antidumping duties on all appropriate entries. Individual differences between U.S. price and normal value (NV) may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Ausimont will be 17.73 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 46.46 percent, the ''all others'' rate established in the LTFV investigation (50 FR 26019, June 24, 1985).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations (19 CFR 353.22 (1996)).

Dated: January 27, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–2881 Filed 2–5–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–703]

Certain Internal-Combustion Industrial Forklift Trucks From Japan; Final Results of Antidumping Duty Administrative Review

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

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

SUMMARY: On August 2, 1996, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on certain internal-combustion industrial forklift trucks from Japan. The review covers three manufacturers/exporters. The period of review is June 1, 1994 through May 31, 1995.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculation for Toyota Motor Corporation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''*Final Results of the Review.*''

EFFECTIVE DATE: Febraury 6, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow, Davina Hashmi or Kris Campbell, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

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 current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On August 2, 1996, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on certain internal-combustion industrial forklift trucks from Japan (61 FR 40400)(Preliminary Results). The review covers three manufacturers/exporters. The period of review (the POR) is June 1, 1994, through May 31, 1995. We invited parties to comment on our Preliminary Results. We received briefs and rebuttal briefs on behalf of NACCO Materials Handling Group, Inc. (petitioners), and Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. (Toyota). At the request of Toyota, a hearing was scheduled but was subsequently canceled at Toyota's request. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 pounds. The products covered by this review are further described as follows: Assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less-than-complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8427.20.00, 8427.90.00, and 8431.20.00. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

This review covers the following firms: Toyota, Nissan Motor Company (Nissan), and Toyo Umpanki Company, Ltd. (Toyo).

Use of Facts Available

In accordance with section 776 of the Act, we have determined that the use of facts available is appropriate for certain portions of our analysis of Toyota's data. For a discussion of our application of facts available, see Comments 1 through 3, below.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain corrections that changed our results. We have corrected certain programming and clerical errors in our Preliminary Results, where applicable; they are discussed in the relevant comment sections below.

Analysis of Comments and Responses

Issues raised in the case and rebuttal briefs by parties to this administrative review are addressed below.

Toyota's Comments

Comment 1

Toyota provided the following general comments regarding the Department's use of the facts available in this review.[1] Toyota asserts that the Department's use of facts available for the Preliminary Results is punitive and is disproportionate to any perceived deficiencies at verification. Toyota suggests that the facts available are not corroborated—and in fact are contradicted—by available evidence, contrary to law and Department precedent.

Toyota asserts that the Department's use of facts available is governed by a two-step inquiry (citing *Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey,* 61 FR 35188, 35189 (1996), and *Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey,* 61 FR 30309, 30312) (*Pasta from Turkey*)). First, Toyota states that section 776(a)(2)(D) of the Act allows use of facts otherwise available if an interested party provided information but it cannot be verified and notes that the SAA directs that such facts available must be ''reasonable to use under the circumstances'' (citing the SAA at 869). Second, Toyota states that section 776(b) provides that, in selecting from facts available, adverse inferences may be drawn only if the ''interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information * * *.'' Toyota argues that perceived deficiencies in the verification of its reported information are not sufficient to allow the Department to resort to disproportionately punitive adverse inferences, given that Toyota's deficiencies are far from a general failure to cooperate with requests for information.

[1] We address Toyota's specific comments regarding the use of facts available with regard to certain selling expenses and home market credit revenue in Comments 2 and 3, respectively.

Toyota asserts that it responded fully and timely to questionnaires in this review, prepared a substantial amount of documentation for the verification, and made every effort to provide requested documents. Toyota asserts that the Department has no basis for concluding that Toyota failed to cooperate and the Department should not use adverse inferences and punitive facts available.

Toyota states that a comparison of the perceived deficiencies in Toyota's responses with past occasions in which the Department has been confronted with deficiencies, but did not draw adverse inferences, illustrates that the use of adverse facts available against Toyota was unwarranted (citing, among others, *Chrome-Plated Lug Nuts From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Termination in Part,* 61 FR 35724, 35725 (1996)).

Toyota further states that a comparison of the perceived deficiencies in its response with past occasions where the Department *has* drawn adverse inferences against interested parties also illustrates that adverse inferences against Toyota in this case were unwarranted. First, Toyota asserts that it did not fail to submit a questionnaire response (citing adverse inferences drawn as a result of failure to submit a response in, among others, *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany,* 61 FR 38166, 38167 (1996) (*LNPP from Germany*)).

Second, Toyota notes that its response was not wholly unverifiable (citing adverse inferences drawn as a result of the complete failure of verification in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Preliminary Results of Antidumping Duty Administrative Reviews, Termination of Administrative Reviews, and Partial Termination of Administrative Reviews,* 61 FR 35713, 31716 (1996)).

Third, Toyota states that it has never refused to provide information to the Department (citing adverse inferences drawn due to a respondent's refusal to provide information in *Pasta from Turkey*, 61 FR 30309, 30312 (1996).

Toyota concludes that, given these facts and precedent, neither the statute nor the Department's practice permit the use of adverse inferences against Toyota; therefore, to the extent the Department uses facts available, the Department must select facts which are reasonable under the circumstances (citing *LNPP from Germany,* 61 FR at 38179, and the SAA at 869).

Petitioners respond that the record indicates clearly that the Department was unable to verify a substantial portion of Toyota's home market sales questionnaire response. Petitioners assert that, by the express terms of the statute, if the Department could not verify Toyota's data, the Department was not permitted by law to rely on the information to calculate Toyota's dumping margins (citing section 776 of the Act). Petitioners contend that the Department, therefore, must base its determination on the facts otherwise available.

Petitioners argue that the cases Toyota cites as instances where the Department applied adverse inferences do not support Toyota's claim that the Department was overly punitive in this case. Petitioners assert that, in those instances, the Department generally selected the highest rate from another respondent or prior review; conversely, in this case the Department did not completely reject Toyota's response even though it could not verify a substantial portion of it. Petitioners assert that, under these circumstances, the Department was not making an adverse inference but instead was simply following the requirements of the statute. Petitioners conclude that Toyota's claim that the Department made an unnecessarily punitive adverse inference when it relied on the facts otherwise available is not valid.

Department's Position

We disagree with Toyota with respect to its general comments regarding the use of the facts available in this review. Our determination in this regard is consistent with the statute and our practice. We determined, in accordance with section 776(a) of the Act, that the use of facts available for certain home market selling expenses and home market credit revenue is appropriate for Toyota because we were unable to verify the accuracy of the information Toyota submitted. As our discussions in response to Comments 2 and 3, below, make clear, despite our efforts at verification, we were unable to verify the information in question sufficiently to accept it for our analysis.

In addition, we have determined that, by not providing certain basic verification documents that were essential to the establishment of the accuracy of the data submitted (*e.g.*, expense ledgers for certain selling expenses and an affiliated company's (Toyota Finance Corporation, ''TFC'') financial statements), Toyota did not cooperate to the best of its ability to

comply with our requests for such information. Accordingly, our resort to an adverse inference with respect to these items is appropriate and fully in accord with law. *See* section 776(b) of the Act.

Contrary to Toyota's contention that this result is overly punitive, we have used in our analysis all data submitted by the company that we were able to verify. While we have determined that Toyota has not cooperated to the best of its ability with respect to the selling expense and credit revenue items, we find that the nature and extent of the deficiencies in Toyota's information do not undermine the credibility of other information that it submitted during this review. Accordingly, we have calculated Toyota's dumping rate using all data it submitted except for the specific information that we were unable to verify.

The cases Toyota cites do not demonstrate that we have departed from our practice in applying the facts available in this review. These cases illustrate that, consistent with the SAA, we resolve such matters on a case-by-case basis by examining the nature and extent of any deficiencies and the level of cooperation by respondent (*see* SAA at 868–870). After such an examination we determine whether to apply adverse inferences. Neither the statute nor our practice limits our use of adverse inferences to completely unresponsive firms. Rather, we may draw such inferences whenever a party fails to cooperate by not acting to the best of its ability to comply with a request for information. As discussed below, the information requests at issue were routine verification requests that in no way constituted an unreasonable burden on Toyota and, therefore, we determined that an adverse application of facts available is appropriate for these items.

Comment 2

Toyota asserts that the Department's use of the facts available with respect to the company's reported home market indirect selling expenses, home market direct advertising, and U.S. direct selling expenses incurred in Japan is inappropriately punitive. Toyota notes that, with regard to home market indirect selling expenses and direct advertising, Toyota prepared the necessary documentation in support of the expenses, and the Department verified the expenses with no discrepancies, but Toyota was simply unable to provide further details requested on site. With regard to direct U.S. selling expenses incurred in Japan, Toyota notes that it only had sufficient time to correct an error it detected in preparing for verification and did not have sufficient time to prepare the reconciliation between the actual expenses and its financial statements.

Toyota claims that it has gone through two successful verifications and states that it prepared for verification in this review in light of the information and level of documentation examined at previous verifications. Toyota contends that, when the Department requested additional documentation not anticipated by Toyota, the company was not always able to obtain the requested documents in the time permitted. Toyota argues that, where a company prepares a substantial amount of information for verification and acts to the best of its ability to obtain documents requested at verification, but is unable to obtain such in the limited time-frame of verification, it is not appropriate to penalize the company through use of punitive facts available.

Toyota claims that its home market expenses are significant and states that the Department's level-of-trade analysis confirms that the company performs extensive selling functions and incurs significant selling expenses in connection with sales in the home market. Toyota asserts that the Department's analysis for the Preliminary Results pretends these significant expenses do not exist only in those parts of the analysis when it is detrimental to Toyota, while assuming they do exist whenever such an assumption is detrimental to the company. Toyota states that this resulted in the following significant punitive and compounding adjustments: (1) By not adjusting normal value (NV) downward by the amount of these expenses, dumping duties were increased on each U.S. truck equivalent to these expenses; (2) by not including these expenses in the calculation of the company-wide profit used in the constructed export price (CEP) profit calculation, the resulting CEP profit was increased; (3) by including these expenses in the calculation of constructed value (CV) and then deducting from CV only the much smaller amount of direct and indirect selling expenses in deriving the adjusted CV for comparison to CEP, the CV was increased; and (4) by deducting these expenses from the home market prices used in the cost test, the number of sales found to be below cost increased. Toyota contends that these calculations demonstrate that, without regard to any reasonable determination about the accuracy of the expenses, at various steps in its calculations the Department applied whatever number was adverse to Toyota, effectively compounding the penalty several times through internally inconsistent applications of the adjustments. Toyota argues that this is an excessive and duplicative penalty out of proportion with perceived deficiencies, particularly since the Department reviewed substantial documents that supported the reported expenses at verification.

Petitioners contend that the Department's decision to reject a certain portion of Toyota's selling expenses was not punitive and notes that Toyota has proposed no reasonable alternatives. Petitioners note that the Department cannot accept Toyota's data simply because the company attempted to comply with requests for information and, given there were no other reasonable options to take, the Department correctly rejected the claimed expenses.

Petitioners argue that the Department's reliance on the reported expenses for purposes of conducting the cost test and calculating CV was proper and that Toyota cannot expect to benefit from its inability to pass verification. Furthermore, the alteration of Toyota's cost of production (COP) data in a way to benefit Toyota as a result of a failed verification would be grossly unfair and would contradict the fundamental purpose of the verification provisions of the statute.

Department's Position

We disagree with Toyota. In light of Toyota's inability to establish the accuracy of the data that it submitted regarding its home market direct advertising and home market indirect selling expenses, we were unable to include these reported expenses as adjustments to home market price in determining the NV. However, we included these expenses in our analysis for purposes of establishing the adjusted home market price for use in the cost test and in the calculation of CV, and we used Toyota's reported direct advertising expenses incurred on U.S. sales in our calculation of CEP, because by not doing so we would have rewarded Toyota for its failure to establish the accuracy of these expenses at verification.

This approach is consistent with the Department's practice in other cases. For instance, in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 2081, 2090–2092 (January 15, 1997) *(AFBs 6),* we stated, ''Where we have found that a company has not acted to the best of its ability in reporting the adjustment

* * *, we have made an adverse inference in using the facts available with respect to this adjustment, pursuant to section 776(b) of the Tariff Act * * *. The treatment of positive [home market] billing adjustments as direct adjustments is appropriate because disallowing such adjustments would provide an incentive to report positive billing adjustments on an unacceptably broad basis in order to reduce NV and margins.'' This approach is clearly sanctioned by the SAA at 870: ''Where a party has not cooperated, Commerce * * * may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. In employing adverse inferences, one factor the agencies will consider is the extent to which a party may benefit from its own lack of cooperation.''

The same approach with respect to Toyota's selling expenses is appropriate, given Toyota's failure to provide basic source documentation at verification. The expenses at issue concern Toyota's reported home market indirect selling expenses, home market direct advertising and direct advertising expenses incurred in Japan attributable to U.S. sales. The verification report states clearly that, with regard to its claimed indirect selling expenses and direct advertising expenses, Toyota could not go below the level of a semi-annual detail report to support its claimed expenses *(Verification of Home Market and Certain U.S. Sales,* August 12, 1996, at 2 *(Report)*). With regard to its direct U.S. selling expenses incurred in Japan, the report states ''Toyota could not provide supporting documentation as a bridge between the * * * expenses * * * and its financial statements.'' *Report* at 2. It is standard Department practice to review source documentation at a level of detail greater than a semi-annual report and to require documentation that ties reported expenses to a company's financial statements. Accordingly, we were unable to verify the accuracy of these claimed expenses.

