This notice also serves as a 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 Act 19 U.S.C. 1675(a)(1) and 19 CFR 353.22(c)(5).

Dated: April 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9423 Filed 4–14–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 & A–580–816]

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

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

ACTION: Final results of antidumping duty administrative reviews.

SUMMARY: On October 4, 1996, the Department of Commerce (''the Department'') published the preliminary results of the administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea. These reviews cover three manufacturers/exporters of the subject merchandise to the United States and the period August 1, 1994, through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Rast (Dongbu), Steve Bezirganian (POSCO), Alain Letort (Union), or John Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone 202/482–5811 (Rast), 202/482–1395 (Bezirganian), 202/482–4243 (Letort), or 202/482–0649 (Kugelman), fax 202/482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

The Department published antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea on August 19, 1993 (58 FR 44159). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty orders for the 1994/95 review period on August 1, 1995 (60 FR 39150). On August 31, 1995, respondents Dongbu Steel Co., Ltd. (''Dongbu''), Union Steel Manufacturing Co., Ltd. (''Union''), and Pohang Iron and Steel Co., Ltd. (''POSCO''), requested that the Department conduct administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea. On the same day, the petitioners in the original less-than-fair-value (''LTFV'') investigations (Bethlehem Steel Corporation, U.S. Steel Group—a unit of USX Corporation, Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company, collectively referred to as ''petitioners'') filed a similar request. We initiated these reviews on September 5, 1995 (60 FR 46817—September 8, 1996).

Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On March 22, 1996, the Department extended the time limits for preliminary and final results in these reviews. *See Extension of Time Limit for Antidumping Duty Administrative Reviews,* 61 FR 14291 (April 1, 1996).

On October 4, 1996, the Department published in the **Federal Register** the preliminary results of the second administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea (61 FR 51882). The Department has now completed these administrative reviews in accordance with section 751 of the Act.

Scope of the Review

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

0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

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

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

The period of review (''POR'') is August 1, 1994 through July 31, 1995. These reviews cover sales of certain cold-rolled and corrosion-resistant carbon steel flat products by Dongbu, POSCO, and Union.

Verification

As provided in section 776(b) of the Act, we verified information provided by Dongbu, POSCO, and Union using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from Dongbu, POSCO, and Union, exporters of the subject merchandise (''respondents''), and from petitioners. Petitioners requested a public hearing, which was held on December 16, 1996.

General Comments

Petitioners' Comments

Comment 1. Petitioners allege that the home market for such or similar merchandise in Korea is not a viable comparison market, and that the Department should base normal value (''NV'') on sales to third countries. Petitioners cite section 773(a)(1)(C)(iii) of the Act, which provides that the Department will use third-country sales as the basis for normal value if ''the particular market situation in the exporting country does not permit a proper comparison with the export price or the constructed export price.'' 19 U.S.C. 1677b(a)(1)(C)(iii). The Statement of Administrative Action (''SAA'') accompanying the URAA states that ''* * * Commerce may determine that home-market sales are inappropriate as a basis for determining normal value if the particular market situation would not permit a proper comparison. The Agreement [on Implementation of Article VI] does not define 'particular market situation,' but such a situation might exist where a single sale in the home market constitutes five percent of sales to the United States or where there is government control over pricing to such an extent that home-market prices cannot be considered to be competitively set.'' H.R. Doc. No. 316, 103rd Cong., 2nd Sess. 822 (1994). Petitioners argue that steel prices in Korea are controlled *de facto* by the government of Korea to such an extent that home-market prices cannot be considered to be competitively set, making the Korean market non-viable.

Petitioners provide several lines of argument in support of their contention that the Korean market is not viable. In their first line of argument, petitioners contend that statements by numerous sources—both the interested parties themselves and widely acknowledged independent authorities—demonstrate the Korean government's control over the price at which both subject merchandise and other non-steel products are sold. These sources are:

(1) Circumstantial evidence, in the form of data submitted by the respondents themselves, which allegedly demonstrates that prices for subject merchandise in Korea remained flat and coincident from 1991 through 1995, even though all formal, *de jure* government price controls had ended by February 7, 1994.

(2) Petitioners claim that independent, third party sources confirm the existence of government control over steel prices and that no credible, independent source has ever denied the existence of price controls. Petitioners cite numerous articles and financial reports, published in reputable financial dailies and by major financial institutions in which the existence of government control over steel prices is discussed. In particular, petitioners cite the following sources in support of their allegations:

- ''Domestic steel prices in Korea do not necessarily move directly with international prices or the domestic supply and demand due to government price controls.'' Barclays de Zoete Wedd (Asia) Limited, *POSCO: The Price Is Right* at 4 (Jan. 29, 1996) (''*BZW Report*'').
- ''[T]he government allowed 4.2 percent domestic price increases in April for the first time since 1991 to induce cold-rolled steel makers to supply more volume to the domestic market.'' *Id.* at 11.
- ''POSCO needs government approval to raise domestic prices and domestic prices rarely fluctuate due to the government's anti-inflationary pricing policy.'' *Id.* at 17, in the section entitled ''Domestic Prices Are Under Government Control.''

• ''Prices, however, continued to fall due to the government's tight pricing policy on * * * steel and cement.'' Hoare Govett Securities, Ltd., *Korean Steel Companies—Industry Report* at 6 (Nov. 1, 1994) (''HGS Report'').

• ''With the Government as its largest shareholder, [POSCO] has supported many domestic steel companies with stable prices.'' Young-Kyun Ryu, ''Steel: Imported Hot-coil Price is Lower Than POSCO's Local Price,'' *Investment Newsletter* (June 27, 1996).

• ''About 75 percent of POSCO's products are sold in Korea where a controlled market and strong domestic demand have smoothed the traditional volatility of international steel markets.'' Investext, *POSCO—Company Report* (June 12, 1996).

• ''The balanced market conditions have helped the government establish a stable pricing policy on steel that protects POSCO against cyclical downturns in the global steel industry.'' (*BZW Report*)

• ''Domestic steel prices in Korea do not necessarily move directly with international prices or domestic supply and demand due to government price controls.'' John Burton, ''POSCO moves to pre-empt challenge from Hyundai,'' *Financial Times*, Mar. 15, 1996.

• ''Domestic steel prices are under government control * * *'' John Burton, ''Strong export prices boost POSCO 119 percent,'' *Financial Times*, Feb. 8, 1996.

• ''Last September, *Metal Bulletin* reported that '[d]omestic Korean prices of CR and surface-treated sheet are closely monitored by the Korean government * * *'.'' Russ McCulloch, ''Pocos proposes expansion into a growing market,'' *Metal Bulletin*, Sep. 1995, at 67.

• ''Though it denies it, POSCO is widely believed to 'consult' with the government about its business plans and its pricing.'' ''South Korean Industry: The war goes on,'' *The Economist*, Mar. 2, 1996, at 62.

As recognized by the Court of Appeals for the Federal Circuit (''CAFC'') in *Matsushita Elec. Indus. Co.* v. *United States*, 750 F.2d 927, 934 (Fed. Cir. 1984), even circumstantial evidence is ''always relevant and, indeed, may be more reliable than self-serving declarations'' provided by respondents. Petitioners argue that these articles and reports are so numerous, and emanate from such credible and neutral third parties, as to give them the weight of authority. The authors of the reports in question depend upon their knowledge of the Korean steel market and their credibility for their very livelihoods, claim petitioners.

(3) Petitioners assert that Union has previously admitted to the existence of government price controls during the POR, and that Union's subsequent retraction cannot be given any weight. In the verification report issued as part of the first administrative review of this proceeding, a Union official was quoted as volunteering that his company was subject to government price controls and that ''the Korean government sets the price levels for domestic sales * * *.'' Although Union later ''clarified'' this statement by explaining that the Korean government simply ''reviews and approves the price lists for domestic sales,'' petitioners claim that this ''non-denial denial'' actually substantiates their own claims. Petitioners argue that a year later, after they had filed their allegation that the home market is not viable and the full import of such a statement became clear, Union retracted its ''non-denial denial'' and attempted to explain away its admission by confusion over the date on which formal price controls had been eliminated. Petitioners contend that the idea that a Union executive could have so little idea of the company's pricing practices as to provide a totally erroneous explanation of the government's involvement in them is ludicrous. Petitioners point out that the record contains several such instances of misrepresentation, omission, and subsequent recantation by Union. Petitioners argue that admissions against interest are considered so inherently trustworthy and probative that they are an exception to the hearsay rule under the Federal Rules of Evidence, and are deemed by courts to carry a circumstantial guarantee of reliability that a party's neutral and favorable statements are deemed to lack. *See, e.g., Masson* v. *New Yorker Magazine, Inc.*, 501 U.S. 496, 512 (1991).

(4) Petitioners contend that the Korean Iron and Steel Association (''KOSA'') itself has acknowledged the existence of government price controls. Petitioners quote KOSA's 1995 yearbook, which states in pertinent part that ''the domestic price of the cold-rolled steel has been maintained lower than the international price,'' and that the ''price management system can cause a shortage of domestic supply if the difference of international and domestic prices becomes bigger.'' Petitioners add that when two independent professional translators, neither of whom was apprised of the nature of the document or for what purpose it would be used, were asked to translate this passage, they both used ''price control'' rather than ''price management system.'' Petitioners argue that these minor differences in translation do not detract from the evidence that the government controls steel prices in Korea.

(5) Petitioners also submit that the price reporting termination notices sent by the Korean government's Economic Planning Board to the respondents repeatedly request their cooperation in the price stabilization effort regardless of the reporting requirements. According to petitioners, these notices indicate that the Korean government controls the price at which subject merchandise is sold. Petitioners also cite an authority on the Korean economy, who wrote, in pertinent part, that ''[b]ecause of the acceptance of the government's control over business, Korean companies will nearly always respond to government directions even though they may not be legally binding. [* * *] Failing to comply with administrative guidance on the ground that it is not legally binding may result in disadvantageous treatment in future transactions for which government approval is required.'' See Trenholme J. Griffin, *Korea: The Tiger Economy*, 1988, *appended to* petitioners' October 15, 1996 letter at Exhibit 10.

(6) Petitioners contend that the Korean government itself recently announced price controls on flat-rolled steel products outside the scope of the instant review. On October 9, 1996, petitioners allege, the Korean Ministry of Finance and Economy issued a press release in which it stated that POSCO would reduce domestic prices of hot-rolled steel coil from its mini-mills at the end of that month. Petitioners argue that whether or not POSCO announced the price cut itself in an earlier press release is irrelevant, since that announcement was subsequent to the Korean government's ''September 3rd Countermeasures,'' whose explicit policy goal was the stabilization of prices. Petitioners cite a letter (dated October 22, 1996) from Korea's Ministry of Trade, Industry, and Energy to the United States Trade Representative (''USTR'') as further proof of their allegations.

Petitioners find it ''suspicious'' that the Korean government saw no need to ''clarify'' its statement until after the press release was entered on the record of these proceedings and the trade-related implications of the October 9 announcement became apparent. POSCO itself did not protest the Korean government's announcement of the price reduction as its own initiative until after the press release was entered onto the record of these proceedings.

Petitioners argue that if the official government press release announcing POSCO's price reductions was truly in error, then there is no reason to accept the veracity of statements contained in a self-serving, *post hoc* government letter of limited circulation. Petitioners also stress that the fact that the Korean government's letter to USTR bears the same date as POSCO's letter to the Department, to which it was appended, demonstrates the degree of cooperation between the Korean steel industry and the Korean government, a relationship which respondents insist does not exist.

(7) Petitioners assert that Hanbo Steel, whose products potentially are subject to the antidumping duty orders on subject merchandise, has previously admitted that price controls exist, and that its subsequent retraction cannot be given any weight. Petitioners cite a May 27, 1994 *Offering Circular* by Hanbo (four months after the date the Korean respondents claim all price controls ended), in which Hanbo stated that prices are ''determined by the Korean government'' and that its competitors charge the same prices for the same products. Although Hanbo later retracted this statement, petitioners point out that in the *Offering Circular*, Hanbo confirmed that the information contained in that document was true and accurate in all material respects. Said *Offering Circular*, petitioners point out, was subject to securities fraud laws in the United States and in other jurisdictions in which Hanbo's securities were offered or sold. Given the potential ramifications of an admission by Hanbo of the existence of price controls during the Department's verification in a dumping case, Hanbo had every reason to conceal their existence and to explain away its prior admission in the *Offering Circular*. Therefore, petitioners argue, Hanbo's recantation at verification should be ignored. Furthermore, petitioners argue, the Department's own Hanbo verification report actually supports the fact that the Korean government controls domestic steel prices. *See* the Memorandum from Richard O. Weible to the Files dated February 21, 1997.

(8) Finally, petitioners point to an article in Korea's leading English-language daily, the *Korea Herald*, according to which leading Korean steel makers, in a meeting with the Minister of Trade, Industry, and Energy, requested the lowering of domestic hot-coil prices. Petitioners affirm this belies statements by Korean government officials denying government intervention in steel pricing. In another article reporting on the same meeting and submitted by respondents Dongbu and Union, it was stated that ''the request embarrassed the Minister because that issue was not on the agenda of the meeting * * *.'' To petitioners, such language suggests that issue is sometimes included on the agenda of government-industry meetings.

In their second line of argument, petitioners claim that mechanisms remain by which the Korean government can control the price at which steel is sold in the domestic market, and which explain why respondent's prices remained flat after the purported end of price controls. Petitioners allege that the Korean government controls prices through administrative guidance and through monitoring of the respondents' prices and production costs under the ''Monopoly Regulation and Fair Trade Act'' (''MRFTA'').

Petitioners allege that the Department itself, in a 1995 commercial guide issued by the International Trade Administration, concluded that ''government intervention is extensive'' and that ''the prices of many products are *de facto* controlled.'' *See Korea: Economic Trends and Outlook* (USDOC, International Trade Administration, August 23, 1995). Petitioners also allege that in a May 1994 article, after the putative end of *de jure* price controls, the Korean president's senior economic adviser acknowledged that price controls should be liberalized ''so that prices may be determined normally in the market and thus administrative guidance on prices can be eliminated altogether.'' *See* Ed Paisley, ''The Morning After,'' in *Far Eastern Economic Review*, May 26, 1994, at 52. The legal authority for these price controls, petitioners allege, derives from the Price Stabilization and Fair Trade Act of 1992. Petitioners allege that the Korean government uses administrative means at its disposal to pressure businesses into complying with its price guidelines, in particular by means of tax audits or the threat thereof. In support of this contention, petitioners quote the English-language daily *The Korea Times* as saying, on October 12, 1996, that ''[t]he government must stop its long practice of mobilizing tax auditors, policemen, ward officials and fire fighters to bully businessmen not to increase prices.'' Petitioners affirm that POSCO's own ''Economic Policy Direction for 1995'' (sales verification exhibit 85–E) is further evidence of the Korean government's role in stabilizing domestic prices. Finally, petitioners note that the Korean government's status as POSCO's single largest shareholder enables it to control domestic steel prices. Petitioners contend that one of POSCO's competitors, Hanbo, admitted as much to a Department official during verification: ''POSCO does not raise prices because of the partial government control of POSCO.'' *See* Hanbo Viability Verification Report at 2.

According to petitioners, respondents admit, and verification confirmed, that the Korean government continues to collect certain data from respondents under the MRFTA. Petitioners contend that verification exhibits demonstrate that the data collected relates not only to market share, but also to liabilities, capital, and profit. In petitioners' view, this confirms the statements made in KOSA's 1994 and 1995 yearbooks that domestic steel prices ''do not reflect market conditions'' and ''are not flexible.'' *See* June 26, 1996 letter from Dewey Ballantine to the Secretary of Commerce, Exhibit 3 (at 233).

Petitioners contest respondents' assertions that the Korean government lifted price controls on February 7, 1994, stating that the respondents' own pricing data demonstrate the opposite. Indeed, petitioners affirm, prices of the subject merchandise in Korea remained flat and coincident from 1991 through 1995, well after the official lifting of price controls. No Korean steel company changed its prices or charged a price statistically different from its competitors after the formal lifting of price controls.

Petitioners argue that, once freed of government control, respondents would have been expected to alter pricing on the basis of market forces, especially in an environment of rapidly increasing demand and high capacity utilization. Because this did not happen, petitioners surmise that *de jure* price controls were replaced with *de facto* price controls. Petitioners state that the Department has used the lack of change in certain practices as evidence of the continuation of *de facto* government activity, notwithstanding the alleged termination of *de jure* government involvement. *See, e.g., Final Affirmative Countervailing Duty Determinations and Final Negative Determinations of Critical Circumstances: Certain Steel Products from Korea* (58 FR 37328, 37342–45—July 9, 1993), where the Department rejected respondents' claim that the Korean government was no longer engaged in credit allocation.

Petitioners find respondents' explanations for continued and coincident flat prices in the home market conflicting and, therefore, incredible. On the one hand, say petitioners, respondents claim that price stability was due to long-term market

strategy and a concern for their customers' ''well-being,'' but on the other hand, they claim that transaction prices vary due to adjustments in sales and payment terms. Petitioners contend that respondents' explanations for their domestic pricing behavior are ''incredible'' for several reasons.

First, POSCO has admitted that its home-market prices did not change in a context of fluctuating economic indicators, such as world prices, capacity utilization, exchange rates, and domestic inflation. Since International Monetary Fund statistics show that domestic consumer prices in Korea rose 27.2 percent between 1991 and 1995, petitioners argue that Korean steel prices, unchanging in nominal terms, actually decreased by nearly a third during that period, at a time when demand for steel products in Korea was extremely strong.

Second, in response to respondents' claim that their pricing behavior is normal and expected in an oligopolistic market situation, petitioners retort that typical oligopolistic behavior conspires to keep prices high, not low as is the case here. Moreover, note petitioners, in an open market even oligopolies must respond to international price pressures. Petitioners contend that what is at work here is an oligopoly dominated by a government-owned entity (POSCO) and dedicated to imposing government-mandated price disciplines on much smaller entities (Dongbu and Union).

Third, argue petitioners, not only are respondents' claims that they were able to compensate for the stability of list prices in the 1991–1995 period by altering their ''effective'' prices unsupported by evidence on the record, these claims actually provide further evidence that respondents are not free to alter domestic prices in response to market conditions. After initially denying the existence of discounts, petitioners say, respondents subsequently claimed that effective prices were in fact altered by their discount policies. Petitioners find these claims irrelevant, since what they have alleged all along is a government-imposed ceiling, not a floor, on domestic steel prices. In addition, record evidence shows that such discounts as were granted were minimal and had no discernible effect on the stability of reported transaction prices. If record evidence is to be believed, say petitioners, many of the respondents' claimed ''discounts'' are in fact credits for returns of merchandise, set sales terms which do not vary with market conditions, or discounts for cash payments, which are not true discounts since they are merely an acknowledgment that the customer, not the respondent, is bearing the cost of financing the sales transaction.

Petitioners also dismiss as incredible respondents' claims that differences in credit terms have also been used to vary effective prices. If respondents' previous claims that they maintain open payment systems in which customers are invoiced and make payments on a revolving rather than a sale-specific basis are correct, then the terms of payment of any particular sales transaction are irrelevant, because respondents are unable to link payments to specific sales. Petitioners also contend that the questionnaire responses and verification exhibits belie the respondents' claims that differences in credit terms were used to alter effective prices selectively. In fact, the record shows remarkably little variance in credit terms, in particular, in the number of days for which credit was extended. Petitioners argue that whatever differences in credit terms existed were minor and statistically insignificant, as evidenced by the limited variation in respondents' domestic net prices.

Finally, petitioners characterize Dongbu's claim at verification that differences in freight terms were also used to vary effective prices as ''new'' and unconvincing. Although Dongbu claimed it changed the freight absorption for a selected customer twice in two years, petitioners argue that Dongbu did not demonstrate that it was reacting to market conditions, or that transaction prices to that customer were actually affected.

According to petitioners, all of the foregoing reasons lead to the inescapable conclusion that stable and coincident home-market prices are a result of Korean government control of domestic steel prices. Therefore, since the Korean home market is not viable and collection of third-country sales data is not feasible at this late stage in the proceedings, petitioners urge the Department to resort to constructed value (''CV'') for purposes of determining NV. Petitioners contend that if the Department bases NV on CV, it must calculate CV in a manner consistent with a finding that the home market is not viable. Specifically, petitioners say it would be inappropriate for the Department to calculate the profit component of CV based on the actual profit realized on sales in Korea, because those transactions did not reflect true market prices. Because Japan is the Korean steelmakers' largest third-country market, and because the Department normally uses sales to the largest third-country market to calculate NV when the home market is not viable, ideally the Department should base the profit component of CV on the respondents' experience in that market. The record, however, does not contain complete data on the respondents' sales to Japan. Petitioners therefore urge the Department to rely on the facts available, within the meaning of section 776(c) of the Act, in determining the profit component of CV.

Petitioners suggest that the most comprehensive and product-specific facts available to the Department at this point are official Korean trade statistics showing export prices of subject merchandise to Japan. Petitioners submit that a CV profit figure could be calculated based on the difference between export prices, as reported in these official statistics, and the respondents' costs of production (''COP'').

Respondents retort that the Korean home market is in fact viable. To support this contention, they set forth two affirmative arguments and one negative argument. The affirmative arguments are that the government does not set home-market prices and that home-market prices are based on free market competition. The negative argument is that petitioners have provided no evidence that suggests that there are government price controls of subject merchandise.

To support their affirmative argument that the government does not set home-market prices, Dongbu and Union first argue that any government controls on prices of the subject merchandise ended long before the POR. They deny petitioners' allegation that they had themselves acknowledged that price controls existed until February 1994. In fact, they argue, their responses to the Department's viability questionnaire and their statements at the verifications demonstrate that the government policy of ''prior approval'' of prices (*i.e.*, price controls) ended in 1981, and that applicable ''post-price change'' reporting requirements for cold-rolled products were terminated in 1990 and for galvanized products in 1986. Such requirements, Dongbu and Union argue, never applied to colored products or any other subject merchandise. Furthermore, they argue that even these previously terminated reporting requirements did not involve ''control'' or influence over their private pricing decisions, but actually went no further than the reporting and monitoring of price data. Similarly, POSCO argues that the only subject merchandise for which it was required to report prices were for cold-rolled sheet and hot-dipped

galvanized (''GI'') coil, and that even the reporting requirement for these products was terminated in 1981.

Second, POSCO argues that there is ''substantial record proof'' to demonstrate that the government of Korea does not in fact control prices. POSCO cites in support the September 18, 1996, Memorandum from Steve Bezirganian and Robin Gray to the Files (''Korea sales verification report''). This report notes that the 1995–1996 Korean Government Economic Plans make no reference to any purported plans by the Korean government for steel prices. The verification report also discusses documentation from the Korean Ministry of Finance reviewing the history of price monitoring. That discussion, POSCO argues, indicates that there were no price controls on subject merchandise in place during the POR. POSCO argues that the Department's extensive verification of the issue must serve as the core of the Department's analysis of the issue.

Third, POSCO cites to the verification reports of Korean customers and of Hanbo Steel as evidence that the Korean government does not control steel prices. The Customer verification report, for instance, states, ''regarding government influences in the prices of steel products, company A stated it is not aware of any involvement by the government in prices set by domestic suppliers.'' Furthermore, according to the verification report, representatives from Hanbo Steel reported that, ''at one time they did report prices to the government for long products, but the prices were not subject to government approval.''

Fourth, POSCO cites to documentation written by the government of Korea and submitted to the record of this review as evidence that the government of Korea does not control prices. In submissions to USTR on June 23, 1995 and July 7, 1995, the Korean government stated that it had repealed all laws and regulations imposing any price reporting or monitoring requirements in the Korean market. More recently, the Korean Minister of Trade and Industry filed an official submission with USTR on October 22, 1996 which states that the government of Korea ''had no role or input in POSCO's pricing decisions,'' and that the government of Korea does not control prices for hot-rolled coil from mini-mills, or any other type of steel in the Korean market. According to POSCO, these statements alone, submitted in the context of the Section 301 consultation mechanism, should be the end of the matter.

Finally, POSCO cites an investment report concerning POSCO prepared by the Hannuri Salomon Securities Co., Ltd. According to POSCO, the Hannuri Salomon report conclusively states that ''the Korean government's direct control of domestic steel prices ended in March 1982. Thereafter, the government has not participated in POSCO's pricing decisions.''

To support their affirmative argument that home-market prices are based on free market competition, and are thus not subject to government control, all respondents first explain that their relatively stable home-market prices, which petitioners cite as a demonstration of government control, are actually a function of their long-term pricing strategies. Dongbu and Union explain that their strategy is to ensure long-term growth of their companies by maintaining a loyal and healthy domestic customer base and a consistently high volume of domestic sales. Similarly, POSCO states that its strategy is to maintain a stable, steady, and loyal customer base and high capacity utilization rates. Because of these pricing strategies, all three respondents state that they resist any major revisions to their price schedules.

Furthermore, all three respondents argue that, despite the stability of their home-market prices, there is free market competition in the Korean market, and that evidence of this competition is on the record of this review. To support this argument, respondents cite to their discounts, varying credit terms, and adjustments in freight terms. These variations in sales terms, they argue, are clear evidence of price competition. Therefore, based on the alleged evidence of price competition, Dongbu and Union ask, ''If, in fact, prices in the Korean market were repressed by the alleged government price controls, what incentive would there be for the Korean respondents to provide *any* discounts, much less [* * *], extended credit terms, and freight discounts?'' (Emphasis in original.) They argue that the existence of discounts and other concessions is compelling and dispositive evidence that prices in the Korean market are competitively set, and should be determinative of the issue.

In addition to seeking to establish that there is evidence of price competition on the record, respondents also seek to rebut petitioners' arguments purporting to show the contrary. First, respondents argue that petitioners are mistaken in stating that prices of the subject merchandise in Korea remained flat and coincident from 1991 through 1995. Dongbu and Union state that in fact they raised their domestic prices in March 1995 in response to market conditions; POSCO states that for the same reason (and because Dongbu and Union had raised their prices) it raised its domestic prices in April 1995. POSCO argues further that the Department verified through examination of internal POSCO documentation that POSCO raised its prices because of changing market conditions. POSCO theorizes that petitioners chose not to discuss this price increase because it contradicted their theories. Moreover, all respondents find it significant that there is no evidence on the record that the government of Korea was in any way involved in the price increase that occurred in March and April 1995, which was, they state, the first significant increase in list prices for the subject merchandise in four years.

Second, regarding petitioners' argument that their pricing policies are not consistent with oligopolistic behavior because their domestic prices are low, Dongbu and Union argue that the petitioners' argument ignores long-term trends, and that the Department verified that over the period 1991–1994 Dongbu and Union in fact maintained stable high domestic prices for subject merchandise relative to their export prices. Regarding petitioners' argument that what is at work here is an oligopoly dominated by a government-owned entity (POSCO) and dedicated to imposing government-mandated price disciplines on much smaller entities (Dongbu and Union), POSCO argues that government officials play no role in POSCO's pricing policies. It states that no government officials were on POSCO's board of directors, the government did not appoint the chairman of the board, and no government officials had access to POSCO's pricing data. POSCO, it argues, is managed and operated independently of the government. POSCO states too that the Department's verification report noted no discrepancies concerning any of these key issues.

Third, regarding petitioners' argument that the existence of discounts is irrelevant because the petitioners are alleging a government-imposed ceiling, and not floor, POSCO argues that if the government of Korea did control a ceiling on prices then, as profit maximizers, POSCO and other Korean respondents would bump right up against that price ceiling and would not discount off of it in order to meet competition and short-term market conditions. Regarding petitioners' argument that the effect of the discounts was minimal, Dongbu and Union argue that competition does not occur in the

aggregate, but in terms of individual customers (for whom discounts clearly do matter), and that the discounts clearly contributed to the statistical variation in the Korean market.

Fourth, regarding petitioners' argument that the respondents' credit terms are irrelevant because the respondents maintain an open payment system and are unable to link payments to specific sales, Dongbu and Union argue that because customers usually pay by promissory note, they can easily adjust the payment period by reducing or increasing the number of days for which they will accept the promissory note. Thus, they argue, while payment occurs on a revolving basis, the average credit period can be and is altered, as the Department verified. With respect to the same argument, POSCO argues that the fact that it did not track payment terms in its accounting records on a transaction-specific basis during the POR does not mean that POSCO did not alter those same credit terms during the period 1991–1995. Rather, it means only that POSCO cannot track those changes and credit terms on specific sales after the fact from its computerized database.

Fifth, regarding petitioners' argument that the effect of the varying credit terms is statistically insignificant, Dongbu and Union argue that petitioners' argument misses the point. They argue that these varying credit terms are only one of several pieces of an overall policy that, when used together, have an appreciable effect on the companies' ability to engage in significant price competition.

Sixth, regarding petitioners' argument that varying freight terms did not establish varying effective prices, Dongbu argues that petitioners again miss the point. They argue that freight equalization exists solely because there is competition in the market. Customer-specific ''discounts'' would not exist in a market where prices are fixed and established at repressed levels because the suppliers would have no incentive to incur any freight expense.

To support their negative arguments that petitioners have provided no evidence that suggests that there are government price controls of subject merchandise, respondents attack individually the arguments that petitioners set forth that purportedly substantiate that there are government price controls of the subject merchandise.

First, respondents argue that petitioners are incorrect in stating that on February 7, 1994 the government of Korea decontrolled prices. They argue that what happened on February 7, 1994 was that the price reporting requirements for hot-rolled coil (which they allege is non-subject merchandise) were eliminated. Dongbu and Union argue that the elimination of this reporting requirement was a non-event for producers of the subject merchandise, and that this explains why prices did not change as a result of the elimination of the reporting requirement. POSCO argues that the fact that prices remained level after the lifting of the reporting requirements actually confirms that those reporting requirements had no impact on POSCO's or the other Korean respondents' prices in the first place.

