DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan

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

EFFECTIVE DATE: June 8, 1999.

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The Applicable Statute

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

Final Determination

We determine that stainless steel sheet and strip in coils (''SSSS'') from Japan are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination, issued on December 17, 1998 (*Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 108 (January 4, 1999)) (''*Preliminary Determination*''), the following events have occurred.

On December 21, 1998, Nippon Steel Corporation (''NSC'') requested that the Department extend the deadline for its response to the Section D supplemental questionnaire until January 11, 1998. The Department granted NSC an extension for this response until January 4, 1999. On December 22, 1998, petitioners submitted comments on NSC's Section D response. On January 4, 1999, NSC notified the Department of its inability to respond to the Section D supplemental request on time. On January 11, 1999, Petitioners requested that the Department cancel verification for NSC due to the lack of a response and base its final determination on facts otherwise available. On January 12, 1999, the Department granted NSC an extension to respond to the supplemental cost response until January 25, 1999. On January 19, 1999, NSC notified the Department that it could not respond to the Department's supplemental questionnaire. However, in the same letter, NSC also asked the Department to verify its shipment data for purposes of the Department's final critical circumstances determination.

On December 22, 1998, the Department issued a supplemental cost questionnaire to Kawasaki Steel Corporation (''KSC''). On December 23, 1998, KSC requested an extension of the deadline for its response to supplemental cost questionnaire. On January 4, 1999, KSC submitted a ministerial error allegation on the Department's *Preliminary Determination*. On February 23, 1999, the Department published the amended preliminary determination incorporating the correct scope language. *See Notice of Preliminary Determinations of Sales at Less than Fair Value: Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Mexico, South Korea, and United Kingdom; and Amended Preliminary Determination of Sales at Less than Fair Value, Stainless Steel Sheet and Strip from Taiwan*, 64 FR 8749 (Feb. 23, 1999). On January 25, 1999, KSC submitted its supplemental cost response to the Department as well as its supplemental home market sales information.

On January 15, 1999, Sumitomo Metal Industries (''SMI''), a producer not selected as a respondent in this investigation, requested that the Department reverse its decision that SMI be subject to the ''All Others'' affirmative critical circumstances cooperative finding since it cooperated with the Department's request for information until being deselected as a respondent (*See Decision Memorandum from Division Directors*, Office VII, to Joseph Spetrini, regarding Selection of Respondents, September 21, 1998). On January 29, 1999, Nippon Metal Industry Co., Ltd. (''NMI''), a mandatory but unresponsive respondent, submitted shipment information in connection with the Department's preliminary critical circumstances finding.

On January 25, 1999 and February 2, 1999, KSC and NSC, respectively, requested that the Department conduct a hearing. On February 2, 1999, petitioners and SMI requested that they too participate in the hearing.

On January 28, 1999, petitioners submitted comments regarding the upcoming KSC sales verification. On March 24, 1999, the Department forwarded the sales verification outline to KSC. The Department conducted the sales verification from February 1 through February 9, 1999. On February 2, 1999 and February 9, 1999, KSC submitted a list of minor corrections reported at the beginning of verification for KSC and Kawasho Corporation (''Kawasho''), its affiliated trading company, respectively. The Department did not conduct a sales verification of NSC or NMI.

On February 12, 1999, the Department issued the cost verification outline to KSC. Petitioners submitted cost verification comments regarding KSC on February 18, 1999. The Department conducted the cost verification in conjunction with the LTFV investigation on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan from February 22 through March 5, 1999. The Department issued its cost verification report on March 23, 1999 and sales verification report on March 24, 1999. (*See Memorandum to James Doyle, Program Manager, AD/CVD Enforcement Group III, Office 7: Verification of the Sales Questionnaire Responses of Kawasaki Steel Corporation* (''*KSC Sales Verification Report*'') and *Memorandum to Neal Halper, Acting Director, Office of Accounting: Cost Verification Report-Kawasaki Steel Corporation*) (''*KSC Cost Verification Report*''). On April 13, 1999, KSC submitted a revised sales database which incorporated the minor corrections presented at verification as well as verification findings.

On April 2, 1999, Petitioners, KSC, SMI, Watanabe Trading Co., Ltd. (''Watanabe''), and Printing Developments Inc. submitted case briefs. On April 9, 1999, petitioners, KSC and NSC submitted rebuttal briefs. The Department conducted the hearing on April 14, 1999.

Scope of the Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip 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 sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 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, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 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 Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

currently available under proprietary trade names such as ''Durphynox 17.''[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

Period of Investigation

The period of investigation (''POI'') is April 1, 1997 through March 31, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products, covered by the description in the *Scope of Investigation* section above produced by KSC, and sold in Japan during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison market sales of the foreign like product (listed in order of significance): grade; hot/cold rolled; gauge; finish; metallic coating; non-metallic coating; width; temper/tensile strength; and edge trim. These characteristics have been weighted by the Department where appropriate. 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 listed in the antidumping duty questionnaire instructions.

Fair Value Comparisons

To determine whether sales of SSSS from Japan to the United States were made at LTFV, 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 sections 772(a) and (c) of the Act, we calculated EP for all of KSC's sales, since the subject merchandise was first sold in the United States to an unaffiliated purchaser, and constructed export price (''CEP'') was not otherwise warranted based on the facts on the record.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer. To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the home market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We applied the aforementioned criteria in the *Preliminary Determination* and indicated that the information on the record revealed two levels of trade (end-users and trading companies) for KSC in the home market. The Department also found that sales made through trading companies in both the home market and the United States were at the same level of trade. *See Preliminary Determination*, 64 FR at 114–115. As we further explain this issue in response to Comment 3, below, we continue to find that there are two levels of trade: (1) KSC sales to end-users; and (2) KSC sales to affiliated and unaffiliated trading companies. Additionally, we continue to find that no consistent, significant pattern of price differences existed and therefore we did not adjust NV for U.S. sales when compared to home market sales made at a different LOT.

Export Price

We calculated EP based on the packed, delivered price to unaffiliated purchasers in the United States. For KSC, we deducted, where appropriate, foreign inland freight, insurance, rebates, brokerage and handling from the starting price and added duty drawback.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparisons'' sections of this notice, below.

1. Home Market Viability

As discussed in the *Preliminary Determination*, we determined that the home market was viable. *See Preliminary Determination*, 64 FR at 113. The parties did not contest the viability of the home market and we have no other reason to reconsider our preliminary determination regarding viability. Consequently, for the final determination, we have based NV on home market sales.

2. Cost of Production (''COP'')

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, based on the sum of KSC's cost of materials, fabrication, SG&A expenses, and packing costs. We relied on KSC's submitted COPs, except in the following specific instances where the

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

submitted costs were not appropriately quantified or valued.

1. We adjusted KSC's reported cost of manufacturing to remove variances associated with the packing and transportation cost centers.

2. We revised KSC's reported financial expense rate to include a subsidiary's excluded foreign exchange losses.

3. We applied the general and administrative expense rate and financial expense rate to KSC's cost of manufacturing plus packing expenses and loading costs. *See Memorandum of Cost of Production and Constructed Value Calculation Adjustments for the Final Determination from William Jones to Neal Halper,* dated May 19, 1999. (''*Cost Calculation Memo*'')

We conducted the sales-below-cost test in the same manner as described in our *Preliminary Determination*, 64 FR at 113. As with our *Preliminary Determination*, we found that for certain models of SSSS, more than 20 percent of KSC's home market sales were at prices less than the COP within an extended period of time. *See* section 773(b)(1)(A) of the Act. Further, the prices did not provide for the recovery of cost within a reasonable period of time. We, therefore, disregarded the sales that failed the cost test and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

3. Calculation of Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of KSC's cost of materials, fabrication, SG&A expenses, direct and indirect selling expenses, interest expense, research and development expenses incurred in producing the subject merchandise, U.S. packing costs, and profit. We relied on the submitted CVs except for the specific instances noted in the ''Cost of Production'' section above.

Price-to-Price Comparisons

For those product comparisons for which there were sales that did not fail the cost test, we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C) of the Act. Where applicable, we made adjustments for rebates and movement expenses. To adjust for differences in circumstances of sale between the home market and the United States, we reduced home market prices by the amounts of direct selling expenses (*i.e.*, warranty and credit expenses) and added U.S. credit expenses. In order to adjust for differences in packing between the two markets, we deducted home market packing costs and added U.S. packing costs.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, where we were unable to find a home market match of identical or similar merchandise, we based NV on CV. We calculated CV based on KSC's cost of materials, fabrication, SG&A expenses, U.S. packing, direct and indirect expenses, interest expense, research and development expenses employed in producing the subject merchandise, and profit. In accordance with section 773(a)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by KSC in connection with the production and sale of the foreign like product during the ordinary course of trade for consumption in Japan. 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 Act. For comparisons to EP, we made circumstances of sale (''COS'') adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain corrections for the final determination. We have corrected certain programming and clerical errors that occurred in the *Preliminary Determination*. Where applicable, these errors are discussed in the relevant comment sections below.

Currency Conversion

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

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, as provided in section 782(i), the Department shall, subject to subsections 782(d) of the Act, use facts otherwise available in reaching the applicable determination. In this investigation, NSC, NMI, Nisshin Steel Co., Ltd., and Nippon Yakin Kogyo failed to provide requested information. Therefore, use of facts available is warranted.

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 Statement of Administrative Action* (''SAA''), accompanying the URAA, H.R. DOC. No. 103–316 at 870 (1994)). Given that Nisshin Steel Corporation, Nippon Yakin Kogyo and NMI refused to comply with the Department's request for information, we find that these companies have failed to act to the best of their ability to comply with reporting obligations in this investigation. Therefore, the Department has determined that an adverse inference is warranted with respect to these three mandatory respondents. As in the *Preliminary Determination*, the Department has selected as adverse facts available a margin of 57.87 percent, which is based on the highest margin alleged in the petition for any Japanese producer. As discussed in the *Preliminary Determination*, the Department has, to the extent practicable, corroborated the information used as adverse facts available because information from a petition is considered secondary information. *See* 19 CFR 351.308(c) and (d). For example, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics, call reports, and data from business contacts). We have also determined that the adverse facts available petition rate has probative value by comparing this rate to actual sales made by KSC, the only respondent whose information the Department was able to verify and use for margin calculation. After comparing the information in the petition to KSC's verified sales data, we find that the petition data is reliable for use as adverse facts available. (*See Corroboration Memorandum Detailing Application of Total Adverse Facts Available* from James Doyle, Program Manager, to Roland MacDonald, Director Office VII, dated May 19, 1999.) (''*Corroboration Memorandum*'') 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 these three companies is appropriate. For further discussion regarding the Department's use and selection of facts available for these three companies, see the *Preliminary Determination*, 64 FR at 115.

