DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; Amended Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of amended final results of Antidumping Duty Administrative Reviews.

SUMMARY: On March 26, 1997, the Department of Commerce (the Department) published Antifriction Bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews, 62 FR 14391 (Amended Final Results). On May 27, 1997, the Court of International Trade (CIT) ordered the Department to correct three clerical errors in the Amended Final Results with respect to antifriction bearings (AFBs) from France sold by SNR Roulements (SNR). Accordingly, we are amending our amended final results of administrative reviews of the antidumping duty of orders on AFBs from France with respect to SNR. The reviews cover the period May 1, 1994, through April 30, 1995. The ''classes or kinds'' of merchandise covered by the reviews are ball bearings and parts thereof (BBs) and cylindrical roller bearings and parts thereof (CRBs).

EFFECTIVE DATE: June 25, 1997.

FOR FURTHER INFORMATION CONTACT: Andrea Chu or Thomas O. Barlow, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 1997, the Department published the amended final results. The reviews cover the period May 1, 1994, through April 30, 1995 and the classes or kinds of merchandise covered by these reviews are BBs and CRBs. For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the ''Scope Appendix'' of Antifriction Bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081 (January 15, 1997) (Final Results).

Respondent SNR challenged the amended final results before the CIT, alleging clerical errors in the amended calculations for AFBs from France. On May 27, 1997, the CIT ordered the Department to correct certain errors and publish amended final results incorporating the corrections in the **Federal Register** by June 26, 1997. *See SNR Roulements* v. *United States,* Slip Op. 97–64, May 27, 1997.

The CIT ordered the Department to make the following corrections to its analysis for SNR: (1) Delete the OBS=50 instruction at line 1054 of the margin calculation program (this corrects the home market model match programming to ensure all models are available for the model-match exercise); (2) delete from the currency conversion calculations the variables reported in U.S. dollars for indirect selling expenses incurred in the home market on U.S. sales and inventory carrying cost incurred in the home market on U.S. sales; and (3) substitute total cost of production incurred in the home market for total value as the denominator in the calculation of the credit rate. We have amended SNR's margin calculations as the CIT has directed.

Amended Final Results of Reviews

As a result of the amended margin calculations as directed by the CIT, the following weighted-average percentage margins exist for the period May 1, 1994, through April 30, 1995:

Manufacturer/exporter and country	BBs rate (percent)	CRBs rate (percent)
SNR, France	3.05	6.41

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-by-entry assessments, we will calculate wherever possible an exporter/importer-specific assessment rate for each class or kind of AFBs.

We will instruct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews (62 FR 2081) and as amended by this determination. These amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and 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 the 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 orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO.

This amendment of final results of reviews and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)) and 19 CFR 353.28(c).

Dated: June 19, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–16682 Filed 6–24–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–609]

Color Picture Tubes From Japan; Final Results of Antidumping Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review of color picture tubes from Japan.

SUMMARY: On February 11, 1997, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on color picture tubes (CPTs) from Japan. The period of review (POR) is January 1, 1995 through December 31, 1995.

Based on our analysis of comments received we have made changes to the margin calculation, including correction of certain clerical errors. Therefore, the

final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the section titled ''Final Results of Review.''

We have determined that sales have been made at less than normal value (NV) during the POR. Accordingly, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: June 25, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Thomas O. Barlow, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, 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 February 11, 1997, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on CPTs from Japan. *See Color Picture Tubes From Japan; Preliminary Results of Antidumping Administrative Review,* 62 FR 6168 (February 11, 1997). We gave interested parties an opportunity to comment on our preliminary results and held a public hearing on April 16, 1997. The following parties submitted comments and rebuttal comments: the International Association of Machinists and Aerospace Workers, International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, AFL–CIO, and Industrial Union Department AFL–CIO (collectively ''the Unions''); Mitsubishi Electric Corporation, Mitsubishi Electronics, Inc., and Mitsubishi Consumer Electronics America, Inc. (collectively ''Mitsubishi'').

We have conducted this administrative review in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Scope of Review

Imports covered by this review are shipments of CPTs from Japan. CPTs are defined as cathode ray tubes suitable for use in the manufacture of color televisions or other color entertainment display devices intended for television viewing. This merchandise is classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 8540.11.00.10, 8540.11.00.20, 8540.11.00.30, 8540.11.00.40, 8540.11.00.50 and 8540.11.00.60. The HTS item numbers are provided for convenience and customs purposes; our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

Comment 1

The Unions argue that the Department should treat Mitsubishi's U.S. and its home market technical service expenses in the same manner. The Unions note that, whereas Mitsubishi claimed in its questionnaire response that home market technical service expenses were direct expenses, it claimed that its U.S. technical service expenses were indirect selling expenses. Based on Mitsubishi's explanation of these expenses, the Unions argue, there is no apparent distinction between the expenses incurred in the home market and those in the United States and, therefore, no basis for Mitsubishi's claim that the expenses should be treated differently.

Furthermore, the Unions claim that Mitsubishi bears the burden of demonstrating that its home market selling expenses are direct expenses and that its U.S. selling expenses are indirect expenses, citing *Timken Co.* v. *United States,* 673 F. Supp. 495, 513 (CIT 1987). The Unions assert that Mitsubishi failed to demonstrate that its home market technical service expenses warranted treatment as direct selling expenses. For example, the Unions argue, Mitsubishi failed, both in its questionnaire responses and during verification, to provide a detailed description of the technical services it provided or the nature of the customer visits which were the basis for Mitsubishi's calculation of the claimed technical service expenses. Specifically, the Unions claim, Mitsubishi failed to submit any evidence that the purposes of its customer visits were to solve technical problems related to the merchandise subject to review. Instead, the Unions argue, a review of record data indicates that the customer visits were more likely in the nature of routine customer visits rather than to solve specific technical problems, given the amount of time spent on such visits. Finally, the Unions claim that it strains credulity to believe that Mitsubishi incurred no technical service expenses for its U.S. sales of color televisions (manufactured from the imported CPTs) during the POR while incurring substantial technical service expenses on its home market sales of CPTs. Thus, the Unions argue, due to Mitsubishi's failure to substantiate its claim that expenses related to these customer visits were direct selling expenses and due to Mitsubishi's refusal to identify the specific technical problems with its home market sales that resulted in the claimed expenses, the Department should, for the final results, treat all of Mitsubishi's claimed home market technical service expenses as indirect selling expenses.

Mitsubishi counters that each market's expenses should be treated on their own merits and that a common name for an adjustment does not determine its treatment as a direct or an indirect expense. Mitsubishi notes that, whereas in the home market it sells to original equipment manufacturers who use Mitsubishi CPTs to manufacture televisions, in the United States it sells televisions to resellers. Therefore, Mitsubishi argues, the technical services incurred in the home market, working with customers to optimize usage of the CPT in television production, are irrelevant to sales in the U.S. market. Furthermore, Mitsubishi claims, there is no record evidence to suggest that there are direct U.S. technical service expenses.

Finally, Mitsubishi claims, notwithstanding the Unions' criticism that the verification inadequately addressed the nature of the technical service expenses, the Department verified the nature of these expenses to the extent the Department deemed necessary, that Mitsubishi has fully cooperated, and that the Unions are in no position to now suggest that additional verification is needed. Mitsubishi argues that the Unions' assertions that the visits seemed to be routine customer visits or that the amount of time spent on these visits was overly long are speculative and are not supported by record evidence.

Department's Position

We agree with Mitsubishi in part. We find that the travel-expenses portion of the reported home market technical service expenses falls within the adjustments warranted under 19 CFR 353.56 (a)(2) for differences in circumstances of sale because the record evidence supports Mitsubishi's claims. To warrant a circumstance-of-sale adjustment, the respondent must demonstrate that the technical service expenses are directly related to the sales subject to review (19 CFR 356.56). We treat technical services as direct expenses when the respondent

demonstrates that services are provided to assist customers with technical problems associated with the purchased product. *See, e.g., Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan; Final Results of Antidumping Duty Administrative Review*, 57 FR 29283, 29286 (July 1, 1992). As Mitsubishi explained at verification, the technical service visits in the home market are a circumstance of selling to original equipment manufacturers (OEMs) which incorporate Mitsubishi CPTs into color television sets. The documents that we examined at verification indicate that Mitsubishi engineers visited the OEM customers to provide technical assistance related to the installation of Mitsubishi CPTs into the customers' televisions. We find no evidence to suggest that any sales-related activity occurred. In addition, the documents indicate that such visits only occurred after the sale of the CPTs to the OEM customer and were unrelated to future or pending sales. Furthermore, the Unions have not provided any evidence to support their allegation that the engineers' visits may have been for any purpose other than to provide technical assistance. Therefore, we conclude that Mitsubishi has demonstrated that the travel expenses' portion of the reported technical service expenses bears a direct relationship to the sales compared.