Second, respondents attack the reliability of petitioners' many ''independent third-party sources.'' Dongbu and Union argue that this ''evidence'' has been superseded by the Department's findings at verification. These findings include, they argue, the termination of the price-monitoring system. Similarly, POSCO argues that for the Department to ignore its own verification findings (which, they argue, demonstrate that much of the information petitioners submitted on this issue is incorrect) and to instead rely on third-party press accounts would totally negate the integrity and importance of the Department's own verification process. Furthermore, Dongbu and Union argue that the petitioners have focused exclusively on those statements in the ''third-party sources'' which support their interpretation, and ignored statements contained therein that would permit an alternative interpretation. As an example, they cite petitioners' use of the *BZW Report.* Petitioners use this report to support their contention that there is government control of pricing in Korea. However, Dongbu and Union point out, petitioners ignore the statement in the report that ''POSCO does not keep its domestic prices and local export prices lower than international prices any more * * * . Indeed, domestic and local export prices exceeded international export prices in late 1991 and had remained at higher levels until mid 1994.'' Thus, Dongbu and Union argue, the *BZW Report* does not support petitioners' central contention that the alleged price controls have kept domestic prices low.

Additionally, POSCO argues that the ''third-party sources'' are speculative, outdated, and largely irrelevant. It argues that the bulk of the sources consist merely of third-hand references to outdated materials concerning non-subject merchandise or, more commonly, only the Korean economy generally and not the steel industry at all. These reports, POSCO argues, do not constitute evidence, much less ''convincing evidence,'' that the government of Korea controls prices for subject merchandise in the Korean market.

Third, POSCO argues that petitioners' argument with respect to the KOSA 1995 yearbook is invalid. It argues that the Department's translator determined that there was no reference to price controls in the KOSA report. The Dongbu verification report, POSCO argues, states that the quotes from the KOSA report upon which the petitioners rely were mistranslated.

Fourth, POSCO argues that the Economic Planning Board's requests for cooperation in the price stabilization effort are not evidence of government control, but merely hortatory language equivalent to the standard exhortations that governments make in nearly all countries.

Fifth, respondents argue that the government of Korea's October 9, 1996 press release does not provide evidence of government price controls on subject merchandise. They point out that the press release concerned hot-rolled coil, not subject merchandise. POSCO further argues that the press release concerns only hot-rolled coil produced at its mini-mill, and not hot-rolled coil produced at its integrated facilities. In light of the fact that the hot-rolled coil produced at the mini-mill represents a miniscule amount of total hot-rolled coil production, POSCO argues, the government would surely have required a reduction in prices of hot-rolled coil produced at the integrated facilities if it actually intended to control prices. Moreover, POSCO argues that the press release did not even say that the government had any role in POSCO's pricing decision regarding the merchandise in question; it simply said that the pricing decision was a positive development. If the government considered POSCO's decision to be an ''official act,'' respondents argue, this only reflects the fact that all governments seek to take credit for positive events in which they were not involved. Finally, respondents argue that at the POSCO verification the Department examined various internal documents concerning POSCO's pricing decision, and that none of those documents indicate any government involvement in the decision.

Sixth, respondents argue that petitioners' arguments regarding Hanbo's *Offering Circular* are invalid. They point out that at the Hanbo verification Department officials interviewed and discussed the *Offering Circular* at length with Hanbo officials, and that they informed Department

officials that the statements in the *Offering Circular* were incorrect. Furthermore, respondents argue, the verification report does not discredit or undercut the validity of Hanbo's statements at the verification. Additionally, Dongbu and Union argue that the *Offering Circular* is irrelevant because Hanbo was not then and is not now a producer of the subject merchandise. Moreover, they argue that much more telling than the *Offering Circular* is information in the Hanbo verification report indicating that Hanbo's hot coil prices are based on competitive market conditions.

Seventh, POSCO argues that no weight should be given to the article in the Korea Herald according to which leading Korean steel makers, in a meeting with the Minister of Trade, Industry, and Energy requested the lowering of domestic hot-coil prices. It argues that at verification it presented to Department verifiers more current and more detailed documentation which demonstrates that newspaper accounts of that meeting relied on by petitioners were misplaced and inaccurate.

Eighth, POSCO argues that petitioners' speculations as to what possible indirect mechanisms could be used by the Korean government to possibly control prices do not constitute evidence of price control. In fact, POSCO argues, petitioners themselves acknowledge that they have not identified any mechanisms which are in fact used to control prices. Regarding petitioners' use of verification exhibit 85–E, POSCO states that petitioners have conveniently ignored the plain language of the Department's verification report, which states that, ''in reviewing the plans we found nothing that specifically referred to plans by the Korean government for steel prices.''

Finally, respondents argue that the evidentiary burden of proof placed upon the petitioners is extremely high. They must show, respondents argue, by ''convincing evidence'' that the home market is not viable because the government of Korea controlled the prices of subject merchandise in the Korean market ''to such an extent that home-market prices cannot be considered to be competitively set.'' SAA at 152. Respondents argue that, taken together, the ''evidence'' petitioners have produced does not come close to meeting that burden. Dongbu and Union argue that even if there were a ''price ceiling'' in the home market, the existence of that ceiling does not nearly meet the standard in the SAA for government control of prices to the extent that prices cannot be considered to be competitively set. Because petitioners have failed to meet their burden, respondents argue, their contention should be rejected.

DOC Position. We disagree with petitioners' contention that the particular market situation in the exporting country, Korea, does not permit a proper comparison with EP and CEP. Although petitioners have provided evidence indicative of a not insubstantial level of government interest, and even involvement, in the day-to-day operations of the Korean steel industry, including domestic price levels, the record nevertheless does not show that the Korean government controls domestic steel prices to such an extent that home-market prices cannot be considered to be competitively set.

Although petitioners have alleged that controls existed over domestic steel prices in Korea until February 7, 1994, information collected at verification shows that the Korean government's policy of ''prior approval'' over domestic steel prices ended in 1981. *See, e.g.,* Union sales verification exhibits 88 and 89. These exhibits also show that, after 1981, Union's price-reporting requirements were terminated for galvanized (*i.e,* corrosion-resistant) products in 1986 and for cold-rolled products in 1990. POSCO's general reporting requirements for cold-rolled products were eliminated in 1981, and Dongbu's reporting requirements for these products were eliminated in April 1993. Because home-market steel prices were flat both before and after the reporting requirements were terminated, we cannot conclude that those requirements had any impact on domestic prices. Furthermore, statements made in the supplemental verification reports on the issue of home-market viability by Hanbo and two other POSCO customers support the conclusion that government price controls do not exist. Additionally, the *Hannuri Salomon* report provided by POSCO at verification and cited by petitioners as providing evidence of Korean government control over domestic steel prices states that the Korean government's direct control of domestic steel prices ended in March 1982, and that since that date the government has not participated in POSCO's pricing decisions. *See* POSCO home-market sales verification exhibit 85E at 21.

The record also contains a number of official Korean government documents which deny the existence of government control over domestic steel prices during the POR. The sales verification report for POSCO notes that the 1995–1996 Korean Government Economic Plans make no reference to any plans by the Korean government with respect to steel prices. Documentation from the Korean Ministry of Finance indicated that there were no price controls on the subject merchandise during the POR. *See* POSCO sales verification report at 21. The Korean government, in formal submissions made to USTR on June 23, 1995, and to the Section 301 committee on July 7, 1995, stated that all laws and regulations requiring any price reporting or monitoring of domestic steel prices had been repealed in stages between 1981 and February 1994, *i.e.,* before the POR. More recently, on October 22, 1996, the Korean Ministry of Trade and Industry officially notified the USTR that the Korean government had no role or input in POSCO's pricing decisions, and that the Korean government does not control the prices of any type of steel in the Korean market.

With regard to the press articles, academic treatises, and reports from financial institutions submitted by petitioners, we believe that most of that documentation, while perhaps accurate at the time it was written, has become somewhat outdated. Further, petitioners omitted to cite passage in the *BZW Report* stating that ''POSCO does not keep its domestic prices and local export prices lower than international prices any more * * *. Indeed, domestic and local export prices exceeded international export prices in late 1991 and had remained at higher levels until mid 1994.''

With respect to the issue of whether the KOSA report confirms the existence of government ''price controls,'' as alleged by petitioners, our translator confirmed that this report mentioned no such controls. We stand by the *bona fides* and professional qualifications of its translators, who are hired through the auspices, and with the recommendation, of the United Stares Embassy in Korea. *See* Dongbu sales verification report at 52.

While petitioners have cited an article in the *Korea Herald* according to which leading Korean steelmakers ''requested government intervention in price adjustments,'' more current and detailed documentation submitted at verification casts doubt on the verisimilitude of this account. In particular, the industry periodical *Metal Bulletin,* published in the United Kingdom, noted on May 30, 1996 that the Korean Minister of Trade, Industry, and Energy ''maintained that the Korean government has no say in the pricing policies of private companies * * *. The Government has no right to decide prices.''

With respect to petitioners' allegation that the press release of October 9, 1996

by the Korean Ministry of Finance and Economy demonstrates government control over domestic steel prices, the Department agrees with POSCO that (1) the press release does not explicitly or even implicitly refer to government involvement in POSCO's price increase, but only reports a price increase and comments on it as a positive development; (2) the press release concerns not the subject merchandise, but hot-rolled coil (''HRC'), its major feedstock; and (3) the price increase in the press release in question concerns only HRC produced at POSCO's mini-mill, and not HRC produced at its integrated steel mills, which represents the vast majority of POSCO's HRC production.

Petitioners have claimed that a sentence in a February 1994 notice by the Economic Planning Board (''EPB'') terminating price reporting requirements, in which the EPB hopes that POSCO will cooperate in efforts to foster the country's general economic development and price stabilization, is evidence of continued government price controls. At verification we examined POSCO's submissions to the EPB and found no evidence of price controls during the POR, or evidence of price monitoring after February 1994. Governments, including our own, routinely exhort businesses to cooperate with their macroeconomic and public policy goals, which often include fighting inflation. We agree with respondents that hortatory language of this kind does not constitute evidence of formal price controls.

Petitioners have argued that Hanbo's *Offering Circular* states that the ex-factory prices of Hanbo's steel products ''are, in practice, determined by the Korean government, which approves manufacturers'' filed prices having regard to average costs in the Korean steel industry, but without reference to the prices of products in international markets.'' Hanbo, however, did not then, and does not now, manufacture the subject merchandise. Petitioners also ignore information in the Hanbo supplemental verification report that Hanbo's domestic HRC prices were competitively set. Thus, on the issue of government control, the record is somewhat mixed. Further, even if we assume that there is some level of government control, we must have substantial evidence that government control is so extensive that prices are not competitively set. In the absence of such evidence, we cannot find the Korean home market not to be viable.

By contrast, there is positive evidence on the record indicating that domestic Korean steel prices were competitively set during the POR. First, base (or list) prices were raised during the POR, in March 1995 by Dongbu and Union and in April 1995 by POSCO. During verification, we conducted a thorough and exhaustive examination of POSCO's internal records, including correspondence files, and ascertained from this review that POSCO had raised its list prices on account of changing market conditions; there was no evidence suggesting that there was any government interference or involvement in this price change. Second, record evidence shows that these list prices were subject to discounts and adjustments for credit and freight, which caused the effective price charged to customers to vary from customer to customer. Although petitioners have claimed that these discounts are statistically insignificant, we agree with respondents that discounts, credit adjustments, and freight equalization taken together appreciably affect the companies' ability to engage in significant price competition. Further, the fact that steel prices remained flat throughout the POR is not inconsistent with normal, expected price trends in an oligopolistic market such as the Korean steel market. Therefore, evidence of flat prices *per se* is insufficient to establish that prices are not competitively set.

Having reviewed and weighed the facts on the record, we find that, while there is some evidence of a substantial level of Korean government involvement in domestic steel pricing, there is not ''convincing evidence'' that the Korean government controlled domestic steel prices ''to such an extent that home market prices cannot be considered to be competitively set.'' SAA at 152. We determine, therefore, that the Korean home market is viable for purposes of the instant proceedings.

Comment 2. Petitioners allege that Dongbu and Union are affiliated with POSCO based on Dongbu and Union's dependence on POSCO as their primary supplier of HRC, the primary input for the subject merchandise. Petitioners also allege that Union and POSCO are affiliated based on certain corporate and sales relationships between the two companies.

Petitioners contest the Department's preliminary determination that Dongbu and Union are not affiliated with POSCO and suggest that the Department acted arbitrarily and unreasonably by avoiding the issue rather than addressing its merits. The Department, petitioners argue, interpreted much too narrowly the statutory term ''control.'' Petitioners contend that the Department, instead of focusing, as the statute requires, on whether POSCO was in a position to exercise restraint or direction over the activities of Dongbu and Union, looked instead for concrete evidence of actual dominance of POSCO over Dongbu and Union. In doing so, say petitioners, the Department effectively nullified the new definition of affiliated parties by ''administrative fiat.'' Petitioners also question the Department's finding in the preliminary results that the record at that point in time provided an inadequate basis to make an affirmative determination of affiliation and that it was too late in these proceedings to solicit additional factual information. Not only, petitioners claim, did they make their allegation of affiliation at an early stage in these proceedings (shortly after the initial questionnaire responses were submitted), but the Department explored this issue in great detail in supplemental questionnaires and during verification. Even more troubling, according to petitioners, is the fact that the Department, at the same time that it indicated it was too late to obtain additional information on affiliation, afforded the parties an opportunity to provide additional factual information concerning the viability of the Korean market. This, petitioners submit, demonstrates that the Department's preliminary finding on affiliation was an arbitrary ''ruse.''

If, however, the Department continues to adopt its exceedingly narrow interpretation of the statute's affiliation provision in the final review results, petitioners contend the Department must conclude that Pohang Coated Steel Co., Ltd. (''POCOS'') is unaffiliated with company AKO. In its response to Section A of the Department's antidumping questionnaire, POSCO initially indicated that it was affiliated with AKO and AKO's U.S. affiliate, company BUS. (AKO is located in Korea, and BUS is located in the United States; their identities are proprietary information. For an explanation of these acronyms, please refer to the memorandum from Alain Letort to the Files, dated April 2, 1997.) POSCO subsequently retracted and clarified this statement by pointing out it owns 50 percent of the equity in POCOS, 49.99 percent being owned by Dongkuk Steel Mill (''DSM'') and the remaining 0.01 percent by DSM's president personally. DSM is, in turn, affiliated with AKO and BUS through stock ownership. Therefore, using the Department's definition of affiliated parties, POSCO stated that POCOS was indirectly affiliated with AKO and BUS through stock ownership. Contesting POSCO's

assertions, petitioners assert that, since POCOS holds no equity ownership in DSM and DSM has do direct equity holding in AKO, POCOS cannot be deemed to hold any equity ownership in AKO or BUS.

Petitioners cite Union, which asserted on the record that under Korean law, POSCO's 50 percent interest in POCOS puts it in control of the latter. POCOS is included in POSCO's consolidated financial statements, not DSM's. POSCO, not DSM, appoints the president of POCOS. Petitioners claim that POSCO never challenged Union's assertion. Besides, petitioners point out, POSCO and POCOS are collapsed for purposes of these proceedings, since the Department determined that the relationship between the two companies is so intimate as to present the strong possibility of price and/or production manipulation. While petitioners state their firm belief that DSM also ''controls'' POCOS as that term is defined in the statute, they also affirm that, if the Department retains its unreasonably narrow interpretation of that term, it should conclude that it is impossible for two entities (POSCO and DSM) simultaneously and separately to exercise actual ''control,'' *i.e.*, dominance, over POCOS. The Department should also rule that POCOS neither exercises actual ''control'' (*i.e.*, dominance) over AKO nor is affiliated with it, petitioners urge.

If the Department so finds, petitioners contend, it must base POCOS' U.S. price on the price at which it sells the subject merchandise to AKO. This is because POCOS' U.S. sales are made up of several ''back-to-back'' transactions: POCOS sells the merchandise to AKO, who resells it to BUS, who in turn sells the merchandise to the U.S. customer. According to petitioners, where a manufacturer makes export sales through an unaffiliated trading company, the Department's practice is to determine which transactions are U.S. sales for reporting purposes on the basis of whether the manufacturer knows the ultimate destination of the merchandise. If the manufacturer does *not* know the ultimate destination of the merchandise, the Department determines U.S. price on the basis of the unaffiliated trading company's sale to the United States. If the manufacturer *does* know the destination, then the manufacturer's sale to the unaffiliated trading company becomes the basis for the U.S. price.

Petitioners assert that record evidence shows POCOS is aware of the ultimate destination of the merchandise, since POCOS' order entry sheet shows the name and address of the U.S. customer at the time of the sale from POCOS to AKO. Consequently, petitioners say, if the Department rules that POCOS is unaffiliated with AKO, it must determine U.S. price on the basis of POCOS' selling price to AKO.

With regard to the issue of whether or not Dongbu and Union are affiliated with POSCO because of their supply relationships, petitioners contend that the critical point is whether the supplier-buyer relationship is such that the supplier is *in a position* to exercise restraint or direction over the other. Petitioners claim that, in its preliminary review results, the Department used a definition of ''control'' that is closer to the common meaning of that term (*i.e.*, actual dominance) than to the statutory definition of the term. In essence, petitioners affirm, the Department has adopted the interpretation, advocated by Dongbu and Union and contrary to the statute, that one party must control the commercial operations of the other.

According to petitioners, the following factors place POSCO in a position to exercise restraint or direction over Dongbu and Union and make them ''reliant'' upon POSCO: (1) The sheer weight of POSCO—in comparison with other sources of supply—as a supplier to Dongbu and Union; (2) the percentage of Dongbu's and Union's cost of manufacturing (''COM'') for which POSCO-sourced HRC accounts; and (3) the absence, due to comparatively higher prices of imported HRC, of realistic alternate sources of supply for Dongbu and Union. Clearly, say petitioners, if POSCO were unilaterally to curtail its shipments to Dongbu and Union, or increase its prices, it would disrupt their production schedules and commercial relationships and create hardship for Dongbu and Union. Indeed, petitioners claim, under generally accepted accounting principles (''GAAP'') in the United States, financial statement disclosure of a company's concentration with a particular supplier is required because it is assumed to create the risk of ''severe impact * * * from changes in the availability to the entity of a resource.'' *See* American Institute of Certified Public Accountants (''AICPA''), *Statement of Position 94–6, ''Disclosure of Certain Significant Risks and Uncertainties''* (December 30, 1994) (''AICPA 94–6'') at 8. Petitioners dismiss Union's contention that its purchases from POSCO would not meet the disclosure requirements of AICPA 94–6 because it purchases a standard grade of raw material that is readily available from a number of different suppliers, meaning that its purchases fall into the category described in AICPA's ''Illustrative Disclosure B'' (''ID–B''). Petitioners retort that Union's reference to ID–B is completely inapposite, because it discusses a commodity product (wheat), which is entirely fungible between various sources of supply, while HRC, Union's feedstock, has different specifications, grades, metallurgical and chemical contents, and properties; vendors of HRC must be located and qualified. Indeed, petitioners assert, respondents vigorously argued before the U.S. International Trade Commission (''ITC'') that steel products were not fungible or substitutable.

According to petitioners, the verification exhibits directly confirm the extent of POSCO's involvement with Dongbu and Union. The Department, they claim, is highly unlikely to encounter circumstances more demonstrative of ''control'' via a supply relationship than the present situation.

Petitioners characterize respondents' claim that POSCO is a strong competitor with Dongbu and Union in the same downstream market for the subject merchandise as ''blatant exaggeration.'' Record evidence, according to petitioners, suggests otherwise: one of the Department's two supplemental verification reports on home-market viability indicates that Dongbu and Union compete with POSCO for certain product applications only, since in Korea only POSCO manufactures the full spectrum of cold-rolled and corrosion-resistant carbon steel flat products.

Petitioners contradict respondents' contention that they have ''complete and unfettered access'' to alternative sources of supply. According to petitioners, Dongbu and Union statements on the record that they continued to buy HRC from POSCO even when cheaper alternative sources of supply were available ''because of the reliability of supply, the convenience and familiarity, and other similar factors'' further demonstrates their reliance on POSCO.

Petitioners assert further that the relative proportion of Dongbu's and Union's HRC purchases from POSCO and from sources other than POSCO is more proof of their ''reliance'' upon POSCO.

Petitioners also argue that Dongbu's and Union's contentions that there is no evidence of long-term supply contracts, joint ventures, or other agreements between them and POSCO, and that they have no direct or indirect involvement with POSCO's production, sales or distribution activities beyond the purchase of HRC, are irrelevant and immaterial, since neither the statute nor

the SAA requires the existence of the same in order to establish affiliation on the basis of a supply relationship. Moreover, at least with respect to Union, not only does there exist a joint venture (POCOS) between POSCO and Union's controlling company (DSM), but Union and POCOS—POSCO's subsidiary—share common sales channels.

None of the above ''facts'' cited by the respondents, according to petitioners, alters the fact that POSCO was Dongbu's and Union's dominant supplier of HRC during the POR and that imported HRC was demonstrably dearer than the POSCO product during most of the POR.

Petitioners argue that the case cited by Dongbu and Union in support of their contention that the Department rejected a claim for affiliation on the basis of a close supply relationship—*Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Melamine Institutional Dinnerware Products from Indonesia* (61 FR 43333, 43335—August 22, 1996) (''*Melamine*'')—is inapposite. In addition to the fact that the Department's position in that case is only preliminary, the supply relationship at issue in *Melamine* is easily distinguishable from, and not even remotely akin to, the facts at issue in the instant case. In *Melamine*, the Indonesian producer channeled 100 percent of its U.S. sales through a single, unrelated U.S. importer. The U.S. importer was just as free to purchase from other producers as the Indonesian producer was to find another U.S. importer. In the instant case, petitioners say, clearly Dongbu and Union had no realistic alternate sources of supply due to the higher prices of imported HRC and the absence of other sources within Korea.

Responding to Dongbu's and Union's assertions that, through the end of 1994, imported HRC was cheaper, rather than dearer, if only their highest-volume grade of HRC (*i.e.*, SAE 1008) is taken into consideration, petitioners claim that the aggregate figures in Dongbu's cost verification exhibit 20 and Union's cost verification exhibit 24 are more reliable because they are more comprehensive. Respondents' comparison of domestic and imported prices for grade SAE–1008 HRC is misleading and inaccurate, petitioners argue, because (1) it focuses on only one product out of many; (2) it compares home-market *base* prices to import prices, ignoring the *actual* costs associated with coil purchases; (3) it compares delivered domestic prices to import purchases made on a f.o.b. basis, significantly understating the import price (by the amount of ocean freight, brokerage and handling fees, import duties, etc.); and (4) it is unclear whether the quarterly prices cited by respondents are weight-averaged, as they ought to be.

Petitioners dismiss respondents' argument that historical trends show that, on average, during the 1991–1995 period, import prices for HRC were lower than POSCO's, and that disregarding historical trends would allow temporary market fluctuations to be a dispositive factor in any affiliation decision by the Department, contrary to the Department's proposed regulations. *See Notice of Proposed Rulemaking and Request for Public Comment*, 61 FR 7308, 7310 (February 27, 1996) (''*Proposed Regulations*''). Not only is historical data distortive because it is based on a comparison of base rather actual prices, petitioners contend, but the fact that import prices for HRC were lower in periods preceding the POR only demonstrates that Dongbu and Union did not turn to alternate suppliers when imports were cheaper. Petitioners contend that Dongbu's and Union's inability and/or reluctance to turn to alternative sources of supply when POSCO's HRC prices were higher than imported material signifies that the dependence and reliance of those companies on POSCO as a supplier is not driven by ''temporary market power, created by variations in supply and demand conditions * * *'' *Ibid*. at 7310. That Dongbu and Union did not turn to alternative sources means, according to petitioners, that their dependence on POSCO as a supplier is substantial and long-term, and that the supply relationship between POSCO on the one hand and Dongbu and Union on the other is significant and not easily replaced.'' *Ibid*. at 7310.

In addition to their affiliation as a result of their close supply relationship, petitioners claim that Union and POSCO are affiliated as a result of other corporate and sales relationships. Petitioners argue that the Department's preliminary finding that they failed to present ''any evidence of stock ownership or control'' between POSCO and Union or POSCO and DSM, Union's controlling company, is incorrect. The correct standard, according to petitioners, is not whether or not actual control or dominance exists, but rather whether one party is in a position to exercise restraint or direction over another party in order to ''control'' that party.

It is petitioners' contention that POSCO is in just that position vis-a-vis Union in view of the fact that:

- POSCO holds a 50 percent equity interest in POCOS;
- DSM owns a 49.99 percent equity interest in POCOS;
- The remaining 0.01 percent of POCOS'' equity is held by the son-in-law of Mr. Sang Tae Chang, chairman of the DSM group;
- The Department has determined DSM to have, through the Chang family, a controlling interest in Union;
- The Department has determined the relationship between Union and DSM to be so intimate that it collapsed Union with Dongkuk Industries, Ltd. (''DKI''), another subsidiary of the Chang family and DSM.

According to petitioners, the statute defines affiliated parties as ''[t]wo or more persons directly or indirectly controlling * * * any person'' and ''[a]ny person who controls any other person and such other person.'' Therefore, say petitioners, POSCO and DSM clearly constitute affiliated parties inasmuch as they jointly ''control'' POCOS as a result of their joint venture. Petitioners contend further that, because DSM and Union are essentially one entity since Union and DKI were collapsed by virtue of their relationship with DSM, POSCO, through its joint venture with DSM, is clearly in a position to exercise restraint or direction over Union's activities.

Petitioners also argue that, because DSM and its president's son-in-law jointly hold 50 percent interest in POCOS (*i.e.*, as much as POSCO), DSM is clearly in a position to exercise restraint or direction over POCOS. Since Union and POCOS are ''[t]wo or more persons directly or indirectly * * * controlled by * * * any person'' (in this case, DSM), POCOS and Union are affiliated parties under the terms of the statute. If POCOS is affiliated with Union, petitioners contend, the realities of the marketplace dictate that POSCO must also be affiliated with Union. Furthermore, they say, because POSCO has acknowledged that POSCO, POCOS, and Pohang Steel Industries Co., Ltd. (''PSI'') are a ''single operating entity'' and have been collapsed by the Department, any company affiliated with POCOS (*e.g.*, Union) must also be considered to be affiliated with POSCO. Petitioners contend that the implications of collapsing POSCO and POCOS on the issue of POSCO's affiliation with Union in no way alters the fact that POSCO and POCOS are affiliated parties; therefore, the statutory tests that follow therefrom, such as the ''major-input'' rule, continue to apply. Petitioners also contend that collapsing only bears on the level of affiliation and the unusual intimacy of the relationship

between the parties. Petitioners allege that by ignoring the unique nature of the relationship between POSCO and POCOS and rigidly fixating on the corporate forms of the companies, the Department has ignored commercial reality.

Union, according to petitioners, has not provided any compelling evidence or argument to rebut the information on the record demonstrating affiliation between Union and POSCO through POCOS and DSM, and merely ''pointed out'' at verification that POCOS is not affiliated with Union. The fact that POSCO is in a position to exercise ''control'' over POCOS, petitioners say, does not necessarily entail that DSM, with a 50 percent direct and indirect interest in POCOS (through the son-in-law of DSM's president), is not also in a position to do so. Petitioners are not advocating that Union is in a position to control POCOS; rather, they are asserting that Union and POCOS are affiliated because they are in the common control of DSM. Petitioners agree that the mere affiliation of a party with another does not necessarily entail that party's affiliation with all parties affiliated with its affiliate. In this case, however, petitioners point out that POSCO is not merely affiliated with POCOS—its relationship with POCOS is so intimate that it is collapsed with POCOS and both companies are treated as a single entity by the Department.

In addition to the corporate relationships between POSCO and Union, petitioners allege that POSCO controls Union through shared U.S. sales channels. Petitioners point out that:

- BUS is the importer of record for Union in the United States, and AKO purchases subject merchandise from Union in Korea; and
- All of POCOS's (an entity collapsed with POSCO) U.S. sales are made through AKO and BUS.

Petitioners allege that AKO and BUS provide a conduit for sharing pricing and other sensitive information, which could be used to manipulate transactions and allocate U.S. sales for the purpose of reducing dumping margins. Petitioners aver that the fact that it is POCOS and not POSCO that shares sales channels with Union does not undermine POSCO's ability to exercise restraint or direction over Union, because POSCO has control over POCOS and they are collapsed. Petitioners contend that both POSCO and DSM have an incentive to minimize POCOS' dumping liability since POCOS' financial statements are fully consolidated with POSCO's and DSM is BUS's major shareholder. On this basis of shared sales channels alone, petitioners argue, the Department should conclude that POSCO and Union are affiliated.

In its preliminary results, the Department, according to petitioners, concluded that Union and POSCO are unaffiliated by considering separately each of the grounds presented by petitioners. While petitioners believe that each basis for affiliation they have argued demonstrates that POSCO and Union are affiliated, neither the statute nor the SAA, they claim, require that the Department consider each aspect of the relationship between Union and POSCO independently. When all of the indicia—the supply relationship between POSCO and Union, the joint venture relationship (*i.e.*, POCOS) between POSCO and DSM, the corporate relationships between Union and POSCO through POCOS and DSM, the shared U.S. sales channels—are considered jointly, petitioners believe the Department must find that POSCO is in a position to exercise restraint or direction over Union and therefore ''controls'' Union within the meaning of the statute.

If the Department determines, as petitioners say it ought to, that POSCO is affiliated with Dongbu and Union, in accordance with the principle, set forth in section 773(f)(2) of the Act, that transactions between affiliated parties must ''fairly reflect the amount usually reflected in sales * * * in the market'', and that the price between unaffiliated parties is the normal benchmark for market value, the Department must compare the value of HRC purchased by Dongbu and Union from POSCO with the value of HRC purchased from unaffiliated suppliers. *See* 19 U.S.C. 1677b(f)(2). Such a comparison, in petitioners' view, clearly indicates that Dongbu and Union do not purchase HRC from POSCO at prices that can be deemed ''arm's-length.'' Verification exhibits on the record show, according to petitioners, that HRC purchased by Dongbu and Union from unaffiliated parties are substantially dearer than that purchased from POSCO. Because the statute requires that input prices must reflect fair market value, it is petitioners' view that the Department, in calculating Dongbu's and Union's COM, must adjust upward the value of the HRC Dongbu and Union purchased from POSCO to reflect the value of HRC purchased from unaffiliated suppliers.