Our verification report reveals that, while Toyota succeeded in providing detailed support documentation for other expenses, it was unprepared to provide sufficient and necessary documentation to support the expenses at issue. Our verification report also discusses Toyota's lack of preparation which resulted in delays in completing certain segments, even though we extended our verification in an attempt to cover as many topics as possible. *Report* at 3.

Thus, as we made clear in the report, Toyota was unprepared to provide support for certain claimed expenses. This is true despite clear instructions in the Department's verification outline of the need to be prepared to provide such documentation. Accordingly, we do not find persuasive Toyota's statements that it prepared for verification based on the information and level of documentation examined at previous verifications and that the company was unfairly surprised by the Department's information requests. Each review is a separate, independent segment of the proceeding; what may or may not be required at a particular verification does not override the verification outline and does not govern what is expected of a respondent at a subsequent verification. The verification outline we provided to Toyota for this review made very clear that certain documents would be required *(see Sales Verification Outline, Toyota Motor Corporation, Toyota Motor Sales, USA, Inc*., May 1, 1996).

As noted in response to Comment 1, because we could not verify the relevant information, the use of facts available for these expenses is an appropriate measure in this review. In addition, in light of Toyota's failure to provide basic source documentation regarding the expenses at issue, along with the fact that the company was given sufficient notice that such documentation would be required at verification, we have determined that Toyota has failed to cooperate by not acting to the best of its ability to comply with our requests for information. Therefore, we have resorted to adverse facts available with regard to these expenses. Because we have no other reasonable options under these circumstances, we have maintained our treatment of these expenses for purposes of the final results. Accordingly, we have denied the relevant expenses as adjustments to NV and have used the expenses as reported for purposes of establishing the adjusted home market price used in the cost test and for the calculation of CV. In addition, we have used the reported direct advertising expenses incurred in Japan attributable to U.S. sales in our calculation of CEP.

Finally, because Toyota provided this information in this administrative review and it is, therefore, not secondary information, we are not required to corroborate this information (*see* section 776(c) of the Act).

Comment 3

Toyota contends that the Department was wrong to impute to home market sales, as facts available, an amount for credit revenue because Toyota did not earn such revenue and because it cooperated to the best of its ability at verification in establishing the absence of such revenue. Toyota also contends that, even if the Department is justified in imputing credit revenue, the amount imputed is excessive. (In the Preliminary Results, the Department added, as facts available, the total credit revenue earned on relevant U.S. sales to NV.)

Toyota states that materials and oral information presented to the Department at verification support the fact that TFC, an affiliated company, did not provide financing for the sale of subject merchandise to Toyota's customers in Japan. Toyota claims that the verification report indicates that TFC officials were unable, not unwilling, to provide a copy of TFC's financial statements, which the Department requested in order to verify the absence of credit revenue earned by Toyota or its affiliates on home market sales. Toyota states that it was not given any advance notice that TFC's financial statements would have to be provided at verification but that these documents were simply requested at verification. Toyota asserts that TFC is a separate corporation, TFC has no involvement in the sales under consideration, and TFC was unable to obtain necessary clearances to release these confidential documents in the time available, but it was able to make its officials and certain other documents available on short notice. Consequently, the Department was wrong to penalize Toyota.

Toyota also argues that it is improper to impute any credit revenue to home market sales, particularly since under the new law any profit earned by Toyota Motor Sales U.S.A., Inc. (TMS) on its credit revenue is deducted from CEP and, given that the new law already neutralizes to a degree any impact of credit revenue earned in the United States, there is no need for the Department to make any adjustments to NV to accomplish this purpose.

Toyota suggests that, even if the Department insists on adjusting home market prices upward, the adjustment is punitive to a degree that is disproportionate to the inability to provide TFC's financial statements. Toyota points out that the adjustment goes beyond simply neutralizing the benefit of U.S. credit revenue because (i) the credit total revenue on relevant U.S. sales was offset to a significant degree by a credit expense, and (ii) because the Department calculated the profit to deduct from CEP without regard to the substantial credit expenses associated with the credit revenues, the

Department's approach resulted in additional duties.

Petitioners respond that there is no dispute that the Department requested TFC's financial statements and did not receive them. Petitioners cite the verification outline and their pre-verification comments to support their claim that Toyota should have been well aware that a document as basic as TFC's financial statements would be required at verification. Petitioners claim that Toyota's apparent inability to produce such a basic document cannot absolve it of facing the consequences of this omission.

Petitioners dispute Toyota's contention that the Department responded to Toyota's failure to produce the financial statements with an adverse inference by claiming that if the Department was drawing an adverse inference, it would have made an adjustment to NV based on the largest credit revenue reported on any U.S. sale, which it did not do. Petitioners also argue that the Department should not adjust the U.S. gross revenue applied to relevant home market sales with an offsetting adjustment for the associated U.S. credit expense because the Department already made an adjustment for credit expense in the home market in its analysis and such an adjustment would provide Toyota with a double deduction.

Department's Position

We disagree with Toyota. Toyota reported that it did not earn credit revenue on home market sales. Whether Toyota in fact earned such revenue was a legitimate inquiry for us to pursue at verification. As discussed further below, based on the verification outline, petitioners' pre-verification comments, and our specific requests at verification, Toyota should have been prepared to provide us with TFC's financial statements, a basic source document necessary to explore this issue. By not providing Department officials with the financial statements, Toyota did not provide the Department with the opportunity to ascertain for itself whether the financial statements contained information relevant to our inquiry.

Where an interested party fails to cooperate by withholding information that we have requested, we may resort to the use of the facts available, drawing inferences adverse to the party. *See* sections 776(a)(2)(A) and 776(b) of the Act. Because Toyota failed to provide us with TFC's financial statements, we have determined that Toyota failed to act to the best of its ability with respect to this issue by withholding information. Therefore, we have relied on an inference that is adverse to the interests of Toyota. Accordingly, as facts available, we applied the transaction-specific gross revenue earned by Toyota Motor Credit Corporation (TMCC) on relevant U.S. sales (revenue without the corresponding offsetting credit expense) to the weighted-average home market price of matched sales.

Based on the record of this review, Toyota cannot reasonably claim that it had no advance notice that we would not request an examination of TFC's financial statements. The verification outline clearly indicated that this type of document would be subject to review. Given that TFC is a consolidated subsidiary of TMC, Toyota should have made such a document available to Department officials for inspection. In addition, petitioners' pre-verification comments included a request that the Department review TFC's financial statements (*see* Petitioners' Comments, May 9, 1996 at 10). While such pre-verification comments do not direct the Department's inquiry at verification, the issue of TFC's involvement in home market transactions has been a recurring one in administrative reviews of this order, and petitioners' request provided Toyota with additional notice that the issue was subject to inquiry.

We note that the information Toyota provided at verification did not allow us to establish the accuracy of Toyota's claim that it did not earn credit revenue on home market sales. The written material it provided at verification, and to which Toyota refers in its comments, is limited to "a brochure given to dealers which describes the activities provided by TFC to dealers." *Report* at 11. This brochure is the only written material Toyota provided at verification. The TFC officials we interviewed to discuss the relevant issue, as the verification report indicates, "were unable to provide us with TFC's financial statements nor any other documentation to show the breakout of activities engaged in by TFC." *Report* at 11. Therefore, the interview was of limited value in establishing the accuracy of Toyota's claim that TFC is not involved in the financing of merchandise in the home market.

We further note that our purpose is not to neutralize the benefit Toyota obtained on financing certain U.S. sales, but rather is a response to Toyota's failure to comply with a specific request to produce a document that would permit us to ascertain whether TFC was involved in home market transactions. Toyota's arguments that the new law accounts for profits earned and that it was required to report revenue earned on U.S. sales are irrelevant, given our purpose for applying adverse facts available. Finally, we agree with petitioners that adjusting the U.S. gross revenue for the credit expense portion of the U.S. sale would provide Toyota with two adjustments for credit expense because we have a credit expense already in our calculation of NV.

Comment 4

Toyota contends that the Department applied the cost test on an overly narrow product basis by performing a separate 80–20 "substantial quantities" test for each individual forklift sold in the home market instead of performing it on the group or category of products that are under consideration for the determination of normal value. Toyota asserts that, as a result of this misapplication of the 80–20 test, if any single truck was found to be below cost, it was automatically excluded from the database because 100 percent of the home market sales of that truck were below cost. Toyota argues that applying the test to each individual truck makes no sense and effectively writes the "substantial quantities" provisions of section 773(b) out of the law.

Toyota claims that the law favors price-to-price comparisons over CV. Toyota asserts that the Department's current practice is to apply the test on a model-specific basis (citing the SAA at 832). Toyota further asserts that the Department has defined "model" as *the* such or similar merchandise as defined under section 771(16) of the Act, and claims that this indicates that the Department should not treat each truck as a unique model. Toyota notes that the Department applied the cost test on a broader category in prior reviews. Toyota concludes that the Department should apply the 80–20 test to all home market trucks within each of the load-capacity categories defined by the questionnaire because these are the categories from which similar merchandise is selected as a basis for NV.

Petitioners respond that, based on its practice for the past several years, the Department properly applied the 80–20 test not on the basis of broad such or similar categories but on the basis of the comparison products (*i.e.,* the products that would actually be used to calculate NV). Petitioners acknowledge that the Department applied the test to a broader category of products in the 1989–90 administrative review, but assert that it has since altered its approach and applies the test on the basis of the comparison products even when there are very few or even a single comparison model available (citing

Certain Cut-to-Length Steel Plate from Sweden; Final Results of Antidumping Review of Antidumping Duty Order, 61 FR 15772, 15775 (April 9, 1996)). Petitioners conclude that, based on established practice, the Department properly applied the 80–20 test to the comparison models and assert that this practice should be maintained for the final results.

Department's Position

We disagree with Toyota that we should apply the cost test to a broader category of product than to each unique model for this administrative review. While we recognize that, in the 1989–90 review, we applied the cost test on a broader basis, upon reconsideration we have determined that it is more appropriate to apply the cost test, as set forth in section 773(b) of the Act, to each unique model sold in the home market. This methodology is in accordance with our current practice and the SAA (at 832) and with our practice of applying the cost test to unique models regardless of the potential for a particular model to be grouped in a ''family'' for calculation of NV. *See generally AFBs.* The statute does not require that we employ a different methodology where, as here, each of the reported home market sales involved a unique product.

We note further that it would neither be appropriate to base the test on all selected comparison models (all models identified in the concordance) or each of the individual comparison groups selected in accordance with section 771(16) of the Act for each U.S. model, as both would encompass more than a single model. We disagree that we have defined a ''model'' as those products selected for comparison under section 771(16). In addition, basing the test on the individual comparison groups could result in testing one model two or more times. A given home market model could be an appropriate match to more than one U.S. sale, in which case it would be included in more than one home market comparison group on the concordance. In such cases administering the cost test on a ''comparison group'' basis could result in the home market model being excluded as below cost with respect to one U.S. sale (if more than 20 percent of the relevant comparison group sales are below cost) but included with respect to a different U.S. sale (if less than 20 percent of the comparison group sales are below cost). Therefore, in order to avoid such an anomolous result and in accordance with our practice, we have applied the cost test to each unique model sold in the home market.

Comment 5

Toyota asserts that, where the Department removed home market sales that failed the below-cost test from the concordance, so that the concordance contained no remaining matches to a given U.S. sale, the Department improperly resorted to CV instead of attempting to find other price-based matches within the contemporaneity period which Toyota reported on the home market sales database. Toyota claims that resorting to CV when acceptable above-cost sales exist in the home market sales database and are available as a basis for establishing NV, is contrary to the statute. Toyota argues that the concordance contained the best, but not the only, NV candidates based on the Department's matching method. Toyota concludes that the appropriate solution is to apply the cost test to each foreign like product group, as defined in the questionnaire, and to match to similar above-cost sales as listed in the home market database before resorting to CV.

Petitioners respond that the law does not require that, where 100 percent of the comparison-model sales are below cost, the Department must seek out less similar sales before resorting to CV. Rather, petitioners claim, the law simply requires the Department to use any above-cost sales that are most similar to the U.S. sale (citing Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7338, 7339) (Proposed Regulations)). Petitioners conclude that, under the old and new laws, when the Department rejects all of the most similar home market sales because they were below cost, it is required to rely on CV rather than seek a sale of a less similar model, a practice that has been upheld by the CIT and should be maintained.

Department's Position

We disagree with Toyota. In those situations where we disregarded all of the most similar matches, as identified on the concordance file, as below-cost sales, we properly resorted to CV without attempting to find other, less appropriate, matches remaining in the home market database.

Due to the nature of this product, which involves unique models, and the resulting complexity of determining appropriate home market and U.S. matches, we have developed a detailed set of instructions in our reviews of this order regarding the development of the concordance file. These instructions ensure the accurate reporting of information while minimizing, to the extent possible, the reporting burdens on the parties. We developed the product-matching criteria with input from parties, including Toyota, in prior segments of this proceeding. In our questionnaire in this review, we permitted Toyota to limit its concordance matches to the most similar home market sales made in the closest month in the contemporaneity window as that of each U.S. sale. We did not require Toyota to provide further matches in the contemporaneous period. Otherwise, the matching analysis that Toyota would have had to perform would constitute a significant burden on the company without substantially increasing the accuracy of our analysis since, relative to total U.S. sales, the number of U.S. sales for which we resorted to CV (because we had disregarded the selected model as below cost) was extremely small. Such an approach clearly assisted Toyota in preparing its response. Toyota in fact acknowledges in its comments in this review, that analyzing large databases can be costly and inefficient. For these reasons, we have maintained our approach for the final results.

