There is no basis on the record of this case to question the probative value of the newly recalculated petition rate and we therefore consider it to be corroborated. Petitioners' claims against this rate, which are based on evidence which is contained in the administrative record of the LTFV investigation, are not properly before the Department in this segment of the proceeding.

*Final Results of the Review*

Based on our analysis of this comment, we have determined that no changes to the preliminary results are warranted for purposes of these final results, and a margin of 53.65 percent exists for the PRC entity for the period December 1, 1995 through November 30, 1996. This rate applies to all exports of pencils from the PRC other than those produced and exported by China First (because China First's exports produced by China First and entered during the POR were excluded from the order), those produced by Shanghai Three Star Stationery Company, Ltd. (Three Star) and exported by Guangdong (because Three Star's exports produced by Guangdong were also excluded from the order), and those exported by Shanghai Foreign Trade Corporation (SFTC) (an exporter which was previously determined to be entitled to a separate rate and for which the petitioners withdrew their request for this administrative review). The weighted-average dumping margin is as follows:

| Manufacturer/producer/exporter | Weighted average margin percent |
|---|---|
| PRC Rate | 53.65 |

The U.S. Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service. Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) No cash deposit is required for entries of subject merchandise both produced by Three Star and exported by Guangdong; (2) the cash deposit rate for merchandise both produced and exported by China First is unaffected by this notice (*see* footnote 2, above); (3) the cash deposit rate for SFTC will be 8.31 percent (based on the December 28, 1994 antidumping duty order (59 FR 66909)); (4) the cash deposit rate for merchandise exported by China First and produced by any manufacturer other than China First, for merchandise exported by Guangdong and produced by any manufacturer other than Three Star, and merchandise exported by all other PRC exporters, will be the PRC rate of 53.65 percent; and (5) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate of its supplier. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Upon completion of this review, we will direct the U.S. Customs Service to assess an ad valorem rate of 53.65 percent against the entered value of each entry of subject merchandise during the POR for all firms except those firms excluded from the order or entitled to a separate rate.

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

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the 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: December 22, 1997.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 98–278 Filed 1–6–98; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–815]**

### Certain Cold-Rolled Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review

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

**ACTION:** Final results of antidumping duty administrative review.

**SUMMARY:** On December 19, 1995, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from Korea. This review covers two manufacturers/exporters of the subject merchandise to the United States and the period August 18, 1993, through July 31, 1994. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

**EFFECTIVE DATE:** January 7, 1998.

**FOR FURTHER INFORMATION CONTACT:** Charles Rast (Dongbu), Alain Letort (Union), or Linda Ludwig, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–3793 or fax (202) 482–1388.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 9, 1993, the Commerce Department published in the **Federal Register** (58 FR 37176) the final affirmative antidumping duty determination on certain cold-rolled carbon steel flat products from Korea, for which we published an antidumping duty order on August 19, 1993 (58 FR 44159). On August 3, 1994, the Department published the ''Notice of Opportunity to Request an Administrative Review'' of this order for the period August 18, 1993 through July 31, 1994 (59 FR 39543). We received a request for an administrative review from Dongbu Steel Co., Ltd. (''Dongbu'') and Union Steel Manufacturing Co., Ltd. (''Union''). We initiated the administrative review on September 8, 1994 (59 FR 46391).

In a letter dated February 1, 1995, petitioners formally requested that the

Department consider Union and Dongkuk Industries Co., Ltd. (''DKI''), which was not a respondent initially, as related parties and ''collapse'' them as a single producer of cold-rolled carbon steel flat products. On May 22, 1995, the Department decided to ''collapse'' Union and DKI for purposes of this review. (See the Department's internal memorandum from Joseph A. Spetrini to Susan G. Esserman, dated May 22, 1995.) Unless otherwise indicated, all references to Union in this notice include DKI.

On December 19, 1995, the Department published in the **Federal Register** the preliminary results of the first administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from Korea (60 FR 65284). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act'').

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

**Scope of the Review**

These products include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The period of review (''POR'') is August 18, 1993 through July 31, 1994. This review covers sales of certain cold-rolled carbon steel flat products by Dongbu and Union.

**Verification**

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

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from Dongbu Steel Co., Ltd. (''Dongbu'') and Union Steel Manufacturing Co., Ltd. (''Union''), exporters of the subject merchandise (''respondents''), and from Bethlehem Steel Corporation, U.S. Steel Group—a Unit of USX Corporation, Inland Steel Industries, Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company (''petitioners''). Petitioners requested a public hearing, but subsequently withdrew their request in a timely manner.

