaffiliated customers. See Columbus's September 8, 1998 supplemental response at 47 and 48. Thus, throughout this investigation the U.S. sales prices which have been subject to our analysis have been those reported by Columbus to its named EP customers.

The amounts claimed as ''commissions'' for these transactions are not related in any way to the reported sales to Columbus's EP customers. Columbus has not reported any commissions paid in connection with its first sale to an unaffiliated party in the United States. Regardless of whether the amounts claimed by Columbus are commissions, or simply mark-ups passed on to the subsequent end-user customer, they are related to the resales by Columbus's EP customers, not the sales upon which our dumping analysis is based. We have accordingly limited our analysis of Columbus's EP transactions to those involving Columbus's first sales in the United States to unaffiliated parties and have not considered further the additional amounts claimed as commissions by Columbus.

*Comment 5:* Home Market Short-Term Interest Rates. Petitioners urge the Department to treat Columbus's home market short-term interest rate as ''unverified'' and to disallow entirely Columbus's claimed adjustments for home market credit expenses and ICC. Petitioners point to statements made by Columbus officials at verification that it had no short-term rand-denominated borrowing; Columbus claimed, therefore, to have used ''call'' rates, or interest rate quotes supplied by Columbus's banks, in calculating home market credit expenses and ICC. Petitioners' Case Brief at 15, quoting Columbus's Section B response at pages 38 and 46. Petitioners note Columbus's admission at verification that it solicits these ''call'' rates via telephone and maintains no documentation to support these numbers. ''Without independent verification,'' petitioners insist, ''the Department is not in a position to confirm the accuracy of the submitted data.'' As a result, petitioners conclude, the Department must treat Columbus's home market interest rates as ''unverified'' and deny the claimed adjustments for credit expenses and ICC.

Columbus argues in its case brief that rather than disregarding its claimed credit expense and ICC adjustments, the Department should rely upon the verified prime overdraft rates available in South Africa in the absence of any short-term rand-denominated borrowing by Columbus. Columbus insists that the Department verified fully that Columbus had no short-term borrowing in the home market currency; the Department's practice in such instances, Columbus maintains, is to base home market credit and ICC calculations upon the short-term interest rates generally available in the home market. Columbus's Case Brief at 6, citing Final Determination of Sales at Less Than Fair Value; Certain Pasta From Turkey, 61 FR 30309, 30324 (June 14, 1996), and Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand (Canned Pineapple Fruit), 60 FR 29553, 29557 (June 5, 1995). Therefore, Columbus concludes, the Department should rely upon the verified prime overdraft rates submitted by Columbus at verification. Id.

In rebuttal petitioners assert that the sales verification report clearly states that ''no existing documentation supports these numbers.'' Petitioners' rebuttal brief at 2, quoting the Sales Verification Report at 46. Petitioners likewise describe as unavailing Columbus's attempts during verification to substantiate its prime overdraft rates, insisting that Columbus's short-term interest rates were not verified.

Columbus, in turn, argues in its rebuttal brief that its short-term interest rates were fully verified. Columbus acknowledges that its original response used ''call'' rates obtained by telephone by the Columbus official responsible for preparing Columbus's response. However, Columbus asserts, that official left the company and Columbus could not subsequently locate the underlying documentation for these rates. Therefore, in responding to the Department's October 15, 1998 supplemental questionnaire, and well prior to verification, Columbus provided prime overdraft rates ''which represent the available short-term rand interest rates in South Africa.'' Columbus's Rebuttal Brief at 17. Columbus insists that these prime overdraft rates were documented and verified. Therefore, Columbus avers, these rates should be used in calculating home market credit expenses and ICC.

*Department's Position:* We agree with Columbus that the short-term prime overdraft rates available in South Africa should serve as the basis of Columbus's credit and ICC calculations in the absence of short-term borrowing in the home market. While petitioners note correctly that the Department could not verify the ''call'' rates used to calculate Columbus's credit and ICCs, as we will explain below, we do not believe this ''failure'' warrants application of adverse facts available. Columbus claimed at verification that the official responsible for compiling the ''call'' rates had since left Columbus's employ and that this individual's interest rate worksheets were no longer available. Thus, in response to our specific request, Columbus collected and presented information to substantiate the prime overdraft rates available to commercial borrowers in South Africa. We were able to document and verify these rates through records Columbus keeps in its normal course of business. Furthermore, we confirmed these rates using publicly-available data on interest rates in South Africa as published by the International Monetary Fund (the IMF) in its International Financial Statistics for September 1997, January

1998 and June 1998 (we selected all three volumes to capture monthly prime overdraft rates for each of the twelve months of calendar 1997).

According to Columbus, it originally obtained the ''call'' rates used in calculating credit and ICC expenses by telephoning its leading commercial bank and inquiring about the interest rates that would be available to Columbus if it were seeking short-term rand-denominated loans. The bank, after considering prevailing interest rates and Columbus's history with the institution, responded with the ''call'' rates originally submitted by Columbus on July 20, 1998. Thus, these ''call'' rates represented the interest rates available on rand-denominated loans specifically to Columbus from this bank. These were the rates we referred to in our verification report when we noted that ''no existing documentation supports these numbers.'' Sales Verification Report at 46.

Once Columbus admitted during verification that it could not substantiate its credit expenses as reported using the ''call'' rates, it presented documentation on interest rates drawn from its internal cash management system. These rates coincide with those released by both the South African Reserve Bank and the IMF's International Financial Statistics. As discussed in the Sales Verification Report at pages 46 and 47, Columbus operates an internal system to manage daily cash flows which tracks the various interest rates available from certain commercial banks. This prime overdraft rate was constant from November 1996[5] through October 20, 1997, at which point it changed once for the duration of the POI. See the Sales Verification Report and Exhibit 15 thereto.

The record establishes that Columbus had no short-term rand-denominated loans from unaffiliated lenders. The Department's antidumping duty questionnaire at page B–27 asked Columbus for information on its short-term interest expenses and instructed Columbus to ''use a published commercial short-term lending rate'' if it had no short-term borrowings during the POI. With no actual home-market short-term loans to serve as a basis for its interest rate, Columbus attempted to respond to this question by telephoning its bank and, in effect, asking this bank what interest rates would have been available to Columbus had it borrowed during the POI. In our October 15, 1998 supplemental questionnaire the Department subsequently asked Columbus to substantiate the rates quoted by this bank and to ''provide South African interest rates for the POI obtained from publicly-available sources (such as those published on a monthly basis in business publications or released by the South African Reserve Bank).'' October 15, 1998 supplemental questionnaire at 2. Columbus's response, while failing to indicate that its original interest rates could not be substantiated, nevertheless complied with our request for information on short-term interest rates available from the South African Reserve Bank.[6]

While it is true that we could not verify the ''call'' rates used in Columbus's original and revised home market sales listings, we must point out that these ''call'' rates bear no relationship to any actual short-term loans taken by Columbus, nor did Columbus fail to disclose any home market borrowing or otherwise misstate its short-term interest expenses. This is not a case where Columbus had short-term loans in the home market, incurred actual short-term interest expenses, and then was unable to substantiate these expenses at verification. Rather, in response to a direct question from the Department, Columbus attempted to respond to the best of its ability by determining precisely what rates it could have obtained had it actually borrowed money in the home market. Petitioners' suggested response would have the Department penalize Columbus for failing to provide substantiation for interest rates which, in effect, never existed outside of an informal inquiry from Columbus to its bank.