Comment 6

Toyota contends that, because the Department improperly disregarded certain sales as below cost by applying the 20-percent ''substantial quantity'' threshold on an overly narrow product basis, the CV-profit calculation, which includes only sales that did not fail the cost test, is also flawed. Toyota claims that the Department should include in the CV-profit calculation sales that it improperly disregarded as below cost.

Petitioners respond that the Department properly applied the cost test and that the SAA specifically provides that CV profit should be based only on the amount incurred in connection with sales in the ordinary course of trade. Therefore, petitioners conclude, in keeping with the SAA the Department properly excluded all below-cost sales when calculating CV profit.

Department's Position

We disagree with Toyota. Our application of the 20-percent ''substantial quantities'' threshold portion of the cost test was in accordance with law and our practice. Based on our application of this test, we disregarded certain home market sales as below-cost sales, which the statute considers to be outside the ordinary course of trade. *See* section 771(15) of the Act. Therefore, because we must calculate CV profit using only sales made within the ordinary course of trade, in accordance with section

773(e)(2)(A) of the Act, we excluded sales that failed the cost test from our calculation of CV profit.

Comment 7

Toyota contends that the Department should base CV profit on sales of large trucks (over 7,000-pound load capacity) only and should exclude small trucks from its CV-profit analysis. Toyota asserts that profit and selling expenses calculated for CV should not be based on the entire universe of home market sales, *i.e.,* ''class or kind'', but on a subset of this universe—the class of products in the home market that is most similar to the U.S. sale, *i.e.,* ''foreign like product'' under the new law or ''such or similar'' of the pre-1995 law (citing section 773(e)(2)(A) of the Act). Toyota states that the Department did not follow this provision for the preliminary results when it calculated profit and selling expenses for CV using all home market merchandise regardless of whether the merchandise was ''like'' the merchandise sold in the United States.

Toyota asserts that it sold only large trucks in the United States and that, while it sold large trucks in the home market, it sold many more small trucks in that market. Therefore, Toyota argues, because the profit on small trucks differs from the profit on large trucks, the CV profit was unfairly inflated.

Petitioners respond that the Department has addressed the issue raised by Toyota in its proposed regulations (citing Proposed Regulations at 61 FR 7335). Petitioners assert that it is the Department's practice to use aggregate figures to calculate profit and SG&A, based on an average of the profits of foreign like products sold in the ordinary course of trade. Therefore, petitioners contend, the Department properly calculated profit based on the profits of all like products sold in the ordinary course of trade in the home market and should maintain this methodology for purposes of the final results.

Department's Position

We disagree with Toyota. The foreign like product in this case consists of all potential matches to U.S. sales. That is, for purposes of calculating profit (and SG&A) for CV, we generally use, as we have here, aggregate data that encompasses all foreign like products under consideration for determining NV. During the POR, Toyota sold both small and large trucks in the United States. While only a small quantity of small trucks were sold in the United States, home market sales of trucks in this category are nonetheless potential matches. Accordingly, both small and large trucks are a foreign like product. Therefore, we have included the small capacity trucks in the calculation of CV profit for the final results.

Comment 8

Toyota contends that, contrary to the directives of the statute, the Department calculated a CEP profit amount that is disproportionately based on profit on home market, not U.S., sales. Toyota acknowledges that the Department applied the CEP-profit formula in section 772(f) of the Act literally, but argues that, where the application of the formula to a particular set of facts leads to an absurd result directly at odds with the stated goal of the statute, the Department should exercise its discretion by limiting the CEP profit to the actual profit for U.S. sales.

Toyota argues in the alternative that, in the event that the Department continues to calculate profit as it did in the preliminary results, it should exercise its well-established authority under section 773(6)(iii) of the Act to make adjustments to NV for other differences in circumstances of sale. Toyota states that the difference in circumstance of sale would be the profit differential between the United States and home market. Toyota notes that, under the pre-URAA law, the Department used its discretionary authority to avoid unfair results in the context of the creation and application of the exporter's sales price (ESP) offset and asserts that a similar adjustment should be made in this review (citing *Brother Industries, Ltd.* v. *United States,* 3 CIT 125, 540 F.Supp. 1341 (1982), aff'd 713 F.2d 1568 (Fed.Cir. 1983), cert. denied, 465 U.S. 1022 (1984) (*Brother*)).

Petitioners respond that Toyota admits the plain language of the statute requires the Department to base CEP profit on total actual profit, which includes the profit on both home market and U.S. sales. Therefore, petitioners argue, the Department does not have the discretion Toyota proposes and the Department applied the explicit requirements of the statute properly when calculating CEP profit.

Petitioners further assert that Toyota is incorrect in suggesting in the alternative that, based on *Brother,* the Department should make a circumstances of sale (COS) adjustment to NV to account for differences between U.S. and home market profit. Petitioners contend that, in so doing, the Department would first be calculating CEP profit using the methodology required by the statute, then nullifying the explicit statutory requirement by making an offsetting adjustment to NV. Petitioners assert that the Department cannot implement a procedure that would lead to a result in conflict with the requirements of the statute. Petitioners add that Toyota's analogy to the ESP offset is incorrect because, unlike Toyota's recommendations regarding CEP profit, the ESP offset was designed to correct a perceived omission in the statute.

Department's Position

We agree with petitioners. Section 772(d)(3) of the Act directs us to deduct an amount of allocated profit in deriving the CEP. Section 772(f) describes in detail the methodology for calculating the profit, which Toyota acknowledges we followed. In particular, the statute explicitly directs us to calculate a ''total actual profit'' amount, where possible, based on both sales of the foreign like product in the comparison market and on U.S. sales. *See* sections 772(f)(2) (C) and (D). The statute then directs us to allocate a portion of this total actual profit to CEP sales based on the level of U.S. selling and further-processing expenses. Toyota's proposal to calculate profit in a different manner would be in clear conflict with this provision of the statute.

We also decline to make a COS adjustment in the manner suggested by Toyota to account for the allegedly disproportionate influence of home market profits on the total actual profit calculation. As noted above, the CEP-profit provision in the statute provides a detailed methodology for the calculation of total actual profit. Given the detailed nature of this provision, it is not appropriate to impute a ''disproportionate home market profit'' standard on the calculation of total actual profit, such that we must make an adjustment to account for such alleged disproportionality. Moreover, differences in profits are not differences in the circumstances of sale. Profit differentials, if any, are what remain after different circumstances of sale have been accounted for. Therefore, we have not changed our CEP-profit calculation for the final results.

Comment 9

Toyota argues that the Department should calculate CEP profit based on the prices and expenses of large trucks (over 7,000-pound load capacity) only, not large and small trucks, because large trucks were the only merchandise Toyota sold in the United States during the POR. Toyota contends that section 772(d) of the Act requires that total actual profit be calculated based on sales of subject merchandise sold in the United States and the foreign like

product sold in the exporting country. Toyota cites to the statutory definition of foreign like product in section 771(16) of the statute in arguing that ''foreign like product'' corresponds to the ''such or similar'' category of the pre-URAA law and not to the broader ''class or kind'' of merchandise category. Toyota argues that the foreign like product in this case is limited to large trucks because, with the exception of a *de minimis* number of small trucks, it sold only large trucks to the United States. (Toyota states that its request in this Comment pertains only to the profit calculation for U.S. sales of large trucks and does not pertain to the profit calculated on the *de minimis* U.S. sales of small trucks.) Toyota argues that, because the profit on smaller trucks is greater than the profit on large trucks and because many more small trucks than large trucks were sold in the home market, significant distortions in the calculation are created by including the smaller trucks.

Toyota argues that, while the Department recently denied a respondent's request to calculate profit derived from ''different rates for different pools of products within the foreign like product'' (citing *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan,* 61 FR 38139, 38146 (1996) (*LNPP from Japan*)), in this case it is proper to calculate profit based upon the foreign like product as defined by load capacity because: (1) The Department has conducted its entire review on the premise that foreign like product was defined by several load capacity ranges, and (2) Toyota has not asked the Department to change its determination of foreign like product, as respondent did in *LNPP from Japan.*

Petitioners respond that, in keeping with the explicit requirements of the statute, the Department properly based CEP profit on the total actual profit realized on all of Toyota's sales of the subject merchandise, which includes large and small trucks.

Department's Position

We disagree with Toyota. In accordance with our practice as described in the Proposed Regulations (at 7382), we have used the aggregate of expenses and profit for all subject merchandise sold in the United States and all foreign like products sold in the exporting country. During the POR, Toyota sold both small and large trucks in the United States. While only a small quantity of small trucks were sold in the United States, home market sales of trucks of these categories are nonetheless potential matches. Accordingly, the foreign like product in this review encompasses both small and large trucks. Therefore, we have included the small capacity trucks in the calculation of CEP profit for the final results.

The statute does not require separate CEP-profit calculation based on the narrow interpretation of the term ''foreign like product'' advanced by Toyota. As we noted in *AFBs 6,* ''[n]either the statute nor the SAA require us to calculate CEP profit on a basis more specific than the subject merchandise as a whole. Indeed, while we cannot at this time rule out the possibility that the facts of a particular case may require division of CEP profit, the statute and SAA, by referring to 'the' profit, 'total actual profit' and 'total expenses,' imply that we should prefer calculating a single profit figure.'' *AFBs 6* at 2125–2126. Further, such a subdivision as Toyota proposes would be more susceptible to manipulation of the profit rate, a particular concern noted by Congress. *See Id.* and S. Rep. 103–412, 103d Cong., 2d Sess. at 66–67.

Comment 10

Toyota asserts that, notwithstanding the methodological CEP-profit calculation issues it has already addressed, the Department incorrectly calculated the CEP-profit amount by: (1) Including all home market sales revenue while excluding certain home market selling expenses, and (2) calculating the total actual profit without regard to imputed expenses while allocating a portion of this amount to CEP sales using a U.S. selling expense pool that includes imputed expenses.

With respect to the first issue, Toyota claims that the home market values for the CEP-profit calculation incorrectly excludes the home market selling expenses the Department disallowed as an adjustment to NV because of perceived difficulties at verification. Toyota states that this results in a higher home market profit, which becomes part of the total actual profit, a portion of which, in turn, is allocated as CEP profit and deducted from the starting price used to derive the CEP. With respect to the second issue, Toyota asserts that it is mathematically incorrect to apply an ''actual cost'' profit ratio to a U.S. selling expense pool that includes actual plus imputed costs because this methodology allocates substantially more profit to U.S. sales than exists, particularly with respect to transactions with significant imputed credit and inventory carrying costs.

Petitioners respond that the Department correctly included imputed credit and inventory carrying costs in the U.S. selling expense pool used to calculate CEP profit for individual U.S. sales. Petitioners note that the Department calculated total profit for Toyota's sales based on the difference between the total revenues and total expenses and that the Department omitted imputed credit and inventory carrying costs from the total profit amount because the expense amounts the Department used in the total actual profit calculation include an amount for actual interest expenses. Petitioners assert that, if the Department included imputed expenses in the total actual profit calculation, the result would double-count Toyota's interest costs. Petitioners further note that CEP selling expenses do not include an amount for actual interest expense and, thus, if the Department does not include imputed credit and inventory carrying costs in the formula it uses to calculate CEP profit for Toyota's individual U.S. sales, the CEP-profit figure would not account for the profit attributable to the expenses Toyota incurred to carry forklifts in inventory in the United States or to extend credit to its U.S. customers. Therefore, petitioners argue, the Department should continue to include imputed credit and inventory carrying expenses in the CEP selling expenses used to calculate CEP profit for Toyota's U.S. sales.

Department's Position

We disagree with Toyota. With respect to Toyota's argument that the home market values for the CEP-profit calculation improperly exclude selling expenses we disallowed due to problems encountered at verification, as we stated in its response to Comment 2, we properly employed an adverse inference regarding information with respect to which Toyota failed to act to the best of its ability to provide. This ensures that Toyota does not obtain a more favorable result by failing to cooperate fully. *See* SAA at 870.

Regarding Toyota's claim that we treated imputed expenses inconsistently in calculating CEP profit, we addressed this issue in detail in *AFBs 6* at 2126–2127 as follows:

> Sections 772(f)(1) and 772(f)(2)(D) of the Act state that the per-unit profit amount shall be an amount determined by multiplying the actual profit by the applicable percentage (ratio of total U.S. expenses to total expenses) and that the total actual profit means the total profit earned by the foreign producer, exporter, and affiliated parties. In accordance with the statute, we base the calculation of the total actual profit used in calculating the

per-unit profit amount for CEP sales on actual revenues and expenses recognized by the company. In calculating the per-unit cost of the U.S. sales, we have included net interest expense. Therefore, we do not need to include imputed interest expenses in the "total actual profit" calculation since we have already accounted for actual interest in computing this amount under 772(f)(1). When we allocated a portion of the actual profit to each CEP sale, we have included imputed credit and inventory carrying costs as part of the total U.S. expense allocation factor. This methodology is consistent with section 772(f)(1) of the statute which defines "total United States Expense" as the total expenses described under section 772(d)(1) and (2). Such expenses include both imputed credit and inventory carrying costs. *See Certain Stainless Wire Rods from France,* 61 FR 47874, 47882 (September 11, 1996).

As this statement of our practice makes clear, our calculation of CEP profit is in accordance with the statute and the SAA. Therefore, we have maintained our treatment for the final results.

Comment 11

Toyota argues that the Department should exclude certain "used" forklifts sold in the United States from its analysis or, in the alternative, the Department should adjust its calculations to avoid the distortions created by the comparison of these used trucks with new trucks sold in the home market. Toyota asserts that there were a small number of U.S. sales of used merchandise, sold out of the ordinary course of trade at significant discounts and under "fire sale" conditions due to their use as demonstration units. Toyota asserts that all of the trucks were imported new but were in "used" condition when sold to the first unaffiliated purchaser in the United States. Toyota asserts that, in the less-than-fair-value (LTFV) investigation, petitioners explicitly excluded imports of used trucks from the investigation and argues that the principle that a used truck is excluded should not change because the truck was used not in Japan, but in the United States, before being sold.