Respondents deny that either Dongbu or Union are affiliated with POSCO. POSCO argues that petitioners' arguments merely repeat arguments contained in their earlier submissions. Therefore, it argues, the Department's September 6, 1996 memorandum to the file in which it addressed the issue and determined that neither Dongbu nor Union were related to POSCO, must stand. Dongbu and Union argue that the conclusion contained in the September 6, 1996 memorandum was not, as petitioners allege, arbitrary or unreasonable, but was instead the only conclusion supported by evidence and the law.

In addition to citing the Department's prior determination on the issue, respondents set forth their own arguments which, they believe, demonstrate that the arguments petitioners set forth in their case brief do not support the conclusion that Dongbu and Union are affiliated with POSCO.

First, POSCO argues as a preliminary matter that the petitioners are in error in charging that the Department applied the wrong standard in the analysis reflected in the September 6, 1996 memorandum. It argues that the standard the petitioners want the Department to apply is at odds with the plain wording of the SAA. The petitioners, POSCO argues, want the Department to read the standard in the SAA to find only that two companies *might* be ''in a position'' to become reliant upon the other through a buyer or supplier relationship. POSCO argues that the SAA requires the Department to examine first if, through a buyer or supplier relationship, ''the supplier or buyer *becomes* reliant upon the other'' (emphasis added). Thus, POSCO argues, only if the Department makes the initial finding that Dongbu and Union are reliant upon POSCO could the Department conclude that the parties could be in a position to exercise restraint or direction over the other. However, POSCO argues, the record evidence here, as demonstrated by the Department's September 6, 1996 memorandum, does not demonstrate reliance.

Second, respondents argue that both Dongbu and Union purchase their hot-rolled products from numerous sources, thus demonstrating that they are not reliant upon POSCO. Dongbu and Union state that they have ''complete and unfettered'' access to numerous alternative supplies of hot-rolled coil. Further, POSCO argues that the preamble to the Proposed Regulation's definition of ''affiliated parties'' confirms that the Department must find significant and actual indicia of control. The preamble states that ''[b]usiness and economic reality suggest that these relationships must be significant and not easily replaced.'' See *Proposed Regulations* at 7310. Dongbu's and

Union's purchases from POSCO, POSCO argues, do not meet this standard.

Moreover, POSCO argues that petitioners' argument that Dongbu and Union must have access to essentially identically-priced imports in order not to be reliant on POSCO is incorrect. It argues that the Department's analysis here must focus on whether POSCO as a supplier can ''control'' Dongbu's and Union's activities. The fact that Dongbu and Union can and do purchase significant quantities of imported hot-rolled coil, POSCO argues, should end the analysis. Comparable pricing, POSCO argues, is irrelevant.

Furthermore, Dongbu and Union argue that the record does not support petitioners' claim that imports represent a prohibitively more expensive alternative to hot-rolled coil purchased from POSCO. They point out that the figures in Dongbu's cost verification exhibit 20 and Union's cost verification exhibit 24 (upon which petitioners rely to establish their argument) are aggregate purchase volumes and values, and therefore do not account for product mix, differences in specifications, grades, extras, and other similar factors. Furthermore, Dongbu and Union argue that exhibit 96 of Dongbu's home-market sales verification report and exhibit 99 of Union's sales verification report show that import prices were lower than POSCO's prices for hot-rolled steel in 15 out of 23 quarters from 1991 through the third quarter of 1996. Moreover, Dongbu and Union argue, price is only one criterion in making purchasing decisions. Other criteria include quality of the steel, long-standing relationships, lead-times, and technical support. If comparative purchase factors frequently have favored POSCO, the fact remains that there are literally dozens of alternative sources for the same material located outside of Korea.

Third, respondents argue that petitioners are in error in their allegations regarding the prices at which POSCO sells to Dongbu and Union. Dongbu and Union argue that there is no evidence on the record that POSCO charges Dongbu and Union any more or less for its hot-rolled coil than it charges other domestic customers. POSCO argues that petitioners are incorrect in stating that it sold to Dongbu and Union at less than the cost of production. It argues that the figures upon which petitioners relied in making this allegation are not indicative of the costs for the specific types of coil sold to Dongbu and Union. When the actual costs are used, POSCO argues, it becomes clear that its sales to Dongbu and Union were above cost. POSCO also notes that petitioners' calculation included general and administrative expenses (''G&A'') as revised by the Department, which POSCO believes to be an error.

Fourth, POSCO and Union argue that the Department's precedent confirms that the parties are not affiliated. As support for this argument, POSCO cites *Melamine*, in which the Department concluded that no buyer-supplier relationship existed so as to constitute affiliation even though the supplier made 100 percent of its U.S. sales through a sole U.S. importer. The Department, POSCO states, considered the following factors: (1) There was no corporate relationship between the two companies; (2) the buyer was free to purchase, and did purchase, from other suppliers; and (3) the supplier was free to sell to other buyers. POSCO argues that these three factors are all satisfied here. It also argues that the petitioners' attempt to distinguish this case (based on whether subject merchandise or an input was being bought) is irrelevant to the reliance issue facing the Department, and has no basis in either the SAA or the Department's precedent.

Furthermore, POSCO and Union argue that *Melamine* demonstrates that it is not enough to merely point out, as petitioners have, that a supplier relationship exists. For the parties to be considered affiliated, they argue, the evidence must show that the relationship is of a kind that can realistically be characterized as involving ''control'' of one party over the commercial operations of another.

With respect to the issue of whether Union and POSCO are affiliated through indirect stock ownership, respondents argue that petitioners' demonstration that Union is related to POSCO based on ''indirect corporate relationships'' is fallacious. POSCO bases this argument on two factors. First, there is no stock ownership between POSCO and DSM, or between POSCO and Union. They point out that the Department's September 6, 1996 memorandum made mention of this very fact. Second, POSCO and Union, as well as POSCO and DSM, are completely independent entities. POSCO operates independently from both DSM and Union. There is thus, POSCO argues, no ''control'' of any kind between POSCO and DSM, or between POSCO and Union.

Furthermore, Union argues that the petitioners, in referencing the affiliated persons definition, have incorrectly claimed that there is a specific statutory basis for finding POSCO and Union to be affiliated. Section 771(33)(E) of the Act states that an affiliated person is ''[a]ny person directly or indirectly owning, controlling, or holding with power to vote 5 percent or more of the outstanding voting stock or shares of any organization and such organization.'' It is uncontradicted, Union argues, that neither POSCO nor Union, directly or indirectly, own or control five percent or more of any of the other party's securities. Thus, they argue, the petitioners' claim under this provision fails. The second provision that the petitioners' have referenced, subsection (F), reads that an affiliated party is ''[t]wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person.'' According to Union, Union and POSCO do not directly or indirectly control, are not controlled by, and are not under common control with any party. The third provision that the petitioners have referenced, subsection (G), states that an affiliated party is ''[a]ny person who controls any other person and such other person.'' Union argues that nothing in the record indicates that either Union or POSCO is in a position to control, either legally or operationally, the other party. In fact, it shows the opposite. It shows, for instance, that POSCO and Union strongly compete in the sale of subject merchandise in both the home and U.S. markets.

Finally, POSCO argues that the Department should reject petitioners' argument that if the Department adopts a narrow reading of the statute's affiliation provision it should also determine that POCOS is not affiliated with AKO and BUS. It argues that under the statute POCOS and AKO/BUS are clearly affiliated through indirect stock ownership with DSM. It first explains that POCOS is jointly owned by POSCO and DSM, with POSCO holding a 50 percent ownership interest and DSM owning 49.99 percent. Under section 771(33)(F) of the Act, affiliated parties include ''[t]wo or more persons directly or indirectly controlled by * * * any person.'' Under this definition POCOS and AKO/BUS are clearly affiliated, POSCO argues. Neither the Department's precedent nor the plain language of the statute requires that DSM own more than 50 percent of POCOS or be the only party in a position to control POCOS for the statutory definition of affiliated parties to apply. Rather, POSCO argues, the statute requires only that DSM exercise ''control'' over POCOS. The fact that DSM can ''control'' POCOS, POSCO argues, is supported by the fact that a separate statutory definition of affiliation (in section 771(33)(E) of the Act) provides that two parties are

affiliated where one party holds a five percent interest in the other. It argues that the fact that in a parallel provision of the statute a mere 5 percent ownership interest can constitute control confirms that an ownership interest of 50 percent can constitute ''control'' over two parties under subsection (G). Furthermore, POSCO points out that the Department, in current countervailing duty cases under the new law, explicitly states in its questionnaire that if party A holds at least a twenty percent interest in parties B and C, then parties B and C are deemed affiliated.

Moreover, POSCO argues that apart from the plain language of the statute and consistent Department practice, petitioners themselves have acknowledged that the fact that POCOS is collapsed with POSCO for dumping margin calculations purposes does not mean that DSM also cannot exercise sufficient control over POCOS such that POCOS and AKO can be deemed affiliated parties. To support this argument, POSCO points to petitioners' joint case brief as an example, where petitioners state explicitly (at 78) that ''petitioners firmly believe * * * that DSM also ''controls'' POCOS as that term is defined in the statute.'' POSCO also points to petitioners' statement in its joint case brief (at 104) where petitioners state that both DSM and POSCO can ''control'' POCOS for the purposes of the statute.

Finally, POSCO argues that in addition to the fact that AKO/BUS are affiliated through DSM, they are also affiliated through POCOS's operational control over AKO's selling activities. POSCO explains that AKO has no independent authority to negotiate or set sales prices for POCOS merchandise. Rather POCOS sets all of AKO's selling prices and terms of sale. AKO only acts as a communications link, and all sales and negotiation authority lie with POCOS. Under these circumstances, POSCO argues, POCOS is clearly exercising operational control over AKO's sales activities, and the parties are therefore affiliated.

DOC Position. We disagree with petitioners' contentions that Dongbu and Union are affiliated with POSCO based on their supply relationship, and that Union is affiliated with POSCO through indirect stock ownership.

With respect to the issue of affiliation through a supply relationship in which one party becomes reliant on the other, we agree with respondents that petitioners have applied a wrong standard. The standard is not, as petitioners claim, whether one company might be in a position to become reliant upon another by means of their supplier-buyer relationship; rather, the Department must find that a situation exists where the buyer has, in fact, become reliant on the seller, or vice versa. Only if we make such a finding can we address the issue of whether one of the parties is in a position to exercise restraint or direction over the other. When the preamble to our *Proposed Regulations*, in its definition of ''affiliated parties,'' states that ''business and economic reality suggest that these relationships must be significant and not easily replaced,'' it suggests that we must find significant indicia of control. *See Proposed Regulations* at 7310. For the following reasons, we believe that the record evidence does not support the existence of a supply relationship between POSCO on the one hand, and Dongbu and Union on the other, in which Dongbu and Union have become reliant upon POSCO.

The record shows that Dongbu and Union have alternate sources of supply for HRC, that they can and do purchase significant quantities of HRC from abroad. Petitioners have identifed no law, regulation, or directive, whether formal or informal, mandating Dongbu and Union to purchase HRC from POSCO, or to limit their purchases from non-POSCO sources. Nor is it true, as petitioners have alleged, that imports are consistently more expensive for Dongbu and Union than POSCO material. Record evidence shows that import prices were lower than POSCO's in 15 out of 23 quarters from 1991 through the third quarter of 1996. The record indicates that POSCO has a comparative advantage over imported steel for reasons of proximity, cost, reliability of supply, and differences in specifications, grade, and quality, which can explain POSCO's position as principal supplier to Dongbu and Union. That position, therefore, does not signify that Dongbu and Union have a relationship which is so significant that it could not be replaced.

Petitioners have alleged that POSCO sells HRC to Dongbu and Union at prices below its cost of production. Petitioners calculated POSCO's HRC production cost from POSCO's submitted cost data for cold-rolled finished products. But these estimated costs are averages of all possible types, grades, and dimensions of hot-rolled coil, and are not comparable to the costs of the specific products sold to Dongbu and Union for further manufacturing into cold-rolled and corrosion-resistant products. When the actual costs of the HRC sold to Dongbu and Union are used, POSCO's sales to Dongbu and Union are above cost of production.

For the above reasons, the Department determines that there is no supply relationship between POSCO on the one hand, and Dongbu and Union on the other, to the extent that Dongbu and Union have become reliant upon POSCO.

We also disagree with petitioners' argument that POSCO and Union are affiliated by virtue of their respective affiliations with DSM, Union's parent company. In support of their argument, petitioners cite sections 771(33)(E) through (G) of the Act, which, *inter alia*, define an affiliated person as ''[a]ny person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization,'' ''[t]wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person,'' and ''[a]ny person who controls any other person and such other person.''

With respect to subsection (E), there is no record evidence indicating that POSCO and Union directly or indirectly own or otherwise control five percent or more of each other's equity. While DSM and Union are affiliated through stock ownership, DSM and POSCO are not. As we stated in an internal memo shortly before the preliminary review results, ''we lack[ed] any evidence of stock ownership or control between POSCO and Union or POSCO and DSM, Union's controlling company.'' *See* memorandum from Richard O. Weible to Joseph A. Spetrini (September 6, 1996). No new evidence has come to light that would lead us to alter this statement.

With respect to subsection (F), Union and POSCO do not directly or indirectly control, are not controlled by, and are not under common control with, any party. Even though DSM controls Union through its 58.9 percent equity interest, and DSM and POSCO are affiliated with one another due to their common control of their joint venture, POCOS, it does not follow that POSCO controls either DSM or Union. As section 771(33) of the Act specifies, a finding of control hinges on whether a person ''is legally or operationally in a position to exercise restraint or direction over the other person.'' While POSCO and DSM are clearly able to restrain or direct POCOS, and therefore control it for purposes of the Act, this does not mean that POSCO and DSM control one another. Subsection (F)'s affiliation standard is met where two parties control a third, as here. But such a finding of affiliation does not mean that the two affiliated parties control one another. The alleged

link between POSCO and Union is even more tenuous. Because POSCO does not control DSM, Union's parent company, DSM is not a vehicle through which POSCO can indirectly control Union, DSM's subsidiary. In other words, POSCO affiliation with DSM and DSM control of Union do not add up to POSCO control of Union. The affiliation standard set forth in subsection (F) is thus not satisfied.

With respect to subsection (G), nothing in the record indicates that either Union or POSCO is in a position to control, either legally or operationally, the other party. The Department verified that (1) POSCO and Union compete in both Korea and the United States for the sale of the subject merchandise; and (2) POSCO on the one hand and DSM/Union on the other are separate operational entities with no overlapping stock ownership. The fact that POSCO supplies Union with HRC does not alter this conclusion. As discussed above, this supplier relationship does not rise to the level of reliance on POSCO.

Using the same statutory provisions, we continue to find that POCOS is affiliated with AKO and BUS through indirect stock ownership, since POCOS is 49.99 percent-owned by DSM, and DSM is affiliated with AKO and BUS by virtue of its indirect stock ownership in those companies.

For the reasons stated above, the Department determines that POSCO and Union are not affiliated under the provisions of section 771(33)(E)–(G) of the Act.

Comment 3. Petitioners contest the Department's preliminary determination not to undertake a duty absorption inquiry despite their entreaties to do so. By not considering requests for an absorption inquiry until the 1996 administrative reviews, petitioners argue, the Department has adopted an overly restrictive interpretation of its authority to conduct such inquiries. Petitioners submit that, although the statute requires the Department to conduct an inquiry, if requested, during reviews initiated in the second and fourth years following publication of an order, it does not preclude the Department from conducting inquiries in reviews initiated during the first, third, or fifth year following publication of an order.

Petitioners advance four main reasons why the Department should use its discretion to conduct a duty absorption inquiry:

- There is no valid reason not to examine the issue of duty absorption when the record clearly indicates that respondents and their affiliated importers have absorbed antidumping duties during the POR.
- Confining absorption inquiries to the second and fourth reviews will encourage respondents to manipulate the administrative review process with a view to avoid duty absorption findings. As an example, petitioners have requested duty absorption inquiries in the 1995–1996 administrative reviews on cold-rolled carbon steel flat products from Korea (with respect to Union) and on cut-to-length carbon steel plate from Germany (with respect to A.G. der Dillinger Hüttenwerke—Dillinger). Dillinger and Union, however, claim not to have had any imports of these products during the POR. By not conducting duty absorption inquiries with respect to these companies, petitioners allege, the Department will permit Dillinger and Union to elude penalties despite clear evidence on the record that both companies absorb duties.
- By limiting itself to conducting duty absorption inquiries during the second and fourth administrative reviews, the Department is only creating additional burdens for itself, since petitioners will feel compelled to request complete administrative reviews for the sole purpose of obtaining a duty absorption determination. The Department's proposed policy effectively requires petitioners in certain circumstances to incur additional costs by requesting a review when they might not otherwise choose to do so.

Petitioners argue that the statute was not intended to force petitioners into a position of choosing between incurring such additional costs or giving up their right to an absorption determination, and the Department should not establish a policy that would do so. Although it is conceivable that the Department could conduct mini-reviews in the second and fourth years focusing exclusively on the issue of duty absorption, the workload savings would be far exceeded by the workload of additional ''protective'' reviews requested by petitioners. Additionally, petitioners submit, if a respondent chose not to participate in such a ''mini-review,'' the Department would have to make an adverse assumption that the respondent did, in fact, absorb antidumping duties. As an example, petitioners cite the ongoing administrative review of cut-to-length carbon steel plate from Sweden, where respondent Svenskt Stål AB (''SSAB'') has withdrawn from the review and refuses to answer requests for information. Although the Department has the option of making an adverse assumption that SSAB absorbed antidumping duties, petitioners wonder whether, and to what extent, the ITC in its sunset review determination would give weight to a duty absorption determination based on adverse assumptions as opposed to actual record evidence.

- Because all the information needed to conduct a duty absorption inquiry is already on record and verified, and only a small amount of additional activity is necessary to determine whether antidumping duties have been absorbed, petitioners assert there is no reason why the Department should not exercise its discretion and conduct a duty absorption inquiry.

The record evidence cited by petitioners which, they allege, conclusively demonstrates that duty absorption has occurred are the following:

- Petitioners cite as an example a U.S. sale by Dongbu where the ultimate U.S. purchaser was invoiced less than what Dongbu Corporation (Korea) billed DBLA, its Los Angeles, California sales affiliate. *See* petitioners' common issues case brief, from Dewey Ballantine to the Secretary of Commerce (proprietary version), as resubmitted on February 27, 1997 (''CICB''), at 120–122.
- Petitioners allege that an analysis of the data submitted by POSCO clearly reveals that POSCO's U.S. prices do not reflect the full amount of antidumping duties. In their example, petitioners submit that the deduction from the reported gross unit price of the total of (a) per-unit transfer price, (b) direct and indirect selling expenses in the United States, (c) per-unit movement charges paid by BUS, and (d) antidumping and countervailing duty cash deposits, results in a negative margin. According to petitioners, this example demonstrates that, by not raising its U.S. prices sufficiently to cover the margin of dumping, BUS elected to pay the dumping duties rather than pass them on to the customer. *See* CICB at 122–124.
- Petitioners allege that an analysis of the data submitted by Union clearly reveals that Union's prices to unaffiliated U.S. purchasers do not reflect the full amount of antidumping duties. In their example, petitioners submit that the deduction from the reported gross unit price of the total of (a) per-unit transfer price, (b) direct and indirect selling expenses in the United States, (c) per-unit movement charges paid by Union America (''UA''), and (d) antidumping and countervailing duty cash deposits, results in a negative margin. According to petitioners, this example demonstrates that, by not raising its U.S. prices sufficiently to

cover the margin of dumping, UA elected to pay the dumping duties rather than pass them on to the customer. *See* CICB at 124–125.

Respondents retort that the Department should not conduct a duty absorption inquiry. First, they argue that the request is premature because in section 751(a)(4) of the Act, Congress authorized the Department to conduct duty absorption inquiries in ''transition reviews,'' (such as this one) only for reviews initiated in 1996 or 1998. For this same reason, Dongbu and Union argue, the Department, contrary to petitioners' assertions, does not have the discretion to conduct a duty absorption inquiry in this review.

Second, POSCO argues that according to the SAA, a duty absorption inquiry is relevant only in the context of a sunset review proceeding. The SAA (at 885) states that ''[t]he duty absorption inquiry would not affect the calculation of margins in administrative reviews.'' Thus, POSCO argues, not only is the request premature, but it is irrelevant to the calculation of the dumping margin in this proceeding.

Third, Dongbu and Union argue that there is no evidence of duty absorption on the record. The calculations the petitioners give in their brief that allegedly demonstrate duty absorption, Dongbu and Union argue, are incorrect. They argue that the petitioners' calculations treat the antidumping and countervailing duty deposit amounts as if they were the equivalent of a dumping margin. Doing so was incorrect, Dongbu and Union argue, because the plain language of the statute speaks of the absorption of ''antidumping duties,'' and not estimated antidumping duties.

Fourth, regarding petitioners' argument that confining reviews to the second and fourth reviews will encourage respondents to manipulate the administrative review process, Dongbu and Union argue that this argument is invalid. They argue that even if there were such a risk, it would not give the Department the right to disregard the statutory framework. Moreover, they argue that petitioners' suggestion that Union ceased its exports of cold-rolled steel to the United States during the 1995–96 period in order to avoid a duty absorption inquiry is sheer speculation and demonstrably incorrect. They argue that because Union has set its prices to the point where the dumping margins determined by the Department are insignificant, it is clear that it has not absorbed antidumping duties, and the motive for avoiding a duty absorption review therefore does not exist.

Fifth, regarding petitioners' argument that by limiting duty absorption inquiries to only the second and fourth administrative reviews the Department creates additional burdens for itself, Dongbu and Union argue that even this consideration does not give the Department the right to thwart the plain language of the law and Congressional will by conducting a duty absorption inquiry when it is not authorized to do so.

For these reasons, respondents argue that the Department should uphold its determination in the preliminary results of review that petitioners' request for a duty absorption inquiry is premature.

DOC Position. We agree with respondents that we are not required to conduct a duty absorption inquiry for this administrative review. Section 751(a)(4) of the Act provides that the Department, if requested, will determine during an administrative review initiated two years or four years after publication of the order whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Act by the URAA.

Special rules, however, exist for transition orders, defined in section 751(c)(6)(C) of the Act as orders in effect as of January 1, 1995. Section 351.213(j)(2) of the Department's proposed regulations provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. *See* Proposed Regulations at 7366. The commentary to the proposed regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year. *Ibid.* at 7317. Although these proposed regulations are not yet binding upon the Department, they do constitute a public statement of how the Department expects to proceed in construing section 751(a)(4) of the amended statute. This approach ensures that interested parties will have the opportunity to request a duty absorption determination on entries for which the second and fourth years following an order have already passed, prior to the time for sunset review of the order under section 751(c). *See, e.g., Certain Welded Stainless Steel Pipe From Taiwan; Preliminary Results of Administrative Review,* 62 FR 1435 (January 10, 1997) and *Fresh Cut Flowers From Mexico; Preliminary Results and Partial Termination of Antidumping Duty Administrative Review,* 62 FR 1318 (January 9, 1997).

Because the antidumping orders on corrosion-resistant and cold-rolled carbon steel flat products from Korea have been in place since 1993, they clearly constitute transition orders. Therefore, based on the policy articulated above, the Department will first consider a request for a duty absorption determination for reviews of these orders initiated in 1996. These reviews were initiated in 1995. Accordingly, we have not considered the issue of duty absorption in these reviews. *See also Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Preliminary Results of Antidumping Duty Administrative Reviews,* 61 FR 51891, 51892 (October 4, 1996).

Comment 4. Petitioners argue that, in calculating antidumping margins for the respondents, the Department must deduct from the price used to establish EP or CEP the actual countervailing and antidumping duties paid by respondents' affiliated U.S. importers.

Petitioners argue that the plain language and structure of the statute mandate that the Department make such a deduction, since it provides, in section 772(c)(2)(A) of the Act, that ''the price used to establish export price and constructed export price *shall be * * * reduced by * * * United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.*'' 19 U.S.C. § 1677a(c)(2)(A) (1995) (emphasis added by petitioners). Petitioners also contend that antidumping and countervailing duties are plainly ''incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.'' Nor, they insist, does the language of the statute mandate that antidumping and countervailing duties are to be distinguished or excluded from the phrase ''United States import duties.''

Petitioners state that the relevant provisions of section 772(c)(2)(A) of the Act, cited above, first entered U.S. law, verbatim, in the Antidumping Act of 1921 (''1921 Act''). Although Congress at the time omitted a definition of the phrase ''import duties,'' petitioners assert that the Court of Customs and Patent Appeals subsequently and specifically addressed the intentions of the drafters of the 1921 Act and noted that antidumping and countervailing duties were ''desired and intended (by Congress) to be considered as duties *for*

all purposes.'' See C.J. Tower & Sons v. United States, 771 F.2d 438, 445 (C.C.P.A. 1934) (emphasis added by petitioners).

That antidumping and countervailing duties are to be included in the deduction, petitioners maintain, is confirmed when section 772(c)(2)(A) of the Act is read in conjunction with the later-added section 772(c)(1)(C), which provides that, to derive EP or CEP, the U.S. price shall be increased by the amount of any countervailing duty imposed to offset an export subsidy. That provision was added to U.S. law in 1979 to implement Article VI¶5 of the General Agreement on Tariffs and Trade, which prohibits the assessment of both antidumping and countervailing duties to compensate for the same cause of unfairly low-priced imports, whether by dumping or as a result of an export subsidy. *See Serampore Indus. Pvt. Ltd.* v. *United States,* 675 F. Supp. 1354, 1359 (CIT 1987) (*quoting* H.R. Doc. No. 96–153 at 412, *reprinted in* 1979 U.S.C.C.A.N. 683).

In the 1979 Trade Agreements Act, petitioners state, Congress, in addition to adding section 772(c)(1)(C), added the phrase ''except as provided in paragraph 1(C)'' to section 772(c)(2)(A). Petitioners argue it is a fundamental precept of statutory construction that a statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another. They argue further that Congress' specific exemption of countervailing duties from section 772(c)(2)(A) demonstrates it clearly understood that subsection's reference to ''any * * * United States import duties'' as including antidumping and countervailing duties; otherwise, there would have been no reason to exempt certain countervailing duties from application of the provision. Had this exception not been inserted, petitioners maintain, an equal amount would be added by the operation of one subsection (*i.e.*, section 772(c)(1)(C)) and deducted as a result of the next subsection (i.e., section 772(c)(2)(A)).

Petitioners also argue that the Court of International Trade (''CIT'') has implicitly held that section 772(c)(2)(A) covers actual countervailing or antidumping duties. In *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 872 (CIT 1993) (''*Federal-Mogul*''), the CIT did not adopt the Department's reasoning that section 1677a(c)(2)(A) applied only to the deduction of ''normal'' import duties, and that antidumping duties were not ''normal'' import duties. Rather, according to petitioners, the CIT based its refusal to deduct estimated antidumping duties on the fact that the duty deposits were only estimates—not actual duties—which might not have borne any relationship to the actual antidumping or countervailing duties owed. Petitioners also cite *PQ Corp.* v. *United States,* where the CIT noted approvingly that ''antidumping provisions in other jurisdictions explicitly list antidumping duties as one of the adjustments to be made in constructing prices.'' *See PQ Corp.* at 724.

Petitioners also put forward that in no way does the legislative history of the URAA suggest that Congress rejected their construction of section 772(c)(2)(A). Indeed, according to petitioners, the Senate Finance Committee, aware that the issue of whether to deduct antidumping duties from EP or CEP was being litigated, directed the Department to abide by the outcome of the litigation. *See* S. Rep. No. 103–412 at 64 (1994). Petitioners also maintain that the SAA explicitly states that no changes in the law were intended with respect to section 772(c)(2)(A). *See* SAA at 823. Petitioners deny that, as asserted elsewhere by the Department, Congress' rejection of a separate provision expressly allowing for the deduction of antidumping duties as a cost in the context of the passage of the URAA requires a different interpretation of section 772(c)(2)(A). See *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review,* 61 FR 48465, 48469 (September 13, 1996) (''*Netherlands Final*''). This rejection, petitioners assert, does not alter the Congressional intent with respect to a pre-existing statutory provision.

Petitioners dismiss as illegitimate the Department's repeated refusal to deduct antidumping and countervailing duties from U.S. price on the grounds that such a deduction would result in double-counting, for the following reasons.

- First, the statute is not discretionary when it states that the Department ''shall'' reduce U.S. price by the amount of United States import duties. No conflicting policy rationale, they maintain, can justify the Department's refusal to comply with a legal mandate.
- Second, petitioners affirm, in the *Netherlands Final* the Department did not consider doubling of antidumping margins to account for reimbursement of antidumping duties, as constituting double-counting. *See Netherlands Final* at 48470–71.
- Third, the Department has refrained from making the adjustment for antidumping duties because ''making an additional adjustment to USP for *the same* antidumping duties that correct this price discrimination between the U.S. and home markets would result in double-counting.'' *See Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review,* 61 FR 18547, 18564 (April 26, 1996) (''*Corrosion-Resistant Final*'') (emphasis added by petitioners). This rationale, petitioners argue, cannot apply to countervailing duties, which offset subsidization, not price discrimination.

In the event that the Department determines that actual antidumping and countervailing duties do not fall within the general category of ''United States import duties,'' petitioners argue that antidumping and countervailing duties constitute ''additional costs, charges, or expenses * * * incident to bringing the subject merchandise from * * * the exporting country to * * * the United States' within the meaning of section 772(c)(2)(A) of the Act. These duties should therefore be deducted from EP or CEP, petitioners contend.