The Department has over time developed a policy to address specifically situations such as the instant case where a respondent has no short-term borrowing from unaffiliated parties in the currency of either the export market or the United States. On February 23, 1998, the Department promulgated Import Administration Policy Bulletin 98.2, ''Imputed Credit Expenses and Interest Rates.'' As we explain in this document, the Department at one time calculated imputed interest expenses to reflect the ''opportunity cost of money'' incurred in extending credit by using the actual short-term interest rates incurred in the home market to calculate both home market and U.S. credit and ICC (except in exporter's sales price (now, CEP) situations, where we would use the short-term dollar-denominated interest rates for transactions in the United States). However, in 1990 the Court of Appeals for the Federal Circuit overturned this practice, stating that the cost of credit ''must be imputed on the basis of usual and reasonable commercial behavior,'' and that the short-term interest rates used should conform with ''commercial reality.'' *LMI-La Metalli Industriale S.p.A.* v. *United States*, 912 F.2d 455, 460 (Fed. Cir. 1990). Our policy bulletin concluded that ''[i]n cases where a respondent has no short-term borrowings in the currency of the transaction, we will use publicly available information to establish a short-term interest rate applicable to the transaction.'' The bulletin further noted that in the rare cases where a respondent has no short-term loans from unaffiliated parties in the home market currency we will establish interest rates on a case-by-case basis ''with a preference for published average short-term lending rates.'' Policy Bulletin 98.2 at 6.

As Columbus had no short-term rand-denominated loans from unaffiliated parties, the alternative, and the Department's stated preferences in such cases, is to use publicly-available interest rate information. Thus, for purposes of this final determination we have recalculated Columbus's home market credit expenses and ICC using the publicly-available rates of the South African Reserve Bank as confirmed by the IMF's International Financial Statistics.

*Comment 6:* Marketing and Market Development Costs. Petitioners urge the Department to recalculate Columbus's indirect selling expenses by deducting those expenses relating to ''sales and marketing'' and general market development. Petitioners note that the Department's Sales Verification Report described the cost centers identified by Columbus to determine the pool of expenses for use in calculating its indirect selling expenses. According to petitioners, Columbus added to its indirect selling expenses those costs relating to ''general expenses and salaries pertaining to its market development cost centers.'' Petitioners' Case Brief at 14, quoting the Sales Verification Report at 53 and 54. However, petitioners insist that general expenses not related to sales of such or similar merchandise do not qualify for treatment as indirect selling expenses.

[5] The reference to ''November 1997'' at page 47 of the Sales Verification Report is a typographical error.

[6] Columbus submitted information on prime overdraft rates drawn from the South African Reserve Bank's Worldwide Web site (*www.resbank.co.za*) at Exhibit 3 of its November 2, 1998 supplemental response. Columbus did not indicate that its reported short-term interest rates could no longer withstand verification, however, stating cryptically that ''[t]he final credit expenses may have to be calculated based on the attached.'' Id. at 8.

Id. and n. 58, citing Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, *et al.*, 58 FR 39729, 39749 (July 26, 1993) (Antifriction Bearings). Rather, petitioners assert, the marketing and market development expenses at issue are by definition ''general expenses,'' which should be included in the general and administrative (G&A) expenses used to adjust COP and CV. Id. Petitioners further accuse Columbus of including in its G&A calculation certain costs and revenue they characterize as ''non-operating items.'' Petitioners' Case Brief at 25. Columbus's G&A ratio, petitioners insists, must be adjusted by excluding all such items.

Columbus argues that all expenses incurred by its sales department in ''marketing, selling and promoting sales of subject merchandise are plainly selling expenses'' which, Columbus maintains, should not be considered part of its G&A. Columbus's Rebuttal Brief at 15. Further, Columbus avers, in the sole case cited by petitioners to support the reclassification of its sales and marketing expenses, Antifriction Bearings, the Department concluded just the opposite, that the marketing and market development expenses at issue were, in fact, indirect selling expenses. ''Expenses incurred to market and to expand and develop the market for Columbus's products,'' Columbus insists, ''are plainly associated with sales of those products.'' Columbus's Rebuttal Brief at 16.

Treating these expenses as indirect selling expenses, Columbus argues, is consistent with the Department's own antidumping questionnaire. Further, Columbus asserts, petitioners' claim that these expenses should be classified as general expenses related to cost of production runs contrary to the Department's section D questionnaire, which defines ''general expenses'' as ''period expenses which relate indirectly to the general production operations of the company.'' Columbus's Rebuttal Brief at 16, quoting the Department's questionnaire at D–25. According to Columbus, marketing and market development expenses intended to promote sales ''do not belong in this category of expenses.'' Id. at 17.

*Department's Position:* We agree with Columbus. We reviewed the expenses at issue during both the sales and cost verifications in this case (see, e.g., the Sales Verification Report at 53 and 54—''we examined the various expenses and noted no discrepancies''). As noted in the Sales Verification Report, Columbus has established cost centers for its export marketing and for each of its local sales offices. In addition, Columbus relies on a separate cost center to accrue expenses relating to its market development efforts in South Africa. Because these costs are related, albeit indirectly, to promoting sales in the home market, as opposed to Columbus's general operation or its production of stainless steel, we have continued to treat these costs as indirect selling expenses for this final determination.

With respect to the amounts claimed by petitioners to be ''non-operating items,'' our review of the relevant expenses and revenues indicates that these items relate to the general operations of the company as a whole and, therefore, are properly considered as part of Columbus's G&A.

*Comment 7:* Home Market Advertising Expenses. Columbus reported adjustments for home market advertising expenses claiming these were ''assumed'' on behalf of the buyer, thus warranting treatment as direct selling expenses pursuant to the COS provision of 19 CFR 351.410(d). These expenses fell into three categories: print advertising expenses, maintenance of a stadium box at the Ellis Park Stadium, and expenses arising from Columbus's sponsorship of an annual ''3CR12 Squash Tourney.''

Petitioners maintain that Columbus's various claimed advertising expenses qualify as indirect rather than direct selling expenses. According to petitioners, Columbus has failed to demonstrate that any of the expenses relating to its magazine advertisements, as well as those stemming from the publication of Contact, an in-house newsletter, qualify as direct selling expenses. Further, petitioners argue, Columbus uses the hospitality suite at Ellis Park Stadium to entertain Columbus's customers, including distributors, at rugby matches, not to entertain its customers' customers. Similarly, the 3CR12 Squash Tourney fails to qualify as a direct advertising expense because the tourney was open to users of stainless steel generally, and not limited to specifiers of the specialty 3CR12 product (or, for that matter, subject stainless steel plate in coil). Petitioners' Case Brief at 17. Therefore, petitioners conclude, the Department must disallow any adjustment for advertising as a direct selling expense and instead treat the expenses as indirect selling expenses in their entirety.