We also agree with Mitsubishi that the technical service expenses incurred in the home market are naturally different from those incurred in the United States. Mitsubishi's home market sales are to OEM customers who incorporate Mitsubishi's CPTs into color televisions. We verified that Mitsubishi's claimed technical service expenses are related to technical assistance provided to OEM customers. In the United States, however, Mitsubishi sells televisions to resellers. No technical service such as that provided to OEM customers in Japan would be necessary in selling completed televisions to resellers in the United States. It is, therefore, reasonable to assume that Mitsubishi would not incur the same types of expenses for such different types of sales activity.

Comment 2

The Unions next argue that the Department should recalculate Mitsubishi's home market technical service expenses to exclude the salaries of Mitsubishi's engineers. The Unions note that in Mitsubishi's questionnaire response Mitsubishi stated that its home market technical service expenses consisted of travel expenses related to engineers' visits to customers plus the engineers' wages applicable to the duration of the business trip. Further, the Unions claim, the Department's verification report states that the salary and benefits figure used to calculate technical services expenses was based on salaries paid to Mitsubishi employees, citing *Verification Report for Mitsubishi Electric Corporation (MELCO) for the 1995 Administrative Review of the Antidumping Duty Order on Color Picture Tubes (CPTs) from Japan*, December 27, 1996, at 6 (*Verification Report*). The Unions argue that including the salaries paid to Mitsubishi employees as part of the technical services expenses runs counter to the Department's practice as stated in the Department's antidumping manual.

Mitsubishi rebuts that the service visits and accompanying expenses are circumstances of selling to the large screen customers in the home market and, accordingly, fall within the expenses named in the statute at section 776(a)(6)(C)(iii), ''other differences in circumstances of sale.''

Mitsubishi remarks that the Unions do not challenge the amounts or the allocation bases of these expenses. Thus, Mitsubishi claims, if the Department agrees with the Unions' basic argument the expenses should be reclassified as indirect expenses with no change in the amounts. Mitsubishi states that, because the Department consistently adheres to the principle that selling expenses should be allocated as specifically as possible, the wage costs associated with visits to a particular customer should be assigned to sales to that customer rather than to some broader universe. Therefore, Mitsubishi asserts, any reduction in technical service expenses would be matched by a corresponding increase in indirect selling expenses for the same transactions.

Department's Position

We disagree with the Unions' contention that salaries paid to Mitsubishi's engineers should be excluded from the acceptable technical service expenses. We treat technical services as direct expenses when the respondent demonstrates that services are provided to assist customers with technical problems associated with the purchased product. We require respondents to segregate the variable and fixed portions of these expenses and treat variable costs as direct and fixed costs as indirect. *See Zenith Elec. Corp.* v. *United States*, 77 F.3d 426, 430 (Fed. Cir. 1996) (upholding the Department's practice of analyzing each component of claimed expenses for purposes of determining whether to make a circumstance-of-sale adjustment). We generally consider travel expenses to be directly related to sales because the technicians are visiting customers to assist with specific matters. We generally consider salaries to be fixed costs because they would have been incurred whether or not sales were made. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews , Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900, 10910 (Feb. 28, 1995). In keeping with our standard practice, we have allowed a circumstance-of-sale adjustment for the travel expenses (*see* our response to Comment 1) and we have determined that the salaries should be treated as indirect expenses.

Comment 3

The Unions argue that the Department should use facts available to calculate inland freight costs for Mitsubishi's home market sales because Mitsubishi's inland freight data contain serious errors that cannot be corrected at this stage of the review. The Unions claim that information obtained at verification indicated that the average freight costs in Mitsubishi's questionnaire response hid obvious errors in the calculation of freight costs. For instance, the Unions claim, data on a worksheet provided at verification show that Mitsubishi failed to allocate inland freight costs to merchandise not subject to review and, accordingly, the average freight costs reported in Mitsubishi's questionnaire response should not be used for the final results.

To support this argument the Unions note variations in the reported freight costs for shipments of the same quantities to the same customers, stating that the only explanation for such variations is that the inland freight costs shown on the shipment-by-shipment worksheet obtained at verification represented the total freight bill for all of the products included in the delivery rather than the freight costs allocated to the CPT models subject to review. Thus, the Unions argue, if Mitsubishi actually allocated the total freight cost to all of the products that were shipped to each customer, the average freight costs in the questionnaire response should be less than the average costs shown by the data on the verification worksheet because the average freight costs in the questionnaire response should be only for the specific models in question. Finally, the Unions question why

Mitsubishi reported average freight costs when it apparently was able to determine and compile the freight costs for each observation in its reported home market sales list.

The Unions also state that the verification report and the verification worksheet indicate that Mitsubishi double-counted inland freight expenses for its home market sales in that, for the specific sale verified, the freight bill from the trucking company was for a round trip but that the amount claimed in Mitsubishi's sales listing was based on a one-way trip, referring to the *Verification Report* at 9. However, the Unions note, the round-trip freight expense amount was the amount shown on the shipment-by-shipment worksheet provided by Mitsubishi at verification. Thus, the Unions claim, Mitsubishi's reported inland freight costs for its home market sales represent the costs of deliveries and returns rather than only delivery costs.

The Unions argue that the verification report and the verification worksheet indicate that Mitsubishi charged the entire freight cost to the merchandise subject to review despite the fact that its shipments included non-subject products, in that the entire freight bill for a given shipment was used to calculate the freight costs reported in the questionnaire response.

Finally, the Unions argue that the customer-by-customer inland freight costs that Mitsubishi reported for its home market sales are inconsistent and unreliable because Mitsubishi's reported inland freight expenses bear no relation to the distances shipped. Therefore, the Unions argue, the Department should use in its calculation of inland freight on home market sales, as facts available, the Japanese inland freight costs that Mitsubishi reported for its U.S. sales. The Unions reason that these costs represent a reasonable proxy because Mitsubishi has no incentive to overstate these costs and because they are costs incurred to ship the same product. Alternatively, if the Department does not use facts available for Mitsubishi's inland freight costs for home market sales, the Unions suggest that the Department use the average, customer-specific freight costs indicated on the documents obtained at verification.

Mitsubishi refutes the Unions' arguments as a laundry list of suppositions that provide no reason for the Department to reverse its preliminary calculations with respect to inland freight expenses. Instead, Mitsubishi claims, the Department verified the correctness of Mitsubishi's reported freight expenses and should use them in the final results.

First, Mitsubishi claims, there is no basis to the Unions' conclusion that large shipment-to-shipment variations in per-unit freight costs are due to the fact that shipments must have included non-subject merchandise that did not attract freight charges. Mitsubishi notes that the Unions' exhibit in the case brief indicates that freight charges vary widely because the number of units carried varies widely. Further, Mitsubishi claims, fixed trip costs, spread over more or fewer units, will yield lesser or greater per-unit freight costs.

Mitsubishi next argues that the Unions assume, incorrectly, that all trucks are full and, if a truck contains only three units of one model, it must be filled out with other models. In fact, Mitsubishi asserts, in both its submissions and at verification, it has demonstrated that when shipments included multiple models on a truck the freight charges were allocated among the models based on their cubic volume.

Mitsubishi rebuts the Unions' argument that Mitsubishi double-counted inland freight costs because the freight bills were for round trips, *i.e.*, Mitsubishi was responsible for the return trip. However, Mitsubishi states, the charge for delivery was the amount on the freight bill and the fact that the amount is to cover the return of the empty trucks to their starting point does not affect the amount of the expense. Mitsubishi notes that the record does not suggest, nor do the Unions allege, that Mitsubishi's customers were sending something back to Mitsubishi that would lead to a broader allocation of the freight expense and, consequently, the Unions' argument of double-counting is unsupported and should be rejected.