Petitioners contend that, because no party requested a review of the countervailing duty order on the subject merchandise at the time of the second anniversary of the order, countervailing duties are determinable and should be deducted in full from EP and CEP. Although the Department is currently enjoined by order of the CIT from liquidating the applicable entries pending a final resolution of the respondents' legal challenge of the Department's final affirmative countervailing duty determination, petitioners assert the presumption exists that the Department's determination is correct (*see* H.R. Rep. No. 96–317 at 182 (1979)) and the duties should be treated as final for purposes of section 772(c)(2)(A). Indeed, petitioners say, in the preliminary results of the instant reviews, the Department treated as final those countervailing duties imposed to offset subsidies, and stated that a respondent was entitled to an upward adjustment to U.S. price, even though liquidation was still enjoined as a result of litigation with respect to the entries in question. Petitioners contend that, in the event the Department incorrectly determines not to treat such duties as being final at this time, the actual amount to be collected will be known if the court reaches a decision before the final review results are issued, and the Department can make an adjustment at that time. At a minimum, petitioners argue, the Department should adjust the cash deposit rate upward by the amount of countervailing duties (other than

those offsetting export subsidies) found in the original investigation.

Finally, petitioners request that the Department deduct the full amount of the ''actual'' antidumping duties that respondents' affiliated U.S. importers will be responsible for upon liquidation of the entries of the subject merchandise. If the Department determines that there exists a five percent dumping margin exclusive of the payment of estimated antidumping duties, petitioners contend the Department must deduct '' as per *Federal-Mogul*—an additional five percent, which is equal to the cost of the antidumping duties that Dongbu's, POSCO's, and Union's affiliated importers will be required to pay to U.S. Customs. In this case, petitioners say, once the final review results are issued, the exact amount of antidumping duties owed by Dongbu's, POSCO's, and Union's affiliated importers will actually be determined.

Respondents answer that the petitioners' argument is identical to the one the Department considered and properly rejected in the first administrative review of the order on corrosion-resistant products, and that the Department should reject here as well because the petitioners have not advanced any new arguments not set forth and rejected in the first review. Dongbu and Union argue that the Department's determination in the first review of corrosion-resistant products was strengthened further when Congress and the Administration, in enacting the URAA amendments under which this review is being conducted, very pointedly rebuffed the petitioners' persistent lobbying for a ''duties as a cost'' amendment. More recently, Dongbu and Union argue, the Department rejected the petitioner's position again in *Netherlands Final*, at 48469. Additionally, POSCO argues that the SAA (at 885) also states that the Department does not intend to treat antidumping duties as a cost in antidumping cases.

Furthermore, POSCO argues that petitioners' analogy with *Netherlands Final* (in which the Department did not consider doubling of antidumping margins, to account for reimbursement of antidumping duties, as constituting double-counting) is inapposite. In the duty reimbursement context, POSCO argues, the regulations require the Department to double-count antidumping duties as a punitive measure. The fact that antidumping duties are double-counted in that context, therefore, is not a policy decision over which the Department has any discretion. Because the Department's regulations do not require it to double-count antidumping and countervailing duties in its antidumping margin calculation, POSCO argues, the Department has the discretion to conclude that it would be unfair to double-count those expenses.

Moreover, POSCO argues that petitioners' reasoning is circular. The statute, POSCO argues, requires the Department to calculate the margin by comparing U.S. price with NV. If the margin must first be subtracted from U.S. prices, then, as a matter of simple mathematics, the ''correct'' margin could never be calculated.

In summary, Dongbu and Union argue, the petitioners' position is entirely without foundation, is either contradicted by or finds no support in the plain language of the law, the legislative history of the law, court precedent, Department practice, or the United States' legal obligations under the WTO Antidumping Agreement which prohibits signatories from deducting in excess of the actual margin of dumping.

DOC Position. We disagree with petitioners. The term ''United States import duties'' is not defined in the statute, and is therefore open to interpretation. Substantial deference is owed to an agency's interpretation of the statute it is charged with administering, as long as such interpretation is reasonable. *See Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984).

The term ''United States import duties'' first appeared in section 203 of the 1921 Act (42 Stat. 12). However, neither the 1921 Act nor its legislative history defined the term. The Senate Report accompanying the legislation, however, uniformly refers to antidumping duties as ''special dumping dut[ies],'' and uniformly refers to ordinary customs duties as ''United States import duties.'' The rigorous use of these distinct terms indicates that the new ''special dumping duties'' (payable only to offset dumping) were considered to be distinct from the existing ''United States import duties'' (payable, *ad valorem*, upon importation).

This conclusion is reinforced by the fact that section 211 of the 1921 Act (42 Stat. 15), provided that, for the limited purpose of duty drawback, ''the special dumping dut[ies] * * * shall be treated in all respects as regular customs duties.'' *See* S. Rep. No. 16, 67th Cong., 1st Sess., at 4 (1921). If ''special dumping duties'' really were considered to be just one type of ''United States import duty,'' this special provision would have served no purpose. That ''special dumping duties'' are distinct from normal import duties also is apparent from the fact that section 202(a) of the 1921 Act (42 Stat. 11) provided that ''special dumping duties'' may be applied to ''duty-free'' merchandise. In this context, ''duty-free'' meant ''free from *ordinary* import duties.'' If ''duty-free'' meant ''free from *any* duties,'' that would include antidumping (''AD'') duties and countervailing duties (''CVDs''). Plainly, however, ''duty-free'' was understood to mean ''free from ordinary customs duties.'' Although the Congress in 1921 did not explicitly stipulate that the new ''special dumping duty'' should not be calculated so as to include itself, the most reasonable explanation is that Congress would have considered it absurd to spell out such a self-evident proposition.

When the AD law was amended in 1979, the provision requiring the deduction of ''United States import duties'' from the starting price in the United States was amended by adding the words ''except as provided in paragraph (1)(D).'' Because paragraph (1)(D) provides for the addition to the starting price of CVDs to offset export subsidies on the subject merchandise, petitioners argue that this indicates that Congress in 1979 considered ''United States import duties'' to include countervailing duties. However, the only intent of Congress that is clear is that the addition of export-subsidy CVDs to the price in the United States should not be robbed of its logical effect by an offsetting deduction. *See Trade Agreements Act of 1979*, Report of the Committee on Finance on H.R. 4537, S. Rep. No. 249, 96th Cong., 1st Sess., at 94 (1979). There is absolutely nothing in the legislative history to indicate that Congress intended to change the standard practice of not deducting either AD duties or CVDs from the starting price in the United States as ''United States import duties.''

Furthermore, the SAA explicitly states that AD duties are not to be treated as ''a cost'' to be deducted from the starting price in the United States, and notes that Article 2.4 of the Antidumping Agreement (at footnote 7) ''admonishes national authorities not to double count adjustments'' in calculating dumping margins. *See* SAA at 139. In the hundreds of antidumping duty administrative reviews that Commerce has conducted since 1980, the Department has never deducted AD duties or CVDs from the starting price in the United States, and the courts have never directed the Department to change this practice. Congress has been well aware of this situation, and, despite

numerous revisions of the antidumping law since 1921, has never amended the law to change this result.

Petitioners' argument that the Department should deduct ''actual'' CVDs from U.S. price overlooks the distinction made by Congress in section 772(c)(1)(C) of the Act between domestic and export subsidies. Domestic subsidies presumably lower the price of the subject merchandise both in the home and U.S. markets, and therefore have no effect on the measurement of any dumping that might also occur. Export subsidies, by contrast, benefit only exported merchandise. Accordingly, an export subsidy brings about a lower U.S. price which could be ascribed to either dumping or export subsidization, as well as the potential for double remedies. Imposing both an export-subsidy CVD and an AD duty, calculated with no adjustment for that CVD, would impose a double remedy specifically prohibited by Article VI¶5 of the GATT. Thus, the only reasonable explanation for Congress' decision to provide for the deduction from U.S. price of export-subsidy CVDs is protection against double remedies.

Finally, the Department rejects petitioners' argument that the AD duties and CVDs should be deducted as ''additional costs, charges, and expenses * * * incident to importation'' because the Department's rationale for refusing to deduct AD duties and CVDs from the United States price (that it double-counts the dumping margin) applies equally whether the AD duties and CVDs are described as ''import duties'' or ''costs of importation.''

Company-Specific Comments

Petitioners' Comments

Comment 5. Petitioners argue that CV profit must be calculated in a manner consistent with the calculation of the CV base cost. Petitioners state the Department calculated CV profit as a percentage of total profit on above-cost sales over the corresponding sum of COM, G&A, interest, commissions, selling expenses, and packing (''COPVALUE''). Petitioners allege that in calculating the absolute amount of profit for CV, the Department multiplied the CV profit rate by a different base value representing the COM, G&A, and interest expenses, but excluded selling expenses and packing. Petitioners propose that the Department calculate CV profit as the total home-market sales value, minus the total COP, and divided by the COP.

POSCO disagrees with petitioners' proposed correction. POSCO asserts the home-market sales and total COP used as the numerator and denominator in the calculation of the profit rate are extended values, whereas the COP used as the denominator in petitioners' proposed correction is a per-unit value. POSCO suggests that for the equation to be correct mathematically the COP would have to be a total figure.

DOC Position. We agree that we incorrectly calculated CV profit in the preliminary results. We calculated the profit rate including packing and selling expenses and applied it to the CV base cost that excluded packing and selling expenses. We have corrected the programming language for the final results to include selling and packing expenses in the CV base cost consistent with the components of the profit rate (*i.e.,* the numerator includes selling and packing expenses and the denominator includes selling and packing expenses).

Comment 6. Petitioners note that Dongbu's CV financial expense factor must be revised. According to petitioners, Dongbu incorrectly offset CV financial expense with an adjustment based on the ratio of accounts receivable and finished goods inventory to assets.

Dongbu acknowledges it inappropriately reduced its CV financial expense rate with imputed accounts receivable and inventory carrying expenses. Dongbu states that the company agrees to the use of the COP financial expense factor for calculating CV.

DOC Position. We agree with both petitioners and Dongbu. The Act directs the Department to exclude the imputed accounts receivable and inventory carrying expense offsets. *See, e.g., Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy,* 61 FR 30326, 30361 (June 14, 1996) (''*Pasta*''). Therefore, we revised Dongbu's CV financial expense rate for these final results, and used the company's submitted COP financial expense factor to calculate the financial expense factor used for CV, because this factor appropriately excluded imputed offsets.

Comment 7. Petitioners argue that Dongbu's reported U.S. sales are CEP transactions. They maintain that the record demonstrates that Dongbu's U.S. sales are made through ''back-to-back'' transactions, in which Dongbu USA, Dongbu's affiliated importer, engages in all selling functions in the United States. Petitioners claim that new factual information available to the Department in this review demonstrates that Dongbu's sales are properly characterized as CEP transactions.

According to petitioners, the criteria typically used by the Department for classifying sales as CEP or EP lead to the conclusion that Dongbu's sales are CEP transactions. *See, e.g., Notice of 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, 38175 (July 23, 1996) (''*Presses from Germany*''); *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from France,* 56 FR 56380, 56384 (November 4, 1991); *Final Determination of Sales at Less Than Fair Value: New Minivans from Japan,* 57 FR 21937, 21945 (May 26, 1992); and *Brass Sheet and Strip from Sweden; Final Results of Antidumping Duty Administrative Reviews,* 57 FR 2706, 2708 (January 23, 1992). They maintain that the Department also recently determined that a U.S. sale is properly classified as a CEP transaction when the U.S. affiliate plays an active role in the sales negotiation process, and when it performs significant additional functions in support of U.S. sales. *See Presses from Germany* at 38171. Petitioners claim that all selling expenses related to Dongbu's U.S. sales are incurred in the United States, that Dongbu USA engages in substantial selling activities in the United States, and that the sale itself occurs in the United States. Petitioners further argue that the record supports these activities since Dongbu USA acts as the importer of record, issues sales contracts for all U.S. sales, borrows to finance accounts receivable, handles all billing and accounting functions related to U.S. sales, and is involved in other selling functions consistent with CEP sales.

Petitioners contend that Dongbu's selling functions exceed those of a mere communications link or processor of documents. They argue that evidence on the record demonstrates that for every reported U.S. transaction, two sales take place, one from Dongbu to Dongbu USA and the other from Dongbu USA to the unaffiliated U.S. customer. Petitioners note that Dongbu describes its U.S. sales as involving ''back-to-back'' transactions, a characterization which appears to be at odds with Dongbu's portrayal of its U.S. sales as direct sales to unaffiliated customers. Petitioners maintain that separate transactions indicate that Dongbu USA acts as more than a mere processor of documents or communications link, and that the presence of multiple transactions with CEP sales is consistent with the amendments made under the URAA, as indirect selling expenses would typically be incurred on the second

sales transaction, as they were in the present case.

Petitioners argue that Dongbu's own information makes it clear that significantly greater sales activity occurs in the United States for U.S. sales than occurs in the home market, and the amount of Dongbu's U.S. indirect selling expenses incurred in Korea is an insignificant percentage of sales price. From this evidence, according to petitioners, it is clear that Dongbu USA's sales activity in the United States is far more significant than that which takes place in Korea for equivalent sales. Petitioners note that despite the evidence demonstrating that Dongbu USA sells subject merchandise to the U.S. customer, Dongbu claims that the U.S. sale is made by Dongbu, because Dongbu approves the customer's purchase order. They contend that Dongbu has failed to present evidence or documentation indicating that Dongbu negotiated the price or quantity of the U.S. sales, or played any other role in the sales process other than giving *pro forma* approval.

Dongbu asserts that the Department has already thoroughly considered and rejected the arguments raised by petitioners in the first administrative review and the preliminary review results. Dongbu argues that there is no new factual information that the Department has overlooked. The nature and scope of Dongbu USA's selling activities in the United States have not changed for this review. According to Dongbu, petitioners' contention that all selling functions related to Dongbu's U.S. sales are incurred in the United States and that Dongbu USA is involved in substantial selling activities is easily disproved by evidence on the record supporting the fact that sales negotiations are undertaken by Dongbu's export department in Seoul and that Dongbu USA merely acts as a communications link in this process. Dongbu argues further that it is a matter of record that the most significant selling activities related to U.S. sales occur in Korea, including sales negotiation, production scheduling, shipping scheduling, Korean brokerage, handling, and loading expenses, Korean inland freight to the port, and ocean freight. Respondent claims that Dongbu USA simply facilitates the sale by ensuring delivery of the merchandise to the customer after clearance through Customs and by invoicing the customer and receiving payment.

Dongbu also contends that, contrary to petitioners' arguments, the issue is not the relative quantity of the selling activities that are undertaken in the United States and Korea, but the nature of those selling activities; these selling activities are consistent with those associated with acting as a communications link and document processor. Dongbu points out that the CIT has upheld the classification of sales as purchase price (now EP) sales in circumstances where the related U.S. company undertook activities similar to, or even more extensive than, those in this instance. *See, e.g., Outokumpu Copper Rolled Products* v. *United States*, 829 F. Supp. 1371, 1379–1380 (CIT 1993), *appeal after remand dismissed*, 850 F. Supp. 16 (CIT 1994); *E.I. du Pont de Nemours & Co., Inc.* v. *United States*, 841 F. Supp. 1237, 1248–50 (CIT 1993); *Zenith Electronics Corp.* v. *United States*, Consol. Ct. No. 88–07–00488, Slip Op. 94–146 (CIT) (''*Zenith*'').

Dongbu argues that there is no factual evidence to support petitioners' claim that the sale itself occurs in the United States. The record itself, including the Department's verifications findings, confirms that Dongbu USA has no authority to accept or reject U.S. sales offers and that the approval of sales comes from Dongbu's export department in Seoul. Dongbu also argues that there is no support for petitioners' claim, either in past administrative practice or in the URAA, that the use of intracorporate invoicing to facilitate shipment of sales indicates that sales are CEP transactions. *See* SAA at 153. Respondent contends that back-to-back invoicing is a common method by which related parties are able to geographically transfer routine selling functions to the United States, and that such invoicing is consistent with EP classification.

DOC Position. We disagree with petitioners that the selling functions of Dongbu USA exceed those of a mere communications link or processor of documents. As discussed in our position on this matter during the first administrative reviews, whenever sales are made prior to the date of importation through an affiliated sales entity in the United States, we determine whether EP is the most appropriate determinant of the U.S. price based upon the following considerations: (1) The subject merchandise was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related shipping agent; (2) direct shipment from the manufacturer to the unrelated buyer was the customary channel for sales of this merchandise between the parties involved; and (3) the related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer. *See, e.g., Certain Stainless Steel Wire Rods from France: Final Determination of Sales at Less than Fair Value*, 58 FR 68865, 68868–9 (December 29, 1993) (''*Wire Rod*''); *Granular Polytetrafluoroethylene Resin from Japan: Final Results of Antidumping Duty Administrative Review*, 58 FR 50343–4 (September 27, 1993) (''*PTF Resin*''). This test was first developed in response to the CIT's decision in *PQ Corp.* at 733–35. It has also been used to uphold indirect purchase price transactions involving exporters and their U.S. affiliates. *See, e.g., Zenith*. We agree with respondent that neither the nature nor the scope of Dongbu USA's selling activities with regard to these activities in the United States have changed in these reviews.

Furthermore, we agree with respondent that, when the criteria described above are met, we consider the exporter's selling functions to have been relocated geographically from the country of exportation to the United States, where the sales agent performs them. We determine that Dongbu USA's selling functions are of a kind that would normally be undertaken by the exporter in connection with these sales. Dongbu USA's role in the payment of cash deposits of antidumping and countervailing duties, extension of credit to U.S. customers, the processing of certain warranty claims, and project development are consistent with EP classification and are a relocation of routine selling functions from Korea to the United States.

Comment 8. Petitioners contend that Dongbu's reported credit expenses should be revised to reflect the date of shipment from the factory. Petitioners claim that Dongbu improperly computes the number of credit days based on the date of the bill of lading at the port, rather than on the date of shipment from the factory. Accordingly, the Department should increase the credit period for all U.S. sales on the basis of facts available. Petitioners argue that the Department requires respondents to calculate credit expenses based on the number of days between date of shipment to the customer and date of payment, and that these instructions are consistent with the Department's long-standing practice. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe from the Republic of Korea*, 57 FR 53693, 53700 (November 12, 1992) (''*Stainless Pipe from Korea*''); *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty*

Administrative Reviews and Notice of Revocation in Part, 61 FR 35177, 35181 (July 5, 1996) (''*PET Film*''); and *PTF Resin* at 50344.

However, according to petitioners, Dongbu used as the date of shipment the date of lading on board the ship as indicated on the bill of lading. In doing so, they claim, Dongbu improperly shortened the credit expense period in the U.S. market. *See, e.g., Final Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe from Malaysia*, 59 FR 4023, 4029 (January 28, 1994); and *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 58 FR 6207, 6212 (January 27, 1993).

Petitioners support their argument by stating that sales documentation examined by the Department at verification demonstrated time differences between shipment of merchandise from the factory and its lading at the port. They argue that Dongbu claims, *post hoc*, that the source of this information was issued directly after production was completed and prior to commencement of shipment, and does not indicate the date of shipment from the factory. In noting this, petitioners assert that Dongbu offers no evidence for its claim, which is contradicted by its earlier responses and discredited by the document itself. Petitioners contend that Dongbu's position is further weakened by its unsupported claim that shipment from the factory does not occur until an export permit has been issued by the Korean government. Petitioners state that the claim is undermined by Dongbu's own calculation of the number of days between the date of export and the bill of lading date (as opposed to the date of shipment from the factory), and the fact that Dongbu has admitted that subject merchandise is warehoused between shipment from the factory and later export.

Dongbu counters these arguments by noting that its use of the bill of lading as the date of shipment is consistent with the methodology accepted by the Department in the first review of corrosion-resistant-products and in the preliminary results of the present reviews. Dongbu argues that the issue is not whether a minimum number of consecutive reviews were conducted prior to the change in practice—as in *Shikoku Chemicals Corporation* v. *United States*, 795 F. Supp. 417, 421–22 (CIT 1992) (''*Shikoku*''), where the calculation methodology was changed without notice after four consecutive reviews rather than just after one—but whether there was reasonable reliance on the Department's prior acceptance of the methodology, whether the fact pattern is unchanged, and whether there is evidence of a ''significant error.'' Dongbu states that in the present case, it reasonably relied on the Department's prior examination and acceptance of the reported date of shipment, the fact pattern is unchanged, and there is no evidence of error in using shipment date as the date of sale.

Dongbu maintains that petitioners' argument is based on their incorrect identification of a verification document as a shipping invoice. The document in question, according to Dongbu, is not a shipping invoice, but a document which is generated prior to shipment. Dongbu states that actual shipment from the factory does not occur until later in the process, following the transmission of vessel arrangements to the factory and export clearance being obtained from the broker. Therefore, according to respondent, the invoice petitioners question is not the same invoice that is generated at the time of shipment from Dongbu's factory and which is the basis for recording the date of sale in Dongbu's accounting records. Dongbu also notes that the export permit, and other documents singled out by petitioners as suspect, are documents that are prepared in advance of shipment from the factory, while others, including the bill of lading, are issued at approximately the time of shipment from the factory. Accordingly, these facts explain the short time differences between the export permit date and the shipment date questioned by petitioners.

DOC Position. Although we disagree with petitioners' interpretation of the shipping documents, we agree with them that the Department's general practice is to calculate credit expenses based on the number of days between date of shipment to the customer and date of payment. *See, e.g., Stainless Pipe from Korea* at 53700, *PET Film* at 35181, and *PTF Resin* at 50344. However, we agree with respondent that Dongbu's use of the bill of lading date as the date of shipment is consistent with the methodology reviewed and accepted by the Department in both the first review of corrosion-resistant products and the preliminary results of these reviews; in this instance, the fact pattern is unchanged, and there is no evidence that using the bill of lading date as the shipment date would be in error. *See Shikoku* at 421–22.

While both petitioners and respondent argue at length over the identification and characteristics of certain sales verification documentation, we refer to our review and analysis of the documents in question in our sales verification report for Dongbu. In that report, and upon our review of the documents used to support the corresponding sales data, we noted that ''no discrepancies were noted for this transaction.'' Accordingly, we have continued to use this methodology for these final review results.

Comment 9. Petitioners assert that Dongbu's warehousing expenses must be deducted from U.S. price. They argue that Dongbu's warehousing expenses should be treated as movement charges since Dongbu has stated that subject merchandise is warehoused post-production and after shipment from the factory. Petitioners maintain that while Dongbu claimed in its questionnaire response that it does not introduce subject merchandise into a distribution warehouse in the United States, Dongbu later admitted that subject merchandise is warehoused after shipment from the factory. According to petitioners, Dongbu's argument shifted to the position that its warehousing expenses are more similar to pre-shipment manufacturing overhead expenses.

Petitioners argue that Dongbu's revised claim is based on the incorrect view that its warehousing expenses are incurred prior to shipment to its U.S. customers. Petitioners state that in contrast to this, Dongbu previously admitted that it transports unpainted cold-rolled merchandise from the Seoul factory to its Inchon warehouse to await exportation. Accordingly, the Department, consistent with the statute, its proposed regulations, and the SAA, may deduct post-sale warehousing expenses from U.S. price. *See Proposed Regulations* at 7330 and SAA at 823, 827.

Petitioners also take issue with Dongbu's claim that its warehousing expenses are correctly characterized as overhead expenses since they are associated with the temporary storing of semi-finished products between product lines. Petitioners state that Dongbu itself admitted to warehousing finished products after production is completed and after shipment from the production facility. According to petitioners, post-production warehousing expenses incurred after shipment are not attributable to manufacturing, but instead constitute movement charges and should be deducted from U.S. price. *See, e.g., Erasable Programmable Read Only Memories from Japan; Final Determination of Sales at Less Than Fair Value*, 51 FR 39680, 39691 (October 30, 1986).

Petitioners contend that the Department should resort to facts available in this instance because Dongbu failed to provide the requested information regarding warehousing expenses, and because it originally claimed that no such warehousing actually occurred. Petitioners assert that, at a minimum, the Department should deduct from U.S. price, as facts available, the amount calculated by Dongbu for warehousing expenses. Alternatively, and only if the Department incorrectly concludes that Dongbu's admitted post-warehousing expenses are not movement charges, state petitioners, the amount calculated by Dongbu for these charges should be deducted as a direct expense, since this amount is directly linked to individual sales.

Dongbu argues that the pre-shipment expenses questioned by petitioners are recorded as manufacturing overhead expenses in its normal accounting records and have been reported properly as such in its COP and CV data. Respondent states that the cost of such pre-shipment overhead is no different from overhead expenses associated with temporarily storing semi-finished products between production lines, and that the Department has never treated pre-shipment manufacturing costs as selling expenses.

Contrary to petitioners' claim that Dongbu shifted its position and only characterized these expenses as manufacturing overhead following petitioners' argument that they be treated as movement expenses, respondent notes that it pointed this out three months earlier in its Section D cost response to the Department. Respondent argues that petitioners continue to miss the important point, which is that Dongbu records these expenses as factory overhead, rather than selling expenses in its normal course of business. Furthermore, Dongbu argues that there is no legal basis to treat these expenses as movement expenses pursuant to section 771(c)(2) of the Act since they are incurred before shipment to the U.S. customer. Respondent argues that the Department most recently stated in the *Proposed Regulations* that the deduction for movement expenses only ''includes a deduction for all warehousing expenses incurred after the merchandise leaves the producers factory * * *,'' a position which the Department notes is ''[c]onsistent with the SAA, at 823 and 827.'' *See Proposed Regulations* at 7330 (preamble to proposed section 351.401(e)).

DOC Position. We disagree with petitioners' characterization of the expenses in question as post-production warehousing expenses which Dongbu has incurred after shipment, and that they should be treated as movement charges and deducted from U.S. price. As we noted in our sales verification report for Dongbu, the respondent indicated that the warehousing expenses in question are not treated as selling expenses, but rather as cost of manufacturing expenses. We noted in the same report that, as such, the amounts reported in Dongbu's questionnaire response of May 24, 1996, and the method of allocating these expenses, were shown during Dongbu's cost verification to tie directly to audited financial statements. Therefore, as in the preliminary results of these reviews, we have continued to treat these expenses as manufacturing overhead expenses, and we have not deducted them from U.S. price for the final review results.

Comment 10. Petitioners argue that the Department should treat the markup charged by Dongbu USA for transportation services in the U.S. market consistently with the Department's treatment of similar charges by Dongbu Express in the Korean market by deducting them as movement expenses from the U.S. price. Petitioners note that in the first review of corrosion-resistant products, and in the preliminary results of the present reviews, the Department included the markups paid by Dongbu to Dongbu's home-market subsidiary, Dongbu Express, in the adjustment made to NV for movement charges. Petitioners contend that Dongbu's transactions with Dongbu USA are identical in substance to those between Dongbu and Dongbu Express, and the Department must analyze them in the same way. In doing so, U.S. brokerage and handling expenses, ocean freight, and the U.S. customs duty, which are arranged and/or paid for Dongbu USA, should therefore be increased by the corresponding value of the services performed by Dongbu USA relative to these services.

Respondent argues that the actual expenses of the kind referred to by petitioners (*i.e.*, the costs of arranging for U.S. brokerage and handling, U.S. customs clearance, and, as importer of record, the payment of customs duties), are already completely accounted for. According to Dongbu, Dongbu USA does not directly arrange for these services, but instead employs Customs brokers for the brokerage service, handling, customs clearance, and payment of customs duties. Dongbu states that the full costs associated with these expenses were fully reported on a sale-by-sale basis in the computer field USOTREU. Dongbu maintains that even though it agrees with petitioners that the markups charged by Dongbu Express for inland freight services constitute deductible movement charges, the services at issue are separate from the reported fees paid by Dongbu USA. Dongbu states further that there is no legal basis for deducting an amount for Dongbu USA's profit on these sales, because U.S. profit deductions such as those suggested by petitioners are allowed only in connection with CEP sales, and not EP sales.

DOC Position. We agree with petitioners and Dongbu that the actual expenses charged by Dongbu Express for inland freight services in the Korean home market consist of movement charges deductible from net price and NV. We differ, however, with petitioners' argument that Dongbu's transactions with Dongbu USA are identical in substance to those between Dongbu and Dongbu Express. We agree with respondent that the costs of arranging for U.S. brokerage and handling, U.S. customs clearance, and, as the importer of record, the payment of customs duties, are reflected in the brokerage fees paid by Dongbu USA and are accounted for on a sale-by-sale basis in the reported field USOTREU, which we verified during the sales verification. Accordingly, our treatment of these expenses has not changed in these final review results.

Comment 11. According to petitioners, the Department must apply partial facts available to account for Dongbu's failure to report all U.S. brokerage expenses. Petitioners state that the Department's verification report indicates that the company did not report any U.S. brokerage expenses for one observation number. As a result, the Department should use partial facts available for this adjustment in its U.S. price calculations. Respondent conceded this reporting error and did not contest this issue.

DOC Position. We agree with petitioners and have corrected this error by deducting from U.S. price the amount of U.S. brokerage fee which we verified should have been allocated to this transaction.

Comment 12. Petitioners maintain that the Department must use facts available to account for Dongbu's failure to report partial returns in the home market. They argue that in its questionnaire responses, Dongbu implied that it had reported all credit invoices as requested; however, at verification the Department discovered that partial returns were not reported. Petitioners state that while Dongbu

initially claimed as its excuse for omitting partial returns that it had over-reported sales, Dongbu now claims that it failed to account for partial returns because it could not do so. Petitioners argue that the explanation for Dongbu's failure to report partial returns was a simple unilateral decision not to do so, and that this omission may result in its understatement of home-market monthly weighted prices to be compared to U.S. price (*i.e.*, if the original sale involving the returned merchandise had a lower price than other sales during the month). Petitioners state that in similar situations the Department has resorted to facts available. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Japan, Singapore, Sweden, Thailand and the United Kingdom*, 60 FR 10900, 10908 (February 28, 1995) (Final Results of Antidumping Duty Administrative Reviews). Petitioners contend that any uncertainty regarding the total effect of the partial returns is attributable to Dongbu's misstatement of the relevant facts and its failure to account for partial returns. They further note that had Dongbu not misled the Department in stating that returns had been traced to original invoices, the effect of partial returns on specific products or CONNUMs could have been reviewed during the course of the review. However, given Dongbu's misstatement of the facts and its failure to account for partial returns, the Department must resort to facts available.