In their rebuttal brief petitioners note that to qualify for an adjustment as a direct selling expense, 19 CFR 351.410(d) requires advertising expenses to ''bear a direct relationship to (a) particular sale'' or to be ''assumed by the seller on behalf of the buyer.'' Petitioners' Rebuttal Brief at 3, quoting 19 CFR 351.410(d). Petitioners point to the findings in the Department's Sales Verification Report as demonstrating that ''all of Columbus'(s) claimed direct advertising expenses are general in nature, and fail to meet the criteria for consideration as an assumed selling expense.'' Id. at 4.

Columbus argues that its advertising expenses incurred in the home market are assumed on behalf of the buyer and merit adjustment under the COS provision. For example, Columbus asserts, expenses relating to the corporate box at the Ellis Park Stadium and those connected to the squash tournament sponsored by Columbus qualify as direct advertising expenses. Conceding that ''some portion'' of the magazine advertising purchased by Columbus, as well as an unspecified portion of the Ellis Park Stadium expenses, may appropriately be considered indirect in nature, Columbus nonetheless urges the Department to either treat advertising costs as direct expenses in their entirety or to ''apportion them reasonably between 'assumed' and 'indirect' expenses.'' Columbus's Case Brief at 7.

In addition, Columbus notes that during the sales verification the Department discovered that some of the reported advertising expenses had been based upon budgeted, rather than actual, costs. Columbus urges the Department, therefore, to base any adjustment for advertising expenses upon the actual verified expenses in lieu of the incorrect budgeted amounts originally reported.

Finally, Columbus disagrees with petitioners' contention that these advertising expenses cannot be considered as direct selling expenses because the advertising at issue may reach a broader audience than purchasers of subject stainless steel plate in coil; Columbus asserts that in many cases the customers of Columbus's customers are purchasing merchandise which has been further processed so as to no longer constitute the foreign like product. Columbus's Rebuttal Brief at 18. Columbus maintains that whether the downstream sale comprises subject or non-subject merchandise has no bearing on the proper treatment of the advertising expenses assumed by Columbus on behalf of the buyer (i.e., Columbus's customers).

*Department's Position:* We agree in part with petitioners. We reviewed Columbus's claimed advertising expenses exhaustively at verification and found that most, if not all, of these

promotional expenses were incurred either in marketing to Columbus's customers, as in the case of the Ellis Park Stadium box, or as general corporate promotion in the case of Columbus's print advertising.

With respect to this last category of expenses, we reviewed numerous samples of Columbus's print advertising which reflected high-quality glossy art and copy suitable for publication as full-page advertisements. These advertisements are intended to promote either the benefits of stainless steel generally, or Columbus's image as a reliable supplier of high-quality stainless steel; by Columbus's own admission, most of these advertisements, including advertisements promoting sales of coiled hot-bands, are aimed at distributors; ''Columbus acknowledged that end-users are not purchasing stainless coils, or large quantities of cut stainless sheet.'' Sales Verification Report at 49. Likewise, as petitioners note, Columbus's in-house publication Contact is addressed ''to you, our valued customers.'' Columbus's September 8, 1998 supplemental response at Exhibit K. Thus, we conclude that Columbus's print advertising expenses are aimed primarily at Columbus's customers, with the remaining expenses promoting Columbus's general corporate image. As such, these expenses do not represent expenses assumed by Columbus on behalf of its customers, and do not merit treatment as a COS adjustment.

Similarly, the record indicates that the Ellis Park Stadium box is used primarily to entertain Columbus' customers at rugby matches. As Columbus noted, 13 of the 15 seats in the box are devoted to use by the local sales department. ''Columbus claims that employees of catalytic converter companies, tanktainer manufacturers, and Columbus' distributors were the most common recipients of passes to the box.'' Sales Verification Report at 49. Thus, we find that these expenses represent indirect selling expenses incurred by Columbus in marketing stainless steel products to its customers, not direct selling expenses assumed by Columbus on behalf of its customers.

Finally, as regards the 3CR12 Squash Tourney, we discussed this tournament at verification with the public relations officials at Columbus and reviewed the list of participants included in the tourney's brochure. We confirmed that virtually all of the contestant teams represented mining companies or other end users of 3CR12 steel products. While Columbus acknowledged that ''the scope of the tourney extended beyond end users of 3CR12,'' the very name of the tournament coupled with the makeup of the tournament's competitors makes it clear that these expenses were incurred to promote sales of 3CR12 stainless to end-user customers. The Court of International Trade addressed a similar issue in *Smith Corona Group* v. *United States,* 540 F. Supp. 1341 (CIT 1982), aff'd 713 F.2d 1568 (Fed. Cir. 1983). There, the Court found that

> [w]hile the challenged ads were not exclusively directed to the relevant merchandise, a portion of each advertising effort was. In a purely metaphysical sense, Smith Corona is correct in that the ad expense cannot be directly correlated with specific sales. Yet, the statute does not deal in imponderables.

In a later case involving the same parties, *Smith Corona* v. *United States,* 771 F. Supp. (CIT 1991), the Court likewise concluded that ''(e)ven if the evidence that the advertisements contained institutional or corporate themes were substantial, it would still not undermine the agency's determination, for the existence of such themes does not necessarily diminish direct promotion therein of particular products.''

As with Smith Corona's advertisements, so too Columbus' 3CR12 Squash Tourney is directed towards end users of 3CR12 steel, i.e., the customers of Columbus' customers. That Columbus realizes some measure of general corporate promotion at the same time ''does not necessarily diminish direct promotion therein of particular products.'' Accordingly, while we have disallowed the balance of Columbus' claimed advertising expenses as COS adjustments, treating these instead as indirect selling expenses, we have treated the actual costs of sponsoring the 3CR12 Squash Tourney as direct selling expenses assumed by Columbus on behalf of its customers and have allocated these expenses over home market sales of 3CR12 steel only.

*Comment 8:* Other Direct Selling Expenses for 3CR12 Steel. Petitioners, noting that Columbus incurs certain expenses in the United States in selling 3CR12 stainless steel, argue that the Department must calculate an amount for ''other direct'' selling expenses for sales of this product. Petitioners' Case Brief at 17. These expenses, petitioners argue, include those relating to sales visits paid by employees of a wholly-owned Columbus subsidiary to its customer's customers. As such, petitioners insist, the costs relating to these visits represent direct expenses Columbus has assumed on behalf of its customer, an unaffiliated distributor.

In response Columbus avers that its expenses relating to U.S. sales of 3CR12 steel are indirect in nature, arising primarily from general market promotion for this specialty product. ''[T]here is no indication,'' Columbus insists, ''that the visits to the customers were an 'assumed' expense.'' Columbus' Rebuttal Brief at 18 and 19. Further, Columbus argues, the customer visits were just one of a range of activities of these employees. Even if the attendant expenses qualify as 'assumed' expenses, Columbus submits, the resulting adjustment ''would plainly be de minimis,'' and could not support treating all fixed expenses in the U.S. as direct selling expenses. Id.