In addition, in light of NSC's decision not to respond to the Department's December 7, 1998, supplemental cost response despite repeated extensions by the Department, the Department has determined that NSC has failed to act to the best of its ability in this investigation. Furthermore, NSC's failed to provide the requested cost information, including a large number of affiliated input suppliers, a breakdown of NSC costs by production process and explanations and clarifications regarding allocation methodologies used by NSC in arriving at product-specific costs. As a result, the Department was unable to assess whether any input constituted major inputs, whether collapsing certain steel grades is appropriate, as well as the reasonableness of the allocation methodologies used. Thus, the Department has determined that, in selecting from among facts available, an adverse inference is appropriate. Consistent with Department practice in cases where a respondent withdraws its participation in an investigation, as adverse facts available, we have applied the highest margin in the petition. *See* Comment 13 and *Corroboration Memorandum; see also Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan*, 62 FR 45623 (August 28, 1997).

Critical Circumstances

Section 735(a)(3) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

As discussed in our preliminary findings of critical circumstances, we are not aware of any antidumping order in any country on stainless steel sheet and strip in coils from Japan, nor has any additional information in this regard been placed on the record for purposes of the final determination. Therefore, we examined whether there was importer knowledge. The statute and the Statement of Administrative Action (''SAA''), which accompany the Uruguay Round Agreements Act, are silent as to how the Department is to make a finding that there was knowledge of less than fair value sales and the likelihood of material injury. Therefore, Congress has left the method of implementing this provision to the Department's discretion.

In determining whether an importer knew or should have known that the exporter was selling the product at less than fair value, the Department normally considers margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price (''CEP'') sales, and margins of 25 percent or more for export price (''EP'') sales. *See Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the PRC*, 62 FR 9160 (February 28, 1997). In this investigation, as discussed above in the Facts Available section, we have determined pursuant to an application of adverse facts available that the petition margin of 57.87 percent is probative of the selling practices of mandatory respondents Nisshin Steel Corporation, Nippon Yakin Kogyo, Nippon Metal Industries, and NSC. This margin indicates dumping over the 15 and 25 percent thresholds for these respondents' sales. In addition, the Department normally considers a preliminary International Trade Commission (''ITC'') determination of material injury sufficient to impute knowledge of likelihood of resultant material injury. The ITC preliminarily found material injury to the domestic industry due to imports of sheet and strip from Japan and, on this basis, the Department may impute knowledge of likelihood of injury to these respondents. *See Preliminary Determination of the ITC of Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom*, 63 FR 33092, (June 17, 1998). Thus, we determine that the knowledge criterion for ascertaining whether critical circumstances exist has been satisfied.

Moreover, because we are applying adverse facts available to these four companies with respect to our final critical circumstances determination, we also find that imports for each of them have been massive. Consequently, both prongs of our critical circumstances analyses have been met. We further discuss our treatment of Facts Available/Critical Circumstances in Comment 15 below.

We do not find critical circumstances for KSC. KSC was a cooperative mandatory respondent whose verified shipments did not evidence massive imports but, instead, showed an increase of less than the requisite threshold of 15 percent during the relevant comparison periods (January–May 1998 with June–October 1998). Although the Department's regulations at 19 CFR 206(i) require that we examine at least three months in making our determination of whether imports are massive, it is the Department's practice to examine the longest period for which information is available up until the preliminary determination. *See Notice of Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide From The Netherlands*, 59 FR 23684, (May 6, 1994). In this case, for purposes of the Final Determination, available information permitted us to examine relevant comparison periods covering five months before and after the filing of the petition. Additionally, for purposes of the final determination we included June in the post-petition period, as it was incorrectly included in the pre-petition period for purposes of the Preliminary Determination.

We have reconsidered our *Preliminary Determination's* finding as to the ''All Others'' category of companies and further discuss our treatment of the ''All Others'' category in Comment 14 below. For a complete discussion, see Memo from Roland MacDonald to Joe Spetrini regarding Final Critical Circumstances Determination, dated May 19, 1999, (''*Final Critical Circumstances Memo*''). For this final determination, we do not find critical circumstances for the ''All Others'' category.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by KSC for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by KSC.

Interested Party Comments Regarding Sales Issues

Comment 1: Exclusion of Sales of Foil Products

KSC argues that the Department should have excluded product code R20–5USR grade foil products, which are used for automotive catalytic converter applications, from its

preliminary margin calculation since this product meets the exclusion criteria as outlined in the Scope of Investigation of the *Preliminary Determination*. Further, KSC contends that the Department's verification findings support its claim for exclusion of these foil products. For instance, KSC claims that at verification, the Department reviewed numerous sales transactions of R20–5USR foil products, including production records and mill certificates. KSC argues that these findings prove that the R20–5USR grade foil product, previously included in the sales database, met all of the Department's physical and chemical criteria for exclusion. Thus, KSC argues that the merchandise is outside the scope of the investigation and therefore must be removed from the Department's dumping margin calculations for the final determination.

Alternatively, KSC contends that if the Department decides not to exclude sales of foil used for automotive catalytic converter applications, then the Department should exclude the home market trial sales as being outside the ordinary course of trade. KSC argues that the home market sales of R20–5USR grade foil product, also classified as trials, are outside the ''ordinary course of trade,'' in accordance with the section 773(a)(1) of the Act because: (1) These sales represent a small percentage of the entire volume of home market sales of SSSS during the POI; (2) the price of the trial sales is aberrational; (3) the average quantity of the trial sales is an insignificant percentage of the average quantity of commercial sales of all subject merchandise during the POI; and (4) the trial sales are not used for commercial production by the end-users, but are used only for testing and evaluation purposes. For the aforementioned reasons, KSC contends that if the Department should decide to use R20–5USR grade foil in its margin analysis then the Department should exclude the home market trial sales from its margin analysis, on the basis of the fact that these sales are ''outside the ordinary course of trade'' and sold in non-commercial quantities.

Petitioners' first contention is that respondent's exclusion request of October 15, 1998, related only to narrowly focused foil product sold only by Emitec, a producer. According to the petitioners, KSC sells a wide range of foil products falling under the R20–5USR designation and the evidence on the record suggests that KSC's home market sales of foil products do not meet the precise exclusion specifications agreed to by petitioners. Petitioners agree that the verified U.S. sales of R20–5USR meet all the ''Emitec specifications'' and thereby fall within the exclusion. However, petitioners argue that the mill certificates of the home market sales of foil products contain certain chemical elements but not other elements and do not clearly indicate that the product meets ''Emitec specifications.''

Furthermore, petitioners assert that the cost data for foil products vary significantly between the export products and the domestic products, which they argue indicates that not all foil products have the same cost of production, as discussed in *KSC Cost Verification Report* at S–14. For the aforementioned reasons, petitioners urge the Department to limit exclusion of sales only to those sales of foil products that meet the precise exclusion requirements as defined in its October 15, 1998 submission. As a result, petitioners request that the Department not exclude home market foil products from its margin calculations as the exclusion applies only to a particular producer, and the home market foil products do not appear to meet the specifications set forth in the exclusion language. Petitioners' second contention is that KSC's request that its sales of home market foil products be excluded as being outside the ordinary course of trade should not be granted. Petitioners argue that these sales were made at arm's length regardless of the quantity sold.

Department's Position: We agree with KSC. At verification, KSC was able to demonstrate that its R20–5USR products met all of the Department's exclusion criteria for foil products as defined in the Scope of Investigation of the *Preliminary Determination*. Specifically, KSC provided copies of mill certificates for a randomly selected group of foil sales accompanied by a ladle analysis (indicating chemical contents). This verification documentation demonstrates that the chemical content of all exclusion elements met the narrow exclusion requirements as defined in the Scope of Investigation of the Department's *Preliminary Determination*.

The Department first disagrees with petitioners' application of the scope exclusion on a customer-specific basis. The scope of an antidumping duty order covers merchandise, not companies. Second, the Department has determined that petitioners' argument that home market mill certificates contain certain elements not within the scope exclusion is unjustified given the facts of the record. Contrary to this contention, we find that the evidence on the record (*i.e.*, mill certificates and ladle analysis) demonstrates that each of the elements required by the Department's exclusion criteria, as stated in the *Preliminary Determination*, is disclosed on the home market mill certificates and ladle analysis for the randomly selected and verified foil sales. (*See KSC Sales Verification Report* and verification exhibit 3.) Therefore, those chemical elements referred to by petitioners that were not found in the market mill certificates are not relevant to the question of scope. Since these sales meet the exclusion criteria, they do not fall within the scope as defined in the *Preliminary Determination*. Thus, we have eliminated them from the final determination margin calculations because we determine that these sales meet the exclusion criteria, we do not need to address respondent's ordinary course of trade argument.

Comment 2: Proper Application of the Arm's Length Test

KSC claims that the Department erred in its application of the arm's length test by testing sales on a sales destination basis, rather than on a customer basis. According to KSC, the Department's normal practice is to compare overall weighted average home market net prices for each control number sold to affiliated customers with the overall weighted average home market net prices for each control number sold to unaffiliated customers. KSC argues that the Department performed its arm's length test for sales to affiliated customers for each delivery point, as each delivery point has a unique customer code in KSC's sales database, rather than aggregating the delivery points maintained by one particular customer. KSC claims that the arm's length test should have been performed by customer taking into account the customer's various delivery points in determining the appropriate comparison price. Hence, KSC asserts that the Department should perform this test on an affiliated customer-specific basis, rather than on a destination-specific basis.

In response, petitioners note that KSC failed to indicate that its reported customer codes are ''commingled'' with customers'' delivery locations in its questionnaire response. Further, petitioners contend that the data on the record contradict KSC's assertion that an affiliated customer may have numerous delivery points as reflected in the multiple codes assigned to the customer. First, petitioners claim that not all of the delivery locations for each home market sale were reported. Second, petitioners argue with KSC's contention that each customer code

signifies a particular destination point since a specific customer code is reported to have more than one destination point related to it and certain customer codes share the same destination point as reflected in KSC's home market sales database. In light of the above contradictions to KSC's claim, petitioners argue that the Department should continue to use the existing customer codes in KSC's home market database as in the Department's *Preliminary Determination*.

Department's Position: We agree with KSC. Although KSC could have explained that its individual customer codes may at times reference the same customer at a different location by a different customer code, the necessary factual information has already been presented on the record in the Section B and C responses. Further, the Department did not find any discrepancies with the reporting of customers or delivery locations at verification. Hence, we have no reason to suspect that the information in regard the destination data field (*i.e.*, DESTH) is in error in the sales databases. Finally, the Department attempts to calculate margins as accurately as possible and this inadvertent oversight by KSC and the Department will be corrected by using information on the record. Accordingly, we have corrected our arm's length program and tested the prices on a customer basis rather than an individual customer delivery location basis.

Comment 3: Proper Implementation of Level of Trade Analysis

KSC argues that the Department should recognize that KSC's sales to all end-users are classified as a separate level of trade regardless of whether the end-user is a customer of KSC or Kawasho, an affiliated party of KSC. KSC contends that Kawasho's sales to its end-users exhibit the same differences in selling functions as KSC's sales to its end-users. In addition, KSC claims that the Department found no discrepancies in its review of the framework agreement between KSC and its end-users and the distinct sales functions performed by Kawasho to its end-users. According to KSC, these distinctions in selling functions, as examined during the course of verification, warrant two separate levels of trade. Kawasaki argues that because sales to trading companies were at the same LOT in both markets, the Department should match U.S. sales to trading companies with normal values derived from home market sales to trading companies, citing *Notice of Preliminary Determination of Sales Less than Fair Value: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 63 FR 6155, 6158 (February 6, 1998) (''We first attempted to compare sales at the U.S. level of trade to sales at the identical home market level of trade. If no match was available at the same level of trade, we attempted to compare sales at the U.S. level of trade to sales at the second home market level of trade.''); *Certain Stainless Steel Wire Rods From France Final Results of Antidumping Duty Administrative Review*, 61 FR 47874, 47880 (September 11, 1996) (same). Thus, KSC urges that sales to end users should be segregated from sales to trading companies.