Dongbu argues that there is no reason to revise its home-market sales data because its methodology used in accounting for partial returns is reasonable given its reporting capabilities, and that the approach it adopted had no significant impact on the margin. According to Dongbu, petitioners ignore the fact that the reason it did not offset the reported sales quantities to account for partial returns is because it could not do so, and that this was verified by the Department. Dongbu excluded these credits from its reporting database, but accounted for the universe of such credits during the quantity and value reconciliation of the home-market sales verification. Respondent argues that petitioners' claim that the exclusion of these partial returns might distort monthly weighted-average prices is unfounded since documents examined during verification demonstrate that the total volume of such adjustments is so small as to have no discernible effect on weighted-average prices. According to Dongbu, even if the quantities at issue were significant, for petitioners' claim to have merit would require that the original sales prices for partially returned merchandise on average would have to have been consistently higher or lower than prices for comparable merchandise in the same period. Respondent contends, however, that given the random nature of returns, there is no reason for such a pattern to occur. Also, Dongbu asserts that there is no basis for petitioners' claim that it misled the Department or misstated the facts, and that the methodology it used to account for partial returns is consistent with that which the Department verified in the first reviews.

DOC Position. We agree with Dongbu that its reporting methodology was reasonable and consistent with the approach we verified and accepted in the first review of corrosion-resistant products. As we noted in the home-market section of the Dongbu sales verification report, Dongbu did not report its partial returns because it could not do so. We agree that it was not possible for the Department's verifiers to trace partial return credit invoices to original sales transactions. Although Dongbu excluded these credits from its home-market database, we sampled and tested a complete listing of all such partial-return credits during the quantity and value reconciliation process of the sales verification, and found that Dongbu adequately accounted for the universe of such credits. We also agree with Dongbu that the total volume of the adjustments at issue is not significant and that, due to the random nature of the returns, there is no conclusive way of knowing that the original sales prices for partially returned products was consistently higher or lower than prices of comparable products in the same period. Accordingly, for the final results of this review we have not adjusted home-market prices to account for partial returns.

Comment 13. Petitioners argue that Dongbu's home-market credit expenses are improperly inflated because the calculation includes value-added tax (''VAT'') in the numerator and excludes VAT from the denominator. Petitioners further contend that it is the Department's long-standing practice to calculate credit expenses exclusive of VAT. Petitioners explain that Dongbu calculated the credit period for home-market sales based on the average credit days outstanding, and thereby improperly included VAT in the customer's accounts receivable. They state this represents a practice not permitted under the Department's precedent. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Venezuela*, 59 FR 55436, 55438–39 (November 7, 1994) (''*Silicomanganese*''); *Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 60 FR 63499, 63504 (December 11, 1995) (''*Wire Rope*''); and *Final Determinations of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France*, 59 FR 14136, 14139, 14146 (March 25, 1994).

According to petitioners, the VAT portion of the customer's accounts receivable relates to taxes which Dongbu collects from the customer and pays the government of Korea, and not to the price which Dongbu charges for the sale of the product under review. Petitioners contend that the Department should revise Dongbu's credit expense calculation such that the VAT is excluded from both receivables and sales in determining the credit period, since the applicable credit period concerns the period between shipment and payment for the merchandise, and not the customer's payment of VAT. Petitioners further argue that in *Silicomanganese* and *Wire Rope*, respondent attempted to improperly inflate its credit expense by including VAT in the numerator (*i.e.*, the average daily receivables), and excluding VAT from the denominator (*i.e.*, the average daily sales) of the credit period ratio, as Dongbu has done in the present review. Petitioners maintain that prior to the Department's discovery at verification, Dongbu did not accurately disclose its home-market credit methodology.

Dongbu argues that its home-market credit period was accurately calculated, and that petitioners' comment regarding this issue is based on a manifest error in the Department's sales verification report for the home-market transaction cited. Dongbu states that the report incorrectly reports that the accounts receivable amount used in determining customer-specific credit periods is inclusive of VAT, whereas the sales amount was not. Respondent argues that the verification documentation in question demonstrates that the monthly sales total for the customer reported is in fact inclusive of VAT, rather than exclusive. Dongbu maintains that since both sides of the equation used in determining the customer-specific credit period are inclusive of VAT, there is no error in the reporting methodology. Respondent notes that a potential problem could only arise if both sides of the equation were not reported on the same basis.

DOC Position. We disagree with petitioners. While petitioners are correct that it is the Department's practice to calculate credit expenses exclusive of VAT, we disagree with petitioners' cites to *Silicomanganese* and *Wire Rope* in support of their argument that Dongbu incorrectly calculated the average receivable turnover rate based on an average trade receivables inclusive of VAT. Unlike the respondent in the present review, the respondents in these cases sought an adjustment for the costs associated with carrying additional uncertain liabilities for VAT.

Also, upon review of the sales verification documents cited by respondent as the basis for petitioners' incorrect analysis of credit periods, we agree that the Department's analysis incorrectly states that the accounts receivable amount used in determining customer-specific credit periods is in fact inclusive of VAT, while reported sales values were not. The documents referred to by the respondent demonstrate that the total monthly sales used in the credit period calculation included—not excluded—VAT. Consequently, because both sides of the equation used to determine the customer-specific credits are inclusive of VAT, we agree with respondent that Dongbu's reporting methodology for credit periods is not in error.

Comment 14. Petitioners claim that the markup charged by Dongbu Express is not a permissible freight deduction, and that the Department must adjust Dongbu's home-market movement expenses in the final results. Petitioners contend that Dongbu has failed to demonstrate that the freight-related markup charged to Dongbu by its affiliated service provider, Dongbu Express, was at arm's length. Accordingly, the Department should use facts available to ensure that these movement charges reflect actual movement expenses, and not merely an intra-corporate transfer. Petitioners argue that Dongbu reported the majority of its home-market inland freight expenses as the amount it is charged by Dongbu Express. They state that since Dongbu Express is an affiliated concern, the amount charged by it must be shown to be arm's-length before the data reported can be determined reliable. *See, e.g., Final Results of Antidumping Duty Administrative Review; Color Picture Tubes from Japan,* 55 FR 37915, 37922–23 (September 14, 1990).

Petitioners claim that in the current reviews the record demonstrates that Dongbu Express' home-market freight charges to Dongbu are artificially inflated in excess of unaffiliated-party charges, and that Dongbu has provided ''no credible information or evidence'' to show that the markup charged by Dongbu Express for freight-related charges reflects market value, and is not simply a price constructed for internal bookkeeping purposes. As a result, according to petitioners, the Department must revise Dongbu's claimed freight adjustment by reducing the reported freight expenses by Dongbu Express for merchandise delivered by unaffiliated truckers by the maximum reported amount of Dongbu Express' markup. Petitioners further argue that if Dongbu is entitled to the freight adjustment, a similar adjustment must be made to account for the markup charged by Dongbu USA for transportation-related services in the U.S. market.

Dongbu argues that the markup charged by Dongbu Express is reasonable and at arm's length. Dongbu contends that, with respect to the markup charged by Dongbu Express on shipments using unaffiliated truckers, petitioners made exactly the same argument here as in the first administrative reviews; those arguments were rejected by the Department. Respondent states that petitioners have mischaracterized the markup in question as an intra-corporate transfer or ''internal bookkeeping entry'' rather than a real movement expense. Dongbu maintains that it has demonstrated on the record of this review that the markups at issue are reasonable in magnitude by comparing them to Dongbu Express' company-wide overhead and profit, and that while the comparison expenses and profit data relate to company-wide operations rather than only steel-related trucking services, the test is reasonable and accurate for the purpose of demonstrating that the markup is commercially reasonable. Dongbu also takes issue with petitioners' suggestion that it may be manipulating the markup in question in order to ''reduce artificially the margin of dumping calculated'' by referencing the data submitted by Dongbu and verified by the Department during the home-market sales verification.

Respondent also points out that the Department verified in Korea that Dongbu makes ex-factory sales where Dongbu Express provides the freight services and the customer pays Dongbu Express directly for the service. In these cases the amount paid is based on the same fee schedule charged by Dongbu Express; therefore, the customer is charged the same amounts by Dongbu Express that Dongbu Express charges Dongbu for the same services.

DOC Position. We agree with respondent that the amount charged by Dongbu Express is reasonable and at arm's length. As indicated by Dongbu, it demonstrated during its home-market verification that the prices charged by Dongbu Express to Dongbu were commercially reasonable charges for the services provided by Dongbu Express. In the present reviews, as was the case during the first administrative reviews, Dongbu has demonstrated that, on average, the percentage of Dongbu Express' general expenses to cost of sales is equal, on average, to the profit Dongbu Express earns. The sum of these two items is equal to Dongbu Express' markup to unrelated freight company charges, and, therefore, the prices charged to Dongbu by Dongbu Express accurately reflect market rates.

Comment 15. Petitioners argue that the Department must use facts available to determine the freight adjustment for deliveries where Dongbu Express' vehicles were used. Petitioners contend that Dongbu refused to answer the Department's repeated inquiries on the matter. According to petitioners, Dongbu confirmed in its supplemental questionnaire response that Dongbu Express occasionally uses its own trucks to transport subject merchandise for Dongbu Steel, but indicated that such instances were very rare and involved no greater than an estimated 10% of reported shipments. Petitioners state that while Dongbu eventually identified those sales which were transported using Dongbu Express' trucks, it did not provide the actual costs of the services. The Department needs this information, assert petitioners, to calculate the freight adjustment based upon actual costs. *See, e.g., Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results,* 55 FR 47093, 47099 (November 9, 1990). Therefore, as a result of Dongbu's refusal to provide requested information, the Department should deny Dongbu any freight deduction for those deliveries identified as having been made using Dongbu Express' personnel or vehicles.

Respondent argues that the reported amounts for transportation where Dongbu Express vehicles were used were at arm's length. Dongbu notes that while it pays a discrete amount for freight to an affiliated party in accordance with an established fee schedule, petitioners have erroneously claimed that it is the Department's practice to require that adjustments for services provided by affiliated parties should in all circumstances be reported on the basis of actual costs. Dongbu argues that in such instances where respondents pay a fee for such a service, the Department's practice is to accept the payment as the basis for the reported

adjustment so long as it can be demonstrated to be at arm's length. If this cannot be demonstrated, the Department requires respondents to calculate a cost build-up based on the supplier's accounting records. Respondent asserts that it has demonstrated in the present review that the amounts paid to Dongbu Express for freight services provided using its own trucks were reasonable and reflected arm's-length rates when compared to a benchmark that is at arm's length. Furthermore, according to Dongbu, the benchmark at issue is the arm's-length amount that Dongbu Express was charged by unaffiliated trucking companies. Dongbu claims it has demonstrated that the amounts charged to Dongbu were equal to those third party charges plus a reasonable markup for Dongbu Express' expenses and profit incurred in arranging for the freight services.

DOC Position. We agree with Dongbu that the amounts reported for transportation expenses when Dongbu Express vehicles were used were demonstrated to be at arm's length. We agree that it has been the Department's practice to accept the payment made by a respondent for a service as the basis for reported adjustments so long as it can be demonstrated to be at arm's length. If this cannot be demonstrated, we require the respondent to calculate a cost build-up based on suppliers' accounting records. *See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552 (April 15, 1988). In the present case, however, Dongbu has demonstrated that the amounts paid to Dongbu Express for freight services provided when using its own trucks were reasonable and accurately reflect arm's-length rates. Dongbu did this by demonstrating that the amounts charged to Dongbu are equal to those charged by unaffiliated trucking companies (that provide trucking services) plus a reasonable markup for Dongbu Express' expenses and profit incurred in arranging for the freight services.

Comment 16. Petitioners claim that the POSCO group's method of reporting COP and CV data is seriously flawed and warrants the use of partial facts available. Petitioners claim that it is unclear whether POSCO accurately assigned internal product codes known internally as ''representative product groups'' (''RPG's'') to control numbers (''CONNUM's'') based on the physical characteristics of the CONNUM. An RPG is a product having certain industrial specifications. POSCO created CONNUMs using the Department's matching criteria by assigning RPGs with similar physical characteristics to the CONNUM. Petitioners note that in some instances POSCO combined RPGs with different physical characteristics into one CONNUM. Petitioners argue that combining disparate RPGs to create a single CONNUM and then calculating a single cost for this CONNUM results in a severe distortion of costs. Petitioners believe that it would be very easy for POSCO to manipulate the cost of CONNUMs by combining disparate RPGs into a single CONNUM to obtain an artificially low cost for the CONNUM. Petitioners state that it would be difficult for the Department to discover this type of manipulation due to the large number of RPGs and CONNUMs in the database. Consequently, petitioners conclude it is impossible for the Department to determine precisely which CONNUMs consist of multiple RPGs with disparate physical characteristics and therefore costs which are unreasonable. Petitioners continue that because there is no way for the Department to assess the extent of these problems, the Department should declare the RPG system unreliable and resort to facts available. As facts available, petitioners suggest adjusting all of POSCO's submitted cost data by assigning to each CONNUM the highest cost of manufacturing reported for any particular RPG within that CONNUM.

POSCO responds that it has accurately assigned RPGs to CONNUMs in accordance with the Department's model-match hierarchy. POSCO claims that the product characteristics captured at the RPG level are in some instances more detailed than the Department's CONNUM characteristics and in other instances less detailed. POSCO states that for critical characteristics such as width and thickness, POSCO's RPG characteristics closely mirror the Department's specifications, although the exact ranges are not identical. POSCO asserts the RPG system matches the Department's requirements in the vast majority of cases and characterizes petitioners' examples of severe systemic defects as aberrant examples which were not portrayed as major exceptions in the Department's cost verification report.

DOC Position. We agree with the POSCO group. For these final results we have accepted POSCO's reported CONNUM-specific costs. We found that POSCO's cost data were allocated to a sufficient level of product detail following the model-match instructions. To derive the submitted cost data, POSCO assigned and weight-averaged individual RPGs based on characteristics that corresponded to our model-match instructions. We examined the component RPGs within selected CONNUMs and noted, in some instances, that the RPG characteristics were not exactly identical to the Department's characteristics, and that POSCO's combining of RPGs caused the cost of certain characteristics in the CONNUM to be averaged. However, we have determined there is no indication of a pervasive problem in how RPGs were assigned to particular CONNUMs and that, with certain adjustments, the reported CONNUM costs are reliable. We have determined that POSCO's reported costs for CONNUMs reasonably reflected the production cost of the merchandise during the POR. We made a similar determination in the *Corrosion-Resistant Final*, where we accepted a respondent's CONNUM-specific costs and found that the cost data were allocated to a sufficient level of product detail following our model-match instructions. *See Corrosion-Resistant Final* at 18560.

Comment 17. Petitioners argue that the POSCO group's use of the cost during the POR of the most similar CONNUM for products which were not produced but which were sold during the POR warrants the use of partial facts available. Petitioners contend that product costs can vary substantially from one period to the next. Accordingly, assigning a surrogate value from a production period during the POR for a different product produced outside the POR may result in a substantial distortion of the reported costs. Petitioners state that the POSCO group provided no information regarding the method it used in selecting the most similar product for use as a surrogate. This practice did not allow the Department to assess whether the reported most similar CONNUM is, in fact, the most similar. Petitioners contend that all CONNUMs with identical costs are surrogates. As partial facts available, petitioners suggest using the highest reported cost from this group for all the CONNUMs within the group.

The POSCO group retorts that the number of products which were sold during the POR but which were not produced in this period is trivial. The POSCO group criticizes petitioners' estimate of the number of surrogate sales, stating that petitioners have inaccurately and unreasonably summed the volume of all CONNUMs which share the same total cost of manufacturing with another CONNUM. The POSCO group contends that this

calculation grossly overstates the use of surrogate values because it is the POSCO group's inability to account for all of the characteristics in the model match that is the reason for the majority of CONNUMs sharing the same total cost of manufacturing.

DOC Position. We have accepted the POSCO group's surrogate CONNUMs for merchandise produced outside this POR. For subject merchandise which was sold but was not produced during this POR, the POSCO group used as a surrogate the COM of a similar CONNUM produced during this POR. We compared the physical characteristics of POSCO's surrogate CONNUMs with the product which was produced outside the POR (*see* cost verification exhibit 27). This comparison indicates that the physical characteristics of the surrogate closely resembled those of the actual product. With regard to petitioners' concern that this method could distort costs because manufacturing costs differ among time periods, we note that the small amount of sales in question renders this concern insignificant when considering the margin analysis as a whole. Furthermore, our verification findings indicate that the POSCO group reported CONNUMs with identical costs primarily because it weight-averaged the cost of certain characteristics (*see* comments 16 and 20 for further discussion).

Comment 18. Petitioners argue that the POSCO group entities' reported costs are less than those recorded in each company's financial statement. Petitioners state that the Department must adjust the submitted data to account for this unreconciled difference as partial facts available. To support their position, petitioners cite Pasta, in which the Department made this type of adjustment.

The POSCO group counters that petitioners' analysis of information on the record is groundless because it relies on the ''total COM valuation'' (*i.e.*, a summation of reported per-unit COM values) as the basis to prove that there is an understatement of reported costs. The POSCO group first claims that petitioner's analysis relies on a reconciliation worksheet (cost verification exhibit 26) that requires further explanation to avoid misinterpretation of the data. The POSCO group explains that this reconciliation did not result in a perfect matching of the reported costs to the financial-statement COM because the reconciliation relied on sales quantities and not production quantities for the period of August 1, 1994 through July 20, 1995. The POSCO group then used these sales quantities to extend the per-unit COM values. However, the POSCO group states that the COM values reflect manufacturing costs from July 1, 1994 through June 30, 1995. Therefore, the total costs which were used to derive the unit costs in petitioners' analysis reflect a different period of time than did the quantity used to derive the sales. Second, the POSCO group explains that the data for third-country costs had to be estimated because the POSCO group entities do not keep cost records precisely in accordance with the Department's requested reconciliation format. In order to complete the reconciliation, the POSCO group states that it made the simplifying assumption that the distribution of products sold in third countries was identical on a CONNUM-by-CONNUM basis to the distribution of those sold in the home market. The POSCO group asserts that this mismatch does not indicate that the submitted costs do not tie to POSCO's, POCOS'', or PSI's audited financial statements, but rather it simply indicates that the Department's requested format for the analysis did not fit exactly the CONNUM-specific cost reporting when applied to third-country sales.

DOC Position. We agree with the POSCO group. We are satisfied that the reconciliation provided by the POSCO group establishes that the reported costs are not understated. We also agree with the POSCO group that the format of the reconciliation necessarily would not result in a perfect match of reported costs to the financial statement, but we have determined that the reconciliation did indicate that all costs are captured. We disagree with petitioners that this situation is analogous to that found in Pasta. In that case, the respondent refused to provide a reconciliation and therefore we adjusted for the differences between the reported costs and the total costs reported in the financial statement based on our reconciliation. In this case, each of the POSCO group entities provided the requested reconciliation based on certain assumptions that we determined were not significant enough to affect the reliability of the data.

Comment 19. Petitioners submit that the Department should make a number of adjustments in determining the appropriate fair value and COP for purchases of substrates by POSCO's affiliates. Petitioners allege that prices in Korea are not set by market forces and therefore the Department should not rely on domestic sales prices of cold-rolled or corrosion-resistant products for purposes of determining whether the affiliated party transaction prices reflect fair value. Petitioners suggest the Department should use export prices to third countries to assess whether affiliated party transaction prices reflect fair value.

If the Department determines that the Korean market is viable, petitioners suggest that the Department should calculate the difference in profitability between sales to POCOS, PSI, and other customers in Korea for sales of subject merchandise only as the measure of fair value. Petitioners argue that this company-specific and product-specific comparison more accurately portrays the difference in the level of profitability of sales to affiliates and unaffiliated companies.

Petitioners contend that the Department erroneously compared transfer prices of substrates to the COM (as opposed to the COP) of substrates. Petitioners argue the statute explicitly requires that this test be a comparison of transfer price to COP, not COM.

The POSCO group argues that the Department erroneously failed to treat POSCO, POCOS, PSI, and PCC as a single producer when calculating the value of steel substrate that was subsequently painted, coated, slit, or sheared by various segments of the collapsed entity. The POSCO group states that because the Department is treating POSCO, POCOS, PSI, and PCC as a single producer for antidumping duty rate purposes, the substrate transferred between them should be valued at cost rather than at the higher of cost, transfer price, or fair value.

The POSCO group challenges the Department's application of the ''fair-value'' and ''major-input'' provisions in this case. The POSCO group argues that the fair-value provision and the major-input rule apply only when reviewing transactions between affiliated entities. The POSCO group contends that neither subsections (2) nor (3) of section 773(f) of the Act apply in this case, where the reviewed transactions are between segments of a single collapsed entity. The POSCO group states that the Department created a single producer for purposes of calculating the COP when the Department instructed the POSCO group to calculate a single, weighted cost for each unique control number when reporting the costs of products manufactured at POSCO, POCOS, PSI, or PCC. The POSCO group cites the *Final Results of Antidumping Duty Administrative Review: Certain Iron Construction Castings from Canada*, 59 FR 25603, 25604 (May 17, 1994) (''*Iron Castings*'') to support its case that the Department treats collapsed respondents as a single entity. The POSCO group also states the Department tested sales of a single

control number, without regard to the identity of the producer, to see if the control number was sold below cost. The POSCO group argues that by applying the major-input rule and the fair-value test to the collapsed entity, the Department failed to fulfill its own stated intention to treat POSCO, POCOS, PSI and PCC as a single producer.

The POSCO group cites the *Final Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom*, 61 FR 54613, 54614 (October 21, 1996) (''*Crankshafts*'') to support its position that the Department does not apply the fair-value provision or the major-input rule to transfers of steel substrate between divisions of a single company. The POSCO group also states that it is logically inconsistent and contrary to law for the Department to treat two or more entities as a single unit for some areas of dumping analysis such as inter-company transfers under the CEP methodology and subject merchandise purchased for resale and not disregard transfer prices in this instance. The POSCO group cites examples such as technical services, warranty, and advertising expenses that are routinely valued at the entity's cost, not at a rate charged by one entity to its parent, subsidiary, or sister division. The POSCO group sets forth that unaffiliated resellers have argued that, for purposes of the sales below cost test, the Department should value subject merchandise purchased from unaffiliated suppliers based on the acquisition price rather than on the supplier's production costs. POSCO states the Department has rejected this argument, explaining that COP means actual production costs of the producer—plus selling, general and administrative expenses (''SG&A'')—and not the acquisition price, in the *Final Results of Antidumping Duty Administrative Review: Elemental Sulphur from Canada*, 61 FR 8239, 8251 (March 4, 1996) (''*Sulphur*'').

The POSCO group argues that the Department's fair-value adjustment inappropriately double counts expenses and erroneously introduces profit into the calculated COP for the sales-below-cost analysis. The POSCO group asserts using the transfer price to value POCOS'' substrate purchases includes POSCO's profit nominally earned on the substrate transaction as well as elements of POSCO's SG&A. This, the POSCO group avers, violates the Department's own definition of the COM, which consists of materials, labor, fixed and variable overhead.

The POSCO group argues if the Department erroneously applies the fair-value test, fundamental errors in the preliminary methodology should be corrected for the final results. The POSCO group states the statute directs that the amount of the element under consideration, in this case the substrate, should fairly reflect the amount usually represented in sales of that merchandise in the market under consideration. The POSCO group states that it had sales of comparable merchandise both to members of the combined entity and to unaffiliated customers. The POSCO group contends the Department therefore should have compared these two sets of prices when performing the fair-value test. The POSCO group criticizes the Department's methodology as too broad and inaccurate because the Department did not attempt to compare profitability across sales of the same product sold in the same relative volume to affiliated and unaffiliated customers.

Petitioners retort that the statute explicitly requires that the major-input rule and fair-value provisions be applied to transactions involving transfers of substrate between POSCO, POCOS, PSI, and PCC. Petitioners argue that regardless of whether these entities have been collapsed, they are clearly and undeniably ''affiliated persons'' under the statutory definition. Accordingly, major inputs should be valued using the major-input rule and the fair-value provision. Petitioners contend the collapsing of entities merely goes to the level of affiliation between the separate corporations and the unusual intimacy of the relationship between the parties. If collapsed, entities are treated as a single firm for the limited purpose of sales reporting and calculation of a single margin. Petitioners argue that collapsing, however, does not extinguish corporate forms per se. Petitioners state that the collapsing of POSCO, POCOS, PSI, and PCC for sales reporting and margin calculation does not in any way extinguish, or even diminish, the fact that these entities are separate legal businesses. Petitioners assert that, to the contrary, the collapsing of these entities merely evidences the extremely high degree of affiliation and intimate nature of their relationship demonstrated on the record between these separate corporate entities. Petitioners cite the *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, 38187 (July 23, 1996) to support their position that the major-input rule and fair-value provisions apply regardless of whether the entities are collapsed for sales purposes.

Petitioners state that the POSCO group's argument regarding the Department's valuation of merchandise purchased for resale is incorrect since the statutory provision on which the POSCO group relies relates to subject merchandise, not inputs. Petitioners also disagree with the POSCO group's contention that the application of the major-input rule results in the inappropriate inclusion of profit and certain expenses because the major-input rule goes exclusively to material costs; accordingly, profit earned on sales or purchases of the subject merchandise never enters into the major-input rule and cannot be infused into the COM as a result of that rule. Petitioners continue that, for example, the cost to POCOS of the substrate naturally includes a markup charged by POSCO and that the price with the markup represents the true cost to POCOS of the input.

DOC Position. As indicated in the preliminary results of this review, we have treated POSCO, POCOS, and PSI as a collapsed, single entity, the POSCO group, for purposes of our antidumping analysis. *See, e.g., Preliminary Results of Antidumping Duty Administrative Review: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 61 FR 51882, 51884 (October 4, 1996). We have determined that the POSCO group represents one producer of certain cold-rolled steel flat products and certain corrosion-resistant carbon steel flat products. We note that the POSCO group has also been treated as a single entity in prior segments of these proceedings. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea*, 58 FR 37176 (July 9, 1993).

We have reconsidered our position with respect to those companies which the Department determined are properly treated as a single entity in performing an antidumping analysis. We find that our prior practice of collapsing entities while continuing to apply the fair-value provision and the major-input rule is improper. We have determined that a decision to treat affiliated parties as a single entity necessitates that transactions among the parties also be valued based on the group as a whole. As such, we find that among collapsed entities, the fair-value and major-input provisions are not controlling. Thus, for both sales and cost reporting purposes,

we consider the POSCO group to be one producer. With regard to transfers of inputs among the POSCO group companies we have valued transfers of substrate between the companies at the cost of manufacturing of the substrate plus the cost of inter-company transportation and packing. We find the facts of this case analogous to those found in *Crankshafts* where we did not apply the fair-value provision or the major-input rule to transfers of steel substrate between divisions of a single company. In *Crankshafts*, we sated that ''[a]lthough respondent describes UEF and UES as ''related'' in various sections of their questionnaire response, the weight of record evidence (*e.g.*, corporate structure charts and audited financial statements) indicate that they are divisions of the same corporation. The Department has determined that section 773(e) (2) and (4) does not apply in such situations.'' *Crankshafts* at 54614. *See also Final Determination of Sales at Less Than Fair Value: Offshore Platform Jackets and Piles from Japan*, 51 FR 11788, 11791 (April 7, 1986), where the Department stated that because NSC's steel was manufactured internally by another division of the same company, section 773(e) of the Act—in relevant part now sections 773(f) (2) and (3)—is inapplicable. Section 773(f)(2) directs the Department to disregard, in certain instances, transactions directly or indirectly between two persons. Since we have determined that the POSCO group is one entity for these final results, sections 773(f) (2) and (3) of the Act cannot apply because there are no transactions between affiliated persons.

We disagree with petitioners' reliance on *Presses from Germany* which they argue supports their position that the major-input rule and fair-value provisions apply regardless of whether the entities are collapsed for sales purposes. In that case, the companies at issue were not collapsed for sales reporting. However, respondents argued for combining certain elements of cost between two affiliated companies because the combination of these companies met, in their view, the sales collapsing criteria set forth by the Department in *Iron Castings*. We did not combine the companies for cost purposes in that case because the two companies made different models and the respondent selectively averaged certain costs between the companies but not other costs. This is not consistent with the facts in the current case where we combined companies for sales reporting purposes and are now combining the same companies which produce the same models for cost purposes. Additionally, in the current case, we are combining all elements of cost, not selected elements of cost as respondent's suggested in *Presses from Germany*.

Petitioners' comments regarding the comparison of affiliated transactions to sales to third countries are moot since we have determined that the Korean market is viable. The comments received from petitioners and respondent concerning the application in these cases of the fair-value and major-input provisions are irrelevant to these final results, since the Department has determined that sections 773(f) (2) and (3) of the Act do not apply here.

Comment 20. Petitioners argue the Department should apply partial facts available for the POSCO group's submitted costs because costs for certain physical characteristics were not appropriately accounted for. *See* proprietary version of the Department's cost analysis memo, dated April 2, 1997, for an explanation of these physical characteristics. Petitioners state RPGs are unreliable as evidenced by the fact that some RPGs with similar characteristics have different costs.

The POSCO group retorts that the Department may not apply adverse facts available simply because POSCO did not maintain costs in the level of detail contemplated by the Department. The POSCO group states in cases where a company has been unable to provide costs at the level of detail requested by the Department, the Department has accepted the reported costs where it was satisfied that those costs nonetheless reasonably reflected the actual costs of producing the subject merchandise during the POR. The POSCO group cites the *Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 61 FR 13815, 13817 (March 28, 1996) (''*Canadian Plate*''), where the Department accepted submitted costs despite the fact that the respondent had reported costs for one of two producing mills. The POSCO group states the Department concluded that the respondent's methodology was reasonable, given (1) the nature of its cost accounting system, (2) its verified inability to determine specific costs, and (3) the conservative method in which the costs were reported. The POSCO group asserts its reported costs reflect the actual costs as recorded in its normal accounting system and reasonably reflect the cost of producing the merchandise.

Petitioners counter that the POSCO group failed to furnish the Department with any means to account for the costs associated with certain characteristics and did not, as the antidumping questionnaire requires, provide costs determined on the basis of specific CONNUMs. Petitioners state that the POSCO group's failure to account for the cost of these characteristics severely distorts the dumping calculations by understating the costs associated with these products.