*Department's Position.* During our verification in Middelburg we reviewed the activities of personnel stationed in the United States and agree with Columbus that the expenses arising from these activities represent indirect selling expenses. Columbus maintains a wholly-owned subsidiary in the United Kingdom whose ''sole function is the sale and distribution of 3CR12 and the development of the market for 3CR12, primarily in Europe.'' Columbus' September 8, 1998 supplemental response at 9. As Columbus explained at verification, the personnel maintained by Columbus' subsidiary have technical expertise necessary to develop the market for 3CR12, a unique, corrosion-resistant ''utility'' steel ''which is used extensively in the mining, sugar, and coal industries, and in the manufacture of railway wagons, bus bodies and automobile frames.'' Columbus' June 24, 1998 section A response at 8, n.1. According to Columbus, it developed this grade of steel and currently holds patents and trademarks on it.

After successfully introducing the steel in South Africa, Columbus noted, it is now attempting to promote this grade in the export market, focusing on the same industry sectors. However, Columbus maintains, because of 3CR12's unique properties, for example, its weldability, it required individuals with specific technical expertise to promote sales of Columbus' 3CR12 products to its customers. See, e.g., Columbus' September 8, 1998 supplemental response at 9. At verification we confirmed that all sales and distribution of 3CR12 steel in the United States are the responsibility of an unaffiliated distributor which purchases the material from Columbus' wholly-owned subsidiary in the United Kingdom. The individuals stationed in the United States, on the other hand, act only to distribute technical information about 3CR12's characteristics to potential customers and to promote new

applications for a grade of steel that is relatively little-known in the United States.

Because there is no evidence of record that the expenses associated with the personnel stationed in the United States by Columbus' U.K. subsidiary are direct in nature or that these expenses were assumed by Columbus on behalf of its U.S. customers the expenses are properly considered indirect selling expenses, and have been so reported by Columbus. We have continued to treat these expenses as such for this final determination.

*Comment 9:* Inland Insurance Expenses Incurred In South Africa for U.S. Sales. According to petitioners, the Department should apply partial facts available to calculate inland insurance expenses incurred in South Africa for sales to the United States. Petitioners note that Columbus reported these insurance premiums using the policies' formula of multiplying a stated premium factor by 110 percent of the invoice value. However, petitioners accuse Columbus of: (i) Reporting an incorrect amount for inland insurance, (ii) reporting the premiums in the wrong currency, and (iii) failing to offset its premium expenses with a rebate Columbus received for overpayments of its premiums. Further clouding the issue, petitioners maintain, is that Columbus's insurance broker ''was originally founded specifically to provide insurance underwriting for Columbus Joint Venture.'' Petitioners' Case Brief at 18, quoting the Sales Verification Report at 44. For these reasons petitioners insist that the Department should disregard Columbus' reported inland insurance, applying instead the highest reported insurance expense to all U.S. sales whose terms were either CFR or FOB.

Columbus accuses petitioners of distorting the Department's findings at verification with respect to its foreign inland insurance, asserting that it is ''flatly wrong'' that Columbus mis-reported this expense, used the inappropriate currency, or failed to account for a substantial rebate. According to Columbus, the company reported this expense ''exactly as it is incurred,'' multiplying the premium rate by 110 percent of the invoice price. The reason Columbus is unable to trace specific insurance payments for specific shipments, Columbus explains, is that it pays these premiums in advance against anticipated shipments. The exact amount is adjusted after the fact to reconcile the pre-paid premiums based upon estimated shipments to those based upon actual shipments during the period. ''It is absurd,'' Columbus complains, ''to claim that this is a verification failure.'' Columbus' Rebuttal Brief at 19. Columbus also dismisses petitioners' insinuations that its insurance provider is affiliated with Columbus. The insurance brokerage's name was chosen, Columbus maintains, when the company was founded to provide insurance underwriting for Columbus Joint Venture and the name was thought to lend status to the new concern. There is no relationship, Columbus insists, between Columbus and its insurance broker. Id. at 20.

*Department's Position.* Petitioners' objections to Columbus' inland insurance expenses appear to arise from a misreading of the Department's Sales Verification Report. We verified fully Columbus' inland insurance expenses and noted no discrepancies in these expenses or the reporting methodology employed by Columbus. Calculating this insurance is simply a matter of multiplying the invoice value by 1.1 and multiplying that product by the premium rate specified in Columbus' insurance policy. As to petitioners' contention that Columbus reported this expense in the ''wrong'' currency, although Columbus remits its prospective payments in rand, the insurance premiums are based upon the value in U.S. dollars of each shipment and are properly reported in U.S. dollars. Further, as this expense is calculated as a fixed percentage of value multiplied by a fixed premium rate, whether Columbus reports it in dollars or in rand converted to dollars has no effect on our calculations. Finally, with respect to the rebate for overpayments of premiums, the Sales Verification Report failed to make clear that this represented monies paid in advance by Columbus but subsequently refunded by the insurance brokerage when Columbus' prospective payment based upon anticipated shipments exceeded the premium charges based upon actual shipments. This refund did not reflect a price concession by the insurance broker. Thus, the refund had no effect upon the inland insurance expenses reported by Columbus in its sales listings. Therefore, we have accepted Columbus' reported inland insurance amounts for this final determination.

*Comment 10:* Recalculation of Inventory Carrying Costs. Columbus points out that the COM used as the basis for calculating Columbus's ICC in its home market and U.S. databases has been subjected to several revisions as a result of supplemental cost questionnaires and the Department's cost verification. These ''various adjustments to COM,'' Columbus asserts, explain why ''Columbus was unable to reconstruct the reported ICC'' at verification. Columbus's Case Brief at 5, quoting the Sales Verification Report at 53. Reconstructing the original ICC would not be helpful, Columbus insists, because changes resulting from the supplemental cost questionnaires and verification would necessitate a recalculation in any event. The only outstanding verification issue relating to ICC, Columbus maintains, is a discrepancy of one day between the weighted-average days in inventory. ''Such a small difference does not mean,'' Columbus avers, ''that Columbus'' inventory carrying costs could not be verified.'' Id.

*Department's Position:* We agree with Columbus, and have used the revised COM calculated for this final determination as the basis for calculating Columbus's ICC. As explained in the comments under ''Cost Issues,'' below, we have made a number of adjustments to Columbus's COP data as a result of either findings at the Department's cost verification or comments by the interested parties or both. See the Cost Verification Report and the Cost Calculation Memorandum (Final). Just as we have determined that it would be inappropriate to use Columbus's reported COM as the basis for its COP and CV data, it would likewise be inappropriate to use demonstrably inaccurate COM data as the basis for Columbus's ICC expenses. Accordingly, we are using Columbus's COM, as adjusted for this final determination, in calculating ICCs.