Mitsubishi rebuts the Unions' allegation that the verification report shows that freight was not allocated to non-subject merchandise. Mitsubishi comments that the Unions quoted a passage from the verification report which first demonstrates that Mitsubishi allocated freight expenses reasonably over all relevant products and, second, discusses a particular shipment examined by the Department precisely because it had high unit freight costs and that the Department verified that this shipment included only the three units in question. Mitsubishi argues that this does not support the Unions' allegation that freight expenses were overallocated to certain models but, rather, supports the freight charge on the specific shipment in question.

With respect to the Unions' argument that the reported freight costs bear no relation to the distances shipped, Mitsubishi states that, as before, this argument ignores that fact that freight expenses are driven in large part by the number of units shipped. Mitsubishi asserts that, without correcting for the portion of the truckload occupied by a particular group of sets, the Unions' freight calculation is meaningless. Mitsubishi adds that, even with such a correction it would be necessary to determine the actual freight charged, not just ratios based on distance, because distance does not take into account the fixed trip charges, traffic conditions, *etc.*, and that the Department properly verified the actual freight charged.

Finally, Mitsubishi states that the Unions' suggestion that the Department apply, as facts available, the freight charges incurred in Japan on sales to the United States is senseless. Mitsubishi notes that the Unions would prefer these data be used because the large volumes of U.S. sales lead to multiple fully loaded trucks and, thus, lower per-unit costs. However, Mitsubishi argues, this is not relevant to the home market freight expenses it incurred.

Department's Position

We agree with Mitsubishi that the Unions' arguments with respect to Mitsubishi's inland freight costs are based on speculation and are not supported by record evidence. We verified Mitsubishi's reported home market inland freight costs (*Verification Report* at 9) and find that these data are reliable for use in the final results.

The purpose of verification is to test the accuracy and completeness of information provided by a party. Using standard verification procedures we conducted a selective examination of the reported information rather than a test of the entire universe of information. *See Bomont Indus.* v. *United States*, 733 F. Supp. 1507, 1508 (CIT 1990) (upholding our verification procedures). We chose to examine documentation related to shipments for which Mitsubishi reported the highest per-unit freight costs. We found the information submitted by Mitsubishi to be accurate and complete. The alleged discrepancies identified by the Unions appear to result from a misinterpretation of our findings at verification.

For example, we examined Mitsubishi's allocation methodology at verification and found that for shipments that included multiple products Mitsubishi allocated the freight costs to the foreign like product by volume. *Verification Report* at 9. Using this methodology Mitsubishi was able to calculate an average freight cost per customer and report only the freight

expenses allocable to the foreign like product.

We also found no evidence that Mitsubishi double-counted its inland freight expenses.

For example, with respect to the sale for which Mitsubishi claimed the highest inland freight expenses, documentation gathered at verification indicated that the shipment consisted only of the three units in question. Although we noted that Mitsubishi was charged for a round trip we found no evidence to indicate that the customer returned anything to Mitsubishi. Instead, we determined that Mitsubishi, in hiring the truck to deliver the CPTs to the customer, was responsible for a fixed expense related to the round trip. We verified the reported expense as the amount paid by Mitsubishi to the shipping company for the shipment in question. *Id.* We also found no evidence that distance was a factor in Mitsubishi's freight expenses. Our examination demonstrated that Mitsubishi reported its actual freight costs for the shipment in question. The quantities shipped from the warehouse to the home market customer vary from sale to sale. As was evident from Mitsubishi's response and from information gathered at verification, the freight expenses vary accordingly, and we found no reason to question the validity of Mitsubishi's data.

Finally, we reject the Unions' suggestion that we apply, as facts available, Mitsubishi's domestic inland freight applicable to its U.S. sales of subject merchandise. Because we found Mitsubishi's reported data were reliable the use of facts available is unnecessary.

Comment 4

The Unions and Mitsubishi argue that Mitsubishi's home market warranty expenses should be revised to reflect information obtained at verification. The Unions and Mitsubishi note that during verification the Department reviewed the warranty expenses for home market sales to a particular customer and asked that Mitsubishi recalculate the warranty expenses on a per-model basis for sales to this customer.

The Unions claim that documents obtained at verification by the Department indicate that Mitsubishi overstated the number of returns of the model in question and that, when recalculating the warranty expenses, the Department should use the correct number of returned units.

In addition to revision of the warranty expenses Mitsubishi asserts that revised data relating to discounts and rebates, presented as corrections at the beginning of verification, should be incorporated into the final results.

Department's Position

We agree with the Unions and with Mitsubishi that we neglected to incorporate certain changes into our preliminary margin calculation. At the beginning of verification Mitsubishi provided certain corrections related to reported discounts and rebates and during verification we requested additional information from Mitsubishi with respect to its reported warranty expenses. For the final results we have made the changes to our calculations to reflect the correction of warranty expenses as described in the verification report. We have not changed the calculations with respect to rebates because the information provided by Mitsubishi is insufficient for these purposes.

We have reexamined the documents obtained at verification with respect to the Unions' argument that Mitsubishi overstated the number of returns. Although we agree that Mitsubishi presented evidence of returned units of a different model than the model we verified, other documents presented by Mitsubishi at verification indicate that this was an inadvertent mistake and that the number of returns we verified from Mitsubishi's worksheet was accurate.

Comment 5

The Unions assert that the Department must investigate whether Mitsubishi made sales in the home market at prices below the cost of production. The Unions claim that, based on language in the original questionnaire, they believed that the Department intended to conduct a full cost-of-production investigation to determine whether Mitsubishi was selling below cost in the home market and, as a result, they did not believe it was necessary to submit a separate request that the Department do so. Because the Department failed to consider in its preliminary results whether Mitsubishi sold any comparison models below cost, the Unions argue, the Department must conduct a complete below-cost-sales investigation for purposes of its final results.

The Unions argue further that the cost investigation may be critically important in this case depending on the Department's treatment of Mitsubishi's home market inland freight expenses. The Unions claim that even though Mitsubishi had available its actual freight costs on a sale-by-sale basis it improperly averaged home market freight costs over all sales of the particular size CPTs by customer. The Unions assert that the averaging of these freight costs not only tends to mask dumping margins for individual comparisons but also masks individual sales that were sold below Mitsubishi's cost of production. The Unions argue that it is important that the freight costs be calculated accurately such that they represent a reasonable cost for transporting the CPT from the warehouse to the customer and, once that is done, the Department must then compare the selling expense to the cost of production to determine whether individual sales were made below cost.

Mitsubishi argues that the Unions' request at this stage of the review that the Department conduct a cost investigation is contrary to the Department's regulations and to its practice. Mitsubishi states that, in accordance with section 353.31(c) of the Department's regulations, the Department will not consider allegations of below cost sales submitted more than 120 days after publication of the notice of initiation. Mitsubishi notes that this deadline has been upheld by the Department on numerous occasions in denying petitioners' requests for below-cost sales investigations, citing, *e.g., Certain Forged Steel Crankshafts from the United Kingdom* (*Crankshafts*), 60 FR 52150, 52153 (October 5, 1995), and *Sulfur Dyes, Including Sulfur Vat Dyes, from the United Kingdom (Sulfur Dyes*), 58 FR 3253, 3255 (January 8, 1993), in which the Department denied a similar request for such investigation based on an allegation first made in the petitioner's case brief. Mitsubishi states that, as in this case, absent a timely allegation of below-cost sales or a prior below-cost finding the Department cannot simply disregard below-cost sales.

Additionally, Mitsubishi states, section 351.301(c)(2)(ii) of the Department's proposed regulations (referring to 61 FR 7325 (February 27, 1996)) requires that allegations of below-cost sales be made within 20 days after the respondent submits the relevant section of the questionnaire and that the Section B home market sales submission is the ''relevant section'' for these purposes. Mitsubishi argues that regardless of whether the Department uses deadlines set forth by section 353.31(c) or by section 351.302 of the proposed regulations the Unions' allegation of below-cost sales is grossly untimely.