Petitioners did not comment on this issue.

Department's Position: As discussed in the Department's *Preliminary Determination*, 64 FR at 114, 115, we disagree with KSC for the following reasons. To determine whether normal value was established at a different LOT than KSC's EP sales, we examined stages in the marketing process and selling functions along the chain of distribution between KSC and its U.S. customers, and then compared those functions to the two LOTs that we previously identified in the home market (''HM''). In the U.S., we identified a single channel of distribution: sales from KSC to the unaffiliated Japanese trading companies. In the HM, we identified two channels of distribution: (1) Sales from KSC to end-users; and (2) sales from KSC to all trading companies (affiliated and unaffiliated). In examining the LOTs of the HM sales at verification, we verified that KSC conducted price negotiations, communications with customers, payment collection activity, and warranty activity with its end-users. In contrast, KSC did not perform these same sales functions with respect to sales to both affiliated and unaffiliated trading companies. In our comparison of sales function of KSC to affiliated trading companies and then to unaffiliated customers (end-users/distributors), we noted that KSC's affiliated trading companies gathered market intelligence and customer information, made customer contacts, and performed marketing services, price negotiations, warehousing, processing, payment collection activity, and warranty activity. Based on the above-referenced distinctions between the selling functions of KSC to end-users and those of KSC to affiliated trading companies, and then to unaffiliated customers, we consider the respondent's request that the Department treat KSC's sales to all end-users as one level of trade to be unpersuasive. Finally, because the Department found no ''consistent price differences between the sales on which NV is based and comparison markets sales at the LOT of the export transaction,'' we found that no LOT adjustment or offset was necessary for NV in the event that U.S. sales (KSC sales to unaffiliated trading companies) were compared to home market sales made at a different LOT (KSC sales to end-users) as demonstrated in the Preliminary Determination Pattern of Price Program results. For a discussion of the Department's practice concerning level of trade adjustments, see *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15444, 15445 (March 31, 1999) (''If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales in which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment * * *''). Therefore, for this final determination, in accordance with section 773(a)(7)(A) of the Act, we maintain our preliminary position with regard to KSC's level of trade analysis.

Comment 4: Rolled-On or Hard Finish With 2B Finish

Petitioners argue that the Department should collapse the finish codes 7 and 9 into 2B finish as these finish codes are broad and lack profound distinctions to justify separate categories. Citing *Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from Mexico*, 64 FR 14872, 14875 (March 29, 1999) (''*Emulsion Styrene-Butadiene*''), petitioners suggest that subtle differences may exist among various finish codes; however, the underlying intention of the model match program is not to recognize each distinction between a product but rather to distinguish the major physical differences in the merchandise.

Petitioners urge the Department to treat finish codes 7 (Rolled-On) and 9 (Hard Finish) as a consolidated finish code 2B (temper rolled or skin passed) in its final determination due to the similarity of the products and the fact that these two codes are not in KSC's product brochure which is used in KSC's normal course of business. Moreover, petitioners cite *Rautaruukki Oy* v. *United States*, Slip Op. 98–112 at 14 arguing that a respondent may not unilaterally alter the physical characteristics of the Department's model match methodology.

KSC responds that it did not ''unilaterally'' alter the product codes,

since the Department's model match criteria in the questionnaire specifically lists code 7, ''Rolled-On,'' as a distinct finish, and further requested respondent to specify distinct finishes other than those specifically listed in the questionnaire. Instead, KSC notes that the individual specifications of these finishes were demonstrated with support documentation at verification. KSC argues that the products with finish code 7 and finish code 9 undergo separate production processes according to customer specifications on finishes. KSC argues further that there is a lack of evidence on the record to suggest that KSC's rolled-on or hard finishes are identical to 2B finish.

With respect to petitioners' comment that finish codes 7 and 9 were not mentioned in KSC's product brochure, KSC argues that it provides numerous ''bona fide'' grades and options that are not listed in the main product brochure to its customers. According to KSC, the product brochure features only the most popular grades and options and by no means dictates the types of grades and options that it produces for its customer.

Finally, KSC stresses that if the Department decides to consolidate these finish codes, it would be necessary to recalculate CONNUM-specific costs, imposing burdensome programming calculations and increasing the risk of clerical errors. Therefore, KSC argues that the Department should not deem it appropriate to consolidate these two finishes into 2B, and its statement in the verification report should be read as ''most similar'' to 2B rather than identical.

Department's Position: We agree with KSC. In accordance with section 771(16)(A) of the Act, the Department's selection of appropriate matching criteria was based on meaningful physical characteristics and the comments of the parties. *See Emulsion Styrene Butadiene.* As part of the criteria selection process, the Department's original antidumping questionnaire in this investigation specifically asked KSC to report ''Rolled-On'' (code 7) and ''Other'' (code 9). Pursuant to the questionnaire instructions, KSC reported finish code 7 and code 9 in its sales database and constructed CONNUM-specific costs accordingly. During verification, we noted that KSC offers code 7 and code 9 finish treatments in its ordinary course of business even though these specific finishes are not listed in its finish brochure. (*See KSC Sales Verification Report* at 8 and Exhibit 3 of the verification exhibits.) Despite the overall similarities shared by code 7, code 9 and 2B finish, we examined technical documentation for finish code 7 and internal specifications for code 9, and determined that code 7 and code 9 were distinctly different finishes from 2B. In addition, during verification, we reviewed sales documentation indicating both types of finishes. Accordingly, we have maintained our treatment of code 7 and code 9 as distinct finish codes from code 2B for the final determination.

Comment 5: Advertising and Technical Service Expenses

KSC argues that it classified home market advertising and technical services as direct selling expenses in its questionnaire response; yet the Department inadvertently reclassified these expenses as indirect selling expenses in its *Preliminary Determination* margin calculations. KSC notes that, in response to the Department's questionnaire instructions, it classified only the technical service expense as direct expense.

KSC contends that nothing in the Department's sales verification report contradicts KSC's classification that these expenses are direct. Instead, numerous documents in the verification exhibits demonstrate the nature of these expenses as being direct. *See KSC Sales Verification Report* at 18–19.

Petitioners argue that KSC's reported home market advertising and technical service expenses were not directly related to the subject merchandise, and thus were not direct expenses.

In addition, petitioners maintain that none of the advertisements on the record referred directly to the subject merchandise. Rather, the advertisements referred to stainless steel products in general and covered grades of subject merchandise that were either not subject merchandise or represented an insignificant percentage of KSC's total home market sales during the POI. Further, petitioners argue that KSC's home market advertisements were not directly aimed at the users of the subject merchandise sold during the POI, but to KSC's customers for stainless products in general.

With respect to technical service expenses, petitioners argue that the record suggests that a calculation worksheet from the verification demonstrates that KSC's financial accounting system captures technical service expense for subject and non-subject merchandise under the same cost center, even though KSC used the home market SSSS sales value as the denominator for its technical service expense calculation. Thus, petitioners assert that such expenses are not variable costs. Petitioners cite to the *Notice of Final Results of Antidumping Duty Administrative Review for Certain Internal-Combustion Industrial Forklift Trucks from Japan,* (''*Industrial Forklift Trucks from Japan*'') 62 FR 5592, 5607–5608 (February 6, 1997) arguing that the Department considers expenses as direct expenses if these expenses vary with the sale of a subject merchandise.

KSC rebuts petitioners' argument that KSC's direct selling expenses should be treated as indirect on the basis that these expenses are related to the trading company's sale to its customer, rather than KSC's sale to the trading company. According to KSC, the Department has consistently treated manufacturer's expenses made on behalf of end-users as direct, citing the Department's questionnaire at Appendix I at 1–6, *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan* (''*Stainless Steel Wire Rod*''), 63 FR 40434, 40437 (July 29, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from South Africa,* 64 FR 15459, 15469 (Mar. 31, 1999) (disallowing advertising expense as a direct expense, because advertising was directed at respondent's direct customer, rather than at customer's customer); and *Notice of Final Determination of Sales at Less than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France,* 59 FR 14136, 14145 (March 25, 1994). Similarly, KSC contends that its home market advertising and technical service expenses should be considered direct as indicated in the *Sales Verification Report.* Regarding technical service expenses, KSC argues that technical service expenses should be classified as direct expenses since KSC incurred those expenses in connection with particular sales.

Department's Position: We agree, in part, with KSC. Based on the record evidence in this investigation and the information examined at verification, we have determined that KSC's reported advertising expenses apply to all stainless steel products, including subject and non-subject merchandise, and were incurred on behalf of KSC's customer. In accordance with the Department's practice, in determining whether advertising expenses directly tie to particular sales, we applied the two-prong test used in *Final Determination of Sales at Less than Fair Value: Antifriction Bearings Other than Tapered Roller Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom* (''*AFB's*''), 62 FR 2102–2104 (January 15, 1997). In AFB's, the

Department stated that ''for advertising to be treated as a direct expense, it must be incurred on products under review and assumed on behalf of the respondent's customer; that is, it must be shown to be directed toward the customer's customer.'' *Id.; See also Stainless Steel Wire Rod from Japan*, 63 FR at 40437 (Department will treat expenses as direct expenses if they can be directly tied to specific sales). As evidenced by documentation gathered at verification in Exhibit 7 of the verification exhibits and *KSC Sales Verification Report*, we examined samples of brochures directed to the end-user's product design needs, invoices for advertisements concerning KSC's environmental safety record, invoices for advertisements for a particular company, as well as brochures directed at construction application uses. At verification, KSC provided sufficient documentation that the advertising expenses in question relate to subject merchandise and target the customer's customer. (*See KSC Sales Verification Report* at 4–11). Accordingly, we have reclassified KSC's advertising expenses as direct selling expenses for the purpose of the final determination. This is consistent with our determination in *Stainless Steel Wire Rod*.

With respect to technical service expenses, there is nothing on the record to support petitioners claims. Furthermore, the case cited by petitioners, *Industrial Forklift Trucks from Japan*, is factually distinguishable from this case as the respondent in that case stated that its technical service ''expenses are all expenses and do not relate to specific sales.'' 62 FR at 5605. Furthermore, there is nothing on the record to support petitioners' position that the technical expense did not vary with the sale of subject merchandise. Accordingly, we reclassified KSC's technical service expenses as direct selling expenses for the final determination.

With regard to petitioners' assertion that KSC used the home market SSSS sales value as the denominator for its technical service expense calculation despite KSC's assignment of technical service expenses to one cost center, we agree with the petitioners and accordingly revised the reported per-unit technical service expense. In order to properly reflect the portion of the total technical service and advertising expense associated with the subject merchandise, we calculated a ratio by dividing the sales of subject merchandise by total sales of stainless steel products, and applied the ratio to the total respective verified technical service and advertising expense amounts for the stainless steel products.