*Comment 11:* Other Corrections. Columbus, noting that the Department conducted separate sales and cost verifications, requests that any changes in Columbus's data arising from one verification be reflected in the data verified at the other. This is necessary, Columbus insists, to avoid double-counting any expenses. For example, Columbus continues, the Department found that certain public relations expenses had been included both as a general overhead cost in Columbus's COP data and as a direct selling expense in Columbus's home market sales data. Similarly, certain marketing expenses were reported as G&A in both the sections B and D responses. When adding these expenses to Columbus's indirect selling expenses, Columbus urges the Department to make an offsetting deduction from G&A in Columbus's reported COP to avoid double-counting.

Petitioners suggest without further elaboration that the Department correct a number of errors in Columbus's response, referring to various points in the Department's Sales Verification

Report. Petitioners' Case Brief at 19, citing pages 34 and 42, and Appendices IV, II and III of the Sales Verification Report.

*Department's Position:* As noted in the comments herein, we have attempted to adjust expenses appropriately to reflect any revaluations or recalculations performed on Columbus's sales and cost data. Wherever a recalculation has affected one set of data we have, as appropriate, made the corresponding adjustments to Columbus's other data.

As to petitioners' contentions, we are unable to find any specific errors needing remedy in the first two cites offered. The third citation involved installment payments for one home market sale; we have continued to rely upon the reported date of payment, as this represented the date of receipt of the customer's final payment. The fourth item related to wharfage expenses incurred on U.S. sales and we have adjusted this expense to reflect the actual verified amount. The final item concerns the reported date of payment for one U.S. transaction; we find that Columbus reported properly the payment date and no correction is necessary for this transaction.

*Issues Relating to Cost of Production*

*Comment 12:* Revaluation of Raw Material Costs. Columbus explains that its accounting system kept in its normal course of business records raw material costs as of the date the finished product is sold. These costs, in turn, form Columbus's cost of sales. Columbus will then adjust its raw material costs back to their ''cost as purchased'' by means of a revaluation adjustment. Columbus's Case Brief at 8. Columbus claims that the Department erred in its Cost Verification Report when it stated that Columbus's internal system for accounting for variances in raw material costs has no impact on Columbus's reported COP. Id., citing the Cost Verification Report at 8. It would be wrong, Columbus insists, for the Department to disregard the revaluation adjustment when calculating Columbus's COP.

Columbus notes that section 773(f)(1)(A) of the Tariff Act calls for the Department normally to calculate COP on the basis of the records of the exporter or producer, provided these records i) are kept in accordance with GAAP in exporting country, and ii) ''reasonably reflect the costs associated with the production and sale of the merchandise.'' Columbus's Case Brief at 8, quoting section 773 of the Tariff Act. The company's records are kept in accordance with GAAP, Columbus submits, and include the provision for revaluation of raw material costs as part of its COP for sales made during the POI. By means of the revaluation adjustment, Columbus argues, Columbus's records ''precisely track the actual costs incurred with respect to the subject merchandise.'' Id. at 9. Columbus asserts that stainless steel sold in, e.g., January would have been produced from raw materials purchased in a prior month; thus, valuing the raw material costs based upon the date of sale has the effect of distorting these costs. ''It would be wrong,'' Columbus submits, ''to assert that a sale is below cost because its price fails to cover, not the actual raw material cost of the product, but the cost of raw materials being purchased in January for production later in the year.'' Id. at 9.

Even if the Department concludes that only costs incurred during the POI (calendar 1997) should serve as the basis for COP for sales during the POI, disregarding the revaluation adjustment will not accomplish this end. As reported, Columbus argues, Columbus's revaluation adjustment includes not only adjustments between the last quarter of 1996 and the first quarter of 1997, but also the adjustments applied for each quarter of 1997 (i.e., during the POI). Thus, such a calculation would inappropriately include in Columbus's COP costs it did not incur with respect to producing the subject merchandise. Columbus's Case Brief at 10.

Petitioners suggest that Columbus has incorrectly included an accounting adjustment made to its cost of sales in its reported cost of production. ''As we understand it,'' petitioners submit, Columbus's revaluation adjustments are applied to its finished goods inventory and its cost of goods sold (COGS), but not to its COP. The COP, petitioners aver, is ''unaffected by this revaluation process.'' Petitioners' Rebuttal Brief at 7. Therefore, petitioners conclude, Columbus's revaluation adjustments must be excluded from Columbus's reported COP.

*Department's Position:* We disagree with Columbus that the revaluation adjustment should be included in reported COP and CV. The Department's long-standing practice is to calculate COP and CV based on the COM of the subject merchandise produced during the POI, rather than on the COGS during the POI, because the COM represents the costs incurred in manufacturing the product during the relevant period. The Department does not use the COGS because it includes the value of merchandise held in inventory at the beginning of the period and excludes the value of merchandise produced but not sold during the period. The value of the merchandise sold from beginning inventory reflects the COM of the previous period. Additionally, COGS may include inventory values that have been adjusted (e.g., through inventory write-down) to the lower of cost or market value and, therefore, do not reflect the actual production costs. This methodology is supported by section 773(b)(2)(D) of the Tariff Act, which states that the recovery of costs is provided for ''(i)f prices which are below the per unit cost of production at the time of sale are above the weighted average per unit cost of production *for the period of investigation or review*.'' (emphasis added). Sections 773(b)(2)(D) and 773(e)(1) of the Tariff Act state that the cost of the products shall be determined ''during a period which would ordinarily permit the production of the merchandise in the ordinary course of business.'' In the instant case using the COM during the POI covers the period needed to produce the subject merchandise just prior to export and excludes the changes in inventory. See Notice of Final Determination of Sales at less Than Fair Value: Certain Preserved Mushrooms from Indonesia, 63 FR 72268, 72273 (December 31, 1998).

We have used the reported COM incurred during the POI to calculate COP and CV because it was never revalued to current prices, and therefore does not need to be adjusted back to the original cost. The revaluation adjustment proposed by Columbus does not affect the reported COPs and CVs which are based on COM because, as Columbus notes, the revaluation adjustment is recorded as part of the COGS, not the COM. Therefore, we have not considered the revaluation adjustment in calculating COP and CV.

*Comment 13:* Inclusion of Depreciation Expenses in Cost of Production. Petitioners aver that Columbus's reported costs of manufacture must be adjusted to account for certain depreciation expenses excluded from the original COP data.[7] Petitioners note Columbus's suggestion at the cost verification that this amount be added to G&A expenses; however, petitioners argue, ''depreciation expense is one component of COM,'' which in turn serves as the basis for calculating G&A

[7] Petitioners bracketed the word ''depreciation'' as business proprietary information subject to protection from disclosure under administrative protective order. However, Columbus in its Rebuttal Brief publicly disclosed the specific nature of the expenses; therefore, we are free to discuss the expense in this public forum. See Columbus's Rebuttal Brief at 20.

and interest expenses. Petitioners' Case Brief at 19 (original bracketing omitted). If the calculation of COM is flawed, petitioners note, any subsequent calculations based on that number will suffer the same defect. Petitioners recommend that the Department correct the error by including the omitted depreciation in Columbus's COM, thereby increasing the total costs.