Toyota argues in the alternative that the Department should adjust the margin calculation to avoid the distortions created by the comparison of the used trucks with new trucks sold in the home market. Toyota asserts that, otherwise, the comparison is unreasonable and amounts to an undeserved adverse inference against Toyota (citing, among others, *Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review,* 58 FR 43327, 43328 (1993) (*Cookware*)). Toyota asserts that, because there are no sales of similarly used trucks in the home market, the Department should look to facts otherwise available in making an adjustment that will allow for reasonable comparisons and proposes several ways to make such an adjustment.

Petitioners respond that Toyota's claim should be rejected for a variety of reasons. First, Toyota has admitted the trucks were new when imported and the scope of the order excludes only trucks that were used at the time of entry. Petitioners add that the exact nature and disposition of the trucks is unclear from Toyota's questionnaire responses. Petitioners note that, in Toyota's initial questionnaire response, it reported that some of the trucks were used, others were damaged, and others were mistakenly ordered with unsalable specifications, while in its brief Toyota only discusses used trucks. Therefore, petitioners assert, even if the Department decided to exclude "used" trucks as opposed to other "off-spec" trucks, the Department would be unable to do so because Toyota failed to distinguish between used trucks and off-spec trucks in its sales listing.

Second, petitioners assert that the Department has made clear that it will not exclude any U.S. sales that involve a transfer of ownership even if the sales are aberrational and states that the age or condition of a truck is not relevant to whether the product has been dumped (citing *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Administrative Review,* 60 FR 42835 (Aug. 17, 1995), comment 29).

With respect to Toyota's alternative argument that the Department should make an adjustment to the margin calculation if it includes such "used" trucks in the dumping analysis, petitioners assert that the cases Toyota cited to support such an adjustment are factually distinct from the situation in this case because, unlike those cases, the merchandise at issue is not scrap, seconds or substandard. Petitioners add that in the cited cases the Department did not make an adjustment to account for differences in quality but instead sought to match U.S. sales of inferior quality to merchandise of similar quality in the home market (citing *Cookware* at 43328). Petitioners argue that, if merchandise with similar specifications had been sold in the home market, the model-match methodology would have resulted in a match of similar off-spec trucks. Furthermore, petitioners assert, Toyota never specifically identified whether any home market sales were similarly off-spec and could have been matched and conclude that any deficiency in matching is solely Toyota's fault.

Department's Position

We agree with petitioners. The scope of the order only excludes trucks that were "used" at the time of entry. The order does not exclude trucks that are damaged, "off-spec," or used after importation. We noted in our Preliminary Results analysis memorandum that "trucks imported new and used by the importer prior to sale" are not excluded from the scope of the order. *Memo,* July 26, 1996, at 6. In the LTFV investigation we determined that a forklift could be considered "used" and excluded from the order if, at the time of entry into the United States, the importer can demonstrate to the satisfaction of the U.S. Customs Service that the forklift was manufactured in a calendar year at least three years prior to the year of entry into the United States. *Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion Industrial Forklift Trucks From Japan,* 53 FR 12552 (April 15, 1988). Toyota admits the relevant trucks were imported new. Therefore, they are properly subject to review and we cannot exclude them from our analysis based on this exclusion.

Moreover, Toyota has not established the trucks were used to an extent that an adjustment is warranted nor provided information that would permit us to quantify and make such an adjustment. Therefore, our treatment of these trucks remains unchanged from the preliminary results.

Comment 12

Toyota claims that the Department incorrectly classified the reported indirect selling expenses that Toyota's U.S. affiliate, TMCC, incurred in financing sales of subject merchandise as direct expenses. Toyota asserts that the selling expenses are indirect because they are fixed and are incurred regardless of whether a particular sale is made.

Petitioners respond that, while they do not believe the Department should make any adjustment for credit revenue TMCC earned, if the Department decides credit revenue is related directly to the sale, it must also recognize that expenses TMCC incurred may also be related directly to the sale. Petitioners assert that Toyota did not meet its burden of proof that these expenses are not directly related to the sales (citing 19 CFR 353.54). Petitioners suggest that, although Toyota now alleges that these expenses are fixed and are incurred by TMCC regardless of

whether a sale is made, there is nothing in Toyota's questionnaire response to support such a claim. Petitioners conclude that Toyota's description of these expenses is not sufficiently detailed to allow the Department to determine the exact nature of the expenses and, accordingly, the Department should treat these expenses as direct selling expenses for the final results.

Department's Position

We agree with Toyota and have treated these expenses as indirect expenses for the final results. In reporting sales where payment was made through TMCC, Toyota reported a sale-specific credit revenue and a sale-specific credit expense. Toyota also allocated a portion of TMCC's overhead to the sales as indirect selling expenses. With respect to direct U.S. selling expenses that TMCC incurred, Toyota stated that TMCC ''does not pay commissions to its employees related to financing, and does not incur variable expenses for credit investigations or for preparing and processing documents.'' Supplemental Sales Questionnaire at 58–60. In addition, Toyota disclosed that TMCC incurred a filing fee for a number of transactions which the Department treated as direct in the Preliminary Results. Because the record reveals that the relevant expenses are fixed expenses (not variable) and because it is clear that Toyota reported those expenses that were variable and associated with sales of subject merchandise, we have treated TMCC's reported expenses as indirect expenses for the final results.

Comment 13

Toyota asserts that the Department's proposed method for assessing duties will result in the calculation and assessment of duties on lease transactions, despite the Department's determination that Toyota's operating leases are not subject to review. Toyota notes that the Preliminary Results indicate that the Department calculated an importer-specific *ad valorem* duty assessment rate, based on the ratio of the total amount of duties calculated for the examined sales during the POR to the total customs value of the sales used to calculate the duties, which the Customs Service will assess uniformly on all entries during the POR. Toyota asserts that the Department should calculate an assessment rate with respect to all merchandise reported by taking the total antidumping duties for sold and leased trucks (which will be zero for the latter) divided by the total customs value of the sold and leased trucks, which Customs should then apply to all forklift trucks entered during the POR.

Petitioners assert that Toyota misconstrues the purpose of the proposed assessment method, which is to eliminate the problems caused by assessing duties on individual entries through the creation of a ''master list.'' Petitioners assert that lowering overall duties on subject trucks would defeat the purpose of the antidumping law to assess duties to offset the unfair trade practice with respect to sales subject to the order, which would not be accomplished if the Department decreased the assessment on products covered while imposing duties on merchandise not covered by the order. Petitioners contend that lowering the assessment duty rate would allow a respondent to manipulate the prices of entries that would never be subject to analysis so as to lead to a total lower assessment of antidumping duties.

Petitioners assert that the solution to any perceived problem is to ensure that the Department only assesses duties on trucks subject to review and Toyota is aware of which trucks were sold and which were leased. Petitioners contend that the Department could eliminate the total entered value of leased trucks from the total entered value of all trucks to arrive at the total entered value for trucks subject to the order in its calculation of the appraisement rate, which Customs can then apply to the total entered value for trucks subject to the order. Petitioners further assert that, regardless of the method the Department uses to accomplish the task, it should make no change in its calculation of the cash deposit rate.

Department's Position

We agree with petitioners that, by using an assessment-rate methodology, we are able to eliminate the problems caused by assessing duties on individual entries through the creation of master lists. However, we agree with Toyota that, short of creating a master list, its proposal is reasonable and in accordance with our practice. In *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding* (61 FR 57629 (November 7, 1996) (*TRBs*)), we were confronted with the issue of establishing an assessment rate for bearings where some bearings were not subject to assessment under the principles formulated in *Roller Chain Other Than Bicycle From Japan*, 48 FR 51804 (November 14, 1983). Given that leased trucks are potentially subject to assessment of antidumping duties upon entry, a similar treatment is appropriate here. In *TRBs* we determined that the assessment rate should take into account the value of ''Roller Chain'' merchandise. Accordingly, we included the value of the ''Roller Chain'' merchandise in the denominator when we calculated an assessment rate. Likewise, in this case, we have included the customs value of the leased trucks in the denominator. While this will have the effect of reducing the percentage assessment relative to the rate that we would calculate by excluding these values, this lower assessment rate, when applied against all POR entries, will allow Customs to collect the appropriate amount of antidumping duties due and will effectively exclude the lease trucks from assessment. Finally, we agree with petitioners that a change in the calculation of the cash deposit rate is not appropriate.

Petitioners' Comments

Comment 1

Petitioners assert that the Department is required by statute to verify all of the information it relies on in reaching its final results and, therefore, the Department should have verified Toyota's cost data, difference-in-merchandise data (difmer), U.S. sales data, and U.S. value-added data. Petitioners assert that, while the Department may not be required to verify every item of data submitted, it cannot simply eliminate whole sections of a questionnaire response when conducting verification.

Petitioners add that, beyond the statutory requirement for a complete verification, the following two reasons make verification of the above items essential: (1) The Department found major problems with Toyota's home market sales data, and (2) the record reveals glaring deficiencies with Toyota's cost data, which have never been verified, and its U.S. sales data.

With regard to Toyota's cost data, petitioners allege the following problems with Toyota's data which warrant complete verification: In reporting difmer data, Toyota used different costs for its home market than for its U.S. merchandise; there are differences between Toyota's difmer data and its COP data; Toyota failed to demonstrate adequately that its transactions with affiliated suppliers were at arm's length; and Toyota gave

only a cursory explanation of its method for accruing costs.

Toyota responds that the Department fulfilled its obligation under section 782(i) of the Act to verify respondent's factual information. Toyota argues that petitioners'' position that the Department is required to verify every single piece of information submitted, and not just the factual information it deems relevant and sufficient, is untenable and would place the Department in an impossible situation. Toyota concludes such a construction of the law is unrealistic and unworkable.

Citing §§ 353.36(a)(2) and 353.36(c), Toyota asserts that the Department's regulations are clear that, it is not necessary for the Department to verify every piece of data. Toyota concludes that the law required verification of Toyota's response and the Department fulfilled this requirement, using its judgment as to the adequate level of examination.

Toyota further asserts that petitioners'' claim that there is ''contradictory and incomplete information'' in Toyota's cost and U.S. sales data are untrue. Toyota notes that its costs were verified thoroughly in the first administrative review. Toyota asserts that, as it explained in a prior submission to the Department, its material costs will differ for forklifts in Japan and the United States because: (1) They are built to different specifications (*e.g.,* the parts used may conform to different specifications, such as a UL-Listing), and (2) the criteria used by the Department for its 21-point comparison do not define all aspects and features of all forklifts.

Toyota asserts that petitioners'' comments concerning the accuracy of Toyota's data, particularly Toyota's difmer and cost data, are unfounded and, as the Department conducted the required verification, there is no basis for asserting the verification was legally inadequate.

Department's Position

We disagree with petitioners. We have fulfilled the statutory requirement of a verification of Toyota's data in this review. Because we had not verified Toyota's data during the two immediately preceding reviews, we were required to conduct a verification of Toyota in this administrative review. *See* section 782(i) of the Act. Our verification concerned Toyota's home market sales response and portions of its U.S. sales response. Such a verification fulfills the statutory requirement regarding verification and, as noted below, is in conformity with our regulations and past practice. This practice reflects the reality that it is administratively impossible for the Department to verify at every site and on every topic.

The Department's regulations provide for significant flexibility in conducting verifications by permitting the verification of a sample of respondents in a review and providing for the review of documents and personnel the Department considers relevant to factual information submitted. 19 CFR 353.36(a)(2) and (c). In addition, the CIT has long recognized the Department's discretion regarding the topics to be selected for verification. *See, e.g., Monsanto Co.* v. *United States,* 12 CIT 937, 698 F.Supp. 275, 280 (citing *Hercules, Inc.* v. *United States,* 11 CIT 710, 673 F.Supp. 454,469 (1987)) (''Verification is a spot check and is not intended to be an exhaustive examination of the respondent's business. ITA has considerable latitude in picking and choosing which items it will examine in detail.'); *Bomont Industries,* v. *United States,* 14 CIT 208, 209, 733 F. Supp. 1507 (1990) (''Of course, verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness. Normally, an audit entails selective examination rather than testing of an entire universe.'').

Contrary to petitioners' assertions, the problems we encountered at the home market verification with regard to certain portions of Toyota's response do not establish the necessity for a verification of additional portions of the response. Toyota did not fail its verification in this review; rather, it was unable to demonstrate the reliability of certain selling expenses and was unable to establish that it did not gain credit revenue on its home market sales. As a result, pursuant to our established practice regarding our verification findings, we have disallowed the adjustments in question and have calculated a home market credit revenue amount using the facts available. This is an appropriately tailored response to the problems we encountered at verification. Because we found that, other than the items cited above, the data submitted by Toyota was accurate, we have no reason to disregard the other portions of its response (*e.g.,* Toyota's data regarding its material costs or its product liability expenses).

Comment 2

Petitioners assert that Toyota's variable cost of manufacture (VCOM) difmer data, as reported on the U.S. and home market sales listings, are not acceptable because: (1) They are not consistent with Toyota's COP/CV data, and (2) they are based on costs for certain components and on price or market value for other components. Therefore, petitioners argue, the Department should reject Toyota's difmer data and use the VCOM amounts reported in the COP and CV data to make difmer adjustments for the final results.