*Petitioners' Comments*

Comment 1

Petitioners argue that the Department should use alternative information on the record to determine the market value of transaction handling fees that Dongbu paid to a related party for imported raw materials. Petitioners contend that Dongbu did not provide substantive evidence to support its claim that the transfer prices paid to the related party were at arm's-length or at least equal to the related party's actual costs for providing the services. Moreover, the petitioners argue that since the Department was unable to test the transfer price at verification, the possibility exists that Dongbu may have selectively structured these related-party transactions to maximize adjustments that would lower Dongbu's production costs of the subject merchandise. Thus, the petitioners state that the Department should make an adverse inference and increase the costs of raw materials based on the comparison of similar arm's-length transaction handling fees charged by unrelated parties that Dongbu's U.S. sales affiliate (''DBLA'') used to import subject merchandise into the United States.

Dongbu contends that there is no basis for adjusting its raw material costs to account for transaction fees paid to a related party as suggested by the petitioners. Dongbu states that the services this related party provides to the company are not of any tangible economic value other than lending its internationally recognized name to the transaction. Dongbu additionally states that the arrangement between the related party and itself simply reflects an intra-company transfer that benefits the related party and its shareholders. Therefore, Dongbu believes that the Department should accept the submitted transaction fees that the related party charged the company.

Department's Position

For the final results, we accepted Dongbu's submitted transaction fees that were paid to a related party. The transaction fees in question were for assistance in handling and processing the related paperwork created by the importation of the material. *See* Dongbu's February 21, 1995 submission at page 12. The value of the service was based on a constant percentage of the acquisition price of the input. Dongbu was unable to substantiate that the submitted transaction fees reflected the market value of the service provided. At verification, company officials stated that they did not obtain similar services for the importation of inputs from any other party, nor did the related party provide this service to any other entity. *See* Cost Verification Report of Dongbu Steel Co., Ltd. (May 19, 1995) at page

12. However, after further review of information on the record, we have concluded that the transfer prices submitted by Dongbu did fairly represent the amount usually reflected for such services. This determination was made by comparing Dongbu's submitted transaction fees (expressed as a percentage of the purchase price) to the *weighted-average* cost (also expressed as a percentage of the purchase price) of similar arm's-length transaction fees charged by unrelated parties that DBLA used to import subject merchandise into the United States. This comparison showed that the submitted transaction fees were above the weighted-average amount charged by unrelated parties. We therefore accepted the submitted transaction fees that were paid to a related party because they reasonably reflected a market value.

Comment 2

Petitioners contend that the costs submitted by Dongbu for its research and development (''R&D'') department, raw material department, quality control department, and procurement department should be included in Dongbu's manufacturing costs rather than in its general expenses. The petitioners argue that Dongbu's submitted description of the functions performed by these departments sufficiently demonstrates that they are manufacturing costs. They add that neither the cost verification report nor the accompanying exhibits contained any indication that Dongbu attempted to provide additional explanations, documentation, or schedules to support its claim that the expenses were general in nature. Therefore, the petitioners believe that the Department should include all general expenses that are not attributable to Dongbu's sales department in the company's cost of manufacturing.

Dongbu believes that its submitted classification of these departmental costs as general expenses is appropriate. The company argues that these costs were classified as general expenses on its audited income statement because they benefit the entire company as a whole. This fact was confirmed by the Department at verification. Furthermore, the company argues that reclassifying these as manufacturing costs would have an inconsequential effect, if any, on its cost of production (''COP'').

Department's Position

We agree with respondent. In this specific case, we are satisfied that the costs in question were properly classified as general expenses. For the final results, we accepted Dongbu's inclusion of costs from its R&D department, raw material department, quality control department, and procurement department as general expenses. At verification, the Department reviewed Dongbu's source documentation and noted that these costs were general in nature and related to all merchandise sold during the POR. Furthermore, we noted that these expenses were reported as general expenses on the company's audited income statement and not as a part of its cost-of-sales. Nor were these costs included as part of the inventoried costs reported in Dongbu's finished product inventory ledgers. *See Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea*, 58 FR 37176, 37191 (July 9, 1993).

Comment 3

Petitioners argue that the Department should include foreign exchange losses among Dongbu's manufacturing costs to ensure that the cost of production is calculated accurately and that the statutory minimum amounts for general expenses and profit are properly computed for constructed value (''CV''). The petitioners state that it is the Department's normal practice to include foreign exchange gains and losses related to the production of subject merchandise in the cost of manufacturing and not as G&A expenses.