The POSCO group argues the Department routinely accepts reported costs where the Department is satisfied that those costs reasonably reflect the actual costs of producing the subject merchandise. The POSCO group asserts that its reported costs are acceptable for the same reasons as stated in *Canadian Plate*. Specifically, the POSCO group states the reported costs are based on the costs as recorded in the company's normal accounting system. The POSCO group points out it does not track cost differences with respect to certain physical characteristics, which it maintains is a reasonable and conservative approach, because any costs associated with these differences have been spread over all products.

With regard to petitioners' argument that a serious distortion of costs results from combining RPGs into CONNUMs, the POSCO group responds that the cost difference between two RPGs with similar characteristics results from POSCO's ability to produce identical products using different production lines and production routes. The POSCO group states it may also produce different volumes of a given product over a specific period, resulting in varying unit costs. The POSCO group argues that deviations in actual costs for similar RPGs are not evidence of wide physical dissimilarity or an improper combination, but rather a real-world testimony to the accuracy of POSCO's RPG system where different processing conditions result in different costs.

DOC Position. We agree with petitioners and respondent in part. We agree with petitioners that the POSCO group did not appropriately account for two physical characteristics. *See* the Department's final cost analysis memo, dated April 2, 1997. For the two physical characteristics at issue, the POSCO group derived a general weighted-average cost that was applied uniformly to all merchandise that contained these characteristics. This resulted in a distortion of the COM of CONNUMs with lower sales volume but which required a costlier and higher grade of substrate. This weight-averaged cost is also contrary to POSCO's normal

cost accounting system which reflects cost differences of RPGs; when RPGs were combined to create CONNUMs, differentiations were lost through averaging. For these final results, we calculated adjustment factors specific to different types within each characteristic, and recalculated the COM of the affected CONNUMs.

With regard to the remaining physical characteristics, we have determined that the POSCO group reported product-specific costs from its normal cost accounting system, which reasonably reflect the actual cost of producing the merchandise. We agree with the POSCO group that its reported costs for the other physical characteristics were reasonable, for the same reasons outlined in *Canadian Plate*. Specifically, the POSCO group reported product costs in as much detail as its normal cost accounting system provides, and any costs associated with the other physical characteristics are captured and allocated to all products.

Comment 21. Petitioners argue that if the Department persists in employing the unduly narrow reading of the statute's affiliation provision that it employed in its preliminary results, POCOS's U.S. price should be based on the price charged to AKO because, based on such a narrow reading, POCOS was not in fact affiliated with that sales entity.

The POSCO group argues that POCOS was affiliated with AKO and BUS, and that even petitioners have acknowledged this fact.

DOC Position. As discussed in the DOC Position to Comment 2, *supra*, we have determined that POCOS was affiliated with the entities in question and that, therefore, U.S. price should be based upon the prices charged to the unaffiliated U.S. customers reported by the POSCO group.

Comment 22. Petitioners argue that if the Department finds that POCOS was affiliated with the Korean and U.S. companies through which the U.S. sales of its products were made, the Department should classify POCOS's U.S. sales as CEP transactions, and make the required deductions from U.S. gross unit price. Petitioners also argue that the Department should classify POSCO's U.S. sales, which are made through POSTRADE and POSAM, as CEP transactions.

Petitioners state that the Department classifies sales as EP transactions if they satisfy three criteria: The merchandise is not inventoried in the United States, the commercial channel at issue is customary, and the U.S. selling agent functions only as a communications link and mere processor of sales-related documentation. *See, e.g., Presses from Germany* at 38171 and *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, 38141 (July 23, 1996) (*''Presses from Japan''*).

Regarding the first two criteria, petitioners state that subject merchandise is almost never warehoused for sale in either the United States or Korea by manufacturers or trading companies, and the large customer that typically buys from the manufacturer or trading company would not require an alternative channel of distribution. Consequently, petitioners assert, the Department's analysis must focus on the third criterion: whether the U.S. selling agent functions as more than a communications link and mere processor of sales-related documentation.

Furthermore, for purposes of this analysis, petitioners argue that because POCOS performs virtually no selling functions in any of its markets other than actually selling the product and maintaining customer contacts, the Department's analysis of the functions of POCOS' home market and U.S. sales entities should focus primarily on their role in actually selling the product and maintaining customer contacts, which petitioners assert is significant enough to warrant classifying the U.S. sales in question as CEP sales.

Petitioners argue that several cases cited by the POSCO group in its letter of September 20, 1996, as instances where the Department treated sales as EP (formerly purchase price) sales, where the U.S. affiliates allegedly played a far more active role than did POSAM and BUS, actually involved instances where the Department indicated the U.S. affiliates did not play a substantive role in negotiating U.S. sales prices. *See, e.g., Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France*, 58 FR 37125, 37133 (July 9, 1993); *Wire Rod* at 68869; and *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland*, 56 FR 56363, 56371 (November 4, 1991). Petitioners argue that these determinations support petitioners' point that even when a sale is made prior to importation, the Department will classify that sale as a CEP transaction when the U.S. affiliate negotiates, or plays a significant role in negotiating, the selling prices in the United States.

Petitioners argue that BUS's close contact with U.S. customers (both apart from and during the sales process), its role in setting the price with the U.S. customers, and its involvement in numerous other stages of such transactions show that BUS is much more than a mere processor of sales-related documentation or a communications link in the U.S. sales process, but rather is actively involved in selling, transporting, and financing the product.

Petitioners argue that the SG&A data of BUS suggests that BUS performed even more general selling activities for POCOS' U.S. sales than POCOS does for its own home-market sales.

Petitioners also argue that the Department should treat POSCO's U.S. sales made through POSAM, a U.S. trading company owned by POSCO, as CEP transactions, because record evidence indicates that POSAM's role in the U.S. sales process for POSCO products is very similar to that of BUS.

Petitioners argue that in *Presses from Germany* the Department found similar sales activities being performed by U.S. affiliates, and the existence of substantial SG&A expenses incurred by those affiliates in the U.S. sales process, and, as a result, the Department classified sales transacted by these entities as CEP sales. Petitioners indicate that the financial statements of BUS indicate the significant extent to which it was involved in the U.S. sales process.

Petitioners argue that the Department's verification reports do not indicate that U.S. customers negotiate directly with POCOS or that BUS plays no role in establishing U.S. prices, but rather that the POSCO group had only stated these points at verification. Furthermore, petitioners argue that the presence of a POCOS official at the U.S. sales verification at the offices of BUS, and the assertion by the POSCO group that this official considers and confirms the proposed U.S. price, do not negate the fact that BUS, not POCOS, deals with the customer and negotiates the final price.

The POSCO group contests petitioners' claim that the Department should ignore the first two criteria for determining whether or not sales are classified as EP. The POSCO group argues that it is the Department's longstanding practice to consider all three criteria, and that the Department has in fact done so in prior steel cases, including the *Corrosion-Resistant Final; Wire Rod* at 68869, in regard to the other physical characteristics, and *Brass Sheet*

and Strip from The Netherlands; Final Results of Antidumping Duty Administrative Review, 61 FR 1324, 1326 (January 19, 1996). The POSCO group asserts that the SAA and the Proposed Regulations confirm the Department's intention to continue its consistent prior practice in this area; that the Department cannot simply change its regulations and practices for each industry subject to an antidumping inquiry; and that changing Department practice on a case-by-case basis and applying different standards to respondents in different industries would be fundamentally unfair to all parties.

The POSCO group argues that petitioners' claim that BUS played an important role in setting the price to the ultimate customer is directly contradicted by the sales verification reports and the record evidence. The POSCO group notes that the petitioners state that POSAM's role in the U.S. sales process for POSCO products is very similar to the role of BUS in the U.S. sales process for POCOS products, and that the Korea sales verification report noted that the Department's review of sales documentation confirmed that POSAM served as a facilitator of the sales process, that any customer service or product specification issues were referred to POSCO, and that POSAM's function as facilitator of U.S. sales appeared to be limited to functioning as the importer of record and processing logistical arrangements such as brokerage and handling. The POSCO group also notes that the U.S. sales verification report indicates that BUS simply facilitates communications between POCOS and the U.S. customer.

The POSCO group argues that POCOS' approval of the key terms of sale was not a *pro forma* process. Rather, POCOS received its customers' requests concerning the key terms of sale, considered them, and determined the final price and quantity of each sale. The POSCO group indicates that the U.S. sales verification report states that POCOS' prices to the U.S. customers were negotiated with POCOS. The POSCO group also indicates that one sales trace at the home-market sales verification provides support that POCOS determined the quantity sold: the U.S. customer tried to change the quantity component of the purchase requisition and sent this request to BUS, but this request was refused by POCOS.

The POSCO group argues that petitioners' suggestion that POCOS's sales should be classified as CEP sales because all sales contact with the customer was made by BUS is ridiculous. The POSCO group states that the whole point of having a U.S. affiliate in such back-to-back sales transactions as those here and in every other such EP case is to have a presence in the United States to facilitate communications which, as stated in the U.S. sales verification report, was the role of BUS in POCOS's U.S. sales.

As for petitioners' argument that the Department should classify the POSCO group's U.S. sales as CEP sales because BUS and POSAM purportedly undertook numerous activities with respect to U.S. sales, the POSCO group argues that the Department has determined in scores of previous cases that a respondent's sales are properly classified as EP (formerly purchase price) sales when its U.S. affiliate undertakes activities identical to those undertaken here by BUS and POSAM. For example, in the first administrative review of this corrosion-resistant steel order, the Department found sales to be EP when the U.S. affiliate participated in sales negotiations and took title and warehoused the product. *See Corrosion-Resistant Final* at 18551, 18562. The POSCO group argues that petitioners' claim that certain others of these past cases are distinguishable because the affiliates did not negotiate sales prices is not convincing because BUS likewise did not negotiate sales prices but, rather, only communicated sales prices determined by POCOS to POCOS' U.S. customers.

The POSCO group argues that many of the responsibilities attributed by petitioners to BUS are commonly undertaken by an affiliated selling entity that acts as a communications link, while several others are typically undertaken by an entity, like BUS, that serves as the importer of record. The POSCO group argues that the record shows that BUS played a very limited role in U.S. transportation services, and the POSCO group argues that petitioners failed to mention various functions POCOS undertakes for U.S. sales, including (1) arranging and paying for freight to the Korean port, loading charges, wharfage, harbor maintenance fees, miscellaneous charges, and bank charges; (2) applying for and supplying documentation for duty drawback; (3) investigating and handling warranty claims; (4) determining the quarterly price to be charged BUS and the prices for each individual sale; and (5) obtaining market research from numerous sources.

The POSCO group indicates that BUS's overall SG&A expense figure does not accurately reflect the expenses it incurs in selling the subject merchandise because BUS'' activities extend far beyond selling the merchandise subject to this antidumping inquiry, as evidenced by relatively small value of its sales of subject merchandise compared to total sales. The POSCO group argues that petitioners' continued reliance on *Presses from Germany* is misplaced because in that case the U.S. affiliates played a far more active role than did BUS and POSAM in these cases, including identification of specific customers, handling of warranty expenses, supervision of installation of products, substantial procurement of parts, provision of technical assistance, and arrangement of post-sale warehousing.

DOC Position. We disagree with petitioners' assertion that the POSCO group's sales should be reclassified as CEP sales. When the three criteria described in the DOC Position to Comment 7 *supra* are met, we consider the exporter's selling functions to have been relocated geographically from the country of exportation to the United States, where the sales agent performs them. We also have recognized and classified as indirect EP sales certain transactions involving selling activities similar to those of BUS in other antidumping proceedings involving Korean manufacturers and their related U.S. affiliates. *See, e.g., Final Determination of Sales at Less Than Fair Value; Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 57 FR 42942, 42950–1 (September 17, 1992).

In these reviews, we determine that the selling functions of POSAM and BUS are of a kind that would normally be undertaken by the exporter in connection with these sales. The role of POSAM and BUS in the payment of cash deposits of antidumping and countervailing duties, their arrangement of certain movement-related expenses, their involvement in contracts with customers and commissionaires and in activities related to customer payment, are consistent with EP classification and are a relocation of routine selling functions from Korea to the United States.

Comment 23. Petitioners argue that, regardless of whether the POSCO group's U.S. sales are classified as EP or CEP transactions, the Department should reduce U.S. price by a portion of the revenue earned by POSTRADE, POSAM, AKO, and BUS through the purchase and re-sale of steel in the ''back-to-back'' nature of the U.S. sales. The additional deduction would reflect a portion of this markup that can be attributed to those entities' additional costs (*e.g.*, overhead) and profit that can be associated with the movement

expenses reported by the POSCO group in its U.S. sales file.

Petitioners indicate that for another respondent in these proceedings, Dongbu Steel, the Department has made comparable deductions from price, involving transportation expense services provided by an affiliated party, Dongbu Express. See *Corrosion-Resistant Final* at 18554 and *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results of Antidumping Duty Administrative Reviews*, 61 FR 51882, 51886 (October 4, 1996) (''*Preliminary Results*''). Petitioners argue that POSTRADE, POSAM, AKO, and BUS performed functions similar to those performed by Dongbu Express, and in the case of the latter the Department deducted from home-market price the fee charged by Dongbu Express to Dongbu, which reflected a markup beyond the expenses directly incurred by Dongbu Express in the provision of the services.

Petitioners argue that the only difference between the POSCO group's scenario and that of Dongbu Express is that POSCO, POCOS, and PSI did not pay the affiliates directly for the provision of the movement expense services; rather, those affiliates were reimbursed for these, as well as other services, through the ''back-to-back'' nature of the U.S. sales transactions. Petitioners argue that these markups reflect payment for all of the services rendered for POSCO, POCOS, and PSI, and would have been incurred by POSCO, POCOS, and PSI regardless of what entities were involved in the process.

Petitioners cite an additional case where a similar adjustment was made for services provided by affiliated parties. *See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 57 FR 3167, 3178–9 (January 28, 1992) (''*Forklifts*''). Petitioners argue that, as in *Forklifts*, the Department should presume that the amounts paid by POSCO, POCOS, and PSI beyond the actual expenses directly incurred by the affiliated parties for the certain specific expenses would have been incurred by POSCO and POCOS (directly or indirectly), regardless of who provided those services. Consequently, petitioners argue that the Department should deduct from U.S. price an additional amount for those services to reflect expenses beyond those directly incurred by the affiliates.

Petitioners argue that because POSTRADE and AKO only provided movement services, it is reasonable to deduct the entire markup of those Korean affiliates in the calculation of U.S. price. For POCOS, petitioners note, the difference for each sale can be derived from the U.S. sales database; for the other U.S. sales of respondent (*i.e.*, those of POSCO and PSI), petitioners propose a specific per-ton amount, based on sales verification report exhibit 24 at 17, which concerns a particular sale.

Regarding POSAM and BUS, the petitioners concede that the deductions should not be based on the entire markup, but only the expenses and profit that can reasonably be attributed to U.S. movement expenses. Petitioners state that it is not possible, from the information provided by the POSCO group, to determine what portion is attributable to the services other than those concerning U.S. movement expenses. Petitioners argue that the Department should use the Dongbu Express markup information available from the public record as a basis for determining how to adjust the POSCO group's reported U.S. movement expenses. Petitioners argue that this is appropriate because Dongbu Express only provides services related to movement, and those services are similar to some of those provided by the affiliates of POSCO, POCOS, and PSI. Petitioners state that information submitted on the record by Dongbu indicates that Dongbu Express' markup was 30 percent; therefore, petitioners argue, the Department should increase the U.S. movement expense variables (INLFWCU, USOTREU, USDUTYU, and MARNINU) by 30 percent. *See* the public version of the letter from Morrison & Foerster to the Secretary of Commerce, dated February 29, 1996 (Exhibit B–31 at 1). As an alternative source for an adjustment factor for the U.S. affiliates, the petitioners cite estimates based upon reported markups of POSTRADE and AKO.

The POSCO group argues that petitioners' request to make adjustments for POSAM and BUS represents the rejection of years of uniform practice, and that the Department properly rejected this argument in the preliminary results of these reviews. The POSCO group argues that the affiliate revenue in question reflects the affiliates' indirect selling expenses and profit, typical of hundreds of identical transactions that the Department has examined in scores of prior cases, including numerous steel cases.

Respondent argues that section 772(c) of the Act indicates that profit and any indirect selling expenses or overhead are not to be deducted from EP. Respondent indicates that the Department has frequently examined back-to-back transactions like those involved here, and has never deducted profit or indirect selling expenses from EP, and did not do so in the *Corrosion-Resistant Final.*

The POSCO group argues that the Department's longstanding policy concerning EP sales is to utilize the price paid by the first unaffiliated U.S. customer and to deduct only *direct* selling expenses from the price. The POSCO group cites *Certain Iron Construction Castings from Canada: Final Determination of Sales at Less Than Fair Value*, 51 FR 2412 (January 16, 1986) (''*Castings Final*'') as a case where the Department rejected petitioner's request that a markup earned by a related U.S. distributor be deducted from purchase price because the law only authorizes deduction of direct expenses from purchase price (now EP).

The POSCO group indicates that even if the petitioners' claim can be limited to transportation services, the claim should still be rejected because, unlike Dongbu Express, POSAM and BUS purchased and re-sold the merchandise in typical back-to-back indirect EP transactions, and those affiliates' role in providing transportation services was very limited.

Finally, while it believes it is not necessary because no adjustment such as that proposed by petitioners is appropriate, the POSCO group notes that the petitioners' calculation of the 30 percent adjustment factor is faulty because it apparently reflects total revenue earned by Dongbu Express. The POSCO group states that this figure is irrelevant because Dongbu Express' expenses would have to be deducted from that figure so that one could calculate the relevant figure, Dongbu Express' profit as a percentage of cost of sales.

DOC Position. As indicated elsewhere in this notice, the basis for treating the U.S. sales as EP rather than CEP, for purposes of our analysis, is that the record indicates that POSAM and BUS acted as mere facilitators of the transactions in question, rather than as selling agents. Consequently, in analyzing the U.S. sales of the POSCO group, it would be inappropriate for us to treat a significant portion of the expenses incurred by the affiliates in question as selling expenses, indirect or otherwise.

In any case, petitioners only propose additional adjustments to U.S. price that can reasonably be limited to movement expenses, which are to be deducted in the calculation of U.S. price. *See* section 772(c)(2)(A) of the Act. The U.S.

expenses reported by the POSCO group were deducted from U.S. price in the preliminary results, without objection from respondent and consistent with the requirements of the statute. Any additional portion of the revenue earned by the affiliates through the ''back-to-back'' nature of the U.S. sales that can be attributed to U.S. movement should be deducted as well.

The POSCO group questions the 30 percent adjustment factor proposed by petitioners because the POSCO group claims that the profit rate would be the ''relevant figure.'' However, none of the cases cited by respondent, including the *Corrosion-Resistant Final* and *Forklifts*, provide any grounds for limiting the adjustment to just profit. In the *Corrosion-Resistant Final*, we deducted from home-market price the entire amount charged by Dongbu Express to Dongbu. In *Forklifts* the CIT found that, because the services performed were directly connected with the movement of forklift trucks from Japan to the United States, the Department correctly determined that Toyo's mark-ups were actual expenses relating to the movement of the subject imports that Toyo would have incurred regardless of the relationship of the party performing the service, and that our conclusions were reasonable and our determination was in accordance with the law. See *Toyota Motor Sales, Inc.* v. *United States*, Consol Ct. No. 92–03–00134, Slip Op. 93–154 (CIT 1993).

Furthermore, in *Forklifts* the CIT also indicated that because the parties involved were only related indirectly, no intra-company transfer was taking place. This is also the case with POCOS, because it is not directly affiliated with its U.S. selling entity; consequently, we have determined that the appropriate factor by which to increase the reported expenses for those certain specific services provided by BUS is the markup of Dongbu Express, including the portion that constitutes profit. However, because POSAM was wholly-owned by POSCO, the profit earned by POSAM that can be attributed to the movement services it provided to POSCO should be treated as an intra-company transfer, and therefore should not be deducted from U.S. price. Therefore, the appropriate adjustment factor for the U.S. sales of POSCO and PSI would be the markup, *net* of the profit rate.

We have determined, based on the Dongbu exhibit cited by petitioners and the POSCO group, the appropriate markup rate was eight percent, of which one-half reflected profit. Consequently, the appropriate adjustment factor is eight percent for POCOS and four percent for POSCO and PSI. We multiplied these factors by the variables cited by petitioners, and deducted the results in the calculation of U.S. price.

Regarding the *Castings Final*, that case actually states that the distributor's markup was not deducted from U.S. price because it did not fall into any of the categories of expenses that should be deducted from U.S. price for purchase price sales. *See Castings Final* at 2414. However, as noted above, POSAM and BUS clearly did provide services involving movement expenses, and some of the markup, beyond the portion reflected in the movement expenses reported by the POSCO group in its U.S. sales databases, can be attributed to those movement services.

Regarding POSTRADE and AKO, the POSCO group did not contest either petitioners' assertion that those affiliates only provided transportation services, or petitioners' conclusion that it is consequently reasonable to deduct from U.S. price the entire markup (or, in the case of sales through POSTRADE, a markup based on a verified sale). No information on the record indicates that those affiliates provided services other than those described by petitioners. To account for the additional unreported expenses, for POCOS's U.S. sales we have deducted from U.S. price the entire difference between the price paid by BUS to AKO and the price paid by AKO to POCOS. However, for POSCO's and PSI's U.S. sales, which were made through POSTRADE, we have only deducted from U.S. price that portion of the POSTRADE markup that is not accounted for by POSTRADE profit (*i.e.*, one-half of the markup, in accordance with the Dongbu Express information), because that profit can be considered to have been an internal transfer.

Comment 24. Petitioners argue that the Department should reverse its preliminary decision regarding duty absorption, should conduct duty absorption inquiries, and should determine that respondents have, in fact, absorbed antidumping duties on behalf of their customers. Petitioners argue that the statute provides that during any review initiated two years after publication of an antidumping duty order, the Department, if requested, will determine whether a foreign producer absorbed antidumping duties on behalf of its U.S. customers when subject merchandise is imported into the United States through an affiliate of the producer. Petitioners argue that they requested such a determination, and that reviews were initiated two years after the publication of the relevant antidumping duty order.

Petitioners argue that even if the Department continues to determine that it is not required to conduct the requested duty absorption inquiry during these reviews because it determines that these reviews are the ''first'' ones for purposes of duty absorption, the Department nevertheless retains the discretion to do so and should do so in these reviews.

Petitioners argue that the Department should not ignore absorption when it is obvious on the record. Petitioners argue that analysis of U.S. sales of POCOS indicates that the return to POCOS on certain sales was negative and, consequently, that duties were absorbed.

Petitioners argue that confining absorption inquiries to the second and fourth reviews will encourage respondents to manipulate the administrative review process to avoid duty absorption findings. Petitioners argue that if respondents know with certainty that absorption reviews will only be conducted in the second and fourth reviews, they could, and likely will, alter their absorption practices, or not export any subject merchandise to the United States for the review periods in which the absorption reviews are to be conducted.

Petitioners argue that absorption inquiries in these administrative reviews would eliminate the necessity of filing protective absorption inquiry requests that would otherwise be imposed upon petitioners. Petitioners state that limiting such inquiries to certain reviews would require petitioners to incur the additional expense of requesting a review in those years solely to check for absorption. Petitioners state that such additional requests would also consume the limited resources of the Department and impose greater burdens on respondents. Even if the Department chose to conduct such an absorption inquiry where a review was not requested, substantial information would be required which could be obtained during the normal course of reviews such as these.

The POSCO group argues that petitioners' duty absorption argument is untimely and irrelevant in this administrative review. The Department's proposed regulations indicate that for ''transition orders'' such as these, the Department will only make a duty absorption determination for administrative reviews initiated in 1996 or 1998. Furthermore, respondent argues, the SAA states that the duty absorption inquiry is only relevant in the context of a sunset review proceeding. Respondent states that the SAA indicates that ''[t]he duty absorption inquiry would not affect the

calculation of margins in administrative reviews'' (SAA at 885).

DOC Position. We disagree with petitioners. As we stated in the preliminary results of these reviews and earlier in this notice in the DOC Position on Comment 3, for transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect before January 1, 1995, § 351.213(j)(2) of our *Proposed Regulations* provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. *See Preliminary Results* at 51883. It is not the Department's intent to go beyond what the statute provided with respect to conducting duty absorption determinations in the second-and fourth-year reviews.

Comment 25. Petitioners argue that the Department should adjust NV to account for physical differences between cold-rolled products that were tension-leveled and those that were not tension-leveled. Petitioners state that this process imparts special flatness characteristics to steel products and, therefore, results in commercial distinctions among products which frequently command a price extra.

Petitioners argue that the POSCO group apparently did not provide any information during verification supporting its claim that there are no commercial differences between products that were tension-leveled and those that were not, except perhaps for products which were processed on one other specific line which could impart characteristics similar to those imparted by tension levelers. Petitioners argue that the POSCO group conceded that a large volume of products were not tension-leveled or processed on that other single line. Consequently, it is very possible that tension-leveled U.S. sales are being compared to home-market sales that were not tension-leveled.

Petitioners argue that the Department should recognize that tension-leveling does, in fact, create commercial distinctions among otherwise identical products, which are reflected in higher prices for tension-leveled products. Petitioners argue that as adverse facts available the Department should presume that all products sold in the United States were tension-leveled, and that all of these sales are being matched to home-market sales of products that have not been tension-leveled. The Department should then make an upward adjustment to normal value to account for physical differences in tension-leveling between U.S. and home-market products. Petitioners assert this adjustment should be based upon information submitted by petitioners, because the POSCO group's responses do not contain data that can be used to quantify the commercial difference between products that have been tension-leveled and those that have not.

The POSCO group argues that its methodology is reasonable, that the Department verified the products at issue are commercially indistinguishable, and that the Korea sales verification report supports this conclusion.

The POSCO group argues that petitioners are incorrect in their claim that respondent has not demonstrated that products that are not separately tension-leveled are commercially indistinguishable from other products that have been tension-leveled. The POSCO group argues that because it does not charge any extras depending on whether or not the product is tension-leveled, and because the respondent's customers, in placing the orders, did not specify whether or not the products should be tension-leveled, the products are commercially indistinguishable, and, in fact, the same price is charged whether or not the product is separately tension-leveled.

The POSCO group also argues that the petitioners are mistaken in their estimates of the quantity of steel that did not pass through any type of equipment that imparts tension-leveled characteristics.

For the above reasons, the POSCO group argues that the Department should not increase the NV of cold-rolled products to account for alleged unreported differences in physical characteristics due to differences in tension-leveling.

DOC Position. While inconsistencies exist between the explanations of this product characteristic provided by the POSCO group in (a) its February 13, 1996 submission, (b) at the sales verification in Korea, and (c) in its rebuttal brief, nothing on the record of these reviews contradicts the conclusion that a large portion of the home-market sales of cold-rolled merchandise (other than full-hard coil and electrical steel) was either tension-leveled or processed in such a way that it possessed properties very similar to steel that had been tension-leveled. Furthermore, no information on the record of these reviews indicates that the customers of the POSCO group requested that their steel be tension-leveled, or that the POSCO group charged extra for steel that was tension-leveled (or otherwise processed in a way that would impart similar properties). Furthermore, there is no information on the record of these reviews indicating that the POSCO group could actually determine from its internal records whether or not specific sales consisted of steel that was tension-leveled. Finally, there is no record evidence indicating that the POSCO group failed to report the costs associated with these processes. As a result, in these reviews we have not made any adjustments for this product characteristic.

Comment 26. Petitioners argue that POSCO's overrun sales are outside the ordinary course of trade and, therefore, if the Department should base NV on home-market sales, those overrun sales should be excluded from the Department's calculations. Petitioners argue that the factors considered previously by the Department in analysis of this issue—their volume relative to other sales, the profitability of such sales, and the types of customers purchasing them—demonstrate that the POSCO group's overrun sales were outside the ordinary course of trade. Petitioners cite *Certain Corrosion-Resistant Carbon Steel Flat Products From Australia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 14049, 14050–51 (March 29, 1996) (''*Australian Final*''). Petitioners point out that even the POSCO group, in requesting that it be excused from reporting the downstream sales of affiliated service centers in which POSCO owned a minority-interest, acknowledged that overrun sales were not comparable to non-overrun sales through its exclusion of sales of overrun coil from its presentation of downstream sales data.

The POSCO group argues that the facts with respect to the POSCO group's overrun sales are strikingly similar to those examined by the Department in the *Australian Final* (at 14051), in which the Department determined that the overrun sales of Broken Hill Proprietary Company Ltd. (''BHP'') were in the ordinary course of trade. The POSCO group argues that, as in that case, the Department typically examines several factors, none of which is dispositive, including: (1) whether the home-market sales in question did in fact consist of production overruns; (2) whether differences in physical characteristics, product uses, or production costs existed between overruns and ordinary production; and (3) whether the price and profit differentials between sales of overruns and ordinary production were dissimilar.

The POSCO group argues that the Department verified the POSCO group's methodology for classifying overrun sales, and no discrepancies were noted

in the Korea sales verification report, thereby establishing that the overrun merchandise had been properly classified for reporting purposes. The POSCO group states that, for a given CONNUM, the product characteristics and costs associated with the overrun prime merchandise were the same as those associated with non-overrun prime merchandise. The POSCO group argues that as was the case for BHP in the *Australian Final*, the POSCO group's overrun sales were more than an insignificant percentage of total home-market sales, and the profit earned on those sales was not insignificant. Finally, the POSCO group argues that overrun sales are not unusual or abnormal in the steel industry.

DOC Position. In the *Australian Final* we indicated that it is the Department's established practice to include home-market sales of such or similar merchandise unless it can be established that such sales were not made in the ordinary course of trade. In that case, we cited as an example *Final Determination of Stainless Steel Angle From Japan,* 60 FR 16608, 16614–15 (1995). As noted by the POSCO group, when evaluating whether or not sales of overrun merchandise were in the ordinary course of trade, we typically examine several factors taken together, with no one factor dispositive. *See, e.g., Certain Welded Carbon Steel Standard Pipes and Tubes From India,* 56 FR 64753, 64755 (1991). In addition to the factors cited by the POSCO group, we also stated in the *Australian Final* that we may consider whether the number of buyers of overruns in the home-market and the sales volume and quantity of overruns were similar or dissimilar in comparison to other sales. *See Australian Final* at 14051.