Petitioners claim that case precedent indicates that VCOM amounts reported for the difmer adjustment and for COP/CV should not differ (citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Spain,* 59 FR 66,931, 66938 (December 28, 1994)). Petitioners further assert that the antidumping questionnaire and the SAA (at 828) indicate that any claimed difference-in-merchandise adjustment should be limited to differences in variable costs, without regard to prices. Petitioners note that Toyota acknowledges the data are inconsistent.

Petitioners state that allowing a respondent to report different VCOM amounts for purposes of the difmer adjustment and for COP/CV allows for the possibility of manipulation of the dumping analysis. For instance, if a respondent reports a higher home market VCOM for the difmer adjustment than for its COP reporting, adjustments to foreign market value will generally be downward, thereby providing respondent with a favorable adjustment when comparing home market sales to U.S. sales. Therefore, petitioners argue the Department should reject Toyota's difmer data and use the variable cost of manufacture data in Toyota's COP and CV database to determine the difmer adjustment.

Toyota responds that petitioners' arguments are groundless. Toyota asserts that the Department specifically approved of Toyota's method of reporting difmer data in the original investigation and in the first and second administrative reviews. Toyota states that it reported difmer data consistent with its reporting in prior segments of the proceedings.

Toyota states that the record is clear that, given its accounting system, it could submit the data in a form slightly different from that which the Department requested by including the invoice prices of certain options and attachments instead of their variable costs of production. Toyota asserts that 19 CFR 353.57 supports its approach as it states the Department ''normally will consider differences in the cost of production but, where appropriate, may also consider differences in the market value.'' Toyota indicates that, because the prices of the attachments are based

on uniform price lists, the differences in such prices represent differences in market value. Toyota disputes petitioners' assertion that such an approach is subject to manipulation and points out that the prices are published in Toyota's price list.

Finally, Toyota notes that it used its difmer data to generate the concordance on which the Department relied for product matching and suggests that to change the values now would require Toyota to rematch its sales and revise the concordance. Toyota argues that, given that the difmer values are appropriate and accurate and reflect a methodology acceptable in prior reviews in selecting similar home market sales and adjusting those sales, there is no compelling reason to change these data now.

Department's Position

We agree with petitioners, in part, and have utilized Toyota's reported cost information (COP and CV) to calculate the difmer adjustment for the final results. However, we do not agree with petitioners that it was inappropriate for Toyota to submit its difmer data, based in part on invoice prices, at the time of its original questionnaire submission, and we have used this data for matching purposes.

When we issued the questionnaire, we had not yet initiated a cost investigation of Toyota. Therefore, based on prior experience with Toyota in the investigation and administrative reviews, in which we recognized the difficulties in collecting variable cost information for small attachments, we determined that it was acceptable for Toyota to derive and present its difmer data as it had presented the information in prior segments of this proceeding. However, unlike prior segments of this proceeding, in this review we initiated a cost investigation of Toyota's sales and obtained complete cost information, including costs for the attachments for which Toyota was previously only able to give prices.

The VCOM data from the sales listing, which Toyota used to develop the concordance according to our instructions, is sufficiently precise to allow us to determine which U.S. and comparison-market merchandise ''may reasonably be compared.'' *See* section 771(16)(C)(iii) of the Act. Further, Toyota calculated the VCOMs that we compared in making this determination using the same methodology for both markets, *i.e.,* VCOMs that are generally cost-based with the exception of certain attachments that Toyota valued using invoice prices to its customers. Therefore, we have used the concordance Toyota submitted for sales-matching purposes and do not find it necessary to revise the concordance in order to take into account the COP/CV information.

However, as a result of our cost investigation, we have more precise VCOM data, because Toyota provided cost-based values for its attachments. Accordingly, we have used the COP/CV data to make the difmer adjustment in our calculations. The difmer adjustment to NV is mandated by the statute to account for differences between the U.S. and home market products under comparison. *See* section 773(a)(6)(C) of the Act. Given that the more precise, cost-based information is on the record of this review, it is more appropriate to use the COP/CV data for the actual adjustment where sales of non-identical merchandise are compared. Therefore, in the final results we have used Toyota's reported VCOM data as reported in the COP and CV databases to adjust for physical differences in the merchandise.

Comment 3

Petitioners claim that, in providing its cost data, Toyota failed to supply complete information that would demonstrate that its transactions with affiliated suppliers are at arm's length. Rather, petitioners claim, Toyota submitted costs for a single ''representative'' model. Petitioners contend this is insufficient to demonstrate that Toyota's transactions with these affiliated suppliers are all at arm's length and cite to *Hyster Co.* v. *United States,* 848 F.Supp. 178, 187 (CIT 1994) (*Hyster*).

Petitioners assert that Toyota's claim that its transactions with affiliated suppliers are always at arm's length and that Toyota cannot obtain access to its supplier's cost data is directly contradicted by information the Department gathered in the investigation of New Minivans from Japan (*Initiation of Antidumping Duty Investigation: New Minivans from Japan,* 56 FR 29221 (June 26, 1991) (*Minivans*)). Citing the record in *Minivans,* petitioners state that Keiretsu have group members known to exchange information and to price transfers at below-market levels to maximize profit. Thus, petitioners contend, Toyota's unsupported claims are in conflict with information the Department already possesses. Petitioner argues that, other than rejecting Toyota's questionnaire response, the Department must request supplemental information concerning its transfer prices and then verify the data.

Toyota maintains that the information it submitted demonstrates that transactions between Toyoda Automatic Loom Works Ltd. (TAL) and its affiliated suppliers are at arm's length and that TAL engages in competitive bidding and negotiation processes with its suppliers. Toyota asserts that the statute does not mandate that evidence of an arm's-length transaction be derived exclusively from a respondent's suppliers' cost data and argues that Toyota has met its burden of demonstrating that TAL's transactions with its affiliated suppliers are at arm's length by providing detailed information on its competitive bidding and negotiation processes. Toyota contends that it properly based its COP calculations on prices TAL paid instead of on TAL's suppliers' COP. Toyota claims that TAL did not generally purchase identical parts during the same period from different suppliers and, because it engages in arm's-length negotiations with suppliers, it does not have access to information on sales or prices of identical parts by its suppliers to other parties or the suppliers' COP. Toyota describes the bidding process TAL used to source parts and provides examples of situations where it decided to source such components from unaffiliated suppliers instead of established affiliated suppliers after engaging in such competitive bidding.

Toyota states that, despite its detailed explanation of why it cannot obtain its suppliers' cost data, petitioners continue to rely on a memorandum in the record of the *Minivans* investigation which, contrary to petitioners' assertions, does not contradict Toyota's statements that it cannot obtain access to its suppliers' cost data. Toyota further states that the memorandum is largely irrelevant to this administrative review of forklift trucks. Toyota concludes that, while TAL may be able to persuade these suppliers in which it holds majority ownership to provide cost information in a limited fashion for limited uses, TAL is not able to force its other related suppliers to provide such costs for any purpose.

Department's Position

We do not agree with petitioners that Toyota failed to establish that TAL's transactions with its affiliated suppliers were at arm's-length prices. With respect to major inputs, Toyota provided the transfer prices and cost information for each such input it used in the production of the trucks sold in the United States and home market. The information Toyota provided with regard to TAL's suppliers of major inputs is sufficient to determine that the

amount represented as the value of such input is not less than the cost of production of such input, as required by section 773(f)(3) of the Act. In addition, because these are unique inputs, there were no comparable purchases from unaffiliated suppliers. Accordingly, we have relied on Toyota's reported cost information based on transfer prices for the major inputs in our cost calculations.

We have also determined that Toyota has established the arm's-length nature of other (non-major) inputs supplied by TAL's affiliated suppliers. Section 773(f)(2) of the Act states that ''[a] transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration.'' For its affiliated suppliers of minor inputs, Toyota responded that it could not provide market-value sales prices between affiliated suppliers and third parties, or between TAL and unaffiliated parties of the same inputs because the information was not obtainable or such transactions did not exist. Toyota did, however, supply cost information for a number of minor inputs supplied by affiliated parties. It is the Department's practice to permit limited reporting in appropriate circumstances, such as a case like this where there are scores of parts used in the production of a forklift truck, there are no third-party transactions on which to rely, and the respondent is unable to obtain cost information or prices to other purchasers from its suppliers. We disagree with petitioner that *Hyster* requires the Department to obtain more complete cost information. Unlike *Hyster,* there is no information on the record that prompts the Department to make further inquiry. The court in *Hyster* did not appear to rule out completely our reliance on a representative sample of information. *Id.* at 187. In addition, to support its position that TAL deals with its suppliers at arm's length and, therefore, that the amount for the relevant input ''fairly reflect[s] the amount[s] usually reflected in sales of merchandise under consideration in the market under consideration,'' TAL provided internal documents that evidence competitive bidding practices on the part of its affiliated and unaffiliated suppliers. The documents establish that Toyota selects its suppliers using a competitive bidding process and that Toyota is not averse to switching from an affiliated supplier to an unaffiliated supplier based on price. This is further evidence that Toyota deals with suppliers, both affiliated and unaffiliated, at arm's length. We are satisfied that the information on inputs Toyota provided supports its claim that it deals with affiliated suppliers on an arm's-length basis.

Finally, we agree with Toyota that the *Minivans* memorandum petitioners cite is not relevant to this proceeding. That dealt with a different case with a different record. The record in this review does not suggest that we draw any conclusions based on such observations.

Comment 4

Petitioners allege that Toyota improperly reported its affiliated parties for purposes of the CV and COP calculations. Petitioners state that, as section 773(f)(2) of the Act makes clear, indirect affiliations as well as direct relationships may cause the Department to disregard transactions that are not at arm's length. Petitioners assert that, in identifying its affiliated suppliers, Toyota only identified the manufacturer's (TAL) affiliated suppliers and did not identify its indirect affiliation with suppliers through TMC. Petitioners argue that the interrelationship between TMC and TAL cannot be questioned and that any suppliers under the control of or affiliated with TMC should be considered affiliated with TAL.

Toyota responds that it has complied with section 771(33) of the Act and Department practice with respect to providing information on suppliers who meet one of the statutory affiliation criteria with respect to TAL.

Department's Position

We disagree with petitioners. Section 773(f)(2) states that, in calculating COP or CV, the Department may disregard ''a transaction directly or indirectly between affiliated persons.'' Thus, contrary to petitioners' argument, the direct/indirect language refers to the nature of the transaction, not the affiliation. Toyota has stated in this review that it applied the affiliated-party definition contained at section 771(33) of the Act, as requested in our questionnaire. During the home market verification, we examined Toyota's corporate structure and did not find any deficiencies in its reporting. Further, petitioners have not provided any information regarding other, unreported, affiliated parties. Accordingly, we have accepted Toyota's reporting of its affiliated parties for the final results.

Comment 5

Petitioners claim that the Department should not include the interest income Toyota Motor Credit Corporation (TMCC), a separately incorporated U.S. affiliate of TMS, received for loans it made to dealers that purchased Toyota forklift trucks as an offset to the credit expense TMS incurred in selling trucks in the United States. Petitioners argue that the loan a customer obtained constitutes a separate transaction from the negotiation process related to the sale of a forklift truck and, therefore, under the express terms of the statute and the Department's longstanding practice, income earned or expenses incurred that are not related to the sales negotiation process cannot be taken into consideration in the dumping analysis.

Petitioners provide a number of examples in Toyota's questionnaire response to support their position that payment terms are separate and have no impact on the sales negotiation process between TMS and the dealer. Petitioners also refer to certain business proprietary passages from TMS's financial statements which, they argue, conflict with Toyota's position that TMCC simply operates as an arm of TMS. Petitioners assert that the notes to the financial statements raise serious questions as to the accuracy of Toyota's calculation of the expense, given the possibility of prepayments and credit losses which may not have been factored into its calculations. For all the above stated reasons, therefore, the Department should reject Toyota's claim for an adjustment for interest income TMCC received.

Toyota argues, first, that it is the Department's longstanding practice to include credit revenues and to deduct credit expenses in its calculation of CEP. Second, Toyota argues that it is nonsensical and irrelevant to claim that financing does not affect the selling price of a truck because the customer pays a price that includes credit revenue which TMCC earns. Toyota points to the record evidence that, in the relevant transactions, TMCC receives the payment from the first unrelated customer, which is a price that includes credit revenue, and TMS receives only an intra-party transfer from TMCC, a payment that can not serve as the basis for CEP under section 772(b) of the Act. Toyota states that the ''separate nature'' of the financing transaction is belied by the facts in Toyota's questionnaire response.

Toyota maintains that it is irrelevant that TMCC is separately incorporated and uses its income for various purposes and, therefore, the

Department's determination to treat TMCC and TMS as a single entity was correct. Toyota further maintains that petitioners' argument that TMS and TMCC are ''separate legal entities'' is contradicted by the reality of the relationship, given that they are 100-percent affiliated entities, share a common address, and share certain operational structures. Toyota also claims its method of applying assets and income has no relevance at all to whether credit revenue Toyota received is properly part of CEP. Toyota adds, in conclusion, that petitioners' speculation that Toyota's credit revenue might not be accurate, based on broad statements in TMCC's financial statements, is unfounded.

Department's Position

We disagree with petitioners that we should reject Toyota's claimed adjustment for credit revenue. We have addressed this issue in prior reviews and in our October 9, 1996, *Final Results of Redetermination Pursuant To Court Remand, NACCO Materials Handling Group, Inc.,* v. *United States,* Slip Op. 96–99 (June 18, 1996) (*NACCO*), which we have put on the record of this review.