Comment 6: Home Market Advertising Expenses

Petitioners argue that the Department should apply the revised advertising expense ratios to KSC's respective sales databases for its final determination. Additionally, the Department should reject KSC's correction to the advertising expense for a certain home market sale observation because this particular reported advertising expense contradicts other information on the record. Petitioners further claim that KSC may not use an allocation methodology for some sales but choose actual expenses for others.

KSC rebuts petitioners' argument that home market advertising expenses be recalculated on newspapers alone, on the basis that the home market advertising expense comprises not only the newspaper expense but also catalogue and other advertising expenses. KSC adds, as a result, that the home market advertising expense ratio should remain the same, reflecting the total sum of catalogue, newspaper and advertising expense. In addition, KSC urges that the Department deny petitioners' request that HM observation 400 be corrected, pointing to the verified sales data which support KSC's corrected advertising value.

Department's Position: The Department agrees with KSC in that the advertising expenses should be used as reported to the Department since this expense was verified. Additionally, the Department has taken into account the minor corrections presented at verification. At verification, we found no inconsistencies in KSC's reporting of its advertising expense. *See KSC Sales Verification Report* at 18. Further, the Department has determined that the value reported for the particular home market sale in question corresponds to the verified expense ratios. Thus, we have not corrected this observation.

Comment 7: Correction of Errors in KSC's Weighted-Average Cost Calculation for Certain Products

Petitioners argue that in the process of recalculating the value of financial expenses in its preliminary margin analysis, the Department miscalculated the financial expenses for constructed value by applying the financial expenses ratio to KSC's reported financial expenses, rather than to KSC's reported cost of manufacturing for CV. Thus, petitioners claim, the Department should revise KSC's margin calculation program by multiplying the revised total cost of manufacturing for CV by the revised financial expense ratio.

KSC agrees with this change.

Department's Position: We agree with the proposed change and have corrected this inadvertent error in this final determination. (*See Cost Calculation Memo*).

Comment 8: KSC's Sales to Unaffiliated Trading Companies as Separate Transactions

Petitioners assert that the information on the record indicates that the trading company's role is limited to conveying the end-user's order requests and KSC's acceptance or counter-offer to the end-user. Petitioners argue that the trading companies' roles are similar to that of commissioned agents, and thus the Department should not establish the normal value on the sales price between KSC and the trading company. Instead, petitioners urge the Department to rely on the price paid by the end-user or, in the absence of such information, the Department add an amount for the commission to the sales price reported by KSC to calculate normal value for KSC's home market sales.

Petitioners contend that if the Department views the transaction between the trading company and the end-user as a separate transaction, the Department should then recognize the expenses incurred by KSC on its sales to trading companies as indirect selling expenses, rather than direct selling expenses, on the basis that the services associated with these expenses pertain to ''downstream'' sales and thereby directly benefit the end-user and not the trading company, citing *Notice of Final Results of Antidumping Duty Administrative Reviews: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom*, 62 FR, 54042, 54054 (October 17, 1997); and *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Japan*, 63 FR 40434, 40436 (July 29, 1998). Petitioners request that the Department treat those expenses that are not part of the negotiated deal between KSC and the trading companies as indirect selling expenses in KSC's margin calculation analysis.

KSC argues that the record demonstrates that the unaffiliated trading companies are customers of KSC, rather than ''commissioned sales agents. In support, KSC notes that the Department reviewed the framework agreements for its unaffiliated trading companies as well as contracts demonstrating that KSC makes bona fide

sales to the trading companies. (*See KSC Sales Verification Report* and verification exhibit 4.) Furthermore, KSC adds that the sales reviewed by the Department at verification demonstrated that KSC issues an order confirmation and an invoice to its trading company customer and records the invoice amount to the trading company in its financial accounting system. KSC notes that the obligation to pay KSC rests with the trading company and not on the condition that the trading company receive payment from its downstream customer for payment to KSC. KSC further stresses that the trading companies take title to the goods and are solely responsible for the resale transaction, issue order confirmations and invoices to their customers, and bear the full responsibility of a resale profit or loss on their sale. Finally, KSC argues that, because the sales to the trading companies are actual bona fide sales, the Department may not disregard those sales. KSC stresses that the Department practice is to use manufacturers' sales to trading companies, even in instances where the manufacturers ships the goods directly to the customers of the trading companies. *See Stainless Steel Wire Rod from Taiwan*, 63 FR 40461, 40470 (Jul. 29, 1998), and *Stainless Steel Plate in Coils from South Africa*, 64 FR 15459, 15467 (Mar. 31, 1999).

Department's Position: We agree with KSC. At verification, the Department found that the trading company obtains title to goods and has direct responsibility for payment to KSC for merchandise sold to the customer of the trading company even if the customer defaults on its payment. *See KSC Sales Verification Report* at 5. Additionally, our examination of KSC's sales process did not demonstrate that the trading companies assume the role of commissioned agents. At verification, KSC stated that trading companies undertake their own sales negotiations with their customers, issue separate order confirmations and sales invoices and take title of goods purchased from KSC. *See KSC Sales Verification Report* at 3. Thus, we have not changed our treatment of NV sales for the final determination.

Comment 9: Actual vs. Budgeted Brokerage and Handling Expenses for KSC's U.S. Sales

Petitioners contend that the Department should rely on the actual brokerage and handling expenses reported in Verification Exhibit 9 rather than KSC's budgeted brokerage and handling expenses. According to petitioners, a review of KSC's most recent U.S. sales listing demonstrates that the verified brokerage and handling expenses were not reported to the Department. Instead, KSC reported budgeted brokerage and handling costs for its U.S. sales.

KSC finds no basis for the petitioners' assertion that KSC applied budgeted rather than actual brokerage and handling expenses. In fact, KSC argues that the petitioners misconstrued the brokerage and handling expense calculation in Verification Exhibit 9, as the Department found values from this worksheet to be actual and calculated on a bi-annual basis. KSC acknowledges that its original calculation contained errors that needed to be revised; however, it argues that neither the original calculation nor the revised calculation were based on budgeted values. In addition, KSC contends that the Department tested the integrity of the calculation worksheets, during verification and found no inconsistencies in the calculation worksheets, with the exception of a clerical error presented at the beginning of verification. As a result, KSC concludes that the revised and actual brokerage and handling expenses should be used by the Department.

Department's Position: We agree with the respondent. Although KSC reported brokerage and handling expense values in its January 25, 1999 sales listing that were different from those verified, we were able to confirm the accuracy of the per-unit brokerage and handling expenses submitted at the time of verification by obtaining support documentation and reconciling those values to KSC's financial accounting system. (*See KSC Sales Verification Report* at 13–15). We further note that our findings at verification clearly demonstrate that the verified brokerage and handling amounts are actual and not budgeted. Thus, for the purpose of the final determination, we will use KSC's verified brokerage and handling expenses as submitted on April 13, 1999.

Comment 10: Verified Inland Insurance Amounts for KSC's Home Market and U.S. Sales

Petitioners argue that some of KSC's reported inland insurance amount exceeded the maximum amount of verified home market inland insurance expense for home market sales and fell below the minium verified value for certain U.S. sales. Petitioners contend that in instances where KSC reported incorrect inland insurance amounts, the Department should apply adverse facts available to those sales. As facts available, petitioners argue that the Department should assign a zero to those home market sales with reported inland insurance greater than the maximum verified amount, and the maximum amount for those sales that were reported to have an inland insurance expense lower than the minimum verified amount.

KSC explains that the higher and lower per-unit values exist simply as a result of KSC's use of multiple invoices as was verified by the Department. KSC contends that the per-unit values for certain sales would be less where not all invoices issued against a given order had insurance charges, indicating that not all of the quantity for the particular order incurred inland insurance charges. KSC states that, even though insurance charges are incurred on an invoice-specific basis, KSC's allocation of the total insurance charges for a particular order over the total quantity of that order is consistent with its freight calculation methodology. Further, KSC emphasizes the relative insignificance of the alleged inconsistencies, as they only apply to four home market sales and may potentially apply only to twenty eight U.S. sales. KSC suggests that even if the Department views these inconsistencies as errors, the Department should either ignore them or assign the mean of the home market and U.S. insurance expenses to those sales, rather than apply any punitive facts available, citing *Notice of Final Determination of Sales Less than Fair Value: Stainless Steel Plate in Coils from Belgium*, 64 FR 15476 (March 31, 1999).

Department's Position: We agree with the petitioners. As noted by the petitioners, KSC incorrectly reported inland insurance values for certain home market sales with amounts below the minimum value and those exceeding the maximum value for inland insurance. KSC's argument that its inland insurance calculation methodology is consistent with that of inland freight is without merit. We note that our findings are in contrast to KSC's claim that the per-unit insurance expense was derived by allocating total insurance charges to order quantity. As the Department examined at verification, and as KSC demonstrated in its exhibits, the per-unit inland insurance expense is a contract-based amount, with rates that varied on the designated market of the sale (*i.e.*, home market vs. export market) and location (i.e., Nishinomiya plant vs. Chiba Works) in which the merchandise was produced. (*See KSC Sales Verification Report* at 10–11.) Moreover, our comparison of the home market sales database to the inland insurance

expense values submitted at verification confirm these alleged inconsistencies in KSC's sales data. Therefore, as facts available for the final determination, we have accounted for the existing inconsistencies by assigning the average inland insurance rate to those home market and U.S. sales with reported inland insurance greater than the maximum verified amount and to those sales that were reported to have an insurance expense lower than the minimum verified amount.

Comment 11: KSC Misreported Inland Freight Expense for Certain U.S. Sales

Petitioners argue that a comparison of per-unit inland freight expense on a particular sale from the verification exhibit to KSC's January 25, 1999 sales listing reveals that the revised inland freight expense remains incorrect. Petitioners contend that even though the total freight expense for the U.S. sale in question is correct, the verified shipment quantity does not match the reported shipment quantity on this particular sale. Thus, the Department should use the total reported quantity for this particular sale on the sales listing rather than the total shipment quantity that the Department examined during verification. Petitioners point out that the revised allocation base will produce results comparable to inland freight expenses of other U.S. sales while conforming to the overall allocation methodology used to calculate inland freight expenses.

KSC argues that petitioners have misunderstood KSC's order-based freight calculations, explaining that the per-unit expense on sales covered by that specific order is based on the order quantity for each delivery. KSC reiterates that the Department reviewed relevant supporting documentation and was able to tie KSC's reported inland freight expenses to its financial accounting system. For the purposes of the final determination, KSC urges the Department to continue using its verified freight information.

Department's Position: We agree with KSC. At verification, we confirmed that KSC allocates its total inland freight charges on an order-specific basis rather than on an invoice-specific basis. We again reviewed Exhibit 10 in regards to the noted invoice and have confirmed that the per order calculation is correct. It appears that petitioners neglected to include one invoice of the affected order in their calculation. Thus, we are using KSC's submitted information for this invoice.