Mitsubishi notes that the Department's cover letter attached to the questionnaire dated March 11, 1996 instructed Mitsubishi to respond to the cost-of-production portion of the

questionnaire only if the Department disregarded below-cost sales in the most recently completed review or investigation of Mitsubishi, but that in the event of a timely allegation from a domestic party that sales in the comparison market were made at prices below the cost of production, the Department may request at a later date that Mitsubishi complete the cost-of-production portion of the questionnaire. Mitsubishi states that the Department did not exclude below-cost sales from Mitsubishi's home market database in the original investigation and that there has been no prior administrative review of Mitsubishi in this case. Accordingly, Mitsubishi states, the cover letter not only confirmed that Mitsubishi was not required to respond to the cost-of-production portion of the questionnaire but also instructed the Unions on what they needed to do if they wanted the Department to initiate a cost investigation. Mitsubishi argues that, instead of giving the impression that the Department intended to initiate a cost investigation, the cover letter provided the Unions with clear notice that it was incumbent upon the Unions to come forward with sufficient allegations of below-cost sales if the Unions intended to raise the issue. In addition, Mitsubishi claims that the Unions' argument that a cost investigation is necessary because of variances in home market inland freight expenses does not negate the Unions' duty to make a timely allegation of below-cost sales and, as a result, the Department should reject the Unions' argument.

Department's Position

We agree with Mitsubishi. Section 773(b) of the Act directs us to initiate a cost inquiry only when there are ''reasonable grounds to believe or suspect'' that sales have been made below cost. The Statement of Administrative Action Accompanying the URAA, *reprinted in* H.R. Doc. No. 103–316, vol. 1, at 833 (1994) (''SAA''), notes that this provision codifies our existing practice that in administrative reviews, ''reasonable grounds'' exist when an interested party submits a sufficient allegation of below-cost sales or when we have disregarded below-cost sales of the particular producer or exporter in the most recently completed segment of the proceeding. Because we did not exclude any below-cost sales in the less-than-fair-value investigation (*i.e.*, the most recently completed segment in which we examined Mitsubishi's sales), an allegation by the Unions is the only appropriate basis to initiate a cost inquiry in this review. However, in accordance with our existing regulations, an allegation of below-cost sales must be submitted no later than 120 days after the publication of the notice of initiation of the review, unless a relevant response is considered untimely or incomplete. Section 353.31(c)(1)(ii) of Interim Regulations, 60 FR at 25135. If the allegation is received later than 120 days after initiation the Department may exercise its discretion in determining a reasonable amount of time for the domestic interested party to submit its cost allegation. *See Crankshafts* at 52153.

In this instance, the Unions did not make an allegation of below-cost sales until they filed their case brief, 390 days after publication of the initiation notice. However, the Unions had access to Mitsubishi's relevant home market sales data as early as May 10, 1996, when Mitsubishi filed its response to section B. We find that the Unions had sufficient time to provide a timely cost allegation. In past cases, we have rejected cost allegations submitted in case briefs. *See Crankshafts* at 52153; *Sulfur Dyes* at 3255–56. Moreover, the SAA expresses an intent that we initiate cost inquiries at the outset of a proceeding in order to enhance our ability to complete reviews ''in a timely, transparent, and effective manner.'' SAA at 833. The CIT stated in *Floral Trade Council* v. *United States*, 704 F. Supp. 233, 236 (CIT 1988), that ''it is not reasonable to expect [the Department] in every case to pursue all investigative avenues, even such important areas as less-than-cost-of-production sales, without some direction by petitioners * * * cost of production need not be investigated in every case, but only where reasonable grounds are present. Part of whether [the Department] has ''reasonable grounds to believe or suspect'' that a less than cost-of production analysis is needed is whether it has been requested.'' In light of these considerations, we have not conducted a cost-of-production analysis for these final results.

We note that the Unions' assertion that they relied upon the fact that we sent Section D of the questionnaire to Mitsubishi as an expression of our intent to initiate a cost inquiry is untenable. The questionnaire is sent in its entirety to respondents in any review. The cover letter accompanying the questionnaire clearly stated that, unless we had disregarded any of Mitsubishi's below-cost sales in the most recently completed segment, we would require Mitsubishi to provide cost-of-production information only if the Department received a timely cost allegation. Accordingly, we find no ''reasonable grounds'' to warrant a below-cost inquiry of Mitsubishi's sales in this review.

Comment 6

The Unions argue that, pursuant to section 772(d)(1) of the Act, the Department must deduct all direct and indirect selling expenses incurred by the foreign producer, exporter or the U.S. affiliate in selling to the United States. The Unions argue that this section reflects the statutory requirements as they existed prior to the URAA (referring to section 772), claiming that the Department interpreted this provision to require the deduction of all selling expenses incurred in selling to the United States, including all indirect selling expenses incurred by the foreign producer or exporter in its home country that related to U.S. sales. The Unions claim that such interpretation was upheld in *Silver Reed America, Inc.* v. *United States*, 12 CIT 250, 683 F. Supp. 1393, 1397 (1988).

The Unions argue that, while the two statutory provisions—pre-URAA and the URAA—contain the same requirements regarding deductions, the Department failed in its preliminary results to deduct indirect selling expenses and inventory carrying expenses from the time of final production in the country of manufacture to the time of arrival in the United States that Mitsubishi identified in its questionnaire response as being incurred in selling to the United States. The Unions claim that the failure to deduct these expenses is inconsistent with the statute.

With regard to Mitsubishi's inventory carrying costs, the Unions argue that, even if the Department determines that it can only deduct from CEP those selling expenses related to commercial activity in the United States, the Department must, at a minimum, deduct the inventory carrying costs that the foreign producer/exporter incurred following exportation of the merchandise from Japan. The Unions note that the Department stated in the preliminary results that it had deducted various selling expenses related to economic activity in the United States, among them inventory carrying costs, but that a review of preliminary margin calculation indicates that the Department not only failed to deduct inventory carrying costs incurred prior to exportation but also failed to deduct inventory carrying costs incurred for the time the merchandise was in transit from Japan to the United States. The Unions assert that inventory carrying costs incurred while the merchandise is

in transit to the United States are akin to other costs that the Department has recognized must be deducted when calculating CEP because such costs clearly relate to the product sold in the United States. Furthermore, the Unions argue (referring to *Silver Reed* at 1397), the CIT has recognized that this expense must be deducted in the calculation of CEP.

The Unions acknowledge that the Department may have attempted to distinguish the new statutory calculation of CEP from the prior calculation of exporter's sale price by limiting the deductions to those attributable exclusively to U.S. sales. However, in interpreting the new statute, the Unions claim, the Department has determined that inventory carrying costs that are shown to relate exclusively to U.S. sales are deductible, even when incurred in the exporter's home market (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy* (*Pasta*), 61 FR 30326, 30352 (June 14, 1996)). The Unions claim that the distinction the Department drew in *Pasta* was that, given evidence that the expense at issue was related to a U.S. sale and not to any other sale, inventory carrying costs incurred in shipping the merchandise following exportation should be deducted because such expenses related to U.S. sales. Similarly, the Unions argue, where the CPT is loaded in Japan onto a ship destined exclusively for the United States all costs incurred following exportation relate only to the U.S. sales and, accordingly, even if the Department declines to deduct other indirect selling expenses incurred in Japan in selling to the United States the Department should deduct from CEP inventory carrying costs incurred after exportation because such costs are exclusively attributable to U.S. commercial activity.

Finally, the Unions argue that the Department should be consistent in its treatment of indirect selling expenses incurred in Japan, whether in the calculation of CEP or in the calculation of CEP profit. The Unions insist that if, as discussed above, the Department decides to ignore indirect selling expenses incurred by Mitsubishi in Japan for its U.S. sales in the calculation of CEP, the Department must likewise disregard the same expenses in calculating the total U.S. selling expenses for the purpose of calculating the CEP-profit ratio. The Unions claim that, although the Department failed in the preliminary results to deduct from CEP the indirect selling expenses incurred by Mitsubishi in Japan for its U.S. sales, the Department included these same expenses in the calculation of Mitsubishi's total selling expenses for the determination of the CEP-profit ratio. Such uneven treatment, the Unions argue, not only violates the antidumping law but is unreasonable and unfair. The Unions claim that on one hand the Department determined that, for purposes of calculating CEP, these expenses were not related to U.S. economic activity even though Mitsubishi identified these expenses as being incurred on behalf of the U.S. sales and even though the same types of expenses were deducted from normal value, whereas on the other hand, for purposes of calculating the CEP-profit ratio, the Department accepted these expenses as being related to U.S. sales. The Unions argue that nothing in the statute allows the Department to distinguish between the treatment of these selling expenses for purposes of calculating CEP and the CEP-profit ratio and, accordingly, for the final results the Department should either deduct all indirect selling expenses for the U.S. sales from CEP or, alternatively, the Department should exclude the same expenses from the calculation of total selling expenses for U.S. sales, thereby excluding these expenses from the calculation of the CEP-profit ratio.