Dongbu believes that its net foreign exchange losses were appropriately submitted as general expenses and not as costs of manufacturing. Dongbu states that it recognizes that it is the Department's normal practice to include foreign exchange gains and losses related to material purchases in the cost of manufacturing. However, Dongbu states that its submitted methodology is consistent with the classification of those expenses on its audited income statement, and that such an adjustment would needlessly result in a deviation from the company's normal accounting records. Furthermore, Dongbu argues that an adjustment to reclassify the costs is needless.

Department's Position

We agree, in part, with both petitioners and respondent. Foreign exchange losses arising from the purchase of raw materials normally should be included in material cost because this is a component of the cost of manufacturing. However, in this particular instance we have not reclassified these losses from general expenses to cost of manufacturing as it would have no impact on the submitted cost of production. *See* 19 CFR § 353.59(a). The slight increase in manufacturing costs the reclassification creates is offset by coinciding decreases in G&A and financing costs. *See Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, 54 FR 15467, 15475 (March 23, 1993).

Comment 4

Petitioners contend that the Department should deny all of the claimed miscellaneous income offsets (*e.g.*, dividends, gains on investments) that were applied against Dongbu's submitted G&A costs. The petitioners argue it is not the Department's practice to allow a reduction of G&A costs unless it can be substantiated that the offsetting income can be tied to specific expenses related to production. The petitioners contend that Dongbu failed to do both of these steps and, therefore, the Department should deny all of Dongbu's claimed offsetting adjustments to G&A costs.

Dongbu contends that it properly offset G&A costs with its various miscellaneous income items. Dongbu states that it submitted a complete list of miscellaneous income items used to offset G&A costs and that the Department reviewed each of these items during verification. Therefore, the company believes that the Department should ignore the petitioners' request and allow the miscellaneous income offsets to G&A costs.

Department's Position

For the final results, we continue to disallow certain non-production-related income offsets to Dongbu's G&A costs. At verification, we reviewed source documentation and obtained explanations from company officials on all the income items that were used to offset Dongbu's G&A expense. We disallowed certain offsetting income from the calculation of G&A expense because Dongbu could not substantiate that they related to the production of subject merchandise. Consequently, the offsetting revenue we disallowed included income received from investments (*e.g.*, dividends, gain on investments) because it related to investments, and not to the production of subject merchandise. *See Final Determination of Sales at Not Less Than Fair Value: Saccharin from Korea*, 59 FR 58826, 58828 (November 15, 1994).

Comment 5

Petitioners contend that the Department should exclude Dongbu's duty payments from the calculation of the company's G&A and interest expense factors. According to the petitioners, the addition of the duty to the cost-of-sales figure inappropriately overstates the figure. The petitioners argue that Dongbu's duty drawbacks represent a refund of import duties incurred in the production of finished merchandise that is subsequently exported. Therefore, the cost-of-sales figures in Dongbu's audited income statements, which is net of import duties refunded on certain export sales, accurately represented Dongbu's final cost of manufacturing. Petitioners continue this argument by stating that duties paid on imports used to produce merchandise sold in Korea are not refunded, and are included in both the net cost of sales and Dongbu's domestic sales price. Thus, using the net cost of sales to allocate general expenses and interest results in an appropriate comparison of prices and costs that reflect import duties.

Dongbu believes that it properly increased its cost-of-sales figure to include the duty in order to calculate G&A and interest expense factors. Dongbu contends that the increase to its cost-of-sales is necessary in order to ensure comparability. Dongbu notes that its audited income statement cost-of-sales figure is net of duty drawback, while its submitted costs of manufacturing figures include the duty because the Department requested that it be submitted in this manner. Therefore, the respondent states that any G&A or interest factor that is applied to its duty-inclusive cost of manufacturing must itself be determined on a duty-inclusive basis.

Department's Position

For the final results, the Department added the import duties paid by Dongbu to the cost of sales, which was used as the denominator in calculating G&A and interest expense factors. The cost of sales in Dongbu's audited income statement was net of import duty drawback, while the Korean and U.S. cost of manufacturing submitted by Dongbu included the cost of import duties. Thus, the cost of sales and the cost of manufacturing were not reported on a consistent basis. Therefore, Dongbu appropriately determined the interest and G&A factor on a duty-inclusive basis because the submitted cost of manufacturing included import duties.