Comment 12: Duty Drawback

Petitioners argue that KSC's duty drawback calculation is erroneous. According to petitioners, KSC applied the duty rate to the total consumption value without duty to derive a duty-inclusive total consumption value. KSC then used the difference in the unit prices with and without duty as the per-unit value for duty savings. The duty inclusive total consumption value after the application of the duty rate to the total consumption value is different from the value verified by the Department. Petitioners assert that this mathematical error improperly increases the per-unit value of duty drawback. Petitioners request that the Department use KSC's recalculated per-unit duty saving value for chromium to correct this mathematical error.

KSC agrees with the petitioners' recalculation of duty drawback and with their suggested programming language to correct KSC's inadvertent error.

Department's Position: We agree with petitioners and KSC. For the purpose of the final determination, we have continued to rely on KSC's duty drawback calculation methodology while adjusting appropriately for the mathematical error on KSC's part.

Comment 13: Facts Available for NSC

Petitioners contend that the Department should rely on total adverse facts available for NSC in the final determination. Petitioners argue that due to NSC's failure to submit cost information and, as a result, the Department's inability to verify any portion of NSC's response, the Department should rely on facts available. Petitioners note that on prior occasions the Department has found that an inability to utilize cost data results in the inability to use the sales data. NSC contends that to assess an adverse facts available rate would be to ignore its ''substantial compliance'' with the Department's requests and also the reasons for which NSC was unable to respond to the Supplemental D questionnaire. NSC asserts that it did in fact act to the best of its ability and that the Department should assess a non-punitive facts available rate for NSC, using the average margin calculated in the petition. NSC cites to the preamble to the Department's regulations which state that ''the Department will consider whether a failure to respond was due to practical difficulties that made the company unable to respond by the specified deadline.'' 62 FR 27296, 27340 (May 19, 1997). NSC states that to assess the same punitive margin to it as that assigned to the totally non-responsive companies is unfair and would not be consistent with the meaning of the facts available provision. Furthermore, in one instance, the Department used the weighted average petition rate to calculate the final margin where the company had not responded completely and the Department was not able to verify some of the data. *See Notice of Final Determination of Sales Less than Fair Value: Certain Welded Carbon Steel Pipes and Tubes from Thailand,* 62 FR 53808 (October16, 1997).

Department's Position: We agree with the petitioners that the highest rate alleged in the petition, and corroborated by the Department, is the appropriate facts available rate for NSC in this determination. Although NSC cooperated with the Department until the deadline for the section D supplemental response, NSC has not cooperated with the Department's request for cost of production information, which is essential to our dumping analysis. The supplemental section D questionnaire requested: (1) Detailed information on NSC's large number of affiliated input suppliers; (2) a breakdown of NSC's costs by production process; and (3) explanations and clarification regarding allocation methodologies used by NSC in arriving at product-specific costs from NSC's more aggregated accounting records. Absent the affiliated input data, we are unable to determine whether transfer prices between the affiliates occurred at market prices in accordance with section 773(f)(2) of the Act. Moreover, we are unable to assess whether any of these inputs from affiliated parties constituted major inputs. If major inputs are found by the Department to have been used in the production of subject merchandise, we would need the appropriate affiliated suppliers' actual costs of production in accordance with section 773(f)(3) of the Act. With respect to our request for cost information disaggregated according to the stages of the production process, without this information, we are unable to collapse steel grades where appropriate (as we are doing with other respondents in the other SSSS cases), unable to analyze the validity of the reported product-specific data, and unable to adequately plan for verification. Thus, this data omission rendered NSC's response unusable for the cost of production analysis (*i.e.*, the Department is unable to determine whether home market sales were made at prices at or above production costs) and, as a result, for margin analysis.

The Department's practice has been to reject a respondent's submitted information *in toto* when flawed and

unreliable cost data renders any price-to-price comparison impossible. *See, e.g., Preliminary Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Mexico,* 63 FR 48181, 48183 (September 9, 1998); and *Notice of Final Determination of Sales at Less Than Fair Value: Grain Oriented Electrical Steel From Italy,* 59 FR 33952 (July 1, 1994). The rejection of a respondent's questionnaire response is particularly appropriate and consistent with Department practice in instances where a respondent failed completely to provide verifiable COP information. *Id.; see also Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,* 61 FR 18547, 18559 (April 26, 1996) (use of total BIA warranted where reliable price-to-price comparisons are not possible). Therefore, where a respondent's failure to respond is so substantial as to require analysis based upon total facts available the Department will not then selectively review subsets of data provided by the respondent.

Comment 14: Critical Circumstances for ''All Others''

Sumitomo Metal Industries, Ltd. (''SMI'') argues that the Department should not find critical circumstances with respect to it in the final determination. SMI argues that the Department chose not to investigate SMI because of the administrative burden to the Department, yet nonetheless applied its preliminary affirmative critical circumstances finding to imports by SMI. Sumitomo argues that, as a cooperative non-selected respondent, it is entitled to a negative final critical circumstances determination. *See Preliminary Determination of Critical Circumstances: Brake Drums and Brake Rotors from The People's Republic of China,* 61 FR 55269, 55270 (Oct. 25, 1996). SMI argues that it is the Department's practice not to issue final affirmative critical circumstances with regard to cooperative non-selected companies. SMI also cites to the Department's decision in *Honey from the People's Republic of China,* 60 FR 29824, 29825 (Jun. 6, 1995) noting that the Department determined that it was not appropriate ''to penalize respondents whose individual data have not been analyzed due to the Department's own administrative constraints.'' In addition, SMI argues that even though the company falls within the ''all others'' category, the Department must consider its shipment data for purposes of determining whether there were massive imports.

Department's Position: With regard to the ''all others'' category (*i.e.,* companies that were not analyzed in this investigation, *e.g.,* SMI) we have reconsidered our *Preliminary Determination* finding of critical circumstances. In order to determine whether a finding of critical circumstances is appropriate with respect to uninvestigated exporters, it is the Department's normal practice to conduct its analysis based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey,* (''*Rebars from Turkey*'') 62 FR 9737, 9741 (Mar. 4, 1997). In addition, in the instant case, while we have found affirmative critical circumstances for four of the five respondents, we did not extend our affirmative critical circumstances findings to the ''all others'' category, because these companies received affirmative critical circumstances based on adverse facts available. In *Rebars from Turkey,* the Department found critical circumstances for the ''all others'' category because it found critical circumstances for three of the four companies investigated. However, as we most recently determined in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan,* 64 FR 24329 (May 6, 1999) (''*Hot-Rolled Steel from Japan*''), we are concerned that literally applying that approach could produce anomalous results in certain cases. We believe it would be inappropriate to extend the Department's application of adverse facts available to ''all others'' for purposes of making a critical circumstances determination where there is verified data for an investigated company. Instead, we find that it is appropriate in this case to apply the traditional critical circumstances criteria to the ''all others'' category. For further discussion regarding the criteria considered when determining critical circumstances see Comment 15.

First, in determining knowledge of dumping, we look to the ''all others'' rate, which is based on the weighted-average rate of all investigated companies. In this case, such a weighted-average rate must, of necessity, be based on the individual rate of KSC, the only investigated company that did not receive adverse facts available in this investigation. KSC's rate, applied to the ''all others,'' is 37.13 percent. This rate is high enough to impute knowledge of dumping to the ''all others'' category. Furthermore, on the basis of the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from the dumped merchandise.

Second, we also must also evaluate the second prong of the critical circumstances criteria: whether there have been ''massive imports'' for the ''all others'' companies. In making this determination, we examined the verified company-specific shipment data provided by KSC, the only investigated company that did not receive adverse facts available in this investigation. KSC's data showed an increase of less than 15 percent during the relevant comparison periods, and we therefore found that KSC's data provided no evidence of massive imports. In accordance with our decision in *Hot-Rolled Steel from Japan,* we also considered U.S. Customs data on overall imports from Japan of the products at issue. These statistics, however, cover numerous HTS categories that include merchandise other than subject merchandise. As such, we have not relied on this data in making our ''massive imports'' determination for ''all others.'' Based on our review of KSC's data on massive imports, we find that imports from uninvestigated exporters, (e.g., ''all others'') were also not massive during the relevant comparison periods. Given these factors, the Department determines that there are no critical circumstances with regard to ''all other'' imports of SSSS from Japan. For a complete discussion of the data examined, see the Department's *Final Critical Circumstances Memo,* dated May 19, 1999.

Comment 15: Fact Available/Critical Circumstances

Petitioners argue that the Department should use adverse facts available with respect to critical circumstances for the non-responding exporters. As for NSC, petitioners contend that a non-responsive company should not be able to manipulate or selectively respond to the Department's questionnaire and benefit as a result. *See Carbon Steel Plate from Mexico and Pistachio Group of the Association of Food Industries* v. *United States,* 11 CIT 668, 671 F. Supp. 31 (1987). Petitioners further argue that NSC, Nisshin Steel Co., Nippon Yakin Kogyo, and Nippon Metal Industries chose not to respond to the Department and should not be rewarded for the section that they responded to because they deemed it as beneficial to their company while remaining non-responsive to other aspects of the

investigation. Because none of the shipment data has been verified, petitioners contend that the Department should use facts available when determining critical circumstances.

In its rebuttal, NSC argues that the Department should use non-adverse facts available in its critical circumstance determination and should instead use the submitted data in conjunction with the U.S. Customs data. Further, NSC contends that the record does not show that it ''failed to cooperate by not acting to the best of its ability,'' because it submitted the shipment data in a timely manner and requested that the Department verify the information. Furthermore, NSC argues that the shipment data it submitted clearly demonstrates that its shipments to the United States have not been massive during the relevant period. NSC contends that the Department has used Customs import data where the respondent's data was not verified. *See Sodium Thiosulfate from the Federal Republic of Germany and the United Kingdom,* (''*Sodium Thiosulfate*'') 55 FR 51749 (Dec. 17, 1990). In another case, where the exporters were non-responsive, the Department used import statistics for its critical circumstances determination and the petition rates for their margins. *See Sodium Thiosulfate from the PRC,* 56 FR 2904 (Jan. 25, 1991). In sum, NSC states that the Department, in some cases, has used Customs import statistics as facts available for determining critical circumstances.

Department's Position: We agree with petitioners. With respect to critical circumstances, it would not be possible to conduct a critical circumstances analysis without relying on adverse facts available. In accordance with section 735(a)(3) of the Act for the final determination, we determine critical circumstances to exist if: (1) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (2) the importer knew or should have known (imputed knowledge) that the exporter was selling the subject merchandise at less than fair value and that there would be material injury by reason of such sales; and (3) there have been massive imports of the subject merchandise over a relatively short time.

In order to determine whether or not the importer of a product under investigation knew or should have known that the exporter was selling the product at less than fair value, we use the estimated margins in our determination as a guide to ''impute knowledge.'' *See Final Determination of Sales at Less Than Fair Value: Manganese Sulfate from the People's Republic of China,* 60 FR 52155 (Oct. 5, 1995); *Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China,* 60 FR 22359 (May 5, 1995); *Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil,* 59 FR 22359 (Jan. 6, 1994). If a particular exporter's sales to an unaffiliated U.S. company (EP transactions) yields a margin of 25 percent or greater, we determine that margin sufficient to impute knowledge to the importer. Similarly, if a particular exporter's sales to an unaffiliated U.S. company through an affiliated company (CEP transactions) yields a margin of 15 percent or greater, we determine that margin sufficient to impute knowledge to the importer.