Mitsubishi claims that the Unions' argument would have the Department abandon its existing practice and deduct certain expenses from the CEP even though the expenses do not relate to economic activities in the United States. Mitsubishi notes that the expenses in question are indirect selling expenses and inventory carrying costs incurred prior to importation and that the Department has consistently not deducted such expenses in its practice under the URAA, citing *Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 62 FR 965 (January 7, 1997), in which the Department stated ''we have not deducted indirect selling expenses and inventory carrying costs incurred in Korea from U.S. price because these expenses do not result from or bear relationship to selling activities in the United States.''

Mitsubishi argues that the reasoning in that case applies directly to this case and that the Department is treating the expenses in question in the same manner in both cases. Mitsubishi also states that, because the Unions recognize that the Department calculates CEP by limiting the deductions to those related to U.S. economic activity, the Unions then argued that one piece of pre-importation inventory carrying costs should be deducted, *i.e.*, that portion attributable to the time in transit. Mitsubishi claims that it submitted its imputed inventory carrying costs in its original questionnaire response and that the transit period represents one part of the inventory carrying costs that cannot be distinguished on the record from the inventory period in Japan. Therefore, Mitsubishi argues, this expense cannot be attributed exclusively to U.S. sales and is not an appropriate adjustment. In addition, Mitsubishi states, the Unions are extremely untimely in their request that a portion of the expense be identified and attributed to U.S. sales. Furthermore, Mitsubishi argues, the adjustment is very small and is well within the parameters for ignoring minor adjustments. For the foregoing reasons Mitsubishi claims that, even if the Department agreed with the substance of the Unions' argument the Department should reject it.

Department's Position

We disagree with the Unions' argument that section 772(d)(1) of the Act requires us to deduct the same direct and indirect selling expenses as were deducted under the pre-URAA statute. Section 772(d)(1) of the Act instructs us to deduct from the starting price the amount of the expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise. It is clear from the SAA that under the new statute we should deduct from CEP only those expenses associated with commercial activity in the United States. The SAA also indicates that the CEP ''is now calculated to be, as closely as possible, a price corresponding to a price between non-affiliated exporters and producers.'' SAA at 823. Section 351.402(b) of the proposed regulations codifies this principle, stating that we will make adjustments under section 772(d) for expenses associated with commercial activity in the United States, no matter where it is incurred. Therefore, consistent with section 772(d) and the SAA, we deduct only those expenses representing activities undertaken to make the sale to the unaffiliated customer in the United States. We ordinarily do not deduct indirect expenses incurred in selling to the affiliated U.S. importer. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative*

Reviews and Termination in Part, 62 FR 11825, 11834 (March 13, 1997); *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review,* 62 FR 17148, 17168 (April 9, 1997) (*Mexican Cement*).

Our analysis of Mitsubishi's indirect selling expenses incurred in Japan indicates that these costs, including items such as salaries, office expenses and equipment expenses, relate to activities performed in selling to the affiliated U.S. importer. While we recognize that in *Pasta* we reevaluated our treatment of indirect selling expenses incurred in Italy for the final determination, the circumstances differed from this case. In *Pasta,* based on information obtained at verification which indicated that enriched pasta, other than whole wheat pasta, is virtually all sold in the United States, we determined that any inventory carrying costs incurred on enriched pasta were necessarily attributable to U.S. economic activity. But in this case, Mitsubishi's indirect selling expenses cannot be attributed exclusively to its U.S. sales to unaffiliated customers. Unlike *Pasta,* we found no models that Mitsubishi produces for sale exclusively in the United States and, therefore, Mitsubishi incurs these costs regardless of the final destination of the sale.

Moreover, we do not consider the portion of Mitsubishi's inventory carrying costs during the period of transit to be associated with commercial activity in the United States. These expenses were incurred from the date of exportation to the date the affiliated importer received the subject merchandise in the United States and, therefore, relate to the sale to Mitsubishi's U.S. affiliate and not to the sale to the unaffiliated customer. *See Certain Stainless Steel Wire Rods From France: Amended Final Results of Antidumping Duty Administrative Review* (*Steel Wire Rods*) 62 FR 25915, 25916 (May 12, 1997). Accordingly, for these final results we have not deducted such costs from the CEP.

Although we agree with the Unions' argument that these expenses should be excluded from the numerator of the CEP-profit ratio (*i.e.,* the calculation of total U.S. expenses), we have included these expenses in the denominator as total expenses in accordance with section 772(f)(2)(C). In deducting profit from CEP the statute directs us to allocate profit to CEP sales based upon the ratio of total U.S. expenses to total expenses. *See* sections 772(f)(1) and (2). Consistent with section 772(f)(2)(B) and the SAA, we include only expenses deducted under sections 772(d)(1) and (2) in the calculation of total U.S. expenses. *See* SAA at 824; *Mexican Cement,* 62 FR at 17167. However, section 772(f)(2)(C) defines total expenses as all expenses incurred by or on behalf of the foreign producer/exporter and the affiliated U.S. seller with respect to the production and sale of subject merchandise and the foreign like product. This calculation requires the inclusion of all expenses even if not associated with commercial activity in the United States. Accordingly, we have included Mitsubishi's indirect selling expenses and inventory carrying costs incurred in Japan in the calculation of total expenses.

Comment 7

The Unions argue that the Department should exclude from the calculation of profit for constructed value (CV) Mitsubishi's home market sales that were made below the cost of production. The Unions note that the Department based normal value on CV for comparison with U.S. sales for which there were no home market comparison models and that, when calculating CV, the Department added an amount for CV profit to the model-specific cost of production provided by Mitsubishi. The Unions argue that, pursuant to section 773(e), CV must include an amount for profits earned in the ordinary course of trade in the production and sale of the foreign like product. The Unions add that in accordance with section 771(15) the Department must consider as outside the ordinary course of trade sales disregarded under section 773(b)(1) due to below-cost prices and under section 773(f)(2) due to non-arm's-length prices. Furthermore, the Unions claim, the Department has consistently implemented this statutory requirement (citing, *e.g., Notice of Final Results of Antidumping Duty Administrative Review: Mechanical Transfer Presses from Japan (Mechanical Transfer Presses*), 62 FR 11820, 11822 (March 13, 1997)). The Unions assert that in that case, as here, the particular market situation did not permit proper price-to-price comparisons between home market sales and all of the respondent's U.S. sales and that the Department had to rely on CV to compare to certain U.S. sales. The Unions claim that, when analyzing the cost and sales data for home market sales of the foreign like product in the *Mechanical Transfer Presses* case, the Department had reason to believe that such sales were made at prices below the cost of production and that the Department excluded below-cost sales from the CV calculation on that basis even though technically the Department did not disregard those sales in the price-based determination of normal value.

In the instant review, the Unions point out, Mitsubishi provided model-specific cost-of-production data in its Section D questionnaire response that allows the Department to determine whether there were sales made in the home market at prices below the cost of production during the POR within an extended period and in substantial quantities. The Unions argue that, although they believe the Department should undertake a full cost-of-production investigation (*see* Comment 5), at a minimum the Department should ensure for the final results that below-cost sales are excluded from its calculation of profit for CV.

Mitsubishi claims that the Unions' argument with respect to the calculation of profit for CV is fundamentally the same argument requesting that the Department undertake an investigation of below-cost sales. Mitsubishi states that the facts on the record have been there for months and that the deadlines for making such allegations are long past. Mitsubishi adds that it is completely inappropriate to request at this point in the review that the Department undertake analyses of new issues that should have been raised much earlier.

Mitsubishi argues that the Department's policy is to include in the calculation of CV profit all sales of the like product unless there has been a finding that such sales were not in the ordinary course of trade. Mitsubishi states that the Department has expressly considered and rejected the position that all below-cost sales are outside the ordinary course of trade. Mitsubishi notes that in comments accompanying the proposed regulations the Department stated that sales must have been disregarded under the cost test before they will be excluded from the calculation of profit (referring to 61 FR 7335 (February 27, 1996)). Mitsubishi points out that the reference to a ''cost test'' is to the investigation conducted under section 773(b) of the Act pursuant to an allegation of below-cost sales. Mitsubishi adds that the test considers not only whether the sales were made below the cost of production but whether the sales were made in substantial quantities over a substantial period of time at prices that do not permit the recovery of all costs within a reasonable period of time (referring to section 773(b)). Mitsubishi adds that, as discussed in response to an earlier comment, the Department has specific regulations regarding the procedures for determining such issues and that the

Unions' arguments come far too late in the review.