Columbus acknowledges that it inadvertently excluded depreciation from its reported COP. Columbus attributed the oversight to a misunderstanding between Columbus officials as to the proper classification of the expense. Accordingly, Columbus points out, it presented its correction of this error at the start of the Department's cost verification. As to its suggestion that depreciation be included in the pool of G&A expenses, Columbus insists it offered this proposal ''for simplicity's sake;'' Columbus has no objection to including depreciation in COM as long as G&A and other adjustments to COP are calculated using the corrected COM. Columbus's Rebuttal Brief at 21.

*Department's Position:* We agree with petitioners and Columbus and have included Columbus's depreciation expenses in its COP and CV. See Comment 14, immediately below.

*Comment 14:* Inclusion of Additional Depreciation Expenses. Petitioners insist that Columbus's COP and CV data must also include additional depreciation expenses omitted by Columbus.[8] Petitioners insist that these expenses, attributable to a new production facility, are properly included in COP, arguing that Columbus's internal accounting system so treats these costs. Therefore, in accordance with Columbus's own accounting policies, the depreciation expenses at issue must be factored into the calculation of Columbus's COP.

Columbus notes that the Department's Cost Verification Report implies that the Department will add this depreciation to COP, and argues that it would be incorrect to include expenses not recognized by either Columbus's audited financial statements or South African GAAP. Citing section 773(f)(1)(a) of the Tariff Act, Columbus notes that COP will normally be calculated using the records kept by the exporter or producer if the records are kept in accordance with local GAAP and ''reasonably reflect the costs associated with the production and sale of the merchandise.'' Further, the Department

> shall consider all available evidence on the proper allocation of costs * * * if such allocations have been historically used by the exporter or producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.
>
> Columbus's Case Brief at 13, quoting section 773 of the Tariff Act.

Columbus avers that its cost accounting system, in full accordance with South African GAAP, does not consider the depreciation at issue a cost of production, but instead allocates the depreciation of assets over their average useful life. Accordingly, Columbus notes, it did not take the full charge for depreciation during its build-up to full design production capacity, but instead has spread its depreciation over the span of the useful life of the facility. Further, Columbus has historically treated these expenses in precisely this fashion. Consistent with the Department's determinations in Certain Preserved Mushrooms From Chile (63 FR 56613, 56620, October 22, 1998) and Static Random Access Memory Semiconductors From the Republic of Korea, (63 FR 8934, February 23, 1998), Columbus suggests, the Department must not adjust for these depreciation expenses.

In its rebuttal Columbus suggests that petitioners ''completely misconstrue Columbus's financial statements'' in arguing that Columbus's internal accounting policies support petitioners' proposed treatment of these expenses. Columbus's Rebuttal Brief at 21. Columbus accuses petitioners of quoting from the incorrect and irrelevant passage from Columbus's accounting policies and asserts that the depreciation expenses at issue are not properly considered part of Columbus's COP.

Petitioners reject Columbus's contention that its accounting for these expenses is either in accordance with South African GAAP or ''reasonably reflect[s] the cost of producing the subject merchandise,'' citing Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Canada, 63 FR 9182, 9187 (February 24, 1998), and Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From South Africa, 60 FR 22520, 22526 (May 8, 1995). Petitioners note that Columbus stated in its section A questionnaire response that it employs a straight-line method for depreciating assets. This, petitioners assert, is consistent with South African GAAP, which provides for the depreciation of plant and equipment ''on a systematic basis over its useful life.'' Petitioners' Rebuttal Brief at 8, quoting South African GAAP, AC 123.44 (December 1994). The problem, petitioners maintain, is that South African GAAP defines ''useful life'' as either a specified period of time or the number of production units expected to be obtained. ''Thus, the useful life can either be a period of time or a number of production or similar units, not a hybrid of the two.'' Id. at 9. Further, petitioners insist, under South African GAAP ''straight-line depreciation results in a constant charge over the useful life of the asset.'' Id., quoting South African GAAP at AC 123.51 (petitioners' emphasis omitted). Petitioners suggest that U.S. GAAP further stipulates that straight-line depreciation ''is a function of the passage of time and * * * is not affected by asset productivity, efficiency, or degree of use.'' Id., quoting Seidler, Lee J., and D.R. Carmichael, Accountant's Handbook, (New York, Ronald Press, 1981) (petitioners' emphasis omitted).

Petitioners conclude that Columbus's chosen method of accounting for its depreciation expenses significantly understates Columbus's COM. This ''distortive'' methodology, petitioners aver, should be rejected by including the additional depreciation in Columbus's costs.

*Department's Position:* We agree with petitioners that these depreciation amounts should be included in Columbus's cost of producing merchandise during the POI. In accordance with section 773(f)(1)(A) of the Tariff Act, the Department normally relies on data from a respondent's books and records if those records are prepared in accordance with the home country's GAAP, and where they reasonably reflect the costs of producing the merchandise. Typically, GAAP provides both respondents and the Department with a reasonably objective and predictable basis by which to compute costs for the merchandise under investigation. However, in those instances where the Department finds that a company's normal accounting practices result in a mis-allocation of production costs, the Department will adjust the respondent's costs or use alternative calculation methodologies that more accurately capture the actual costs incurred to produce the merchandise. See, e.g., New Minivans from Japan: Final Determination of Sales at Less Than Fair Value, 57 FR 21937, 21952 (May 26, 1992) (adjusting a respondent's U.S. further manufacturing costs because the company's normal accounting methodology did not result in an accurate measure of production costs).

[8] The precise nature of these expenses involves discussion of business proprietary information. See Cost Calculation Memorandum (Final).

In the instant case we have determined that the exclusion of this depreciation expense would result in an understatement of the actual costs of producing the subject merchandise. We have therefore included this item in Columbus's COP. Further discussion of the precise nature of these depreciation expenses necessitates reference to business proprietary information. For a full discussion of this depreciation adjustment see the Department's Cost Calculation Memorandum (Final).

*Comment 15:* Columbus's Costs for Ferrochrome. Both petitioners and Columbus make affirmative arguments on Columbus's reported costs for input ferrochrome used in producing stainless steel. Petitioners, noting that Columbus purchases ferrochrome from an affiliated party, submit that Columbus should have reported the supplier's cost of production for ferrochrome and the supplier's prices for ferrochrome sold to unaffiliated customers. Despite the Department's specific requests (and petitioners' comments on this specific issue), petitioners maintain that Columbus failed to provide this information, relying instead upon the transfer prices between the affiliated supplier and Columbus to value its ferrochrome inputs. Petitioners argue that, consistent with the findings of the Department's cost verification, the Department must disregard the transfer prices between Columbus and its affiliated supplier and instead use market prices as quoted in the Metal Bulletin to value ferrochrome.