Comment 6

Petitioners assert that the Department's analysis must account for the difference between U.S. sales by Dongbu and its U.S. sales affiliate, DBLA. They argue that the Department is in error in its treatment of DBLA's and Dongbu's sales and requests that DBLA's sales be treated as exporter's sales price (''ESP'') sales. Petitioners note that Dongbu makes sales to the United States through three separate and distinct channels: directly to customers in the United States; through related and unrelated trading companies in Korea; and through its affiliate in the United States, DBLA, which purchases subject merchandise from Dongbu and resells it to unrelated customers in the United States. Petitioners assert that Dongbu is incorrect in claiming that sales made through each of these channels are purchase-price sales. They state that Dongbu's contention implies that if sales through each of these channels are treated as such, the U.S. prices calculated by the Department will represent prices at the same point in the chain of commerce in all cases, and thus implying that the charges by DBLA to the first unrelated customer in the United States represent the arm's-length prices that Dongbu would charge for the same merchandise if sold directly to an unrelated U.S. customer, without the involvement of DBLA. Petitioners claim that Dongbu's own sales data indicate that there is a systematic and significant difference between Dongbu's and DBLA's pricing structure which is the result of the fact that DBLA's involvement in the sale of subject merchandise results in significant costs which are included in the prices it charges its U.S. customers.

Petitioners also argue that because DBLA's selling prices are distinct from Dongbu's, the Department must analyze DBLA's sales differently from Dongbu's sales in order to ensure consistency with the fundamental purpose of the Tariff Act regarding the calculation of United States price. They argue that the Tariff Act identifies two types of U.S. sales, purchase price (''PP'') and ESP, and mandates different adjustments to each so that United States price is reconstructed at the same point in the chain of commerce regardless of whether a U.S. affiliate of the manufacturer or exporter is involved in the transaction. Citing 19 U.S.C. 1677a(b), petitioners contend that the Tariff Act defines purchase price as the price at which merchandise is purchased, or agreed to be purchased, prior to the date of importation, from either a reseller, manufacturer, or producer of the merchandise for exportation to the United States. Conversely, say petitioners, ESP is defined as the price at which merchandise is sold or agreed to be sold in the United States, prior to or after importation by or for the account of the exporter. *See* 19 U.S.C. 1677a(c). Thus, ESP is typically used when an affiliate of the manufacturer or exporter imports merchandise into the United States. Also, petitioners cite *Smith Corona Group* v. *United States*, 713 F.2d 1568, 1571–72 (Fed. Cir. 1983), in arguing that when a U.S. affiliate of a foreign respondent imports merchandise in question, all costs and expenses incurred by the affiliate must be deducted from the affiliate's resale price in order to derive a United States price (''USP'') that reflects the price that the merchandise would command in an arm's-length transaction. They further state that this is the case whether the sales are from the importer to an independent retailer or directly to the public, as if the affiliate had no role in the transaction. Petitioners note that DBLA's role in selling subject merchandise results in selling prices that are distinct from Dongbu's prices for the same product, and that as a result, DBLA's role in selling subject merchandise creates the type of bias that is addressed by the provisions of the Tariff Act regarding United States price.

Petitioners also contend that Dongbu's sales through DBLA do not meet the statutory definition of purchase price. They argue that the Department utilizes a three-part test to determine whether ESP or purchase price should be used to determine USP when the sale is made prior to the date of importation; and the focus must be on the third factor in this test; that is, that if the related party in the United States only acts as a conduit between the first unrelated purchaser and the seller, the resulting sale is a sale for export to the United States. Petitioners contend, however, that before the Department can accurately determine that the related party is just a processor of documentation, there must be evidence on the record supporting that conclusion. They argue that documents submitted by Dongbu, which include DBLA's sales contracts and production order requests, do not, by themselves establish that Dongbu sets the essential terms of sale in Korea. Petitioners maintain, rather, that there is no documentary evidence in the record in support of Dongbu's contention. Citing to *Creswell Trading Co., et al.* v. *United States*, 15 F.3d 1054 (Fed. Cir. 1994) (''*Creswell*''), petitioners claim that Dongbu has the burden of

producing information that proves its point, which it has not done; and in the absence of such information, the Department cannot conclude that the indirect PP sales at issue were made in Korea by Dongbu for exportation to the United States. Instead, petitioners conclude that the Department must determine that the sales were made in the United States by DBLA, and that they must be treated as ESP sales.