Mitsubishi also argues that *Mechanical Transfer Presses* is readily distinguishable from this case because the Department determined to go directly to CV because mechanical transfer presses are large, custom-built capital equipment and, while the home market was viable, the fact that subject merchandise was built to each customer's specifications did not permit proper price-to-price comparison in either the home market or third countries. As a result, Mitsubishi notes, the Department did not require that the respondent provide home market sales data. Consequently, Mitsubishi claims, the Department had determined that allegations of below-cost sales—for the purpose of eliminating below-cost sales from price-to-price comparisons—were not necessary. In the present case, Mitsubishi notes, home market sales data were not only requested but were extensively used in price-to-price comparisons. Mitsubishi asserts that the statutory structure is clear in that the Department should have been requested, on a timely basis, to conduct a below-cost sales investigation as a prerequisite to the Unions' arguments.

Department's Position

Section 773(e)(2)(A) directs us to calculate CV profit using home market sales of the foreign like product in the ordinary course of trade. Consistent with the definition of ''ordinary course of trade'' contained in section 771(13) and the SAA, we have interpreted this requirement to preclude an automatic exclusion of below-cost sales from the CV profit calculation. Proposed Regulations, 61 FR at 7335. Instead, our normal practice is to exclude below-cost sales only when such sales have been disregarded under our cost test pursuant to section 773(b)(1). *See Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 61 FR 56515, 56518 (November 1, 1996). As discussed above, we have not conducted a cost test in this administrative review of Mitsubishi's home market sales. Accordingly, we have not disregarded any below-cost sales as being outside the ordinary course of trade and, therefore, have not excluded any sales from our calculation of CV profit.

The Unions' cite to *Mechanical Transfer Presses* is misplaced because in that case we excluded below-cost sales because of unique factual circumstances not present in this review. In that case, because the particular market situation rendered a price-to-price comparison inappropriate, the need for an examination of whether home market sales were below cost was not apparent. Thus, when the relevance of the issue became apparent, we analyzed the cost data and determined that the respondent did have below-cost sales that would have been disregarded under section 773(b)(1). *Mechanical Transfer Presses*, 62 FR at 11822. We determined that it was, therefore, appropriate to exclude such sales from the calculation of CV profit.

Comment 8

The Unions argue that for comparison to U.S. sales for which Mitsubishi failed to supply complete data the Department should use, as facts available, the highest cost-of-production data and that the preliminary decision to use the weighted-average dumping margin calculated for all other sales was inappropriate and inconsistent with the Department's past practice. The Unions state that in a case in which the respondent failed to submit the cost of further manufacturing for certain sales the Department used, as facts available, the highest reported cost of further manufacturing, citing *Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Administrative Review* (*PTFE Resin*), 62 FR 5590 (February 6, 1997). In this case, too, the Unions argue, while it would be inappropriate to resort to total facts available, Mitsubishi should not be rewarded for its failure to provide requested data—data which might reveal higher dumping margins for certain sales than the weighted-average dumping margins for other sales. The Unions state that if the Department were to use the weighted-average margin to fill in data that a respondent failed to supply respondents would be encouraged to withhold particular data that would lead to higher margins. Accordingly, the Unions argue, the Department should use, as facts available, the highest CV reported by Mitsubishi for the same model size to calculate margins for these sales.

With respect to the question of facts available, Mitsubishi states that the Department has broad discretion in selecting a facts-available margin for sales having less than complete data. In this review, Mitsubishi argues that a very small number of U.S. sales were made of models for which cost-of-manufacturing data was not available and, given the small number of sales at issue and the similarity of these models to other models for which data was supplied, the Department's decision to apply the weighted-average margin calculated for other U.S. sales was correct.

Mitsubishi disputes the Unions' assertion that Mitsubishi is benefitting by the application of the weighted-average margin for these sales. Mitsubishi argues that there is no benefit or preferential treatment accorded these sales but, rather, an appropriate decision not to apply a punitive rate to these sales in view of the overall reasonableness and reliability of Mitsubishi's response. Mitsubishi states that one of the significant revisions under the new law is the shift from the use of best information available to the use of facts available pursuant to section 776(b).

Department's Position

We disagree with the Unions' argument regarding our use of adverse facts available (*i.e.*, apply the highest calculated CV for the same-size-screen models) for Mitsubishi's U.S. sales of models for which we had no CV data. Given the level of cooperation by Mitsubishi, including timely submission of its initial and supplemental questionnaire responses as well as its participation in a verification of its data, the absence of CV data for these sales does not warrant the use of adverse facts available pursuant to section 776(b). On the contrary, for more than 93 percent of its U.S. sales of subject merchandise during the POR Mitsubishi provided information such that we are able to calculate an accurate margin. For the relatively few sales for which we had no CV data we exercised our discretion under section 776(a) to determine how to apply facts available to account for the missing data. Accordingly, for these final results we have continued to apply as facts available to such sales the weighted-average margin which we calculated for Mitsubishi's other sales.

Comment 9

The Unions argue that the Department should determine that Mitsubishi has absorbed antidumping duties in this review. The Unions claim that the Department's proposed regulations provide that for transition orders the Department will make a duty-absorption determination, if requested, for any review initiated in 1996 (referring to 61 FR 7308, 7366 (February 27, 1996) and also citing *Certain Welded Stainless Steel Pipe from Taiwan; Preliminary Results of Administrative Review* (*Stainless Steel Pipe*), 62 FR 1435, 1436 (January 10, 1997)).

The Unions acknowledge that this is the first time that they have raised the issue of duty absorption in this review. However, the Unions assert, the Department's analysis of this issue is unaffected by the timing of the Unions'

request for a duty-absorption determination. The Unions claim that in the review of *Stainless Steel Pipe* the Department did not obtain any additional information from the respondent in deciding whether absorption occurred. Instead, the Unions claim that the Department determined, based on information obtained during the regular course of the review, that duty absorption occurred within the meaning of the statute. The Unions argue that in this case, too, the Department can make a decision on duty absorption based on information already available to it.

Mitsubishi points out that the notice of initiation, published on February 20, 1996, stated that, if requested within 30 days of publication, the Department would determine whether antidumping duties had been absorbed by an exporter or producer subject to the review if the merchandise was sold in the United States through an affiliated importer (61 FR 6348). Mitsubishi states that, according to the notice, the Unions had the opportunity to request a determination on this issue not later than March 22, 1996. Instead, Mitsubishi argues, the request submitted for the first time on March 17, 1997, was 360 days late. In addition, Mitsubishi argues that section 351.213(j) of the proposed regulations are clear regarding the manner in which the Department should decide this issue: ''* * * the Department will make a determination regarding duty absorption only if the request for such a determination is made within 30 days after the initiation of the administrative review'' (61 FR 7317 (February 27, 1996)). Mitsubishi notes that the Unions make no attempt to explain the lateness of their request but, instead, argue that the record is complete and that the Department would not have sought or gathered any additional information if the request had been filed earlier. Finally, Mitsubishi argues that the Unions ignore Mitsubishi's rights to be advised that such a review has been requested and to put such information on the record as it deems useful and that if the Department accepts the Unions' request, Mitsubishi's rights will be entirely abrogated by the Unions' procedural tactic. Considering the 30-day deadline as stated in the proposed regulations and in the accompanying comments, as well as in the notice of initiation, Mitsubishi argues that there is no merit to the Unions' request and that such a request should be denied.

Department's Position

We agree with Mitsubishi that a duty-absorption inquiry is not appropriate in this review. Section 351.213(j) of our proposed regulations states that ''the Secretary, if requested within 30 days of the initiation of the review, will determine whether antidumping duties have been absorbed * * *.'' Our notice of initiation of this review reflected this procedural requirement, stating that we would make such a determination if a request was received within 30 days of publication. *Initiation of Antidumping and Countervailing Duty Reviews,* 61 FR 6347, 6348 (February 20, 1996). Thus, the Unions had clear notice of the established 30-day deadline for submitting a duty-absorption request. Because our absorption inquiry is fact-intensive and conducted on a case-by-case basis, the *Stainless Steel Pipe* case is irrelevant in considering whether to conduct such a determination in this review.