In this investigation, as discussed above in the Facts Available section, we have determined pursuant to an application of adverse facts available that the petition margin of 57.87 percent is probative of the selling practices of mandatory respondents Nisshin Steel Corporation, Nippon Yakin Kogyo, Nippon Metal Industries, and NSC. This margin indicates dumping over the 15 and 25 percent thresholds for these respondents' sales. In addition, the Department normally considers a preliminary International Trade Commission (''ITC'') determination of material injury sufficient to impute knowledge of likelihood of resultant material injury. The ITC preliminarily found material injury to the domestic industry due to imports of stainless steel sheet and strip in coils from Japan and, on this basis, the Department may impute knowledge of likelihood of injury to these respondents. *See Preliminary Determination of the ITC of Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom,* 63 FR 33092, (June 17, 1998). Thus, we determine that the knowledge criterion for ascertaining whether critical circumstances exist has been satisfied.

Moreover, because we are applying adverse facts available to these four companies with respect to our final critical circumstances determination, we also find that imports for each of the companies have been massive. Consequently, both prongs of our critical circumstances analyses have been met. *See* Critical Circumstances section above for full discussion.

We disagree with NSC's arguments for the following reasons. First, NSC argues that the Department should use the shipment data it submitted. Although, NSC submitted its shipment data in a timely manner and offered to have this information verified by the Department, the Department decided not to verify any of the information submitted by NSC due to substantial missing information since NSC did not respond to the Department's supplemental cost questionnaire. Thus, because the Department could not rely on NSC's sales and cost information as a whole we must apply total adverse facts available and it is not the Department's practice to verify partial information by a respondent who has not fully cooperated. Second, NSC argues that the Department can rely on Customs data in this case as was done previously in *Sodium Thiosulfate.* The Department is unable to do such an analysis in this case since the HTS numbers in the scope of the investigation are basket categories that include non-subject merchandise, and thus do not permit the Department to make an accurate analysis as discussed above. Further, the Department again has determined that, in this case, such an analysis is not warranted for NSC due to NSC's lack of cooperation in this investigation. Therefore, we have found affirmative critical circumstances for NSC.

Comment 16: Date of Sale

KSC asserts that the Department should use invoice date as the date of sale. KSC contends that the Department proved through numerous tests during the course of verification that the material terms of sales change after the order confirmation date and up until the invoice date. For this reason, KSC believes that the Department's should consider the date of invoice as the date of sale. KSC cites the Department's regulations which state that the Secretary normally will use the date of invoice but, in some cases, will use a date that better reflects the date on which the exporter or producer establishes the material terms of sale. KSC asserts that in this case the invoice date is the only date that reflects the intention of the Department's regulations for date of sale. Furthermore, KSC cites the Department's decision in *Notice of Final Results of Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand,* 63 FR 55578, 55587–88 (October 16, 1998) (''*Pipes and Tubes from Thailand*''), where the Department found the date on which the essential terms of the sale were established as the proper date of sale.

Petitioners did not comment on this issue.

Department's Position: We agree with KSC that invoice/shipment date is the correct date of sale for its home market

and U.S. sales of subject merchandise. Under our current practice, as codified in the Department's regulations at section 351.401(i), in identifying the date of sale of the subject merchandise, the Department will normally use the date of invoice, as recorded in the producer's records kept in the ordinary course of business. *See Pipes and Tubes from Thailand,* 63 FR at 55578–55587. However, in some instances, it may not be appropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that the material terms of sale were established on some date other than invoice date. *See Preamble to the Department's Final Regulations,* 62 FR 27296 (May 19, 1997) (''*Preamble*''). Thus, despite the general presumption that the invoice date is the appropriate the date of sale, the Department may determine that this is not an appropriate date of sale where the evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

In this investigation, KSC, in its response to the original questionnaire reported invoice/shipment date as the date of sale in both the U.S. and home markets. However, when requested by the Department, KSC also reported order confirmation date, but maintained that the invoice date would be a more appropriate date of sale. For purposes of our *Preliminary Determination,* we accepted the date of invoice as the date of sale subject to verification. *See Preliminary Determination,* 64 FR at 112.

At verification, we carefully examined KSC's selling practices. We found that it records sales in its sales and financial records by date of invoice/shipment. For the home market, we reviewed several sales observations for which the price and quantity changed subsequent to the original order (*see KSC Sales Verification Report,* dated March 24, 1999). For the U.S. market, we reviewed several instances in which material terms of sale changed subsequent to the original order. In addition, the Department has examined the time lags between order date and invoice date to determine whether it was appropriate to use order date as the date of sale. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 63 FR 32833, 32835 (June 16, 1998) (''*Steel Pipe from Korea*''). However, it is important to note that, in *Steel Pipe from Korea,* the Department found that ''[t]he material terms of sale in the United States are set on the contract date and any subsequent changes are usually immaterial in nature or, if material, rarely occur.'' *Id.,* 63 FR at 32836. In contrast, KSC reported that there were numerous instances of changes in terms of sale between the initial order date and the shipment/invoice date. Therefore, invoice date is the most appropriate date of sale, notwithstanding some time lag between order confirmation and invoice. As noted above, we observed a significant number of such instances at verification where changes did occur between order confirmation and invoice. Based on KSC's representations, and as a result of our examination of its selling records kept in the ordinary course of business, we are satisfied that the date of invoice/shipment should be used as the date of sale because it best reflects the date on which material terms of sale were established for KSC's U.S. and home market sales.

Comment 17: Scope Exclusion Requests

Since the *Preliminary Determination* we received a number of scope exclusion requests. Printing Developments, Inc. (''PDI'') requests that the necessary stainless steel supplies used for the production of printing plates using a stainless steel substrate be excluded from the scope of the investigation. PDI has found only one Japanese manufacturer who produces materials to meet PDI's rigorous specifications. To date, PDI has found no U.S. producer able to produce this specialized product. PDI is presently discussing the requested exclusion with one petitioner who has demonstrated some interest in supplying stainless steel sheet for the production of the printing plates.

SMI argues that the Department should exclude a certain form of ASTM specification 403. SMI contends that it is the only producer in the world of this grade of stainless steel sheet and strip used for production of certain applications. Furthermore, a partner of SMI in developing this material solicited three U.S. steel producers but none were willing or able to produce the material in question.

Watanabe argues that welding strip should be excluded from the scope of the investigation. Watanabe cites the *Preamble* in stating that the Department ''intend(s) to avoid * * * situations where products in which the domestic industry has no interest are included in the scope of an order'' 62 FR at 27323. Further, Watanabe claims that it solicited quotes from all petitioners but received no response. Therefore, Watanabe urges the Department to exclude welding strip from the scope of the investigation. Because there is no evidence on the record of this investigation that U.S. producers have sold the aforementioned product during the POI and because no U.S. manufacturer was willing to produce the said merchandise, Watanabe argues that welding strip should be excluded from the scope. In addition, Watanabe claims that there are no ASTM and AISI standards for this product.

Petitioners have commented that they are unwilling to consider any further exclusions from the scope of investigation.

Department's Position: Since petitioners have not indicated a lack of interest in these particular products, the Department has not excluded any of these products from the final scope of investigation.

Comment 18: GIN4 and GIN5 Scope Correction

Hitachi Metals America, Ltd. (''HMA'') requests that the Department make two corrections to the definition for GIN4 and one correction to the definition of GIN5. First, HMA asserts that the proprietary name ''GIN4 HI–C'' should be included in the definition of GIN4, because the excluded product is sold under that name as well as GIN4 Mo. Second, HMA contends that the product GIN4 should be compared to AISI 420 as it is ''more similar'' to that product than ASTM 440F. Finally, HMA argues that the Department should revise the units for carbide density for the product GIN5. HMA asserts that the correct units for carbide density should read ''one hundred square microns'' as opposed to ''square micron.''

The petitioners have not commented on these requests.

Department's Position: We agree in part. The Department disagrees with the suggestion that we include an explicit reference to GIN4 HI–C in the scope language. The Department's scope has provided illustrative examples but not an exhaustive list of proprietary names. It is unreasonable to expect the Department to do such for each particular product variety and it is unnecessary for the scope language to include each and every proprietary product meeting the noted exclusion. The Department agrees that the product GIN4 should be compared to AISI 420 and has made the necessary change. Finally, in regard to the GIN5 correction, the Department agrees with the noted correction and has made the necessary change.

Interested Party Comments Regarding Cost

Comment 1: Cost of Second Quality Merchandise

Petitioners argue that the Department should reject KSC's reported costs for non-prime merchandise (''seconds'') and the related offset adjustment to prime merchandise costs. Petitioners assert that in its November 18, 1998 Section D response, KSC did not report costs for seconds because it claimed it could not identify the physical characteristics for sales of such products. Petitioners argue that KSC's home market sales database provides information allowing it to identify at least three of the product characteristics for seconds. Petitioners note that KSC offered a proposal in its Section D response that the Department should use the weighted-average cost of all prime merchandise as a proxy for the cost of seconds. Petitioners state that this proposal was rejected by the Department and KSC then submitted costs for seconds in a supplemental response dated January 11, 1999. Petitioners claim that, instead of reporting its actual costs for seconds, KSC provided the average cost of products based on the known physical characteristics. Petitioners argue that KSC should have calculated the actual costs of production for seconds based on its costs for prime merchandise with the same identifiable characteristics. Petitioners assert that the methodology used by KSC to report the costs of seconds in its supplemental response resulted in unreasonable cost allocations. As an example, petitioners claim that nine products with different grades were assigned the same variable cost of manufacturing. Petitioners also argue that KSC assigned unreasonable costs that do not reflect the reported costs of prime merchandise with similar specifications, as demonstrated by four submitted comparisons of nearly identical prime and secondary products with significantly different assigned costs. In addition, petitioners argue that KSC improperly reduced its costs of prime merchandise with an offset adjustment related to the assigned costs of seconds. Petitioners note that KSC claimed this offset was necessary to avoid overstating total costs because it calculated costs for seconds in the same manner as prime merchandise. Petitioners assert, however, that KSC did not assign the same costs for prime merchandise and seconds of the same product specifications. Petitioners also claim that it is unclear from the record what methodology was used by KSC to derive its offset adjustment and that there is no indication that the Department traced this adjustment to KSC's normal books and records. Therefore, petitioners argue that the Department should disallow this reduction to the costs of KSC's prime merchandise.

KSC argues that the Department should use its reported costs for seconds, which were based on data maintained in the ordinary course of business. KSC notes that it has repeatedly explained, and the Department has confirmed, that it does not maintain actual production costs for seconds and therefore it cannot report actual costs for seconds. KSC states that, as confirmed by the Department in its sales verification report, it does not maintain the same product details for seconds as it maintains for prime merchandise. KSC asserts that the extent to which its sales records provide reliable evidence as to the precise characteristics of a secondary product depends on the information needed by sales personnel in order to make the sale. KSC claims that some of the reported physical characteristics in its sales database may be pure estimates and that the only thing known for certain is that the sales of seconds are, in fact, seconds. With regard to the different products that were assigned the same variable cost of manufacturing, KSC asserts that each of those products either had an unknown grade, finish, or metallic coating, and thus these physical characteristics could not be reliably identified. KSC states that seconds are recorded in inventory as a by-product, at their net realizable value, but that it reported costs for seconds as if they were co-products of the prime merchandise, in accordance with *IPSCO, Inc.* v. *United States,* 965 F.2d 1056, 1061 (Fed. Cir. 1992) (''*IPSCO*'') and *Notice of Final Determination of Sales at Less than Fair Value of Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15444, 15455 (March 31, 1999) (''*SSPC from Korea*''). KSC asserts that by using this reporting methodology, which adjusts the costs of seconds, it is necessary to reduce the costs of prime merchandise to avoid overstating its total costs of production.