In *NACCO,* we explained that, in our antidumping analysis, ''we examine thoroughly the corporate structure of respondents in order to capture all expenses and revenues incurred by related companies that pertain to sales of subject merchandise. In (*NACCO*), Toyota's revenue and expense pertain directly to the particular sales in question, whether deemed part of the same transaction or not, and must be included in our dumping analysis.'' *Id.* at 23–24. We further stated that ''[t]he inclusion of TMCC's credit expense and credit revenue in the dumping analysis is not dependent on whether or not ostensibly separate transactions are combined. Such inclusion is required because, otherwise, the Department would be unable to fulfill its statutory mandate to capture all U.S. selling expenses in its analysis, as required by section 772(d) of the Act.'' *Id.* at 26. The essential mechanics of the relevant transactions in this review do not differ materially from those in *NACCO.* Petitioners' arguments concerning the separateness of the transactions and the corporate separateness of the entities are irrelevant, given that ''the expenses and revenues that derive from the financing arrangement are related to the sales in question and are relevant, therefore, to the calculation'' of CEP. *Id.* at 31.

References by petitioners to Toyota's description of the process (*i.e.,* where a dealer may decide separately how it will pay, is not obligated to use payment terms offered by TMCC, etc.) do not alter the conclusion that, for purposes of section 772 of the Act, the revenues and expenses pertain directly to the particular sales in question and are appropriately part of our dumping analysis. As we concluded in *NACCO,* ''TMC, TMS, and TMCC together constitute the exporter and have provided financing services in selling the subject merchandise * * *, it is necessary to focus on the expenses that relate to sales of subject merchandise, regardless of which related entity incurs the expenses, in the interest of accuracy and in order to prevent the manipulation of the dumping analysis through shifting expenses to subsidiaries.'' *Id.* at 29. Although the statutory definition of ''exporter'' applied in that remand has been repealed, TMC, TMS and TMCC are ''affiliated persons'' within the meaning of the new definition at section 771(33) of the Act. Therefore, we consider our analysis and conclusions in *NACCO* to be directly relevant to the facts of this review and petitioners have not advanced any argument that would alter this conclusion.

Petitioners' arguments based on portions of TMS' financial statements are also not persuasive. As explained above, arguments concerning the corporate separateness based on certain descriptions of ostensibly independent activities in which the entities engage are not relevant and, therefore, whether TMCC simply operates as an arm of Toyota does not alter our analysis.

Furthermore, petitioners' suggestion that, based on Toyota's financial statements, Toyota's reported credit revenue might not be accurate, because of the possibility of prepayment of leases and because Toyota might not have accounted for credit losses, constitutes unfounded speculation. Moreover, this speculation is irrelevant to petitioners' position that credit revenue should not be recognized because the transactions are separate. Nonetheless, with regard to whether it factored credit losses into its calculations, Toyota refers to a prior submission wherein it stated ''TMCC has an account for bad debts on its financing, which, if included in the indirect expenses of TMCC, increases these expenses slightly.'' February 29, 1996, submission at 8. Toyota later included this item in its calculations. In addition, nothing in the record contradicts Toyota's statement that prepayments are not relevant to forklift financing. In a February 8, 1996, submission in the 1993–94 administrative review of this order, Toyota stated (at 4) that ''the referenced comment in Toyota's financial statements applies primarily to automobile installment contracts and leases, and not to forklift leases, which are rarely paid off early.'' This explanation supports our conclusion to accept Toyota's claimed adjustment for credit revenue.

Comment 6

Petitioners claim that the payment terms for loans and leases can range from one to five years and thus constitute long-term, not short-term, financing. Therefore, petitioners contend, the Department should consider the credit expense Toyota incurred as long-term debt and should not base the calculation on the short-term borrowing rate Toyota reported. Petitioners argue that, in the absence of information from Toyota on long-term interest rates, the Department should rely on facts otherwise available.

Toyota argues that the Department has a well-established practice of using short-term interest rates to calculate credit expense and believes that the Department should adhere to this practice.

Department's Position

We agree with Toyota. Maintaining our approach is reasonable and we have not altered our practice of using a company's short-term borrowing rate to calculate imputed credit expense. The Department's position is buttressed by the fact that ''TMCC's issuance of short-term commercial paper contributes to the pool of funds used to finance all transactions, regardless of credit term'' and that ''there are only ten occasions in which reported credit terms exceed one year'' (*see* Toyota's Submission, February 29, 1996, at 9). Therefore, we have not adjusted Toyota's reported credit expenses by using a long-term interest rate as petitioners propose.

Comment 7

Petitioners maintain that it is the Department's consistent practice to use the date of the final results as the date of payment for U.S. sales where there is no reported date of payment (citing *Certain Stainless Steel Wire Rods from France; Final Results of Antidumping Duty Administrative Review* (September 3, 1996)). Petitioners suggest that, whenever Toyota has reported a payment date of March 31, 1996, the Department should instead use the date of the final results to calculate Toyota's credit expense.

Toyota explains that, for certain U.S. sales for which it had not yet received payment by the time it was preparing its

supplemental questionnaire for filing on May 3, 1996, it reported a payment date of March 31, 1996, the closing date for the data in the supplemental response. Toyota asserts that the relevant transactions consist of sales with extended payment terms that include credit revenue. Toyota argues that, if the Department changes the reported date of payment to the date of the final results to recalculate the credit expense, the Department would likewise have to revise the calculation of credit revenue. Toyota contends that, because credit revenue is not calculated but is based on actual payments received, Toyota would have to submit these amounts to the Department. Toyota states that, although it has no objection in principle to revising both credit expense and revenue (given that Toyota would gain more in credit revenue than it loses in credit expense), due to the complications of resubmitting new information at this late stage of review, the company requests that the Department maintain the current ''default'' payment date.

Department's Position

We disagree with petitioners. Use of the date of the final results to calculate credit expense and credit revenue for those sales for which payment has not yet been received is not appropriate because there is no evidence to suggest that this date will provide greater accuracy in the calculation of either credit expense or credit revenue. Due to the nature of the credit expense and credit revenue at issue, it is not possible to derive exact expense and revenue amounts for certain transactions within the time permitted for responding to our information requests. In addition, because Toyota calculated its credit expense and credit revenue using the same period, any adjustment to one will require a corresponding adjustment to the other. Accordingly, we have not adopted petitioners' proposal for the final results.

Comment 8

Petitioners state that Toyota never stated for the record that all of its U.S. technical services were actually indirect expenses. Petitioners claim that Toyota reported the expenses as indirect expenses because Toyota was unable to segregate them from other expenses, and petitioners argue that Toyota cannot be allowed to benefit from its alleged inability to isolate these expenses. Petitioners assert that Toyota bears the burden of demonstrating that these expenses are indirect pursuant to 19 CFR 353.54 and argue that the Department should treat the expenses as direct selling expenses.

Toyota disputes petitioners' assertion that it classified technical service expenses as ''indirect'' because the expenses could not be separately quantified. Toyota asserts that the record is clear that these expenses are all fixed and do not relate to specific sales.

Department's Position

We disagree with petitioners. In Toyota's initial questionnaire response, the company reported that its ''[t]echnical services in the United States were allocated and included in selling expenses.'' Toyota also explained that ''[t]hese are not recorded separately in TMS's records, and, therefore, cannot be isolated.'' October 16, 1995 Questionnaire Response at C–51. In response to our request that Toyota state whether any of the technical services it performed could be tied to specific sales and to report variable technical service expenses separately from fixed expenses, Toyota stated that its technical service expenses are all fixed expenses and do not relate to specific sales. Questionnaire Response at C–65–66. Based on the record of this review, we find no reason to dispute Toyota's characterization of its reported technical service expenses as indirect. The fact that Toyota is unable to break out a particular expense does not suggest that this characterization is inaccurate. Accordingly, we have maintained our treatment of these expenses as indirect selling expenses in the final results.

Comment 9

Petitioners maintain that the Department's treatment of Toyota's U.S. servicing commissions as indirect selling expenses is not consistent with the statute or with the Department's practice in the 1987–89 administrative review. Petitioners contend that these expenses are in fact value-added expenses. Petitioners state that section 772 of the Act provides that the Department will derive CEP by reducing the starting price by the cost of any further manufacture or assembly, but section 772 does not provide that U.S. value-added expenses be included in the pool of U.S. indirect selling expenses which, in turn, establishes the limit of the CEP offset. Petitioners claim further that, in the 1987–89 review, the Department included Toyota's servicing commission payments in U.S. value-added costs. Petitioners note that, in that review, the Department determined that Toyota's servicing ''commissions'' are payments to a third party, the dealer, and considered them as a cost of further manufacturing because the expenses involved preparing, servicing, and delivering a forklift truck to the customer, all of which are operations that add value to the forklift.

Toyota responds that these commissions are different from a direct payment to subcontracted value-added activities. Toyota asserts that the law and regulations describe how commissions are to be treated and that commissions are always paid to third parties to compensate for some service or activity. Toyota argues that the fact that some of these activities may involve certain servicing obligations does not render them value-added expenses.

Department's Position

We agree with Toyota. Based on the record of this review, we do not consider these payments to be for specific further-manufacturing activity. Based on Toyota's description of the purpose of these payments, while they may potentially involve such activity or obligations, they are more akin to payments that we treat as commissions. In its sales questionnaire response Toyota stated that ''these commissions are paid to unaffiliated forklift dealers for National Account transactions in their territories . * * *'' October 16, 1995 Questionnaire Response at C–40. In a January 30, 1996, submission to the Department, Toyota stated (at 11) that ''these commissions may or may not be related to modifying the truck—in fact, most are not— and in any case do not relate to any activities performed by Toyota.'' Toyota's description of these payments indicates that they are generally not for further-manufacturing activities, but rather are primarily intended to compensate dealers for servicing obligations they may be called upon to provide.

We have previously considered similar payments to be commissions. In *TRBs* (at 57638), respondent ''explained in its response that, as a means of compensating (its U.S. affiliate) for expenses it incurred with respect to services it provided for certain of (respondent's) purchase price sales, (respondent) made ''commission'' payments to (its U.S. affiliate).'' While the ''commission'' concerned payments to a related party on purchase price sales and were ultimately decided to not have been at arm's length, the case stands for the proposition that the Department will consider such payments to be commissions.

There is nothing on the record to support petitioners'' position that these commissions were related directly to specific further-manufacturing

activities. Therefore, for purposes of the final results, we have maintained our treatment of Toyota's servicing commissions as ''commissions.''

Comment 10

Petitioners note that, at verification, Toyota informed the Department that it miscalculated inland freight and proposed an alternate methodology to calculate the freight cost on the basis of units shipped rather than on the basis of weight. Petitioners assert that such a methodology is improper because it understates the amount of inland freight expense for larger trucks while allocating a disproportionately greater expense to smaller trucks. Petitioners propose an alternate methodology using the total weight of individual trucks and the freight factor Toyota provided in its May 3, 1996 supplemental response.

Toyota responds that petitioners misunderstand the issue because Toyota's yen/kg inland freight factor itself is incorrect. Toyota states that, contrary to its initial belief, there is no way to calculate a yen/kg inland freight factor because its records only permit the calculation of a per-unit amount for inland freight based on the total units shipped and the total payments made. Toyota asserts that this is an accurate way of allocating the expense because Toyota is charged by the truckload regardless of the number of trucks shipped.

Department's Position

We agree with Toyota. Petitioners'' proposed methodology would be based on a freight factor that Toyota determined, in preparing for verification, was flawed. We verified that the original methodology was flawed. Toyota apprised the Department of this error prior to verification and calculated a per-unit expense by taking the total expense for the POR and allocating it over the total units it shipped. We verified the bases of Toyota's proposed methodology.

This methodology is the most feasible manner in which Toyota can report this expense based on its records, which only permit the calculation of per-unit amounts using the total units shipped and total payments made. Further, we consider this to be an accurate and reasonable method of allocating the expense, given that Toyota is charged by the truckload, not by the weight. Accordingly, we have accepted Toyota's methodology for the final results.

Comment 11

Petitioners assert that Toyota failed to provide verification documents to support its home market warranty payments, yet the Department inadvertently allowed Toyota an adjustment for home market warranty expense in the Preliminary Results. Petitioners argue that there is no basis to allow Toyota an adjustment for home market warranty expense given that Toyota failed to demonstrate that it made the warranty payments and, therefore, failed verification of this expense. Petitioners conclude that the Department should disallow an adjustment for Toyota's home market warranty expense for the final results.

Toyota responds that petitioners are incorrect in recommending that the Department deny Toyota's home market warranty expense. Toyota notes that the Department's verification report and verification exhibits related to Toyota's claimed warranty expense show clearly that the verification of this expense, including traces to numerous documents supporting the fact that Toyota incurred and paid the reported warranties. Toyota claims that the only document it could not provide was one showing that it made a specific warranty payment to a dealer, a document that Toyota's accounting system does not produce. Toyota asserts that all of the documentation that Toyota does have, and which the Department examined, supports the fact that it made these payments. Therefore, Toyota contends, the Department was justified in determining the expenses were real. Toyota argues that any decision to deny this expense would be an inappropriate use of adverse facts available.

Department's Position

We disagree with petitioners. We do not accept petitioners' assertions that we could not verify Toyota's reported home market warranty expense and that we inadvertently overlooked Toyota's failure to verify this expense in the Preliminary Results.

While it is true that Toyota was unable to demonstrate that it made these warranty payments through the use of specific documents, *e.g.*, a bank-funds transfer statement, the verification of this expense included the review of numerous other documents that supported the expense. See *Report* at 17–18. Unlike Toyota's failure to respond to the Department's requests with regard to the verification of certain selling expenses, Toyota was able to provide numerous interrelated documents to support the reported warranty expense. Therefore, we have allowed Toyota's home market warranty claim for the final results.