Comment 10

The Unions claim that the Department erroneously treated Mitsubishi's further-manufacturing costs as though they were incurred in Japanese yen rather than in U.S. dollars and, therefore, applied exchange rates incorrectly in its preliminary calculations. The Unions note that the further-manufacturing costs, including costs of materials, labor and overhead, as well as other applicable expenses, were incurred by Mitsubishi to incorporate CPTs into color televisions that were assembled in the United States. Because those costs were incurred in the United States, the Unions point out, they were already denominated in dollars and, thus, no currency conversion was required.

Department's Position

Although Mitsubishi had originally indicated that its further-manufacturing data were denominated in Japanese yen, upon further review of Mitsubishi's section E response we agree with the Unions that Mitsubishi reported its further-manufacturing expenses incurred in the United States in dollars. Therefore, for the final results we have treated them accordingly.

Comment 11

The Unions argue that, when calculating CEP expenses, the Department should include repacking expenses incurred by Mitsubishi in the United States. The Unions note that in the preliminary results the Department deducted from the CEP starting price repacking expenses incurred by Mitsubishi for its U.S. sales but that the Department failed to include repacking expenses in the calculation of total expenses incurred by Mitsubishi in the United States for sales of subject merchandise, thereby understating the sum of the expenses that were subsequently used for the calculation of CEP profit.

The Unions claim that, pursuant to section 772(d)(3) of the Act, the Department is required to deduct the profit allocated to the expenses generally incurred by or for the account of the producer or exporter, or the affiliated reseller in the United States, in selling the subject merchandise, as well as the cost of any further manufacturing or assembly. The Unions assert that repacking expenses incurred by Mitsubishi in the United States for the sale of merchandise to which value had been added fall into the domain of the expenses described by section 772(d)(3) for purposes of the CEP-profit calculation. Further, the Unions argue, inclusion of the repacking expenses in the total expenses incurred by Mitsubishi in the United States for purposes of the CEP-profit calculation is consistent with the Department's practice, citing *Certain Stainless Steel Wire Rod from France: Amended Final Results of Antidumping Duty Administrative Review,* 61 FR 58523, 58524 (November 15, 1996), and, accordingly, should be included for the final results in the calculation of total expenses incurred by Mitsubishi in the United States.

Mitsubishi dismisses the Unions' argument as incorrect. Mitsubishi claims that section 772(d)(3) explicitly limits the deductions that attract a profit to a well-defined group: selling expenses and further-manufacturing costs. Mitsubishi argues that repacking expenses are neither. In fact, Mitsubishi argues, there does not appear to be a statutory basis to deduct repacking expenses from U.S. price at all. Mitsubishi agrees that packing of subject merchandise is a recognized adjustment, made to normal value, but repacking of further-manufactured non-subject merchandise is not an adjustment recognized under the statute. Therefore, Mitsubishi argues, rather than assigning profit to repacking, the Department should not adjust for this expense at all.

Department's Position

We agree with the Unions. Repacking in the United States is an expense associated with the further manufacture and assembly of the merchandise and, as such, is among the expenses deducted from the starting price under section 772(d)(2) and for purposes of the allocation of profit under 772(d)(3). *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et. al.; Final Results of Antidumping Duty*

Administrative Reviews, 57 FR 28360, 28396 (June 24, 1994). As discussed in response to Comment 6 above, all expenses deducted under section 772(d)(1) and (2) are included in the numerator for total U.S. expenses in the calculation of the CEP-profit ratio. Accordingly, for the final results, we have continued to deduct these expenses from the starting price pursuant to section 772(d)(2) and included such repacking expenses in our calculation of CEP profit.

Comment 12

The Unions assert that the Department should ensure that the full amount of dumping duties is assessed and collected. The Unions state that when the Department issues its final results it will be able to determine the total amount of dumping duties payable for all sales made during the POR and that the Department should instruct the Customs Service to assess and collect on Mitsubishi's entries during the POR the absolute amount of duties payable plus interest.

Mitsubishi agrees that the Department should collect the duties payable in this review. However, Mitsubishi argues, the assessment methodology indicated in the preliminary results would, if used, result in a large overcollection of duties. Mitsubishi states that, while it understands that the Department calculated the percentage duty because the assessment instructions that may be issued may instruct Customs to apply the percentage duty to all entries made during the POR, Mitsubishi requests the Department to reconsider this approach because it would cause Customs to collect an amount that far exceeds the amount of dumping duties determined on the POR sales. Specifically, Mitsubishi states, the Department calculated the percentage duty based on the entered value for all sales of subject merchandise during the POR but, Mitsubishi argues, the Department should have based its calculation on Mitsubishi's Section A response of the entered value of entries during the POR. Mitsubishi claims that not all CPTs entered during the POR were sold during the POR and if the percent duty is applied to CPTs actually entered during the POR, a substantial overcollection of dumping duties will result. Mitsubishi adds that overcollection would result regardless of the margin calculated for the final results because of the significant difference in the total entered value of CPTs sold during the POR compared with the total value of all entries of CPTs during the POR.

Mitsubishi states that in a review involving sampling it may be reasonable and permissible for the Department to assess duties on all entries at the ratio derived by dividing the dumping duties for the sample sales divided by the total value of those sample sales. However, Mitsubishi argues, in non-sampling cases such as the present case, the Department has on record an exact quantification of the total value of entries of subject merchandise during the POR. Consequently, Mitsubishi argues, the Department can compute an exact percentage for realizing the precise amount of dumping duties due in the event the Department wishes to have duties assessed uniformly across all entries during the POR. Alternatively, Mitsubishi suggests that the Department could instruct Customs that the assessment is to be capped at the level of the percentage margin.

Mitsubishi argues further that, in CEP sales reviews, the entries that are in excess of the entries accounting for sales of a particular review belong to the sales of other reviews. Mitsubishi argues that the duties relating to such entries are assessed and collected within the review period within which those sales occurred. Through consistent application of the proper methodology in each review, Mitsubishi argues, the appropriate dumping duties are calculated, assessed and collected on all entries subject to an order. Thus, Mitsubishi argues, the Department should revise the percentage duty variable or other aspects of its assessment methodology so as to ensure against an overcollection of duties.

Department's Position

We agree with Mitsubishi and the Unions that we should assess and collect the correct amount of duties payable. We believe that the best way to do so is the methodology which has become our established practice in recent years and which has been upheld by the courts. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 2081, 2083 (January 15, 1997); *FAG Kugelfischer Georg Schafer KgaA* v. *United States,* No. 92–07–00487, 1995 Ct. Int'l. Trade LEXIS 209, at CIT *10 (Sept. 14, 1995), *aff'd.* No. 96–1074 1996 U.S. App. LEXIS 11544 (Fed. Cir. May 20, 1996). This method, by which we calculate an importer-specific *ad valorem* duty assessment rate for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties, yields the best representation of what the dumping margins on sales of merchandise entered are, because in most cases respondents are unable to link specific entries to specific sales. Mitsubishi's proposal would require such a link, which it has not done for this review. For these reasons we will use our current methodology to calculate the assessment rates which we will instruct Customs to apply to entries during the POR.

Comment 13

Mitsubishi argues that the Department mistakenly treated domestic inland freight from the plant to the distribution warehouse on U.S. sales as if it were reported in dollars rather than yen. As a movement expense incurred entirely within Japan, Mitsubishi claims that the Department should multiply the reported expense by the dollar/yen exchange rate.

Department's Position

We agree with Mitsubishi and have made the appropriate currency conversion for the final results.

Comment 14

Mitsubishi argues that the Department did not deduct inland freight expenses to the customer from home market price and, for the final results, the Department should modify its margin calculations in order to adjust for these expenses.

The Unions argue that Mitsubishi's reported freight expenses have been misreported and cannot legitimately be used by the Department in its calculation for the final results (see earlier comment above). Accordingly, the Unions assert, the Department should reject Mitsubishi's claim for an adjustment to home market inland freight but, at a minimum, the Department must adjust the freight expenses reported by Mitsubishi to ensure that those expenses reflect a reasonable amount for transporting the merchandise from Mitsubishi's warehouse to the customer.

Department's Position

We agree with Mitsubishi. As explained in our response to Comment 3 above, at verification we found Mitsubishi's reported inland freight expenses to the customer to be accurate and complete. For the final results we have deducted those expenses from normal value.