Conversely, Columbus argues that the Department should rely upon the ferrochrome prices it reported in its COP response. Columbus maintains that the reason it did not submit the cost and price data of its affiliated supplier is because it does not have access to the affiliated supplier's cost data, not due to any lack of willingness or diligence on its part. In any event, Columbus asserts, verification demonstrated that the prices Columbus paid the affiliate for ferrochrome were at arm's length, as required by the terms of the joint venture agreement. Columbus insists that the international benchmark price data it provided at verification further attest to the reasonableness of its reported ferrochrome costs. While claiming that Columbus has no access to its affiliated supplier's cost data, Columbus avers that it is clear that the supplier is a profitable concern. The supplier's financial statements, reviewed at the cost verification, reveal that ferrochrome production is a major business activity for the supplier and that Columbus was one of the supplier's largest purchasers of ferrochrome. According to Columbus, the supplier ''is a profitable, successful supplier of ferrochrome, and it could not be so if it were selling ferrochrome below its cost of production.'' Columbus's Case Brief at 17. Further, Columbus charges, the suggestion that the supplier would sell ferrochrome at below-cost prices to an affiliate in which it has only a one-third share is ''contrary to all evidence and to logic,'' as any such below-cost sales would redound to the benefit primarily of the other shareholders, and not to the supplier. Columbus closes by asserting that there is no evidence that the ferrochrome prices are not at arm's length or that these prices are below the supplier's cost of production. Therefore, Columbus insists, there are no grounds for disregarding the affiliated supplier's prices in valuing this input.

In rebuttal petitioners suggest Columbus's direct presentation ''makes no new arguments, only repeat[ing] the ones the Department has rejected in the past.'' Petitioner's Rebuttal Brief at 10. In fact, petitioners continue, Columbus admits in its case brief that the so-called arm's-length prices it pays are then adjusted for certain expenses. Id. at 11 and n.38. ''These adjustments,'' petitioners aver, ''are exactly the kinds of things the Department wants and needs to scrutinize but could not because Columbus has not provided the necessary information.'' Further, in petitioners' view Columbus failed to demonstrate that it had no access to its affiliated supplier's cost data, and ''totally disregarded petitioners' suggestion'' that the affiliated supplier provide its cost data directly to the Department (thus bypassing its customer Columbus and protecting these data from disclosure). Petitioners also reject Columbus's argument that it would be neither reasonable nor logical for its affiliated supplier to provide Columbus ferrochrome at less than its cost of production. Rather, petitioners insist, ''these intertwining relationships are exactly the reason the Department has requested the information'' on the affiliate's cost and pricing to unaffiliated customers. Id. at 12 (original emphasis). Petitioners point to Columbus's ''nebulous'' price adjustments, inconsistent statements, and lack of documentation as bases for disregarding Columbus's acquisition prices for ferrochrome. As petitioners frame it, ''Columbus has said, in effect, 'trust us.' '' Id. The Department cannot do so, petitioners argue, and must therefore base ferrochrome costs on published market prices.

Columbus, in turn, claims it provided ''everything it could'' to support its contention that its ferrochrome costs reflected arm's-length and above-cost prices. The sole reason Columbus failed to provide the affiliated supplier's cost of production, Columbus avers, is that it simply did not have access to the information. Thus, Columbus insists, Columbus did not ''choose not to, but could not supply'' the requested data. Columbus's Rebuttal Brief at 23 (original emphasis). Columbus characterizes petitioners' comparison of its ferrochrome costs to international prices as spurious, accusing petitioners of comparing Columbus's ex-works price per metric ton of ferrochrome to the published delivered price per pound of chrome (ferrochrome is 52 percent chrome). If one converts Columbus's price appropriately and adjusts for commissions, international freight and delivery expenses, Columbus suggests, one arrives at a price ''entirely in line with international prices.'' Id. Columbus reiterates that there is no evidentiary basis for the Department to believe or suspect that the affiliated supplier's prices for ferrochrome are below either its cost of production or arm's-length prices. The Department, therefore, must use Columbus's reported ferrochrome prices in calculating COP.

*Department's Position:* We agree with petitioners that, in accordance with section 776 of the Tariff Act, we should use the facts available to determine Columbus's ferrochrome costs. Sections 773(f)(2) and (3) of the Tariff Act specify the treatment of transactions between affiliated parties for purposes of reporting cost data (used in determining both COP and CV) to the Department. Section 773(f)(2) states that the Department may disregard such transactions if the amount representing that element (the transfer price) does not fairly reflect the amount usually reflected (typically the market price) in the market under consideration. Under these circumstances the Department may rely on the market price to value inputs purchased from affiliated parties.

Section 773(f)(3) states that if transactions between affiliated parties involve a major input, then the Department may value the major input based on its COP if the cost is greater than the amount that would be determined under 773(f)(2) (i.e., the higher of the transfer or market price). Additionally, section 773(f)(3) applies if the Department ''has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the COP of such input,'' the Department may disregard that price. See also, 19 CFR 351.407(b) (the Department will determine the value of a major input purchased from an affiliate based upon the higher of

transfer price, market price, or the affiliate's cost of producing the input). The Department generally finds that such ''reasonable grounds'' exist where it has initiated a COP investigation of the subject merchandise (see, e.g., 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, 13218 (March 18, 1998), and Silicomanganese from Brazil; Final Results of Antidumping Duty Administrative Review, 62 FR 37869, 37871 (July 15, 1997).

Because petitioners timely filed an allegation of sales below cost providing ''reasonable grounds to believe or suspect'' that Columbus made sales of the foreign like product in South Africa at prices below its COP, on August 24, 1998, we directed Columbus to respond to section D of our original antidumping questionnaire. See Letter from Richard Weible to Columbus, August 24, 1998. That questionnaire explicitly instructed Columbus to report the unit COP incurred to produce the major inputs obtained from affiliated suppliers. Our October 7 and October 23, 1998, supplemental questionnaires reiterated this instruction specifically for the affiliated purchases of ferrochrome (see questions 13 and 8, respectively). Columbus asserted that it did not have access to the affiliate's COP of ferrochrome and argued that it was sufficient that the affiliated party transactions were at arm's length. However, Columbus failed to provide evidence that the prices it paid the affiliate for ferrochrome were at arm's length. Moreover, Columbus's argument that its purchases of ferrochrome from its affiliate were at arms's length prices does not satisfy the requirement that the transfer price be above the affiliated supplier's actual COP.

In the absence of COP for the major input ferrochrome, the Department was unable to perform an analysis to determine whether the transfer prices were at or above the affiliated supplier's COP. Section 776(a) of the Act requires that the Department use the facts otherwise available when necessary information is not on the record or an interested party withholds requested information, fails to provide such information in a timely manner, significantly impedes a proceeding, or provides information that cannot be verified.

Due to Columbus's failure to provide the affiliated party's ferrochrome COP we cannot determine whether the reported transfer prices are at or above COP. As a result we find that we must rely upon the facts otherwise available for the cost of ferrochrome purchased from the affiliate. In this case Columbus did not provide any evidence indicating that it even attempted to obtain the affiliate's COP data, or otherwise supporting its claim that it could not obtain the requested data. Therefore, we determine that Columbus failed to act to the best of its ability to comply with these requests for information; accordingly we are making an adverse inference in selecting among the facts otherwise available, as provided in section 776(b) of the Tariff Act.