Department's Position: We agree with KSC and have not adjusted its reported costs. As petitioners note, we did object to the proposal set forth by KSC in its Section D response for reporting the costs of seconds. Our supplemental questionnaire dated December 22, 1998 stated, ''the COP for second-quality products should not be calculated using the methodology suggested at page D–29. The use of a single weighted-average cost of all prime products is not an acceptable method of calculating costs for second-quality merchandise. Evidence presented in the home market sales database indicates that KSC is able to identify sales of second-quality products to a high level of specificity. To the extent possible, KSC should use its production system to calculate the actual production quantities and costs for second-quality products during the POI. If such detailed production information is not available, KSC should derive such production quantities and costs based on its sales records.'' KSC followed these specific directions in reporting costs for seconds in its supplemental responses, dated January 11, 1999 and January 25, 1999. The only instances in which KSC based its reported costs for seconds on the overall weighted-average of prime merchandise were those in which it was unable to identify the grade, finish, *and* non-metallic coating of the secondary product. The nine secondary products that petitioners submitted as an example of different products with the same reported costs clearly fall into this category. While petitioners claim that the grades of these products are different, the grade, finish and non-metallic coating characteristics were all coded as unknown. As KSC notes, in no case did the Department identify a second that was miscoded as a prime, or a prime that was miscoded as a second. Thus, it is reasonable to expect that the costs of these seconds would be calculated based on the weighted-average of all prime products.

In other instances where only one or two of these three characteristics were unknown, KSC calculated the reported costs of seconds based on the weighted-average costs of prime merchandise with the identical characteristics, aside from the unknown characteristic(s). The four comparisons presented by petitioners clearly reflect this approach, as we recalculated the cost of these secondary products without exception. See, *Memo to The File from William Jones,* dated May 19, 1999. As a result of our analysis, it appears that KSC properly reported its cost of seconds, to the extent it was able, in accordance with the *IPSCO* rule that prime and secondary merchandise be treated as co-products and be assigned equivalent costs.

With regard to the offset adjustment that KSC applied to its prime merchandise, we agree with KSC that this offset was necessary to avoid overstating its total costs. Since KSC does not track the cost of its secondary merchandise in its normal books and records, it was necessary for the company to recalculate costs in the

manner described above. We reviewed a reconciliation of KSC's total reported costs to its audited financial statements, noting an insignificant difference. If the offset adjustment applied to the prime merchandise had been overstated, then the reported costs of prime merchandise and seconds would have been understated, and the reconciliation would have revealed the understatement. Since the offset adjustment appears to have been properly calculated, we will not make any additional adjustments to the reported costs of KSC's prime merchandise.

Comment 2: Application of Cost Variances

KSC allocated its variable cost variances between subject and non-subject merchandise on the basis of total standard costs incurred for subject and non-subject production. In the *KSC Cost Verification Report* at 2, we stated that it may be appropriate to allocate variable cost variances at the packing and transportation cost centers on the basis of production quantities, rather than standard costs, since the costs in these cost centers are more likely to vary in relation to the production quantities. KSC allocated its fixed cost variances between subject and non-subject merchandise on the basis of the total finished production quantities of subject and non-subject merchandise. We also stated in our cost verification report that it may be appropriate to allocate fixed cost variances at KSC's No. 4 refining and No. 4 continuous caster cost centers on the basis of tons processed.

KSC claims that standard cost is the most appropriate basis for allocating packing and internal transportation costs, as these costs vary by value, and therefore no adjustment is necessary. KSC argues that its packing costs vary based on the type of packing rather than the quantity of production. KSC asserts that the subject merchandise requires more costly packing to protect the thinner gauge models and to protect the finish of models with special surfaces. KSC argues that its internal transportation costs are also more likely to vary with value because higher-cost products require extensive downstream processing and are transferred more extensively throughout the mill. KSC claims that if the Department reallocates the variances incurred at the refining and continuous caster cost centers, it should do so in a consistent manner for both variable and fixed variances, based on data from the entire POI. KSC states that it has no objection to such a reallocation, though it would result in a de minimis adjustment which indicates the reasonableness of its submitted methodology.

Petitioners claim that KSC improperly allocated certain variable and fixed overhead variances, as identified in the cost verification report, which understated KSC's reported costs. Petitioners argue that information on the record does not support KSC's assertion that its packing costs tend to be associated more closely with the value of the product than with production quantity. Petitioners argue that there is no consistent correlation between the reported per-unit packing cost and either sales value or the cost of manufacturing. Petitioners provide examples to support its claim that there is no information on the record to affirm KSC's assertion that its internal transportation costs vary by value rather than quantity. Petitioners note that the Department's verifiers focused on the common cost centers that generated the largest variances and that, if the Department had the resources to examine all of KSC's allocations, other errors requiring revisions may have surfaced.

Department's Position: We agree with KSC that any reallocation of variances incurred at the No. 4 refining and No. 4 continuous caster cost centers should be applied to both variable and fixed cost variances, and should be calculated based on the entire POI. The result of such an adjustment would have a de minimis impact and therefore we have not revised the variance allocations.

We have adjusted the reported costs, however, to remove the packing and transportation variances. KSC derived its reported costs by first calculating variable and fixed cost variances, then applying these variances to the standard cost of each product. Since the resulting actual cost includes packing and loading costs, it was necessary for KSC to remove packing and loading which are not part of the cost of manufacturing. KSC only deducted the standard packing and loading costs, however, while retaining the variances associated with packing and transportation cost centers in the reported costs. Since packing costs are classified as an adjustment to the gross selling price, and since the packing costs reported in the sales databases are actual costs (*see KSC Sales Verification Report* at 17), the variances associated with packing and transportation should be removed from the reported cost of manufacturing. We have adjusted the reported costs to remove these variances, rendering the allocation basis (i.e., quantity or standard cost) a moot point. It is irrelevant whether production quantities or standard costs are used to allocate packing and transportation cost variances between subject and non-subject merchandise, as long as the allocated variances for these costs are completely removed in deriving the cost of manufacturing.

Comment 3: G&A Expenses—Losses on Disposal of Fixed Assets

Petitioners argue that KSC erroneously excluded certain losses on the disposal of fixed assets from the calculation of its general and administrative (''G&A'') expense rate. Petitioners argue that, although these fixed assets may be unrelated to production of subject merchandise, the Department's normal practice is to calculate G&A expenses based on the producing company as a whole, and not on a divisional or product-specific basis. *See, e.g. Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada,* 64 FR 17324, 17333 (April 9, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile,* 63 FR 31412, 31433 (June 9, 1998) (''*Fresh Atlantic Salmon from Chile*''). Petitioners claim that it is reasonable to include all cost of sales as well as all G&A expenses incurred by KSC during the POI for the calculation of its G&A expense rate.

KSC argues that the Department should not include its losses on the disposal of fixed assets used for production of non-subject merchandise in calculating the G&A expense rate. KSC claims that the Department has recognized that expenses relating exclusively to the production of non-subject merchandise do not belong in G&A expenses. KSC maintains that the facts in the instant case are similar to the facts in *Fresh Atlantic Salmon from Chile,* in which the Department noted that it would not include the disposal of fixed assets in G&A if the assets in questions were tied to the production of non-subject merchandise. KSC also cites to the following cases as examples of Department practice on this issue: *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 61 FR 46618, 46619–20 (September 4, 1996) (''*Brass Sheet and Strip from Canada*''); *Certain Hot-Rolled Lead and Bismuth Carbon Steel Flat Products From the United Kingdom; Final Results of Antidumping Duty Administrative Review,* 60 FR 44009, 44012 (August 24, 1995) (''*Lead and Bismuth from the U.K.*''); *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From South Africa,* 60 FR 22550, 22556 (May 8, 1995) (''*Furfuryl Alcohol from South*

Africa''); and *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada,* 59 FR 18791, 197895 (April 10, 1994) (''*Steel Wire Rod from Canada*''). KSC claims that because the assets in question relate to the production of non-subject merchandise, the Department should exclude such expenses from the calculation of KSC's G&A expense rate.

Department's Position: We agree with petitioners and, as in the *Preliminary Determination,* we have included the losses on the disposal of fixed assets in our calculation of KSC's G&A expense rate. We verified that the assets in question relate to the production of non-subject merchandise. However, it is our practice to calculate G&A expenses using the operations of the company as a whole. *See, e.g., Brass Sheet and Strip from Canada,* 61 FR at 46619; and *Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review,* 63 FR 33041, 33050 (June 17, 1998). As we stated in the original questionnaire issued to KSC, ''G&A expenses are those period expenses which relate indirectly to the general production operations of the company rather than directly to the production process for the subject merchandise * * *''. Therefore, any income or expense incurred through KSC's disposition of fixed assets should be included in the G&A expense rate, regardless of whether they are used purely for the production of subject merchandise or non-subject merchandise. This policy was established in *Final Determination of Sales at Less Than Fair Value: New Minivans from Japan,* 57 FR 21937, 21943 (May 26, 1992) (''*Minivans from Japan*''). In that case, the Department stated, ''we generally consider disposal of fixed assets to be a normal part of a company's operations and have included, therefore, *any gains or losses generated by these transactions* in the cost of production calculation.'' (emphasis added). This is consistent with our treatment of miscellaneous income expenses in *U.S. Steel Group et al* v. *United States,* 998 F. Supp 1151 (CIT 1998). We note also that KSC incurred losses on sale of fixed assets related to the production of subject merchandise and these losses were included in G&A expenses and allocated over the cost of all products that KSC produced.

In *Fresh Atlantic Salmon from Chile,* cited by KSC, the issue was whether to treat temporary shutdown costs as period costs or G&A expenses, that would normally be allocated over the cost of all products. The Department determined that the facilities in question were only idle for a brief period of time and therefore the costs associated with the temporary shutdown should not be treated as G&A expenses. Rather, the costs of operating the facility were charged directly to the cost of manufacturing for the non-subject products produced in the facility. The Department did not, as KSC implies, specifically exclude the shutdown costs from the G&A expense calculation because the facility did not produce subject merchandise. KSC's reliance on *Brass Sheet and Strip from Canada* and *Steel Wire Rod from Canada* is similarly misplaced. The issue in these cases was whether to include in a respondent's G&A expenses certain costs that were incurred by a parent company or a subsidiary. The citations are not on point since the instant case involves equipment that was owned by KSC itself and, as noted above, the Department calculates G&A expenses based on the operations of the respondent as a whole. Expenses incurred by a parent company, or any other affiliated company, are only included in the G&A expense calculation where the affiliated company provides services to the respondent company. KSC's citation to *Lead and Bismuth from the U.K.* is also misplaced, since the respondent in that case closed an entire facility that only produced non-subject merchandise and then excluded these closure costs from the G&A expense rate calculation. In the instant case, KSC simply disposed of assets and, as noted above in *Minivans from Japan,* the Department's policy is to include all gains or losses generated by such disposals. The respondent in *Furfuryl Alcohol from South Africa* calculated separate G&A expense rates by division and a company-wide G&A expense rate for G&A expenses that related to the operations of the company as a whole. 60 FR at 22556. Here, KSC submitted a single G&A expense rate for the entire company and only included the losses on the sale of fixed assets related to subject merchandise. It would not be appropriate nor reasonable to allocate these losses over the cost of producing all products, while specifically excluding losses on the sale of fixed assets used for non-subject production. Since the sale of fixed assets is a general activity of the company, and not specifically related to production, we have allocated all losses on the sale of fixed assets over the cost of producing all products.