Comment 15

Mitsubishi argues that the Department erroneously set direct selling expenses

for cost of production equal to zero in its calculations. Because the same variable is used later to calculate profit for CEP and CV, Mitsubishi claims, overriding its value with zero affects these calculations by overstating profit for CEP and CV. Mitsubishi argues that, although it is the Department's practice to eliminate one component of direct selling expenses—imputed credit expenses—from the profit calculation, there is no basis for eliminating all direct selling expenses.

Department's Position

We agree with Mitsubishi and have adjusted our calculations for the final results.

Comment 16

Mitsubishi notes that the Department erroneously did not calculate margins for U.S. sales that were compared to CV because the computer programming language referenced a non-existent data set. Mitsubishi claims that this caused a series of errors in subsequent parts of the program and suggests programming language which would correct this problem.

Department's Position

We agree with Mitsubishi and have ensured that we use all datasets appropriately.

Comment 17

Mitsubishi argues that the Department should modify its calculations in order to base the calculations of CV profit and expenses and CEP profit on all home market sales of the like product rather than just on sales of certain models. Mitsubishi claims that the Department incorrectly restricted these calculations to sales of large-screen sizes but that it should have based these calculations on all home market sales of the like product, including smaller-screen sizes. Mitsubishi notes that the foreign like product, as defined in the Department's questionnaire, is CPTs regardless of screen size. Further, Mitsubishi argues that the Department's practice is clear in this regard, citing *Professional Electric Cutting Tools from Japan; Final Results of Antidumping Duty Administrative Review (PECTs),* 62 FR 386, 389–390 (January 3, 1997), and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore and the United Kingdom (AFBs VI),* 62 FR 2081, 2112–2113 (January 15, 1997), in which the Department used all sales of the foreign like product for the purposes of calculating CV and CEP profit and stated that it interpreted the term foreign like product to be inclusive of all merchandise sold in the home market which was in the same class or kind of merchandise as that under consideration.

The Unions state that in this case and in the cases Mitsubishi cites the Department properly calculated CV and CEP profit based on all sales that could potentially be used for comparison to the U.S. sales. The Unions add that the Department's past practice has been to include in its calculation of CV and CEP profit all home market sales of comparison models because these data encompass all foreign like products under consideration for normal value, referring to *Certain Internal-Combustion Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review (Forklift Trucks),* 62 FR 5592, 5598 (February 6, 1997). Accordingly, the Unions argue, after eliminating sales below cost in the CV-profit calculation, the Department should continue to base the profit-rate calculation on sales of the same models as those it used in the preliminary results.

Department's Position

We agree with Mitsubishi that our calculation of CV and CEP profits should include all home market sales during the POR of the foreign like product. For purposes of calculating CV and CEP profit we use an aggregate calculation that encompasses all foreign like products sold in the home market. *See AFBs VI* at 2113; *PECTs* at 390; *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27295, 27359 (May 19, 1997). The Unions have misconstrued our decision in *Forklift Trucks.* In that case, we applied the same methodology we applied in PECTs and are applying here. It is the facts of *Forklift Trucks,* not the methodology, that differs from the present case. Consistent with that methodology we determine the foreign like product is inclusive of all of Mitsubishi's reported home market sales, and we have calculated CV profit on an aggregate basis.

Final Results of the Review

As a result of our analysis of the comments received, we determine that the following dumping margin exists for the period January 1, 1995 through December 31, 1995:

Manufacturer/exporter	Margin (percent)
Mitsubishi	5.93

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because the inability to link sales with specific entries prevents calculation of duties on an entry-by-entry basis, we have calculated an importer-specific *ad valorem* duty assessment rate for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between NV and CEP, by the total CEP value of the sales compared, and adjusting the result by the average difference between CEP and customs value for all merchandise examined during the POR.) The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise 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) For Mitsubishi the cash deposit rate will be the rate listed above; (2) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair-value investigation (LTFV), but the manufacturer is, the cash deposit rate will be that which was established for the most recent period for the manufacturer of the merchandise; (3) for non-Japanese exporters of subject merchandise from Japan, the cash deposit rate will be the rate applicable to the Japanese supplier of that exporter; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 27.93 percent, the ''all others'' rate established in the LTFV investigation, as explained below. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993), and *Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993), decided that once an ''All Others'' rate is established for a company it can only be changed through an administrative review. We

have determined that, in order to implement these decisions, it is appropriate to reinstate the ''All Others'' rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. Therefore, we are reinstating the ''All Others'' rate made effective by the final determination of sales at LTFV (*see Color Pictures Tubes,* 52 FR 44171, November 18, 1987).

This notice also serves as a 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 APOs of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34 (d). 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.

Dated: June 11, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–811; A–412–810; C–428–812; C–412–811]

Initiation of Anticircumvention Inquiry on Antidumping and Countervailing Duty Orders on Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom and Germany

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

ACTION: Notice of initiation of anticircumvention inquiry.

SUMMARY: On the basis of an application filed with the Department of Commerce (the Department) on April 14, 1997 and amended on May 14, 1997, we are initiating an anticircumvention inquiry to determine whether imports of lead and bismuth carbon steel billets from Germany and the United Kingdom are circumventing the antidumping and countervailing duty orders on hot-rolled lead and bismuth carbon steel products from Germany and the United Kingdom (*See Antidumping Orders; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Brazil, France, Germany and the United Kingdom* 58 FR 15334 (March 22, 1993) and *Countervailing Duty Orders; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom* 58 FR 15325, 15327 (March 22, 1993)).

EFFECTIVE DATES: June 25, 1997.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro, Russell Morris, or Maria MacKay, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 1997, the Department received an application (amended on May 14, 1997) from Inland Steel Bar Company and USS/Kobe Steel Company (the applicants), requesting that the Department conduct an anticircumvention inquiry pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), with respect to the antidumping and countervailing duty orders on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom and Germany. The applicants allege that the principal German (Saarstahl A.G. and Thyssen Stahl A.G.) and British (British Steel PLC) producers of hot rolled leaded bar and rod are circumventing the respective orders by shipping bloom-cast leaded-steel billets (leaded-steel billets) to the United States, where they are easily and inexpensively converted into the hot-rolled carbon steel products covered by the orders.

The Department received written comments opposing the request to initiate the inquiry from Thyssen Stahl A.G. (Thyssen) on May 12, 1997, from Saarstahl A.G. (Saarstahl) on May 16, 1997, from British Steel PLC (British Steel) on May 23, 1997, and from the European Community (EC) on May 27, 1997. Written comments in opposition to the initiation of the inquiry were also received from four U.S. producers of subject merchandise: Bar Technologies on May 19, 1997, Sheffield Steel Corporation on June 2, 1997, Birmingham Steel Corporation on June 3, 1997 and Nucor Steel on June 5, 1997.

Initiation of Anticircumvention Proceeding

In accordance with section 781(a) of the Act, the Department may find circumvention of an order when the following four conditions are met:

(1) The merchandise sold in the United States is of the same class or kind as the merchandise that is subject to the order,

(2) Such merchandise is completed or assembled in the United States from parts or components produced in the foreign country to which the order applies,

(3) The process of assembly or completion in the United States is minor or insignificant, and

(4) The value of the parts or components produced in the foreign country with respect to which the order applies, is a significant portion of the total value of the merchandise sold in the United States.

In order to determine whether a circumvention inquiry is warranted, we evaluated the information submitted by the applicants using each of the criteria listed above. We have concluded that the information submitted is sufficient to warrant the initiation of an anticircumvention inquiry. Each criterion is separately addressed below.

(1) Is the Merchandise Sold in the United States of the Same Class or Kind as the Merchandise That Is Subject to the Order?

The merchandise covered by the orders is described as ''hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes.'' The leaded-steel billets being imported into the United States are alleged to contain 0.03 percent or more of lead or 0.05 percent or more of bismuth and, thus, meet the chemical requirements specified for the merchandise subject to the antidumping and countervailing duty orders. The applicants claim that the imported leaded-steel billets are then converted, in the United States, into the identical products that are covered by the orders.

(2) Is the Merchandise Completed or Assembled in the United States From Parts or Components Produced in the Foreign Country to Which the Order Applies?

The hot-rolled bars and rods allegedly are being completed in the United States from leaded-steel billets produced in the