Comment 12

Petitioners state that the Department has provided no justification for a departure from its standard practice for determining whether transactions with affiliated parties are at arm's length based on its 99.5 percent test. Petitioners claim that they performed an affiliated-party test and, given that the evidence of record indicates that Toyota's prices to its affiliated dealers are not at arm's length, the Department must require Toyota to submit complete home market sales data.

Petitioners note that the Department confirmed at verification that TMC's price list makes no distinction between prices charged to affiliated and unaffiliated dealers, but argues that price lists alone cannot determine whether sales are at arm's length because certain affiliated dealers might receive higher rebates, better payment terms, or any other number of benefits that result in a lower net price than that which unaffiliated dealers pay.

Toyota responds that the Department should not require Toyota to submit sales information on sales by affiliated dealers to unrelated end-users because all of its sales are at arm's length. Toyota adds that petitioners' own analysis demonstrates that sales to affiliated dealers are at arm's length, since this analysis reveals that affiliated dealers paid prices slightly above and slightly below the average price to unaffiliated dealers. Toyota states that this very narrow range of deviation from the average does not suggest that prices to affiliated dealers are not at arm's length and adds that the small deviation is created solely by a deficiency in petitioners' method of analysis, whereby petitioners adjusted the prices by the costs of the attachments and options. Toyota provides three examples indicating that differences in prices are attributable to differences in the number of options/attachments, credits for removal of certain equipment, and differences in the types of attachments. Toyota states that petitioners wrongly tried to compensate for the different attachments through cost adjustments; petitioners should have used the prices for the attachments which the Department verified were identical to affiliated and unaffiliated dealers. Toyota states that the Department has recognized in each of its prior reviews that Toyota's sales are all at arm's length and neither Toyota's business practices nor the law have changed and, therefore, there is no basis for the Department to alter its analysis for this review.

Department's Position

We disagree with petitioners. As we stated in our verification report, Toyota's sales prices to affiliated and unaffiliated dealers in the home market, for the basic truck and parts, were based on published price lists. *See Report* at 11. At verification, we noted no deviation from the price lists for sales to affiliated or unaffiliated dealers for either the basic truck or parts.

In addition, while petitioners claim that the arm's-length test they conducted appears to indicate that Toyota's sales to affiliated dealers fail our 99.5% arms-length-test, we note that, due the unique nature of this product, where differences between products beyond the basic truck (options, attachments, etc.) can be significant and where these differences are not always individually distinguished in the submitted data, an arm's-length test is not always feasible. Petitioners'' methodology in their arm's-length test for calculating average variances for options does not adequately account for all such differences. Therefore, based on the verified fact that both affiliated and unaffiliated dealers purchased trucks and parts based on the same price lists, we have determined that Toyota's sales to affiliated dealers in the home market form a proper basis for consideration and the calculation of NV.

Comment 13

Petitioners argue that the Department's level-of-trade analysis is incorrect. Petitioners claim that, rather than examining the actual level of trade at which Toyota's sales to unaffiliated purchasers in the United States occurred, the Department began its level-of-trade analysis with a price reduced of expenses which Toyota's U.S. affiliate incurred. Petitioners assert that, by excluding these expenses, the Department failed to recognize that the CEP sales were at a more advanced level than Toyota's home market sales and, therefore, that an upward adjustment to NV was warranted.

Petitioners assert that there is no legal justification for adjusting CEP prior to determining the level of trade of the U.S. sale. Petitioners claim that the statute requires the Department to make a comparison of CEP with NV at the same level of trade. Petitioners assert that nothing in the statute nor the SAA requires the Department to compare the level of trade of a CEP with an unadjusted home market price and that, in doing so, the Department has misinterpreted the law. Petitioners point to the Department's longstanding practice of comparing sales in the relevant markets at a common point in the chain of commerce (citing, among others, *Cookware* at 43330).

Petitioners claim that the flaw in the Department's analysis is indicated by the results it reached in this case. Petitioners assert that the U.S. sales are accompanied by similar and more extensive selling activities than those in the home market, yet the Department created distinct and commercially unrealistic levels of trade in the two markets with its adjustments to CEP. Petitioners refer to other cases where the Department's analysis yielded anomalous results and artificial differences in levels of trade between markets (citing *Stainless Steel Wire Rod from France,* 61 FR 8915, 8916 (1996), and *LNPP from Japan,* at 38142).

Petitioners conclude that the Department should begin its level-of-trade analysis with an unadjusted CEP starting price. Once the Department does that it becomes apparent that Toyota's U.S. sales are at a more advanced level of trade than its home market sales and that an upward adjustment to NV for the difference in levels of trade is warranted.

Toyota responds that petitioners'' argument that the Department should compare unadjusted prices is incorrect, contradicted by the statute, and premised upon a fundamental misperception of CEP. Toyota asserts that there is no such thing as an unadjusted CEP; CEP is by definition an adjusted price, while ''normal value'' is an unadjusted price. Toyota further asserts that the level-of-trade provision refers only to a comparison of NV with a CEP. Toyota concludes that use of an unadjusted CEP in determining the level of trade of the U.S. sale is contradicted by the definition of CEP at section 772(b), the definition of normal value at section 773(a)(1), and the level-of-trade provision at section 773(a)(7)(A) of the Act.

Toyota notes that its U.S. sales are indisputably CEP sales. Toyota claims that the U.S. level of trade is a single, very-little-advanced level, from an exclusive distributor (TMC) to an affiliated purchaser in the United States (TMS). In contrast, all of its sales in Japan are at a more remote level, that of a distributor (TMC) to dealers. Consequently, there is no level of trade in Japan comparable to that of the U.S. sales and no information available in Japan on which to make the price-based level-of-trade adjustment anticipated by section 773(a)(7)(A) of the Act. Therefore, the Department correctly made a CEP-offset adjustment as permitted by section 773(a)(7)(B) of the Act. Toyota adds that, since its home market level of trade is more remote, there is no justification for adjusting home market prices upwards. Toyota notes, in conclusion, that the Department refuted arguments identical to petitioners'' suggestions in its proposed regulations (at 7347).

Department's Position

We disagree with petitioners that our level-of-trade analysis must begin with the unadjusted price of the U.S. sales. We base the level of trade of CEP sales on the CEP, *i.e.*, the price in the United States, net of the deductions required by the statute. It is that price, not the starting price, that is compared to the normal value. Petitioners' position is contrary to the SAA, the statute, and our practice under the URAA.

We agree with Toyota that the statute is clear that the CEP by definition is an adjusted price while normal value in a level-of-trade analysis is based on an unadjusted price. Section 772(b) of the Act states that ''constructed export price'' means the price at which the subject merchandise is first sold * * *, *as adjusted* under subsections (c) and (d)'' (emphasis added). Normal value is defined as ''the price at which the foreign like product is first sold * * * for consumption in the exporting country * * * at the same level of trade as the * * * constructed export price.'' Section 773(a)(1)(B)(i) of the Act. The SAA similarly specifies that normal value will be calculated, to the extent practicable, at the same level of trade as the CEP. SAA at 827. Section 773(7)(A) of the Act further indicates that ''[t]he price described in paragraph (1)(B) shall be increased or decreased to make due allowance for any difference (or lack thereof) between the * * * constructed export price and the price described in paragraph (1)(B) * * * that is shown to be wholly or partly due to a difference in level of trade between the * * * constructed export price and normal value * * *'' It is clear that the statute speaks of an adjusted price for CEP and an unadjusted price for NV.

Our practice, in examining level of trade, has been to use an adjusted starting price (*i.e.,* the CEP) in accordance with the statute. In *LNPP from Japan*, we stated ''[i]n those cases where [a level-of-trade] comparison is warranted and possible, then for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act. As stated in Aramid Fiber ''the level of trade of the U.S. sales is determined by the *adjusted CEP* rather than the starting price.'' ' *LNPP from Japan* at 38143 (emphasis added).

More recently, in *AFBs 6,* we stated:

[t]he statutory definition of 'constructed export price' contained in section 772(d) of the Tariff Act indicates clearly that we are to base CEP on the U.S. resale price as adjusted for U.S. selling expenses and profit. As such, the CEP reflects a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. *See* SAA at 823. These adjustments are necessary in order to arrive at, as the term CEP makes clear, a 'constructed' export price. The adjustments we make to the starting price, specifically those made pursuant to section 772(d) of the Tariff Act (''Additional Adjustments for Constructed Export Price''), normally change the level of trade. Accordingly, we must determine the level of trade of CEP sales exclusive of the expenses (and concomitant selling functions) that we deduct pursuant to this subsection.

AFBs 6 at 2107.

Because the statute, the SAA, and our practice support our use of an adjusted CEP to determine level of trade, petitioners' comparisons between the activities provided for Toyota's home market sales and those provided for its U.S. sales to unaffiliated customers are not relevant. We consider the appropriate comparison of selling functions, selling expenses, and class of customer between markets to be sales determined by the adjusted starting price (constructed export price) for U.S. sales and the unadjusted starting price for home market sales (normal value) *i.e.*, Toyota's sales to its U.S. affiliate and its home market sales to affiliated and unaffiliated dealers.

Comment 14

Petitioners assert that, even if the Department begins the level-of-trade analysis with an adjusted CEP, the evidence of record does not establish that different levels of trade exist in the home and U.S. markets. Petitioners claim that the selling functions provided on U.S. sales by TMC and TAL (exclusive of those provided by TMS) are sufficiently similar to the verified selling functions incurred on home market sales by TMC and TAL to consider the sales at the same level of trade.

Petitioners note that the home market expenses the Department examined at verification included inland freight and insurance, rebates, discounts, warranties, direct advertising, credit, product liability, TAL home market indirect expenses (quality assurance) and TMC home market indirect expenses (incentives, indirect selling, indirect advertising, wage and salary and G&A and inventory carrying costs). Petitioners argue that rebates, discounts and incentives do not reflect selling activities and cannot serve as the basis for distinguishing levels of trade. Petitioners claim that the Department was unable to verify either home market direct or indirect advertising, part of the indirect selling expense claims, and Toyota's warranty claims and argue that, given this inability, the Department should neither adjust for, nor consider, these to be distinct functions in its level-of-trade analysis.

Petitioners assert that other expenses applying to home market sales appear to be applicable to U.S. sales. In particular, petitioners claim that Toyota has focused only on selling functions TMC provided with respect to U.S. sales and has ignored those TAL provided (citing as examples TAL's quality assurance, engineering services and technical advice). Petitioners note that Toyota admits TAL incurs expenses related to the selling functions provided with respect to U.S. sales. Petitioners assert that the statute does not limit the selling functions to be examined to those provided by the exporter and notes that, while the degree of the particular service may vary on a given group of sales, the statute merely looks to whether the function provided is the same. Petitioners conclude that there are no verified *bona fide* selling expenses that were incurred in the home market that were not also incurred with respect to U.S. sales and, therefore, there is no rational basis for differentiating between levels of trade in this case.

Toyota responds that petitioners ignore evidence of record establishing different levels of trade and maintains that the Department's disallowance of certain expenses was unwarranted. Toyota argues that, even if the Department's disallowance of these expenses was lawful, it does not follow that the selling functions which gave rise to the expenses should be eliminated from the level-of-trade analysis because the Department was able to verify the selling functions, if not the precise expense amounts. Toyota notes that the Department stated unequivocally in the preliminary results that it verified the presence of home market selling functions and that the home market level of trade constituted a more advanced stage of distribution than the level of the CEP.

Toyota further asserts that petitioners' implication that TAL's provision of selling functions requires a finding that there are no differences in selling functions is not valid since: (1) The differences in TMC's selling functions in the two markets is sufficient to satisfy the Department's level-of-trade analysis, (2) the record states in several places that, while there was some overlap in the functions TAL performed in the two markets, there were nevertheless quantitative and qualitative differences in the functions performed, and (3) the Proposed Rules state that ''overlap between functions is not necessarily determinative of whether two levels of trade are distinct.'' Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7347 (February 27, 1996), *citing* SAA at 830. Toyota argues that the substantial differences in the degree of the performance of a similar function in the two markets constitute ''the performance of different selling activities'' pursuant to section 773(a)(7)(A)(i) of the Act.

Department's Position

We disagree with petitioners. In the course of this review, we obtained information concerning the selling functions Toyota performed for its respective markets. In addition, in the process of verifying this information, we interviewed company officials concerning the functions performed for the various markets. Based on our analysis of this information, we determined that TMC's and TAL's selling activities directed at the home market level of trade were more extensive. *See* Preliminary Results Analysis Memo, July 26, 1996, at 2–5; *see also Report* at 9–10. Our determination for the final results remains unchanged.

We disagree with petitioners that rebates, discounts and incentives do not reflect selling activities and do not serve as a basis for distinguishing levels of trade. Contrary to petitioners' assertion, these expenses may involve selling functions that are appropriate for us to consider in our level-of-trade analysis and contribute to our level-of-trade determination. We further disagree with petitioners that we were unable to verify Toyota's claimed home market warranty expense (see comment 11).

We also disagree with petitioners that Toyota failed to provide information on selling functions TAL performed with respect to sales to the respective markets. As we stated in our Preliminary Results Analysis Memo at 3–4, ''[i]n addition, the functions performed on behalf of U.S. sales by TAL, while similar in some instances to those provided in the home market, are much less extensive and limited to quality assurance, engineering services and technical advice.''