Petitioners further argue that the price at which DBLA sells subject merchandise to the unrelated purchaser is different from the price at which DBLA purchases it from Dongbu. They contend that these prices reflect the fact that DBLA performs significant selling activities in the United States which require the Department to treat the sales in question as ESP sales. Petitioners note also that DBLA extends credit to certain customers by permitting them to delay payment for subject merchandise; that DBLA identifies customers, negotiates prices, and provides some warranty-related services; and that DBLA is engaged in marketing activities that include development of downstream applications for subject merchandise. Petitioners contend that another significant selling function performed by DBLA is the posting of cash deposits of antidumping and countervailing duties on behalf of its U.S. customers. They argue that in a typical purchase price transaction, the U.S. customer, as the importer of record, would be required to deposit cash deposits with the U.S. Customs Service upon importation of the merchandise, resulting in additional costs. In ESP transactions, however, the customer is relieved of this burden and of the risks of uncertain future liabilities. Petitioners contend that DBLA's selling activities can be demonstrated in several ways. First, the activities performed by DBLA are significant in the context of the totality of activities required to sell subject merchandise. In other words, DBLA performs all of the functions required to sell subject merchandise in the United States. Second, the significance of DBLA's selling activities, and the economic benefit these provide to DBLA's customers, is reflected in DBLA's prices. Finally, petitioners cite declarations made by DBLA on Customs Form 7501 which indicate that it was more that a processor of sales related documentation.

Respondent counters these arguments by stating that Dongbu's sales through DBLA meet the statutory definition of PP sales, and that petitioners even concede that Dongbu satisfies the first two prongs of the test: (1) Dongbu's sales through DBLA are shipped directly from Dongbu to the unrelated buyer without being introduced into DBLA's inventory, and (2) such shipment is customary in the industry. Respondent notes that the sole issue thus raised by petitioners is whether Dongbu USA satisfies the third prong of the test (*i.e.*, does Dongbu USA act solely as a processor of sales-related documentation and a communication link with its unrelated U.S. buyers). Respondent contends, however, that verification reports and associated documents confirm that sales through DBLA meet the third requirement of the test, and that DBLA played only a limited role as a processor of sales related documentation and as a communications link to the customer.

Respondent argues that all of the selling activities carried out by Dongbu USA in connection with these sales are within the range of activities determined by the Department and the Court of International Trade (''CIT'') to be consistent with purchase price classification. Respondent notes further that petitioners make the same argument here that they made during the original less-than-fair-value (''LTFV'') investigation with respect to sales of cut-to-length plate made by Dongkuk Steel Mill Co., Ltd. through its affiliated selling agent in the United States. In that case, as with Dongbu, the U.S. affiliate was responsible for payment of customs duties and brokerage and handling charges, invoicing and collecting payment, and financing accounts receivable. Respondent states that the Department in that case determined that all of the functions identified by petitioners were within the scope of activities consistent with a purchase price classification. *See* letter from Morrison & Foerster to the U.S. Department of Commerce (June 8, 1995) at 11–13; concurrence memorandum in *Cut-to-Length Carbon Steel Plate from Korea*, Inv. A–580–817 (January 20, 1993) at 13. Respondent notes that DBLA facilitates the sales by processing the documents needed to ensure that the merchandise is delivered in accordance with the negotiated sales terms: that is, delivery to the customer after clearance through U.S. Customs and payment of brokerage and related charges. In detailing these functions, respondent argues that all of the selling activities carried out by DBLA in connection with these sales are within the range of activities determined by the Department to be consistent with purchase price classification in previous cases.

Regarding petitioners' argument that the Department should classify sales through DBLA based upon comparative pricing patterns, respondent counters that there is no legal or factual basis for reclassifying these sales as ESP. Respondent contends that selling functions, not selling prices, are the basis for the Department's classification of sales as purchase price or ESP. With regard to Dongbu's sales through DBLA, respondent argues that the Department must consider DBLA's selling functions in connection with the fact that these products are sold to the unrelated U.S. customer on an ex-dock duty-paid basis and must thus be delivered to the possession of the customer after clearance through U.S. Customs. Respondent notes that in this case, Dongbu has simply transferred these routine selling functions to a related selling agent in the United States, and that the substance of the transaction is not changed, which is that they are purchase price rather than ESP.