Columbus's ferrochrome transfer price is below the international market price as published in the Metals Bulletin submitted by Columbus for the record of this investigation. We have therefore increased Columbus's prices for ferrochrome by adding the difference between Columbus's transfer price plus estimated freight and the market price (delivered, customer's works, major European destination) as published in the Metals Bulletin. We have not included the other adjustments proposed by Columbus (e.g., commissions) since it is not clear from the record to what extent these other items are included in the Metals Bulletin price. Finally, we note that, contrary to Columbus's assertion, a net profit reflected in the affiliated supplier's financial statements does not provide evidence that its transfer prices were above COP, since such aggregated revenue and cost-of-sales data would include all products sold by the affiliated supplier to all customers.

*Comment 16:* Allocation of Variances. Petitioners accuse Columbus of failing to allocate properly two specific variances by including these variances in its reported COP. ''Since the amount should be included in Columbus's costs, and since the amount is known, the Department should adjust Columbus's COM by adding the (specific) variance(s) to it.'' Petitioners' Case Brief at 22 and 23.

Columbus agrees that it inadvertently omitted one variance and slightly understated another when preparing its COP response, and that both variances should be accounted for in correcting Columbus's COP. Columbus's Rebuttal Brief at 24.

*Department's Position:* We agree with Columbus and petitioner that these variances should be applied to the reported COM. Therefore, we have included both variances in the COM for this final determination.

*Comment 17:* Allocation of Costs Based on Product Characteristics. According to petitioners, Columbus failed to account for differing physical characteristics of its products in allocating its costs of production. Petitioners maintain that factors such as the processing steps (e.g., the number of passes through a given rolling mill) and processing times [9] will vary for different stainless steel products with these differences reflected in the costs of manufacture. Petitioners suggest that the Department can recalculate Columbus' COP by backing out certain costs associated with the different production cost centers (roughing mill, Steckel mill, annealing and pickling) and allocating them back on the basis of product specifications. For example, roughing and Steckel mill costs could be allocated on the basis of production quantities and either the number of passes, processing time, or both. It would be clearly wrong, petitioners insist, for merchandise with different specifications to have the same COP; the Department, therefore, must recalculate Columbus' COM to account for these differences.

Columbus argues that any significant cost differences attributable to physical differences have been captured by its normal cost accounting system. As for differences which are not captured, Columbus insists these differences are both insignificant and unquantifiable. Columbus' Rebuttal Brief at 25. For example, the number of passes required at the Steckel mill depends on such factors as the temperature and condition of the steel, and not just the final physical characteristics as the product passes to the next work station. Thus, Columbus submits, ''[t]here is no straight correlation'' between the product's physical characteristics and the processing time required at each station. Columbus maintains that it quite properly did not report cost differences which could not be substantiated through empirical observation or through Columbus' normal cost accounting system. Id. at 26.

*Department's Position:* We agree with petitioners that differences in the cost of producing the subject merchandise due to differences in physical characteristics should be accounted for in the reported COP and CV. While we have determined in this case that the cost differences due to certain physical characteristics are either insignificant or are adequately taken into account by Columbus' reporting methodology, we have adjusted the reported costs for certain other physical characteristics. A full

[9] Petitioners bracketed this information in keeping with the draft copy of the Cost Verification Report they had at the time they prepared their case and rebuttal briefs. Columbus, however, discusses this issue publicly. See, e.g., Columbus' Rebuttal Brief at 25.

discussion of this issue necessarily involves a discussion of business proprietary information; see the Cost Calculation Memorandum (Final).

*Comment 18:* COP Allocated on the Basis of Sales Volumes Rather than Production Volumes. Petitioners note that Columbus reported its weighted-average costs based on sales quantities rather than production quantities, as requested by the Department. Since the Department has data on Columbus' production quantities, petitioners insist, the Department should recalculate Columbus' weighted-average COP on that basis.

Columbus counters that its records kept in the normal course of business track costs based on tons sold, not tons produced. Further, Columbus avers, the Department is investigating sales during the POI, not production during the POI. To avoid distorting Columbus' costs, Columbus argues, the Department should calculate COP on the same basis as does Columbus in its ordinary course of business. Columbus' Rebuttal Brief at 26.

*Department's Position:* We agree with petitioners that costs should be weight-averaged using production quantities. As noted in Comment 12, above, it is the Department's long-standing practice to calculate COP and CV based on the cost of manufacturing the subject merchandise produced during the POI, rather than on a COGS figure and its associated sales quantity, which includes inventory changes during the POI. Moreover, since the costs the Department is relying upon only include the costs for products produced during the POI, the corresponding production quantities must also serve as the appropriate base for allocation. Therefore, we have used the quantities produced during the POI (i.e., the quantities corresponding to the submitted COM) rather than quantities sold to calculate weighted-average COP and CVs.

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(B) of the Tariff Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after November 4, 1998, the date of publication of the Preliminary Determination in the **Federal Register**.

Article VI.5 of the General Agreement on Tariffs and Trade (GATT 1994) 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 in section 772(c)(1)(C) of the Tariff Act. Since antidumping duties cannot be assessed on the portion of the margin attributed to export subsidies there is no reason to require a cash deposit or bond for that amount. The Department has determined in its Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils From South Africa that the product under investigation benefitted from export subsidies. Normally, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct the Customs Service to require a cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below, minus the amount determined to constitute an export subsidy. See, e.g. Notice of Antidumping Duty Order: Stainless Steel Wire Rod From Italy, 63 FR 49327 (September 15, 1998). Accordingly, for cash deposit purposes we are subtracting from Columbus' cash deposit rate that portion of the rate attributable to the export subsidies found in the countervailing duty investigation involving Columbus (i.e., 3.84 percent). We have made the same adjustment to the ''All Others'' cash deposit rate by subtracting the rate attributable to export subsidies found in the countervailing duty investigation of Columbus.

We will instruct the Customs Service to require a cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the NV exceeds the EP, adjusted for the export subsidy rate, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Exporter/Manufacturer | Weighted-Average Margin | Bonding/Cash Deposit Rate (percent) |
|---|---|---|
| Columbus Stainless | 41.63% | 37.79 |
| All Others | 41.63% | 37.79 |

**International Trade Commission Notification**

In accordance with section 735(d) of the Tariff Act, we have notified the International Trade Commission (the Commission) of our determination. As our final determination is affirmative, the Commission will determine within 45 days after our final determination whether imports of stainless steel plate in coils are materially injuring, or threaten material injury to, the U.S. industry. If the Commission determines that material injury, or threat thereof, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the Commission determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Tariff Act.

Dated: March 19, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–423–808]**

## Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Belgium

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

**EFFECTIVE DATE:** March 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Abdelali Elouaradia or Steve Bezirganian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202)