Neither petitioners nor the POSCO group dispute the categorization of the sales in question as production overruns.

Regarding physical characteristics, because overrun sales are made from inventory (*see* Korea sales verification report at 34), the thickness of the steel is already known at the time of sale and, therefore, any concept of ''thickness tolerance'' is irrelevant. As a default, the respondent coded the thickness tolerance variable as ''standard'' for inventory sales. *See* Korea sales verification report at 33. Consequently, overrun sales were coded in CONNUMs that consisted primarily of prime merchandise that was actually ordered to a specific thickness tolerance, contrary to overrun sales, which were made from inventory.

Given that overrun sales, unlike the overwhelming bulk of sales of prime merchandise, were made from inventory, additional expenses associated with this inventorying process would have been incurred for overrun sales.

Regarding product uses and numbers of buyers for overrun merchandise, these would have been limited in comparison to other merchandise. As indicated in the Korea sales verification report at 34, POSCO's selling practices are such that overruns would not normally be offered to certain types of customers.

The reported overrun sales constitute a relatively small portion of the home-market sales databases. In fact, they constitute a considerably smaller portion of overall sales than did the forecasted 1997 share of POSCO hot-rolled steel output at its new mini-mill, characterized by the respondent in its rebuttal brief at 30 as ''minuscule.''

Furthermore, the record indicates that excluding the sales the POSCO group reported as overruns, as requested by the petitioners, would not in fact exclude overproduced merchandise that was sold in the normal course of business. Specifically, the POSCO group, in its description of the decision to code specific steel as an overrun, noted that typically it attempted to sell merchandise made in excess quantities as ordinary prime. *See* Korea sales verification report at 34. The remainder, what the POSCO group internally classifies as overruns, would just be the portion of what it overproduced which could not be sold to customers as typical prime merchandise.

The POSCO group does not contest petitioners' assertion of differences in relative profitability of overrun sales but, rather, implies that the profits earned on overrun sales were not insignificant. However, as admitted by the POSCO group in its listing of factors we have considered in past instances, we are concerned with relative profitability, not the ''significance'' of certain levels of profitability.

As indicated by petitioners, the POSCO group did distinguish between overruns and other prime merchandise in its request to be excused from reporting downstream sales of certain affiliated service centers. This is an additional indication that the POSCO group considered sales of merchandise that had been actually recorded as overruns as outside the ordinary course of trade.

As a result of these factors, we have determined that the POSCO group's sales of overrun products were outside of the ordinary course of trade, and have excluded them from our price comparisons.

Comment 27. Petitioners state that in its preliminary calculations the Department presumed that the POSCO group had reported warranty expenses in dollars for local sales, and divided the reported warranty expenses by the dollar/won exchange rate in order to convert them to won. Petitioners argue that the POSCO group in fact appeared to have reported the warranty expenses for local sales in won. Petitioners argue that the Department should conclude that the per-unit warranty expenses for local sales were reported in won and, therefore, did not need to be converted to won. Consequently, petitioners state that the Department should correct this error by eliminating from the programming the equations that divide the reported warranty expenses by the dollar/won exchange rate.

DOC Position. We agree with petitioners, and have corrected this error for purposes of these final results.

Comment 28. Petitioners state that the Department should increase Union's reported COP for merchandise with high yield-strength characteristics because the company inappropriately reported an average cost of HRC with different yield strengths. According to petitioners, Union can trace yield strength of HRC to a specific finished product. Therefore, Union should have accounted for yield strength using a model-specific approach rather than relying on a single weighted-average cost. Petitioners also claim that Union's processing costs do not distinguish between the manufacturing cost of producing merchandise with different yield strengths, because reported conversion costs are an average between high- and low-yield-strength products.

Union contends that the petitioners' assertion is incorrect and based on their misinterpretation of the Department's findings at verification. According to Union, the verification report does not raise an issue with respect to its reported weighted-average HRC costs. Furthermore, Union identified and provided separate HRC costs based on yield strength as demonstrated in cost verification exhibit 26. As for submitted processing costs, Union asserts that there is no difference in processing costs associated with differing yield strengths because there is no significant difference in the production process of high- and low-yield-strength merchandise.

DOC Position. For the final results we have accepted Union's CONNUM-specific costs. We found that Union's cost data were allocated to a sufficient level of product detail pursuant to our instructions. We note that in assessing yield strength, the most important

variable is the carbon content, and possibly any micro-alloying elements in the HRC. An HRC with a higher carbon level will result in a finished product with a higher yield strength. However, our model-match hierarchy did not require that respondents identify carbon content. Therefore, Union's HRC were weight-averaged based on other more significant industry characteristics, such as the quality of the HRC. This quality characteristic indirectly incorporates the cost of carbon, which is the driver of yield strength. As for petitioners' concern regarding processing costs, the information on the record does not indicate that high- yield-strength and low-yield-strength products require significantly different processing. Additionally, we tested Union's submitted allocation methods and confirmed that Union allocated its total costs (*i.e.*, materials, labor, overhead) to either home-market, third-country, or U.S. merchandise. We also reviewed and tested the allocation methods used by Union to assign costs to individual CONNUMs. We did not note any discrepancies in Union's allocation methods to individual CONNUMs. Respondent has answered petitioners' concerns by referencing the cost verification exhibits and demonstrating that no additional adjustments are called for to accurately reflect costs of products with different yield strengths.

Comment 29. Petitioners contend that the Department should increase Union's submitted costs to account for the difference between the 1994 and 1995 year-end adjustment figures. Petitioners claim that because Union's POR covers months in both the 1994 and 1995 calendar years, the company's submitted costs should reflect year-end accounting adjustments for both years. Petitioners further argue that the Department has a longstanding policy of accounting for year-end accounting adjustments even when the fiscal year-end occurs outside the POR. In support of their position, petitioners cite *Non-Alloy Steel Pipe* (at 42952) and *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea,* 58 FR 37176, 37187 (July 9, 1993) (''*Flat-Rolled Final*''), in which we included these types of year-end adjustments.

Union argues that its submitted costs already reflect 1994 year-end accounting adjustments and June 30, 1995 semiannual accounting adjustments. Therefore, Union contends that there is no practical reason that in this instant review year-end adjustments for the last six months of 1995, outside the cost reporting period, should be included in the reported costs. According to Union, the adjustment the petitioners request is *de minimis* in nature and should be rejected pursuant to the Department's authority under 19 CFR § 353.59(a).

DOC Position. We agree in part with the petitioners. We normally consider year-end accounting adjustments when calculating costs during the POR. *See, e.g., Non-Alloy Steel Pipe* at 42952. In the instant case, Union reported costs for the period July 1, 1994 through June 30, 1995—a period that includes parts of two separate calendar years. Firms periodically bring their accounting records to a current status by means of updating and adjusting entries. The goal of these adjustments is to match costs in the periods in which the associated revenues are recognized. Union's submitted costs reflect only the 1994 year-end adjustments. We compared Union's 1994 and 1995 year-end accounting adjustments and noted that Union's reliance on only the 1994 year-end adjustments reasonably reflects the company's costs for the POR (*see* testing at cost verification exhibit 10). We did not find that adjustments computed on the basis of a cost-reporting period differed significantly from those computed for the calendar year 1994. In recent determinations we have accepted a respondent's reported costs where they reasonably reflected actual costs. *See, e.g., Final Results of Antidumping Administrative Review; Aramid Fiber Formed of Poly Para Phenylene Terephthalamide from the Netherlands,* 61 FR 51406, 51408 (October 2, 1996) and *Presses from Germany* at 38185.

Comment 30. Petitioners state that the Department should increase Union's reported manufacturing costs to account for differences between the company's POR costs (August 1, 1994 through July 31, 1995) and the submitted fiscal period costs (July 1, 1994 through June 30, 1995). Petitioners claim that information on the record indicates that Union's manufacturing costs for the POR (August 1, 1994 through July 31, 1995) exceed the submitted fiscal costs (July 1, 1994 through June 30, 1995). Petitioners urge the Department to include this difference in the submitted costs.

Union disagrees with petitioners and states that the Department should accept its reported manufacturing costs. Union responds that the Department permitted it to report POR costs based on the period July 1, 1994 through June 30, 1995 because the methodology did not distort costs and simplifies the administrative process.

DOC Position. We agree with Union. We generally require that respondents report a single, weighted-average COP and CV for the POR. We allow respondents to report these costs based on a fiscal year rather than the POR under certain defined conditions as explained in Section D of our questionnaire. We confirmed that the change in the cost reporting period of one month did not significantly distort costs, by comparing significant elements of the COM computed on a fiscal-year basis and on a POR basis (see testing at cost verification exhibit 17). We noted that the fiscal year figures reasonably reflect the company's POR results.

Comment 31. Petitioners claim that Union excluded its parent company G&A expenses in the submitted costs. Petitioners assert that the Department should increase Union's reported general expenses to include the identified G&A expenses incurred by its parent, DSM, that relate to the production of subject merchandise. In support of their position, petitioners cite the *Final Determination of Sales at Less Than Fair Value; Certain Steel Butt-Weld Pipe Fittings from the United Kingdom,* 60 FR 10558, 10561 (February 27, 1995) *(''Butt-Weld Pipe Fittings from the U.K.''),* in which the Department adjusted a respondent's submitted data to include an allocated portion of the parent company's G&A expenses.

Union states that, given the inconsequential amount of the adjustment, the Department should adhere to its preliminary findings and disregard the petitioners' claim pursuant to section 353.59(a) of our regulations.

DOC Position. We agree with petitioners. It is our practice to include a portion of the G&A expense incurred by the parent company on behalf of the reporting entity. *See, e.g., Butt-Weld Pipe Fittings from the U.K.* For these final results, we allocated a portion of DSM's G&A expenses to Union's general expenses.

Comment 32. Petitioners argue that the Department should treat all of Union's U.S. sales as CEP sales because of information in the response and other information discovered at verification. Petitioners draw a distinction between the present circumstances and those of the first reviews, since the record of these reviews contains additional information regarding the nature of UA's activities.

Petitioners argue that for U.S. sales to be classified as EP sales, a respondent must demonstrate that its U.S. sales satisfy three tests, as discussed in two recent final determinations, *Presses from Germany* at 38171 and *Presses*

from Japan at 38141. According to petitioners, U.S. sales will be classified as EP only if (a) merchandise is not inventoried in the United States, (b) the commercial channel at issue is customary, and (c) the U.S. selling agent is not substantively more than a ''processor of sales-related documentation'' or a ''communications link.''

Concerning the first two aspects of the test, petitioners argue that these are not relevant to the instant case, since all merchandise is made to order in the respondent's industry, both in the United States and in the home market. However, petitioners argue, the respondent's U.S. affiliate (UA) performs significant selling functions in the United States, plays an active and substantive role in the U.S. sales process, and clearly acts as more than a mere processor of sales-related documentation. Petitioners cite respondent's February 29, 1996 letters to establish that UA performs market research and strategic and economic planning.

Petitioners argue that UA has substantial discretion and authority to determine resale prices in the United States and that its parent's approval of its price quotes is done on a *pro forma* basis.

Petitioners argue that the Department's verification report contains further evidence of UA's active involvement in the sales process, since it states that either ''Union America/ Dongkuk International (DKA) or an independent commissionaire finds a U.S. sale for Union.'' This statement, petitioners argue, demonstrates that UA acts as more than a mere processor of sales-related documentation and that, at a minimum, the Department equates UA's role with that of a commission agent.

Petitioners argue, again based on the verification report and Union's February 29, 1996 letters, that, in addition to soliciting customers, UA has responsibility for maintaining relationships with U.S. customers and for providing numerous other functions in support of Union's U.S. sales process: UA negotiates price and purchase terms with U.S. customers, performs procurement or sourcing services, acts as the importer of record, extends credit to U.S. customers, and makes arrangements with independent commission agents.

Petitioners argue that during the POR, UA's activities were taken over by DKA, and that UA thus became part of a larger organization engaged in other activities besides the representation of Union. Petitioners argue that UA thus ceased to be a part of Union, and became instead part of a larger organization. Petitioners argue that UA's increased autonomy from Union, and its involvement with other source companies, highlights the greater role played by UA in the sales process. Citing *Presses from Germany* and *Presses from Japan*, petitioners argue that the Department holds sales to be CEP when a U.S. affiliate plays an active role in the sales negotiation process, and when it performs significant additional functions in support of U.S. sales. Union's responses and the verification report demonstrate that UA played an active and substantive role in the U.S. sales process, and that all of Union's U.S. sales should therefore be classified as CEP sales.

Respondent argues that the Department has thoroughly considered and rejected these same arguments in both its first administrative review final decision and its preliminary findings in these proceedings, and argues that nothing has changed with respect to this issue from the first administrative review. Respondent argues that it is Union, not UA, who determines prices in the United States. Nothing in the record, respondent argues, indicates that UA or DKA has any discretion, let alone substantial discretion, in establishing Union's selling price in the United States.

The respondent reiterates that no new facts or law would warrant a change in the finding by the Department, in the first review of corrosion-resistant products and the preliminary results of these reviews, that Union's U.S. sales were EP sales. Respondent argues that all of petitioners' arguments were fully examined and rejected by the Department in the first review of corrosion-resistant products.

DOC Position. We disagree with petitioners. When the criteria outlined in the DOC Position to Comment 7 *supra* are met, we consider the exporter's selling functions to have been relocated geographically from the country of exportation to the United States, where the sales agent performs them. We also have recognized and classified as indirect EP sales certain transactions involving selling activities similar to UA's in other antidumping proceedings involving Korean manufacturers and their related U.S. affiliates. *See, e.g., Final Determination of Sales at Less Than Fair Value; Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 57 FR 42942, 42950–1 (September 17, 1992). In the present reviews, we ascertained the following with regard to sales considered as EP transactions in the preliminary review results: (1) Union's sales through UA, its related sales agent in the United States, are almost always shipped directly from Union to the unrelated buyer, and only rarely are introduced into UA's inventory; (2) Union's customary channel of distribution is direct shipment, although certain limited sales are normally introduced into UA's inventory; (3) UA performed limited liaison functions in the processing of sales-related documentation and a limited role as a communication link in connection with these sales. UA's role, for example, in extending credit to U.S. customers, processing of certain warranty claims, limited advertising, processing of import documents, and payment of cash deposits on antidumping and countervailing duties, appears to be consistent with purchase-price classification. These selling services as an agent on behalf of the foreign producer are thus a relocation of routine selling functions from Korea to the United States. In other words, we determined that UA's selling functions are of a kind that would normally be undertaken by the exporter in connection with these sales. More specifically, we regard selling functions, rather than selling prices, as the basis for classifying sales as EP or CEP. While in some cases certain merchandise sold by Union was entered into UA's inventory, this merchandise was sold prior to the importation of the merchandise, but not from UA's inventory. When all three of the factors already described for sales made prior to the date of importation through a related sales agent in the United States are met, we regard the selling functions of the exporter as having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. The substance of the transaction or the functions do not change whether these functions are performed in the United States or abroad. In this case, Union has transferred these routine selling functions to its related selling agent in the United States and the substance of the transaction is unchanged.

Comment 33. Petitioners argue that in its preliminary results the Department understated Union's per-unit CEP profit by using an incorrect base for its profit calculations. Petitioners argue that the Department should have included inventory carrying costs in indirect selling expenses when the latter were added into the factor labeled as ''INDEXUS,'' which was the sum of direct and indirect selling expenses, plus commissions. Petitioners cite

section 773 of the Act as requiring the Department to attribute CEP profit to all selling expenses incurred with respect to U.S. sales, including such imputed expenses as credit, which petitioners note that the Department did properly include, and inventory carrying charges.

Respondent argues that petitioners' assumption that the Department intended to use actual interest expenses as a proxy for imputed inventory carrying costs is incorrect. Respondent cites programming language to show that the Department deliberately excluded inventory carrying costs from the profit calculation. Respondent maintains that the only correction needed in regards to CEP profit is the inconsistent treatment of credit expenses, which is addressed separately. *See* Comment 34 *infra*.

DOC Position. We agree with respondent that our programming language deliberately excluded inventory carrying costs from the profit calculation. For a further discussion of this issue, see the DOC position to Comment 34.

Comment 34. Union argues the Department erred by treating credit expenses in the CEP profit calculation inconsistently when classifying some of Union's sales as CEP. Union avers that credit expenses were not included in the denominator of the CEP profit ratio, but were among the expenses multiplied by that ratio. Union contends this inconsistency must and can be corrected by adding credit expenses to the denominator in the calculation of the CEP ratio, or by removing them from expenses multiplied by the ratio.

Petitioners counter that Union's analysis of the Department's methodology is incorrect, because credit expenses are, in fact, implicitly included in the denominator of the ratio used to calculate the CEP profit rate. The Department, petitioners state, calculates the CEP profit rate by dividing the total profit on home-market and U.S. sales by the total expenses incurred in both markets. Because the total expenses include the actual amount of interest expenses incurred in financing accounts receivable, petitioners' view is that credit expenses are included in the denominator of the CEP profit ratio. Petitioners add that, because the denominator of the CEP profit ratio includes interest expenses incurred in extending credit to customers, in accordance with the statutory requirement that CEP profit be attributed to all selling expenses incurred on U.S. sales, the Department deducts the imputed credit expenses reported for each sale from the total expenses used to calculate the CEP profit rate in order not to double-count these expenses. This does not alter, however, the fact that credit expenses are implicitly included in the denominator; for that reason, petitioners assert, the Department's methodology is appropriate and accurate.

DOC Position. We agree with petitioners that imputed credit and inventory carrying costs should be included in the definition of total United States expenses used in the allocation of profit to CEP sales, consistent with section 772(f)(1), and have revised our methodology for these final results. The SAA states that ''[t]he total U.S. expenses are all of the expenses deducted under section 772(d)(1) and (2) in determining the constructed export price.'' SAA at 154. The SAA also explains section 772(d)(1)(D) as providing for the deduction from CEP of indirect selling expenses. These typically include imputed inventory carrying costs, which represent the opportunity costs of the capital tied up in inventories of the finished merchandise. *Id*. Section 772(d)(1)(B) explicitly includes credit expenses as among the direct selling expenses to be deducted from CEP.

We disagree with respondent that imputed credit and inventory carrying costs should be added to the total expenses used in the denominator in the CEP profit allocation. In determining the amount of profit to allocate to each CEP sale, the Department first computes the total profit earned by the foreign producer. This amount is based on the producer's actual profits calculated in accordance with section 772(f)(2)(D) of the Act. It includes any below-cost sales but excludes sales made to affiliated parties at non-arm's-length prices. Because it is the ''actual'' profit, this amount reflects the actual interest expense incurred by the producer.

A portion of the total actual profit is then allocated to the U.S. expenses incurred for each CEP sale. This is done based on the applicable percentage described in section 772(f)(2)(A) of the Act. In calculating this percentage, the statute directs us to include in the numerator the CEP expenses deducted under 772(d), which includes imputed credit and inventory carrying costs. In contrast, the total expenses in the denominator are those used to compute total actual profit. See section 772(f)(2)(D). As discussed above, ''actual'' profit is calculated on the basis of ''actual'' rather than imputed expenses. Although the actual and imputed amounts may differ, if we were to account for imputed expenses in the denominator of the CEP allocation ratio, we would double count the interest expense incurred for credit and inventory carrying costs because these expenses are already included in the denominator.

Comment 35. Petitioners argue that regardless of whether the Department classifies Union's U.S. sales as EP or CEP transactions, it still must account for the role played by UA with regard to services for U.S. sales, including transportation services. Petitioners argue that UA performs functions incident to bringing the subject merchandise from the original place of shipment to the United States which are similar to those performed by Dongbu Express. Petitioners argue that although different in form, Union's transactions with UA are identical in substance to those between Dongbu and Dongbu Express. The formal structure of the transactions between Union and UA should not preclude the Department from treating them the same way it would treat them if Union were to pay UA directly for these transportation services, petitioners argue. Petitioners urge the Department to add a markup to the transportation services in question.

Because information in the record does not permit the Department to determine what portion of UA's markup is attributable to transportation-related services, the Department must use alternative information to calculate the adjustment, petitioners argue. For this purpose, petitioners suggest the Department have recourse to the publicly available ranged data from Dongbu for the same kind of transaction, where the markup is as much as 30 percent. Petitioners argue that the Department should therefore add 30 percent to all transportation services provided by UA, *i.e.*, deduct 1.3 percent of all reported transportation charges from U.S. price.

Union, citing section 772(d) of the Act, argues that the Act does not include profits as one of the possible adjustments to EP, and that there is absolutely no basis in law for deduction of CEP adjustments from USP for EP sales. Respondent states that the cost of arranging the movement-related services in question is included in the U.S. brokerage and handling charges, which are fully accounted for as adjustments to the U.S. price. Respondent also differentiates its U.S. sales process from that of Dongbu by asserting that no comparable charge is paid by Union to UA for the services involved, other than those paid by UA to customs brokers. Finally, respondent argues, since its sales were EP and not CEP, there is no basis in law or the Department's practice for the deduction of UA's profit on such sales.

DOC Position. We disagree with petitioners and their analysis of the facts at issue. We verified that UA does not directly perform for U.S. brokerage and handling services for Union but rather employs customs brokers to carry out such services, to facilitate customs clearance, and to pay any customs duties. We verified that all U.S. brokerage and handling expenses (*i.e.*, demurrage and wharfage charges) incurred by UA on behalf of Union were fully reported on a sale-by-sale basis in the computer field USOTREU. We agree with Union that there is no legal basis for deducting an amount for UA's profit on these sales, because U.S. profit deductions are allowed only in connection with CEP sales, and not EP sales. Accordingly, we have not modified our treatment of movement expenses. *See also* DOC Position in response to Comment 10, *supra.*

Comment 36. Petitioners argue that the Department should use Union's date of shipment as date of sale for all U.S. sales because, in multiple transactions, the Department found at verification that the sales quantity changed between the sale date and shipment date. Analyzing verification exhibit 14, petitioners note that the quantity shipped differed from the quantity ordered by more than the established delivery allowance of 10 percent in multiple instances. Petitioners note that similar findings arose in the first review of corrosion-resistant products, and that, as a result, the Department used date of shipment for date of sale.

Respondent maintains that the verification actually upheld its reported sale dates, since it showed that all of Unions' sales are produced to order, that Union schedules its production to meet the terms of the sale contract, that the delivery provision of the sales contract merely requires the customer to accept any shipment falling within the tolerance and does not in any way provide a party with the opportunity to void the transaction if the delivered quantity exceeds the delivery tolerance, as evidenced by the absence of any refused shipments where the quantity fell outside the tolerance. Finally, respondent argues, petitioners have exaggerated the data, and the instances of quantities falling outside the delivery tolerances were ''quite limited.''

DOC Position. We agree with respondent. It is customary in high-volume metal industries for quantities to vary slightly in unforeseen amounts, for production convenience; this practice does not amount to a renegotiation or a significant alteration in the terms of trade. Therefore, we have continued to use the actual sale date as date of sale for purposes of these final results.

Comment 37. Petitioners note that the Department discovered at verification that Union's U.S. credit expenses were based on an incorrect interest rate. Petitioners accordingly request the Department to use the revised rate in its final results. Respondent did not address this issue.

DOC Position. We agree with petitioners and have amended our program accordingly for these final results.

Comment 38. Petitioners argue that the Department should convert all data, including quantity, for U.S. and home-market sales made on the basis of theoretical weight, to actual weight; in so doing, the Department should divide the calculated per-unit net price by the reported weight conversion factor. Respondent did not address this issue.

DOC Position. We agree with petitioners and have amended our program accordingly for these final results.

Comment 39. Petitioners argue that, in the event the Department uses Union's home-market prices instead of CV, the Department should make certain adjustments to Union's reported home-market sales data.

Citing the contractual arrangements which govern Union's home-market distribution, petitioners argue that Union's distributors are under Union's effective control; as examples, petitioners cite a stipulation in one such contract prohibiting a distributor from selling other firms' products. Petitioners cite other clauses which appear to ''give Union control over its distributors.'' In light of this control, petitioners request that the Department subject Union's home-market sales to an arm's-length test, and exclude any sales made at less than arm's-length prices.

DOC Position. We disagree with petitioners. The arrangements Union has entered into with its home-market distributors are simply exclusive sales contracts which are a common commercial arrangement all over the world. These arrangements are typically made at arm's length and do not normally indicate control of one party over the other. In this case we have no evidence that Union's distributors entered into these contracts other than voluntarily and that these contracts cannot be terminated at regular intervals by either party. For these final results, therefore, we have not subjected Union's home-market sales through distributors to an arm's-length test.

Comment 40. Petitioners note that Union identifies certain home-market merchandise as ''overruns,'' which the Department typically excludes from the calculation of NV as outside the ordinary course of trade. Petitioners note that, at verification, the Department found that Union uses the term ''overrun'' to identify sales that have atypical characteristics, including sales of merchandise found to have been obsolete, thinner than planned, or priced especially low to compensate a customer for previous payments. Petitioners cite the definition of ordinary course of trade in section 771(15) of the Act and assert that the overrun sales clearly are not in the ordinary course of trade. Petitioners also cite additional evidence to this effect, such as Union's low volume of overrun sales as a percentage of home-market sales, the different profit level on such sales, and the sporadic and low-volume nature of the sales in question. Petitioners urge the Department to exclude these sales from the calculation of NV.

Union argues that it does not in fact have any overruns, but that it designated certain sales as such at the Department's direction based solely on selling price.

DOC Position. We agree with petitioners. While ''overruns'' may not be the correct term of art to describe each of these sales, since it was at our direction that Union applied that designation to certain sales, the sales bearing this designation do in fact show one of the following signs of being outside the ordinary course of trade:

- The merchandise was obsolete;
- The merchandise was defective (*e.g.*, thinner than planned); or
- The merchandise was priced especially low to compensate a customer for previous payments.

When viewed as a whole, moreover, the fact that these ''overrun'' sales were sporadic, low-volume, accounted for only a small percentage of home-market sales, and were far less profitable than was typically the case in the home market, all suggest that these sales were, in fact, outside the normal course of trade. For these final results, therefore, we have eliminated those sales from our calculations of NV.

Comment 41. Recalling their argument in their general comments that Union is affiliated with POSCO, petitioners argue that the Department should use third-country prices for the value of Union's purchases of HRC, and should use CV for NV, basing CV profit on Union's profit in its largest third-country market.

Respondent argues that it is not affiliated with POSCO, that petitioners have not demonstrated that Union is reliant upon or controlled by POSCO,

that petitioners have not demonstrated that Union pays less than arm's-length prices for HRC purchased from POSCO, and that there is no basis for determining that Union is affiliated with POSCO.

DOC Position. Because the Department has determined that POSCO and Union are not affiliated (*see* DOC Position to Comment 2, *supra*), this comment is moot.

Comment 42. Petitioners note that in its preliminary results, contrary to the intent expressed in its preliminary analysis memorandum, the Department neglected to deduct brokerage and handling charges incurred in Korea by Union from U.S. price. Petitioners request the Department to correct its computer program to ensure that this charge is duly deducted from Union's U.S. price.

DOC Position. We agree with petitioners and have amended our program accordingly for these final results.

Respondents' Comments

Comments by Dongbu

Comment 43. Dongbu argues that it appropriately offset G&A expenses by the net gain from foreign currency translations of accounts payable. Dongbu asserts that these gains are associated with the production of subject merchandise because they relate to the purchase and financing of raw materials. In support of its contention, Dongbu states that this inclusion of foreign currency gains and losses from translations in COP and CV is consistent with the following Departmental determinations and judicial precedent: *Micron Technology, Inc.* v *United States,* 893 F. Supp. 21, 33 (CIT 1995) (''*Micron*''); *Pasta* at 30359; and *Final Determination of Sales at Less than Fair Value: Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea,* 58 FR 15467, 15480 (March 23, 1993) (''*DRAMS*'').

Petitioners contend that the Department should exclude Dongbu's net gains on foreign currency translations from G&A, COP, and CV calculations. The petitioners argue that the Department normally only includes foreign exchange *transactions* and not foreign exchange *translations* in the calculation of G&A expense. According to petitioners, the Department does consider certain *translation* gains and losses as a financial expense if such gains related to the cost of acquiring debt. However, petitioners claim that this approach does not apply in this instance, because the translation gains and losses are associated with raw material accounts payable and not debt related to external financing.

DOC Position. We disagree with Dongbu that the company's net gain from certain foreign-currency translations gains represents a G&A expense. In the past we have found that translation losses represent an increase in the actual amount of cash needed by respondents to retire their foreign-currency-denominated loan balances. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador,* 24 FR 7019, 7039 (February 6, 1995). Using the same reasoning, for purposes of these final results we have included Dongbu's net gains on foreign-currency translations in COP as an offset to financing cost, since the gains represent a decrease in the actual amount of cash needed by respondents to retire their foreign-currency-denominated loan balances.

Comment 44. Dongbu and Union argue that the Department erred in the preliminary determination of this review by failing to add an amount to export price to account for export subsidies, as required by section 772(c)(1)(C) of the Act. According to these respondents, article VI¶ 5 of the GATT provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization. This provision was implemented into U.S. law by section 772(c)(1)(C) of the Act. As provided therein, EP and CEP ''shall be * * * increased by * * * the amount of any countervailing duty imposed on the merchandise * * * to offset an export subsidy.'' In light of the above, Dongbu and Union contend the Department erred by failing to add 0.05 percent (for cold-rolled) and 0.10 percent (for corrosion-resistant) to EP and CEP to account for the payment of countervailing duties offsetting export subsidies. These respondents assert that the Department itself indicated such an adjustment was warranted in the final LTFV determination and in the final results of the first administrative review of certain corrosion-resistant carbon steel flat products from Korea. *See, e.g., Flat-Rolled Final* at 37191; *Corrosion-Resistant Final* at 18568.