Finally, we disagree with petitioners that our inability to substantiate certain selling expenses, by tracing reported amounts to the level of detail required for a successful verification of a topic, precludes us from recognizing that Toyota provided the functions for sales

to the particular markets. We obtained confirmation that these functions were performed in other ways, *e.g.*, through interviews with company officials and review of organizational charts. *See, e.g., Report* at 9–10.

Comment 15

Petitioners argue that Toyota should be denied a CEP-offset adjustment to NV because it failed to provide information on a level-of-trade adjustment (citing *LNPP from Japan* at 38142). Petitioners assert that Toyota has made no effort to quantify a level-of-trade adjustment but has assumed it is entitled automatically to a CEP offset. Petitioners assert that the SAA (at 830) provides that, where information on different levels of trade by the same company and same product is unavailable for the POR, the level-of-trade adjustment may be based on (i) sales of other products by the same company, (ii) the experience of other producers, or (iii) sales of the same product by the same company in different time periods. Petitioners claim that Toyota has not attempted to provide such information, given its assumption a CEP offset is automatic. Petitioners further assert that the Department found the information Toyota provided to quantify the CEP offset to be deficient and not verifiable.

Toyota responds that, in the preliminary results, the Department properly determined that Toyota's sales in the home market were at a different, more advanced level of trade than its sales in the United States. Toyota claims that the wide range of selling activities to the home market level has an obvious and substantial effect on price comparability with the U.S. level of trade. Toyota asserts that, because it sells at only one level in the home market, it cannot demonstrate a ''consistent pattern of differences between levels of trade'' (citing *Certain Stainless Steel Wire Rods From France; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 8915, 8916 (March 6, 1996)). Toyota claims that it provided all of the information necessary for the Department to calculate the CEP offset, and states that, in the preliminary results of review, the Department properly adjusted Toyota's home market prices due to differences in levels of trade through a CEP offset. Toyota asserts that the Department properly resorted to the CEP offset after analyzing other statutorily directed alternatives to account for the necessary adjustment for differences in levels of trade. Toyota states that petitioners' citation to *LNPP from Japan* is misleading because, in that case, the Department denied a CEP offset because a respondent provided no level-of-trade information.

Department's Position

We disagree with petitioners. We agree that a respondent must establish entitlement to a level-of-trade adjustment. However, where the data necessary to calculate an adjustment is unavailable, the CEP offset is warranted. With respect to the quantification necessary for a level-of-trade adjustment, in this case the respondent sells to only one level in the home market and this level is at a more advanced stage of distribution than the level of the CEP. Therefore, neither we nor Toyota can quantify such an adjustment and there is no further requirement to establish entitlement to a CEP-offset adjustment.

Comment 16

Petitioners claim that the Department's failure to deduct from CEP Toyota's indirect selling expenses incurred in the country of manufacture to sell the product to the United States, and Toyota's inventory carrying costs incurred from the time of production in the foreign country through the time of entry into the United States, was a direct violation of the statute and should be corrected in the final results.

Petitioners contend that the plain meaning of section 772(d) of the Act indicates that the Department cannot limit adjustments to CEP based on the geographical area in which such expenses are incurred and that, when Congress amended the statute in the URAA, it did not change the operative language of section 772(e) by limiting the selling expenses the Department is to deduct. Petitioners further contend that, under prior law, the Department was required to deduct selling expenses from Exporter's Sales Price (ESP) regardless of where incurred geographically and, citing *Silver Reed America, Inc. v. United States,* 683 F. Supp. 1393 (CIT 1988) (*Silver Reed*), state that the relevant question is whether the selling expenses relate to U.S. sales. Petitioners further state that the court recognized the loophole that would be created if expenses incurred abroad for U.S. sales were not deducted from ESP (the predecessor to CEP).

Petitioners maintain that the Department should deduct these expenses from CEP because the record establishes that they relate explicitly to the U.S. economic activity. Petitioners cite in support of their position *LNPP from Germany* (at 38173–74), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 30326, 30352 (June 14, 1996) (*Pasta from Italy*).

Toyota answers that the petitioners would have the Department calculate a distorted CEP that is not the equivalent of what the export price would have been if the affiliated foreign seller and U.S. reseller were unaffiliated. Moreover, petitioners claim that the Department limited CEP deductions based on where they occurred is factually in error as the Department deducted from CEP direct advertising TMC incurred in Japan. Citing the *Notice of Proposed Rulemaking and Request for Public Comments,* 61 FR 7308, 7331 (February 27, 1996), Toyota maintains the Department properly limited deductions by whether such expenses were selling expenses associated with economic activities in the United States, as required by the statute. Regarding the indirect selling expenses referred to by petitioners, these were not deducted because they are general in nature, do not relate specifically to U.S. commercial activity, and are incurred, if at all, with respect to the sale by an affiliated purchaser. To support its position, Toyota cites *Calcium Aluminate Flux From France; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 40396, 40397 (August 2, 1996) (*Calcium Aluminate Flux*), and argues that the relevant expenses relate to commercial activity in Japan, not U.S. commercial activity and, therefore, the Department properly did not deduct them in calculating CEP.

Department's Position

We disagree with petitioners. In accordance with the SAA, we deducted from CEP only those expenses associated with economic activities in the United States. The SAA indicates that ''constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers.'' SAA at 823. Therefore, we did not deduct either of the expenses referred to by petitioners from CEP. We have only deducted expenses associated with commercial activities in the United States in our calculation of CEP. Our proposed regulations reflect this logic at 351.402(b): ''(t)he Secretary will make adjustments to constructed export price under 772(d) for expenses associated with commercial activities in the United States, no matter where incurred.'' *Id.* at 179.

With regard to the TMC and TAL export selling expenses Toyota allocated to U.S. sales, we consider these expenses not to be specifically related to economic activities in the United States.

As these figures cover salaries and fixed expenses, which expenses are general in nature and are not related specifically to commercial activity in the United States, they are not properly part of the calculation of CEP. In *Calcium Aluminate Flux,* at 40397, we declined to deduct indirect selling expenses (*i.e.,* administrative expenses, inventory carrying costs, personnel costs for technicians) incurred in the country of manufacture because we deemed such expenses not to be specifically related to commercial activity in the United States. While these expenses arguably may be similar to those we deducted in *LNPP from Germany,* we have determined subsequently, as indicated by our position in *Calcium Aluminate Flux,* that such expenses are not specifically associated with commercial activities in the United States.

Regarding petitioners' assertion that we should deduct Toyota's inventory carrying costs incurred in the country of manufacture, such inventory carrying costs are not associated with economic activities in the United States. *See AFBs 6* at 2125. Therefore, we have not deducted either of these expenses for purposes of the final results because neither of the expenses is specifically associated with economic activities in the United States and, therefore, is not an appropriate deduction in calculating CEP.

Comment 17

Petitioners argue that the Department's verification report and Toyota's supplemental questionnaire response indicate that Toyota misreported the date of sale for both its U.S. and home market sales. Petitioners note that Toyota explained in its supplemental questionnaire response that a dealer may modify an order by changing the configuration of the truck between 10–15 percent of the time, but that the Department determined at verification the frequency instead ranged from 4.3 to 7.5 percent. Petitioners assert that the low frequency of changes fails to justify Toyota's decision to base date of sale on date of shipment when the majority of sales are established on the order date; further, the changes to certain attachments do not alter the essential terms of sale between Toyota and its customer. Petitioners state that it is likely there would be a set price for the particular attachments or changes in configuration of the truck and, although a purchaser may request different attachments, the basic truck and negotiated price would not be altered after the order is placed.

Toyota responds that the date the basic terms of the contract are agreed to is the date of shipment, which is generally on or about the date of invoice. Toyota notes that, under the Department's proposed regulations, the invoice date is considered the date of sale. Toyota contends that customers can request modifications in payment terms, configuration, and price up to the date of shipment. Toyota states, further, that the date of order is not a date of sale in Toyota's records, is not significant enough to record on a systematic basis and, even where recorded, the order may or may not describe the merchandise actually shipped. Toyota notes that this is not a case in which the date of sale is substantively significant to the final results, given that Toyota's sales are relatively even over the period and there are no factors such as hyperinflation that would cause the date of sale to affect the analysis. Consequently a different date of sale would shift the universe of reported sales slightly and not change the outcome particularly since the Department plans to assess duties on all trucks entered during the POR.

Department's Position

We agree with Toyota. The date of shipment is the appropriate date of sale for home market sales in this case for the following reasons. First, the reported date of sale, which is based on shipment date, closely corresponds to invoice date in this case and is in accord with our current practice and with the date-of-sale methodology in our proposed regulations, where invoice date is considered the appropriate date of sale. Second, we verified that certain basic sales terms (such as configuration and price) can change up to the date of shipment. While Toyota initially reported that orders were changed 10–15 percent of the time and we determined at verification that the frequency of changes instead ranged from 4.3 to 7.5 percent, the potential for configurations and prices to change for the reported sales supports a sale date based on the shipment date. Third, Toyota records the date of shipment as the date of sale for financial reporting and internal purposes, and it records the sales transaction as complete upon shipment (*e.g.,* payment is due from a dealers based on this date—*see Report* at 11–12, Sale Date, and 19, Credit Expense).

Comment 18

Petitioners contend that the Department failed to deduct Toyota's U.S. inventory carrying costs (calculated from the date of entry to the date of shipment from the distribution facility in the United States) from CEP. Petitioners assert that these expenses are related to commercial activities in the United States and therefore, should be deducted.

Toyota argues that the Department properly considered inventory carrying costs incurred in connection with Japanese exports to the United States to be general export expenses broadly attributable to the sale to the unaffiliated purchaser, which should not be deducted from CEP. Toyota notes, however, that to the extent the Department deducts any inventory carrying expenses from CEP, the expenses should also be included in U.S. indirect selling expenses and the Department should deduct corresponding home market inventory carrying costs from NV.

Department's Position

We agree with petitioners. The inventory carrying costs Toyota incurred in the United States are an indirect expense related to commercial activity in the United States and, therefore, are appropriately deducted from the CEP starting price. Therefore, we have deducted the reported expense from the starting price and included it in U.S. indirect selling expenses for purposes of the final results.

Comment 19

Petitioners note that, in the preliminary results, the Department treated Toyota's repacking costs as a circumstance-of-sale (COS) adjustment and added the sum of packing and repacking to NV in dollars. Petitioners argue that the statute directs the Department to adjust NV for costs and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States and, therefore, the Department should not include repacking costs in the adjustment for differences in packing, but rather should subtract them from Toyota's starting price as an adjustment to CEP (citing section 772(d) and *Federal-Mogul Corporation* v. *United States,* Slip Op. 96–68 at 25 (April 19, 1996)).

Toyota asserts that section 772(c)(1)(A) provides that the Department should increase CEP by an amount for ''packing,'' and notes that this provision does not limit this term to home market packing. Toyota maintains, therefore, that the Department's approach was reasonable.

Department's Position

We agree with petitioners. As noted in our response to comment 16, we deduct expenses related to economic activities in the United States in calculating CEP.

Because U.S. repacking costs are clearly related to such activities, we have deducted these expenses from the starting price to calculate CEP for the final results.

Comment 20

Petitioners claim that the Department uniformly reduced Toyota's home market sales prices by reported inland freight expenses, which is inappropriate because Toyota's reported home market prices were exclusive of inland freight for certain sales. Petitioners assert that deducting these amounts resulted in an understatement of NV for those sales for which the price did not include delivery.

Toyota responds that it reported, and the Department verified, inland freight amounts only where the prices were inclusive of inland freight. Toyota asserts that the Department's Preliminary Results accomplish exactly what petitioners claim is proper.

Department's Position

We agree with petitioners. Toyota reported that its reported home market gross unit price ''includes inland freight only where the sales term is c.&f.'' (October 16, 1995 response at B–22) and indicated that for a particular sale ''the sales term is FOB, that is, it does not include charges for inland freight'' (May 3, 1996 supplemental response at Supp. 29). We have ensured that our calculations reflect the information Toyota provided in its response concerning this expense.

Final Results of Review

We determine that the following weighted-average margins exist for the period June 1, 1994, through May 31, 1995:

Manufacturer/exporter	Margin (percent)
Toyota	50.34
Nissan	[1] 7.36
Toyo	[1] 4.48

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an exporter/importer-specific assessment rate for Toyota. For Toyota's CEP sales we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales and the entered value of leased trucks not subject to review (see our response to Toyota comment 10). We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of Toyota's entries during the review period. While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of forklift trucks entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the ''All Others'' rate of 39.45 percent made effective by the final results of review in *Certain Internal-Combustion Industrial Forklift Trucks From Japan; Final Results of Antidumping Duty Administrative Review*, 59 FR 1374,1384 (January 10, 1994).

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

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 29, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–2877 Filed 2–5–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–817]

Oil Country Tubular Goods From Mexico: Notice of Panel Decision, Amended Order and Final Determination of Antidumping Duty Investigation in Accordance With Decision Upon Remand

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

ACTION: Notice of panel decision and amendment to final determination of antidumping duty investigation in accordance with decision upon remand.

SUMMARY: As a result of a remand from a Binational Panel (the Panel), convened pursuant to the North American Free Trade Agreement (NAFTA), the Department of Commerce (the Department) is amending its final determination in the antidumping duty investigation of Oil Country Tubular Goods from Mexico. The Department has determined, in accordance with the instruction of the Panel, the dumping margin for entries of Oil Country Tubular Goods from Mexico to be 21.70 percent.

EFFECTIVE DATE: February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Stagner, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1673.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1995, the Department published in the Federal Register (60 FR 33567) the final determination of sales at less than fair value for Oil Country Tubular Goods from Mexico (OCTG from Mexico). On August 11, 1995, the Department published the antidumping duty order on OCTG from Mexico. 60 FR 41056.