Comment 4: General Administrative Expenses—Severance Expenses

KSC states that its expenses on special retirement are one-time severance payments to employees who are transferred from the company and are considered an extraordinary expense under Japanese generally accepted accounting principles (''GAAP''). Therefore, KSC claims that the Department should not include these expenses in the G&A expense rate calculation. KSC asserts that the special retirement payments are not normal, as petitioners claim, because these expenses would normally be accrued as pension liability over an employee's career. KSC also claims that these amounts are not related to KSC's current operations since the workers are no longer employed by the company and KSC has no obligation to make continuing payments to these former employees. KSC states that it can incur such expenses in more than one year, to the extent that the downsizing of operations may not be completed in a single year and additional layoffs or transfers may occur in other years.

Petitioners argue that KSC erroneously excluded expenses on special retirement from the calculation of its G&A expense rate. Petitioners claim that these expenses were incurred during the POI and constitute normal costs associated with the operation of KSC's business. Petitioners state that to qualify as ''extraordinary'' in nature, an expense must be highly unusual and should not reasonably be expected to recur in the foreseeable future. Petitioners assert that it is not unusual for a company to layoff employees when downsizing and it is not unusual for a company to offer severance payments to affected employees. Petitioners also argue that such expenses cannot be considered infrequent because KSC recorded the same expenses during the two prior fiscal years. Petitioners state that it is irrelevant whether the expenses on special retirement may be classified as extraordinary under Japanese GAAP, because the Department's practice is to rely upon a respondent's books and records prepared in accordance with home country GAAP on the condition that those accounting principles reasonably reflect the costs associated with the production of subject merchandise and have been historically used. *See, e.g., Notice of Court Decision: Certain Corrosion-Resistant Carbon Steel Flat Products From Canada,* 63 FR 49078, 49079 (September 14, 1998). Petitioners claim that since the expenses were incurred both prior to and during the

POI, and the expenses were associated with KSC's business operations, the Department should include these expenses in the G&A expense calculation, regardless of whether Japanese GAAP allows KSC to present these amounts as ''extraordinary'' items on the financial statements.

Department's Position: We agree with petitioners and, as in the *Preliminary Determination,* we have included the expenses on special retirement in our calculation of KSC's G&A expense rate. The expenses for special retirement are severance costs that are recorded as part of KSC's ongoing downsizing operations. The Department's normal practice is to include severance costs in a company's G&A expenses. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 8299, 8305–8306 (February 19, 1999), and *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey,* 63 FR 68429, 68434 (December 11, 1998). We noted at verification that these downsizing activities have resulted in recurring expenses for KSC. The fact that the process may extend over multiple years does not preclude the use of current period expenses. KSC has recognized in its audited financial statements the expense related to the current fiscal year, and it is this period cost which we have included in KSC's G&A expenses. Also, the classification of these amounts as extraordinary expenses under Japanese GAAP is irrelevant. The Department in some instances will exclude costs considered extraordinary, provided that they are both unusual in nature and infrequent in occurrence. These expenses for special retirement cannot be considered infrequent in occurrence since they have been a recurring cost for KSC and, therefore, are properly included in G&A expenses along with other period costs. *See Silicomanganese From Brazil: Preliminary Results of Antidumping Administrative Review,* 62 FR 1320, 1322 (January 9, 1997).

Comment 5: G&A Expenses—Bonuses

Petitioners claim that KSC should include bonuses paid to the company's directors and statutory auditors in the calculation of its G&A expense rate. Petitioners refer to a schedule in KSC's consolidated financial statements, which indicates that such bonuses totaled 10,773 million yen during the POI.

KSC points out that the petitioners' claim is based on a misreading of its financial statements and that the bonuses paid to the directors and statutory auditors were actually 42 million yen. In addition, KSC claims that its G&A expense rate calculation includes all relevant bonus expenses.

Department's Position: We agree with KSC and therefore have not adjusted the G&A expense rate calculation for bonuses. As shown in KSC's financial statements in its ''Statement of Other Surplus,'' the total bonuses to directors and statutory auditors during the POI were only 42 million yen, and we verified that the amount of bonuses reported in KSC's G&A expenses were reasonable.

Comment 6: G&A and Financial Expense Rate Application

Petitioners argue that the Department should account for packing costs and loading charges in calculating and applying KSC's G&A and financial expense rates. Petitioners note that packing costs and loading charges are included in the cost of sales denominators used to calculate these rates, but the per-unit cost of manufacturing figures, to which the rates are applied, do not account for these costs. Petitioners argue that the Department should correct this situation by increasing the cost of manufacturing of each product for packing costs and loading charges.

KSC asserts that the Department could address this problem by removing packing costs and loading charges from the cost of sales denominators, as it has in previous cases. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey,* 63 FR 68429, 68434 (December 11, 1998). However, KSC argues that it is impossible for large companies (such as KSC) to determine the precise amount of packing costs incurred for all products, in all plants and by all divisions. As an alternative, KSC suggests that the Department reduce the company-wide cost of sales figures using the ratio of packing and loading costs to total costs of manufacturing for the subject merchandise.

Department's Position: We agree with petitioners that an adjustment is necessary in order to apply the G&A and financial expense rates to the per-unit cost of manufacturing on the same basis on which it is calculated. We also agree with KSC that our preferred method of making this adjustment is to remove packing and loading costs from the cost of sales denominator. However, as KSC acknowledges, the company-wide packing and loading costs are not available in the instant case. We have chosen not to use KSC's proposed alternative, which requires the assumption that packing costs for all company products are incurred in the same ratios as the subject merchandise. Instead, we have applied the G&A and financial expense rates to the per-unit cost of manufacturing inclusive of packing and loading costs.

Comment 7: Financial Expenses—Foreign Exchange Losses

Petitioners argue that KSC incorrectly excluded a subsidiary's foreign exchange losses when calculating its reported financial expense rate. Petitioners note that the Department's practice is to use the highest level of consolidation to calculate financial expenses due to the fungibility of financial resources and to include foreign exchange losses on debt in the same calculation. Petitioners claim that the excluded foreign exchange losses were related to debt and thus should be included in the financial expense rate calculation.

KSC acknowledges that an insignificant amount of foreign exchange losses were inadvertently omitted from the calculation of its financial expense rate.

Department's Position: We agree with petitioners and have adjusted KSC's financial expense rate calculation to include the foreign exchange losses related to debt that were incurred by a KSC subsidiary.

Comment 8: Financial Expenses—Affiliated Party

Petitioners argue that the Department should adjust KSC's reported costs to include financing costs associated with the purchase of equipment. Petitioners note that an affiliated company, KSC Enterprises, purchased equipment from unaffiliated companies and then sold the equipment to KSC under an installment contract. Petitioners assert that the cost of financing was not included in the purchase price and therefore was not included in KSC's depreciation basis for the purchased assets. Petitioners further note that the financing cost was not captured since it was eliminated in the preparation of KSC's consolidated financial statements.

KSC contends that the interest expenses captured on its consolidated income statement reflect all of the financing expenses actually incurred by the consolidated entity and that petitioners' claim seeks to supplement these amounts with financing incurred on specific assets. KSC argues that petitioners' claim violates the Department's practice of allocating finance expenses based on the consolidated corporate entity. *See*

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands; Final Results of Antidumping Administrative Review, 63 FR 37516, 37517 (July 13, 1998); *E.I. DuPont De Nemours & Co.* v. *The United States,* 98–7 (CIT Jan. 29, 1998) (''*DuPont*'').

Department's Position: We agree with KSC. As noted, our long-standing practice is to derive the financial expense rate using the respondent's audited consolidated financial statements. *See, e.g., Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review,* 63 FR 42001, 42005 (August 6, 1998). This practice has been upheld by the CIT as reasonable. *See DuPont.* Petitioners are correct in noting that the depreciable basis of the asset does not include financing costs, and the financing costs associated with this specific transaction between the two affiliated entities are eliminated in the preparation of consolidated financial statements. However, petitioners are incorrect in their assertion that these financing expenses should be included in the depreciable basis of the asset as this would result in the double-counting of costs. Since KSC's reported financial expense rate was properly based on its audited consolidated financial statements, which reflect all borrowing incurred by the consolidated entity, we have not made any adjustments to this rate.

Comment 9: Calculation Error

Petitioners claim that there is an error in KSC's reported cost for one control number, because the reported cost does not agree to supporting documents presented at the cost verification. Petitioners claim that the supporting documents indicate that the reported costs were understated and the Department should adjust the reported cost accordingly.

KSC asserts that the reported cost for the control number is correct. KSC states that the supporting worksheet contains a clerical error and that, after correcting for this error, the weighted-average cost calculation on the worksheet agrees to the reported cost.

Department's Position: We agree with KSC. We reviewed the worksheet that demonstrates the weighted-average cost calculation for this control number, noting that the unit costs of two products comprising the control number were switched in error. When the error is corrected, the resulting weighted-average cost is consistent with the figure reported by KSC. Therefore no adjustment is warranted.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999 (the date of publication of the *Preliminary Determination* in the **Federal Register**) for KSC and companies falling under the All Others category. We are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption on or after October 12, 1998, for NSC, Nippon Metal Industries, Nisshin Steel Co., Ltd., and Nippon Yakin Kogyo. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown 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 percentage
KSC Steel Corporation	37.13
Nippon Steel Corporation	57.87
Nisshin Steel Co., Ltd.	57.87
Nippon Yakin Kogyo	57.87
Nippon Metal Industries	57.87
All Others	37.13

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any zero and de minimis margins and any margins determined entirely under section 776 of the Act, from the calculation of the ''All Others'' rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the 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 and direct Customs Service officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective dates 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: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Taiwan

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

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Doreen Chen (Tung Mung); Joanna Gabryszewski (Chang Mien); Gideon Katz (YUSCO and Yieh Mau); or Michael Panfeld (Ta Chen), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0408; (202) 482–0780; (202) 482–5255; and (202) 482–0172, respectively.

The Applicable Statute

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

Final Determination

We determine that stainless steel sheet and strip in coils (''SSSS'') from Taiwan are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice. Additionally, as discussed below, we have determined that the application of total adverse facts available is warranted with respect to YUSCO and Ta Chen.