Petitioners argue that the Department's decision not to adjust U.S. price for CVDs offsetting export subsidies is consistent with Department practice. They contend that the statute provides for an upward adjustment to U.S. price in order to account for CVDs imposed to offset export subsidies. *See* section 772(c)(1)(C) of the Act. Petitioners state that should the Department determine not to deduct CVDs from U.S. price because these duties are not imposed, it should also not make any upward adjustment to U.S. price for CVDs offsetting export subsidies for the same reason. Furthermore, if the Department treats the CVDs as not final, and determines to makes a downward adjustment to the cash deposit rate for CVDs offsetting export subsidies, it should also make an upward adjustment to the duty deposit rate for all other CVDs. Petitioners argue that if such an adjustment is made to the cash deposit rate, the applicable CVD rate must be applied to entered value, and not reported EP.

Petitioners argue that it is the Department's practice to calculate subsidy rates by allocating the benefit received over the f.o.b. foreign port value of the respondent's sales. They state that since the export subsidy rate is calculated using f.o.b. foreign port prices, the adjustment to U.S. price for CVDs offsetting export subsidies should also be calculated in this way; and that the percentage of the CVD rate attributable to export subsidies must be applied to entered value. However, according to petitioners, because respondents failed to reported entered value to the Department in their sales submissions, the adjustment cannot be made and respondents' request must be denied.

The POSCO group retorts that the Department was correct, in accordance with section 772(c)(1)(C) of the Act, in increasing EP by the amount of the CVD imposed to offset export subsidies, and adds that petitioners' contention that the adjustment be based on the entered value of the merchandise has no basis in the statute.

DOC Position. For purposes of these final results, we agree with Dongbu and Union that they are entitled to a 0.05 percent *ad valorem* adjustment to U.S. price for cold-rolled products and to a 0.10 percent *ad valorem* adjustment to U.S. price for corrosion-resistant products, in accordance with section 772(c)(1)(C) of the Act. Moreover, we disagree with petitioners' claim that an increase to U.S. price to account for export subsidies implies that the remaining portion of the CVDs paid on those shipments must be deducted from U.S. price. Also, nothing in the statute indicates that the upward adjustment should be based on entered value rather than on U.S. price, and it is not our practice to do so.

Comments by POSCO

Comment 45. The POSCO group asserts that the Department erred in including foreign exchange gains and

losses in interest expense. The POSCO group maintains that the foreign exchange gains and losses were not related to the production of the subject merchandise. The POSCO group states the gains and losses were either not realized during the POR or were amortized forward from a prior period. The POSCO group argues that these categories of exchange gains or losses do not in any way capture actual costs incurred during the POR or costs incurred to produce the subject merchandise.

The POSCO group argues that the Department erroneously overstated POSCO's interest expense by basing the denominator in its interest expense calculation on the cost of goods sold as reported in POSCO's consolidated financial statement, rather than on the higher amount that the Department calculated for POSCO's COM during the POR. The POSCO group urges the Department first to increase the cost of goods sold to reflect any adjustments the Department makes to POSCO's COM before dividing POSCO's interest expense by that amount.

Petitioners reply that the foreign-exchange translation losses are related to the cost of acquiring debt. Thus, they are related to production and are properly included in the calculation of POSCO's net interest expense. Petitioners cite *Micron*, which held that, to the extent that a respondent's translation losses resulted from debt associated with production of the subject merchandise, such losses are a legitimate component of the COP. Petitioners conclude that whether POSCO's foreign exchange gains and losses were realized during the POR is immaterial. They resulted from debt associated with production of the subject merchandise, and were, accordingly, properly included in the reported costs.

DOC Position. We agree with petitioners that including foreign-exchange translation losses in net interest expense is appropriate. The translation losses at issue are related to the cost of acquiring debt and thus are related to production and are properly included in the calculation of the POSCO group's net interest expense. The CIT has upheld this practice, stating in *Micron* that ''[t]o the extent that respondent's translation losses resulted from debt associated with production of the subject merchandise, such losses are a legitimate component of COP.'' *See Micron* at 33. Therefore, we increased POSCO's cost of goods sold to reflect our fair-value adjustments for the final results.

Comment 46. The POSCO group contends that the Department erroneously included severance benefit expenses that were attributable to years prior to the POR in our calculation of G&A. The POSCO group cites section 773(f)(1)(B) of the Act, which directs the Department to adjust the COP for those nonrecurring costs that benefit current or future production, or both. The POSCO group argues that prior-period severance benefits are nonrecurring costs that do not benefit current or future production and therefore should not be included in the COP. The POSCO group cites the *Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Germany*, 61 FR 13834, 13837 (March 28, 1996), to support its contention that the Department does not adjust actual production costs incurred during the POR to reflect severance costs related to prior periods.

Petitioners claim the severance benefits were properly included in G&A because the POSCO group's omission of this expense understated, and failed reasonably to reflect, the costs associated with the production and sale of the subject merchandise in accordance with the statute. Petitioners take issue with the POSCO group's characterization of severance benefits as non-recurring costs. Petitioners cite the *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Japan*, 58 FR 37154, 37174 (July 9, 1993), to support their position that severance benefits are not non-recurring items and should be included in G&A.

The POSCO group argues that charitable donations should be excluded from G&A since donations to charitable causes clearly do not relate to activities undertaken to manufacture and sell cold-rolled and corrosion-resistant steel products, but rather are payments to support the society at large. The POSCO group further argues that charitable donations do not fall within any other category of costs that are required to be included in the COP under the statute, such as materials, fabrication, labor, overhead, or packing costs.

Petitioners respond that the POSCO group's charitable contributions clearly benefit the POSCO group's research and development efforts which are clearly activities undertaken to manufacture and sell cold-rolled and corrosion resistant steel products. Petitioners cite the *Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong*, 55 FR 30733, 30741 (July 27, 1990), to support their position that the Department's practice is to include donations as a part of the G&A component of the COP and CV.

DOC Position. We disagree with the POSCO group that the prior-period severance benefits at issue do not relate to the current POR. In 1994, POSCO settled a lawsuit brought by current and former employees regarding severance benefits promised to employees upon departure. POSCO charged the additional severance benefits associated with prior periods directly to retained earnings in accordance with generally accepted accounting principles in Korea (''Korean GAAP''). However, we have determined that including the prior-period severance benefit as an element of COP is appropriate because the POSCO group's omission of this severance benefit understates and does not reasonably reflect the costs associated with the production and sale of the subject merchandise pursuant to U.S. GAAP. If the POSCO group had followed U.S. GAAP, it would have reported this expense currently and not as a charge to retained earnings. According to *Financial Accounting Standards Board Statement No. 16* (1977), paragraph ten, ''* * * all items of profit and loss recognized during a period, including accruals of estimated losses from loss contingencies, shall be included in the determination of net income for that period.'' Furthermore, this pronouncement requires that losses from lawsuits, income tax disputes, and similar events be included in the measurement of net income for the current period and should not be treated as prior-period adjustments. Accordingly, because we have determined that this method reasonably reflects the costs associated with the production and sale of the subject merchandise, we have included the severance benefits in general expenses.

We have included donations in G&A because contributions to charitable causes represent a general expense of the company, providing the firm with valuable commercial exposure and recognition in the marketplace. General expenses are appropriately included in the COP and CV of the merchandise under investigation according to sections 773(b)(3)(B) and 773(e)(2)(A) of the Act.

Comment 47. The POSCO group claims the Department made several cost-related clerical errors in the preliminary results. First, the POSCO group claims the Department applied the wrong factor when the Department adjusted the substrate costs to reflect

fair value for corrosion-resistant products manufactured by POCOS. Second, in the sales-below-cost program, the POSCO group alleges the Department failed to increase the home-market price by interest revenue before comparing the result to the COP. Lastly, the POSCO group argues that the Department incorrectly applied the fair-value adjustment in situations where cost was higher than the transfer price. The POSCO group claims it is inappropriate to apply a percentage figure to a basis different from the data from which the percentage was calculated. Further, the POSCO group claims the adjustment was intended to increase only the value of the substrate; the Department's adjustment, however, multiplied this factor by the COM, which includes additional materials as well as labor and overhead expenses.

DOC Position. The POSCO group's contention that we used the wrong factor to adjust the substrate costs to reflect fair value for corrosion-resistant products manufactured by POCOS is moot since we have not used either the major-input or fair-value provisions for these final results. We agree that interest revenue should be included in the home-market price which we did not include in the preliminary results. We have corrected this error for the final results. The issue of whether we applied the correct adjustment factor in cases where we selected the actual cost of a CONNUM is moot, since we did not apply the major-input rule in these final results.

Comment 48. The POSCO group argues that the Department erred by reducing the post-sale warehousing expense for one warehouse because the Department mistakenly thought the expense was not at arm's length.

Petitioners argue that the Department appropriately reduced POSCO's expenses for the warehouse. Petitioners state that the POSCO group failed to indicate before verification that the warehouse was owned by an affiliated party or to provide evidence that the expenses were at arm's length, and the Department should not presume that they were.

DOC Position. During the sales verification in Korea, the POSCO group informed us that the warehouse in question was owned by an entity that was affiliated with POSCO. *See* Korea sales verification report at 71. Included in the POSCO group's proposed list of POSCO expenses associated with this warehousing, in addition to expenses directly incurred by POSCO, such as those for labor, crane operations, and maintenance (see pages 70–71 of the public version of the Korea sales verification report), is an additional payment to the affiliated party. It is not clear from the record what, if any, were the expenses to the affiliated party that were associated with this payment.

In the preliminary results we deducted from the reported expense a share of the additional payment to the affiliated party corresponding to the ownership share POSCO held in that party. Given the information on the record, we consider this portion of the payment to be an internal transfer of funds. Consequently, we have maintained the adjustment to the reported post-sale warehousing expense that we made in the preliminary results.

Comment 49. The POSCO group argues that the Department erred by failing to convert warehousing expenses to an actual-weight basis. The POSCO group notes that it indicated explicitly in its February 27, 1996, submission that POSCO reported all expenses in a manner consistent with the manner in which the product was sold. The POSCO group states that no exceptions to this rule were indicated, nor were any such exceptions found during verification and, therefore, the Department has no basis for not converting this expense to an actual-weight basis.

Petitioners argue that the per-unit warehousing expense is not unambiguously expressed on a theoretical-weight basis or an actual-weight basis according to the weight basis of the sale. Petitioners indicate that because per-unit warehousing expenses are not expressed on a theoretical-weight basis for sales made on a theoretical-weight basis, the Department's decision not to divide warehousing expenses for those sales by the weight conversion factor was appropriate.

DOC Position. We agree with petitioners. The POSCO group indicated it calculated post-sale warehousing expenses for each warehouse by dividing total aggregate expenses incurred at the warehouse by total quantity of steel at the warehouse. For sales involving specific warehouses, the POSCO group reported the same per-ton post-sale warehousing expense regardless of whether the sales were on an actual-weight basis or a theoretical-weight basis. This indicates that the POSCO group was reporting the per-ton expense on the same basis for all sales. Consequently, no further adjustment is appropriate.

It is possible that the total reported quantities for each warehouse, which were used to calculate the per-ton expense for the respective warehouses, were based on a mix of both theoretical and actual weights. However, there is no evidence on the record that the total reported quantities were based on such a mix of weight bases and, even if there were such evidence, the adjustment proposed by the POSCO group would not correct such an underlying methodological problem.

As a result of the aforementioned review of reported warehousing expenses for sales made on a theoretical-weight basis, we discovered that none of the per-ton warehousing expenses provided by the POSCO group at verification were used in the post-sale warehousing field for several home-market sales. *See* Korea sales verification exhibit 78 at 10. The value used for those sales is the last figure reported in Exhibit 7 of the POSCO group's July 31, 1996, submission. Although the POSCO group asserted in the cover letter to that July 31, 1996, submission that the information in the attached exhibits contained the ''corrections'' that ''were presented to the Department during the sales verification conducted from July 15–27, 1996,'' the figure in question was not presented to the Department at verification, and there is no explanation of its derivation on the record. Consequently, for the final results we are denying this adjustment to all home market sales for which that unverified and unexplainable figure was reported as a post-sale warehousing expense.

Furthermore, the POSCO group indicated at verification that an average per-ton expense across all warehouses had been used for sales by Kyung Ahn and POSTEEL (*see* Korea sales verification report at 69 and 70); therefore, we have limited the post-sale warehousing expense for sales by these entities to no more than the recalculated average warehousing expense. *See* Attachment A to the October 8, 1996, memorandum from Steve Bezirganian to the Files.

Comment 50. The POSCO group argues that the Department erroneously failed to increase the home-market price used in the cost test by interest revenue received by the POSCO group due to late payments by customers. Petitioners did not comment on this issue.

DOC Position. We agree with the POSCO group, and have increased the net price used in the cost test by the reported interest revenue for each sales observation.

Comments by Union

Comment 51. Union claims that the Department inadvertently omitted to add duty drawback to the U.S. gross unit price when calculating net EP and CEP, as required by statute, and requests

that the Department correct its margin calculation program accordingly.

DOC Position. We agree and have corrected our margin calculation program accordingly.

Comment 52. Union argues that the Department erred in combining Union's net interest expenses with those of DSM and DKI, since (1) under Korean GAAP, Union is not considered to be a controlled subsidiary of any other company and is not required to be consolidated with any other company; and (2) the Department verified that neither DSM nor DKI has a controlling interest in Union and that Union's financial statements are not consolidated with either of the two other companies. Union submits that the Department itself answered the question of whether, or under what circumstances, the Department can unilaterally create a consolidated interest rate when the companies at issue are not in fact consolidated or required to be consolidated, in its *Notice of Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands,* 59 FR 23684, 23688 (May 6, 1994) (''*Aramid Fiber*''). In *Aramid Fiber* the Department clarified that where there are no consolidated statements, the issue is whether the parent company had ''sufficient control'' over the subsidiary, as indicated by equity ownership, to warrant consolidation under foreign GAAP. Union adds that in *Aramid Fiber* the Department cited two earlier cases in which it had found evidence of ''sufficient control.'' In both cases the parent company owned at least 50 percent of the subsidiary. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand,* 57 FR 21065 (May 18, 1992); *Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil,* 59 FR 732 (January 6, 1994). Union argues that neither of the above conditions are met since DKI's and DSM's equity ownership in Union is far less than 50 percent and Korean GAAP do not recognize the existence of a parent-subsidiary relationship between DSM or DKI and Union.

Union also states that there is no evidence on the record of DSM's or DKI's involvement in the financing activities of Union. In *Aramid Fiber,* says Union, the Department refused to create a consolidated interest expense for the respondent even though:

- A parent-subsidiary relationship clearly existed;
- The parent company owned 50 percent of the subsidiary's equity;
- The parent and subsidiary shared joint control over the subsidiary's operations;
- The parent and the subsidiary were consolidated after the POR; and
- The parent financed the subsidiary's transactions.

Even though none of these circumstances applied to Union's relationship with DKI and DSM, Union points out, the Department chose to create a consolidated interest rate for Union. Furthermore, Union states, in two recent Korean cases the Department did not consolidate interest expenses because the companies involved were not consolidated in the normal course of business. *See, e.g., DRAMs* and *Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea,* 56 FR 16305 (April 22, 1991).

For all the foregoing reasons, Union argues that the Department should reverse its preliminary decision and cease consolidating Union interest expenses with those of DSM and DKI.

Petitioners take issue with Union's contention that the Department's decision to combine Union's interest expenses with those of DSM and DKI is ''neither supported by facts nor by Department policy and precedent.'' Indeed, say petitioners, not only did Union make (and the Department reject) the same argument in the first administrative review, but Union has presented in this review no new arguments that would change this conclusion. Petitioners assert that the Department does not impose any requirement that firms be formally consolidated before combining their interest expenses, as claimed by Union Steel. Rather, the Department attempts to determine whether a control relationship exists between a respondent and its affiliates. Where there is no evidence of significant control, say petitioners, the Department will not calculate a combined interest rate, even when two firms have a parent-subsidiary relationship on the basis of equity. However, when there is a control relationship, the Department will calculate a consolidated interest rate even if the two firms did not prepare consolidated financial statements. In the first and instant reviews of cold-rolled carbon steel flat products, petitioners point out, the Department collapsed Union and DKI because they had intertwined operations, shared production facilities and board members, and were under the common control of the Chang family through its ownership in DSM. Therefore, petitioners argue, DSM's level of control over DKI and Union warrants the calculation of a consolidated interest expense for all three firms. Petitioners claim the cases of *Aramid Fiber* and *PET Film* cited by Union are inapposite, since in those cases the Department did not find sufficient control of the subsidiary by the parent. For these reasons, petitioners contend, the Department was fully justified in calculating a consolidated interest expense for Union, DSM, and DKI.

DOC Position. For the final results, we calculated a combined net interest factor using Union's, DSM's, and DKI's audited financial figures obtained from verification exhibits, respondent's submissions, and public records. This methodology of calculating a single net interest factor is consistent with our longstanding practice for computing interest expenses in cases involving parent-subsidiary corporate relationships. In contrast to *Aramid Fiber,* we have established that parental control exists. DSM's ownership interest in Union and DKI places the parent in a position to influence Union's financial borrowing and overall capital structure. We note that, contrary to Union's assertions that Union is an independent company and not controlled by DSM, the two companies share common directors and related stockholders. Based on this information, we do not see how Union's operations are independent of its parent to such an extent that we should ignore our normal practice of computing interest. *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand,* 60 FR 10552, 10557 (February 27, 1995). Additionally, we find it appropriate to combine the financing costs of these three companies in this instant review because we consider the financing costs of the parent and its subsidiaries to be fungible. Furthermore, the facts of these reviews differ from both *DRAMS* and *PET Film* with regard to combining interest expense factors. In *DRAMS* and *PET Film* the respondents requested that the Department combine limited brother-sister companies to derive a consolidated group-level interest expense factor. In those cases, however, we determined that a consolidated group-level interest factor was inappropriate because, while the respondents' own financial statements were audited, those of the sister companies and the group-level financial statements were unaudited. As we stated in *DRAMS,* absent detailed testing usually associated with an audit, the Department cannot rely on the

statements as submitted. *See DRAMs*, DOC Position for Comment 24, at 15475. In the instant review, by contrast, each of the entities in question—Union, DSM, and DKI—prepared separate audited financial statements, which we could therefore combine to calculate a group-level interest expense factor based on Union's assertions that no significant inter-company transactions existed.

Comment 53. Union contends the Department erred by failing to differentiate products with disparate paint types that have different costs and commercially meaningful different physical characteristics, and arbitrarily combining them into a single category, contrary to the statutory requirement that the Department make comparisons wherever possible between products with identical physical characteristics.

Union argues the Department has unreasonably aggregated five very different paint categories of painted products: (1) Polyester; (2) silicone polyester; (3) high-polymer polyester; (4) abrasion-resistant steel (''ARS'') texture; and (5) print. Union maintains these products have significantly different:

- Uses: for example, polyester-coated products are used for roofing and siding due to their resistance to chemicals and weather, while high-polymer polyester-coated products are used in home appliances and electronics on account of their resistance to heat, abrasion, and impact;
- Material costs: The differences in physical characteristics lead to substantially different manufacturing costs;
- Values: Union's customers would not be willing to pay substantial premiums for certain painting categories such as high-polymer polyester if the differences in products were as negligible as assumed in the Department's model-match hierarchy.

Union claims the CIT has ruled that ''Commerce must adjust for physical differences between the products if satisfied that *any price differential is wholly or partly the result of such physical differences.*'' *See Hussey Copper, Ltd.* v. *United States*, 895 F. Supp. 311, 313 (1995) (''*Hussey*'') (emphasis added by Union). By treating regular polyester-coated products as identical to silicone polyester, high-polymer polyester, and other painted products, the Department, Union argues, is violating the statutory requirement of fair comparisons and the specific mandate of section 771(16)(A) of the Act for comparisons, wherever possible, between products with ''identical physical characteristics.'' Union, therefore, requests that the Department use the alternative product concordance and difference-in-COM data it has submitted.

Petitioners retort that Union's arguments do not address the criteria used by the Department to establish product categories and determine product comparisons. By focusing on the prices and costs of different painted products, petitioners argue, Union ignores the Department's longstanding practice of using physical characteristics as the primary basis for creating product categories. Petitioners contend that the Department could accept Union's proposed alternate painted categories only if Union were able to demonstrate that the various paint types are so dissimilar that they cannot be compared. According to petitioners, the record does not support Union's claims that its paint types have different physical characteristics and applications. As an example, they cite regular polyester and silicon-polyester paints, which both have weather and chemical resistance and can be used for the exterior surfaces of buildings. Petitioners contend that Union's own descriptions of its various paint types indicate that the physical similarities between paint types far outweigh any differences. Moreover, they contend that even if the costs and prices of paint types were relevant to the creation of paint categories in the Department's model-match hierarchy, which they are not, the differences in costs and prices among painted products are neither significant nor systematic, to the extent that they exist at all. Petitioners therefore urge the Department to disregard Union's proposed alternate paint categories.

DOC Position. We agree with petitioners that Union provided insufficient information to support the further differentiation of painted products in the Department's model-match hierarchy. Contrary to Union's assertions, the uses and applications of the merchandise are not dispositive in this analysis. Rather, the Department looks to physical differences and adjusts for them ''if satisfied that any price differential is wholly or partly the result of such physical differences.'' *Hussey* at 313.

Union contends that the different uses of products with distinct paint coatings demonstrate that each paint coating imparts different properties to the steel (*e.g.*, corrosion-resistance, heat resistance, etc.). Although Exhibit B–4 of Union's November 27, 1996, response to sections B and C of our antidumping questionnaire (with respect to corrosion-resistant products) purports to list the physical properties of Union's various paint types, a close examination of the data presented in that exhibit reveals that the properties listed are all extremely general in nature (*e.g.*, ''gloss,'' ''semi-gloss,'' and ''flat'') and are repeated in every paint category. Other alleged physical properties listed by Union, such as ''drying time,'' ''spreading rate,'' and ''specific gravity'' are not even physical properties at all. Union, therefore, has not demonstrated the precise nature of the respective properties of its paint categories, or the actual physical differences in the paints that impart such properties, nor has it offered any analysis of whether, or to what extent, differences in physical characteristics between its paint categories have resulted in cost differences.

As the CAFC has found, products possessing similar physical characteristics need not be ''technically substitutable, purchased by the same types of customers, or applied to the same end use'' in order to be compared as ''identical'' merchandise within the meaning of section 771(16)(A) of the Act. *See Koyo Seiko Co.* v. *United States*, 66 F.3d 1204, 1210 (Fed. Cir. 1995) (*quoting Tapered Roller Bearings, Finished and Unfinished, from Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 41508, 41511 (August 21, 1991)). Given the tremendous number of variations within carbon steel product categories, the Department may define certain products as ''identical'' even though they contain minor differences. *See, e.g., Certain Cold-Rolled Carbon Steel Flat Products from Germany; Final Results of Antidumping Administrative Review*, 60 FR 65264, 65271 (December 19, 1995) and *Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker from Mexico*, 55 FR 29244, 29247–48 (July 18, 1990). Union's argument ignores the obvious fact that a product characteristic hierarchy cannot possibly account for every single possible difference between products—a result not required by *Hussey*. A range of products may thus be considered ''identical'' within the meaning of the statute. Therefore, we have disregarded the alternative product concordance and difference-in-COM data Union has submitted.

Comment 54. Union argues the Department erred by removing Union's scrap revenue from Union's COM, thereby lowering the COM denominator for general expenses and profit allocations. This would have been justified, Union says, only if scrap revenue had elsewhere been credited to

costs, which is not the case. Union surmises that the Department may have based its decision on the first review of corrosion-resistant products, when scrap revenue was included in miscellaneous income, and therefore was double-counted when included as an offset to COM. In this review, however, Union contends that scrap revenue was not part of miscellaneous income, was not used to reduce Union's general expenses, and was already included in Union's COM.

Petitioners retort that Union's argument is factually inaccurate, because verification exhibits demonstrate that: (1) Scrap material costs are included among the manufacturing costs recorded in Union's COM statements, and (2) Union recorded profits from scrap sales as sales revenues, not as adjustments to manufacturing costs. The Department, they claim, found no evidence that Union reduced its COM by the amount of the scrap revenue. Rather, say petitioners, the record shows that the manufacturing costs recorded in Union's COM statements were used to determine the cost of sales in the financial statements, so that the cost of sales has not been reduced by the amount of scrap revenue, as the denominator of the allocation ratios for general expenses and interest expenses. Petitioners urge the Department to continue to deduct Union's scrap revenue from cost of sales in order to ensure that per-unit general expenses and interest expenses are calculated accurately for purposes of the final review results.

DOC Position. We agree with petitioners. Using its normal cost accounting system, Union prepares COM statements that reflect revenue from the sale of scrap credited against production costs. However, Union's cost of sales figure does not reflect this same reduction because Union reclassifies and recognizes this sale of scrap as sales revenue instead of as an offset to cost. The cost of producing the scrap remains a manufacturing cost and is included in the company's cost of sales. Union's chart of accounts (*see* cost verification exhibit 6) and Union's reconciliation of sales revenue (*see* cost verification exhibit 8) confirm this financial accounting treatment. Therefore, we reduced Union's reported cost of sales figure by the 1994 scrap revenues that Union used to offset manufacturing costs to determine the proper denominator for the G&A and financing ratios.

Comment 55. Union contends the Department erred by excluding foreign-exchange transaction gains and losses from Union's reported general expenses on the grounds that they related to accounts receivable and were therefore more appropriately treated as selling expenses than as administrative expenses. The Department's calculation of general expenses, says Union, includes indirect selling expenses as well as administrative expenses. Consequently, Union contends, the net transaction gain on currency conversion should be included in general expenses; otherwise, this expense will not be captured in the dumping calculation.

Petitioners retort that Union misstates the Department's position with regard to the gains and losses at issue. The Department, petitioners contend, never stated that these gains and losses should be classified as selling expenses; rather, the Department was concerned that Union included them in general expenses when these gains and losses do not relate to the production of subject merchandise. It is for that reason, according to petitioners, that the Department excluded these gains and losses from Union's calculated costs in the first administrative review. Petitioners urge the Department not to modify its treatment of foreign-exchange gains and losses.

DOC Position. We agree with petitioners. Union calculated its net translation gains from foreign currency gains on accounts receivable balances. However, our normal practice is to exclude exchange gains and losses on accounts receivable balances because the gains occurred after the sale date and, therefore, are not relevant to our margin calculations. *See, e.g., Final Determination of Sales at Less than Fair Value: Fresh Pasta from Turkey*, 61 FR 30309, 30324 (June 14, 1996) and *Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy*, 60 FR 31981, 31991 (June 19, 1995). For these final results we excluded Union's net translation gains from accounts receivable balances denominated in foreign currency.

Comment 56. Union argues the Department erred by treating pre-sale freight and warehousing expenses as indirect selling expenses. Union submits that the URAA for the first time establishes that home-market movement charges are to be deducted from NV in all cases, without being subject to a ''direct/indirect'' test like selling expenses, and regardless of whether they occur before or after sale. *See* section 773(a)(6)(B)(ii) of the Act. Union also submits that the SAA requires all movement charges to be deducted from normal value and does not provide for them to be calculated sale by sale or analyzed in terms of their ''direct'' or ''indirect'' nature. *See* SAA at 151. Union therefore requests that the Department deduct all home-market movement charges, including pre-sale freight and warehousing expenses, from NV.

DOC Position. We agree with Union and have deducted all home-market movement charges, including pre-sale freight and warehousing expenses, from NV for these final results.

Comment 57. Union argues that the Department, for purposes of converting certain movement charges from a gross-weight to a net-weight basis, incorrectly adjusted the field USOTREU rather than the field DBROKU.

DOC Position. We agree with Union and have made this correction for these final results.

Comment 58. Union contends the Department erred by not using the most recent data sets in applying the arm's-length test and in establishing the product concordance.

DOC Position. We agree with Union and have used the appropriate data sets in these final results.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period August 1, 1994, through July 31, 1995:

CERTAIN COLD-ROLLED CARBON STEEL FLAT PRODUCTS

Producer/Manufacturer/Exporter	Weighted-Average Margin (percent)
Dongbu	0.10
Union	0.15
POSCO	0.54

CERTAIN CORROSION-RESISTANT CARBON STEEL FLAT PRODUCTS

Producer/Manufacturer/Exporter	Weighted-Average Margin (percent)
Dongbu	0.00
Union	1.09
POSCO	0.09

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results

of review for all shipments of certain cold-rolled and corrosion-resistant carbon steel flat products from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate will continue to be 14.44 percent (for certain cold-rolled carbon steel flat products) and 17.70 percent (for certain corrosion-resistant carbon steel flat products), which were the ''all others'' rates in the LTFV investigations. *See Flat-Rolled Final* at 37191.

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

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

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

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

Dated: April 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9424 Filed 4–14–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822 & A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews

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

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

SUMMARY: On October 4, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. These reviews cover four manufacturers/exporters of the subject merchandise to the United States and the period August 1, 1994 through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

We determine that sales have been made below normal value (''NV'') by various companies subject to these reviews. Thus, we will instruct U.S. Customs to assess antidumping duties based on the difference between the export price (''EP'') or constructed export price (''CEP'') and the NV.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Bolling (Continuous Colour Coat (''CCC'')), Eric Johnson (Dofasco Inc. and Sorevco Inc. (''Dofasco'')), Greg Weber (Algoma, Inc. (''Algoma'')), N. Gerard Zapiain (Stelco, Inc. (''Stelco'')), or Jean Kemp, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute refer to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On October 4, 1996, the Department published in the **Federal Register** (61 FR 51892) the preliminary results of its administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. We gave interested parties an opportunity to comment on our preliminary results. We received written comments on November 4, 1996 from Algoma, CCC, Dofasco/Sorevco, Stelco and from the petitioners: Bethlehem Steel Corporation, U.S. Steel Group (a Unit of USX Corporation), Inland Steel Industries Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company. We received rebuttal comments on November 12, 1996 from interested parties.

As we noted in the preliminary results of review, on February 28, 1996, the petitioners requested that the Department determine whether antidumping duties had been absorbed by Algoma, Dofasco, and Stelco (for corrosion-resistant only) during the POR, pursuant to section 751(a)(4) of the Act. Section 751(a)(4) provides that the Department, if requested, will determine during an administrative review initiated two years or four years after