Department's Position

We have determined that purchase price is the appropriate basis for calculating USP. Typically, whenever sales are made prior to the date of importation through a related sales agent in the United States, we conclude that purchase price is the most appropriate determinant of the USP if the following factors exist: (1) the merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related shipping agent; (2) direct shipment from the manufacturer to the unrelated buyers was the customary commercial channel for sales of this merchandise between the parties involved; and (3) the related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers. *See, e.g., Certain Stainless Steel Wire Rods from France: Final Determination of Sales at Less that Fair Value,* 58 FR 68865, 68868–9 (December 29, 1993); *Granular Polytetrafluoroethylene Resin from Japan: Final Results of Antidumping Duty Administrative Review,* 58 FR 50343–4 (September 27, 1993). This test was first developed in response to the Court of International Trade's decision in *PQ Corporation* v. *United States*, 652 F. Supp. 724, 733–35 (CIT 1987). It has also been used to uphold indirect purchase-price transactions involving exporters and their U.S. affiliates. *See, e.g., Zenith Electronics Corp.* v. *United States,* Consol. Ct. No. 88–07–00488, Slip Op. 94–146 (CIT 1994).

We disagree with petitioners' argument in citing to *Creswell* that Dongbu has not met the burden of

producing information that demonstrates that the related party in the United States functions only as a processor of documentation. Dongbu has placed information on the record which we have verified describing the functions of its related party. Furthermore, the Department has recognized and classified as indirect PP sales transactions involving selling activities similar to those of DBLA's in other antidumping proceedings involving Korean manufacturers and their related U.S. affiliates. *See, e.g., Final Determination of Sales at Less Than Fair Value; Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* 57 FR 42942, 42950–1 (September 17, 1992). In the present review, we found that: (1) Dongbu's sales though DBLA, its related sales agent in the United States, are shipped directly from Dongbu to the unrelated buyer without being introduced into DBLA's inventory; (2) such shipments are the customary channel of distribution for the parties involved; and (3) DBLA performed limited liaison functions in the processing of sales-related documentation and a limited role as a communication link in connection with these sales.

When all three of the criteria described above are met, we consider that the exporter's selling functions have been relocated geographically from the country of exportation to the United States, where the sales agent performs them. We determine that DBLA's selling functions are of a kind that would normally be undertaken by the exporter in connection with these sales. Furthermore, we conclude that DBLA's role in the payment of cash deposits of antidumping and countervailing duties, extension of credit to U.S. customers, the processing of certain warranty claims, and project development does not involve the development of downstream applications for subject merchandise; rather, DBLA's role is not in consistent with purchase price classification and is a relocation of routine selling functions from Korea to the United States.

Comment 7

According to petitioners, the Department is required by law to deduct the cost of ''actual'' antidumping and countervailing duties from USP when the record demonstrates that those costs are included in the prices paid by the first unrelated purchaser. Petitioners contend that these duties are costs to Dongbu and must be deducted from the price paid by the first unrelated purchaser in order to obtain a fair comparison between USP and foreign market value (''FMV'').

Petitioners assert that the statute provides authority for deducting the cost of actual antidumping and countervailing duties incorporated in the price used to establish USP. Citing 19 U.S.C. § 1677a(d)(2)(A), they argue that USP shall be reduced by ''the amount, if any, included in such price which is attributable to additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise into the United States.'' The costs of antidumping and countervailing duties thus fall within the scope of this provision as costs, charges, and expenses or as U.S. import duties. The former, petitioners note, is a subset of the latter, and as a matter of law they must be deducted from the price to the first unrelated purchaser. The also argue that the statute provides that USP shall be increased by the amount of any countervailing duty imposed to offset an export subsidy.

According to petitioners, in order to prevent double-counting, the Department must deduct the full amount of the countervailing duties paid by Dongbu for those entries covered by the first and second annual reviews of the countervailing duty order. They claim that none of the arguments for not deducting the estimated antidumping duties applies in the case of the countervailing duty payments. First, petitioners argue that Dongbu has presented evidence that DBLA paid those duties and that they have an impact on the price. Second, they contend, there is no danger of double-counting since the countervailing duties are not paid to offset past price discrimination. In this case, the countervailing duties are paid to offset domestic subsidies and have nothing to do with Dongbu's price discrimination practices. Thus, petitioners assert that the countervailing duties are a cost separate from the payment of antidumping duties and should be treated as normal customs duties. Also, petitioners claim that since no party requested a review of the countervailing duty order at the time of the first or second anniversary, those duties have become final duties. They also assert that the Department must deduct the cost of antidumping duties equal to the amount of the calculated margin in this review. Petitioners note that the court acknowledged in *Zenith Elec. Corp.* v. *United States,* 18 CIT __ Slip Op. 94–146 (September 19, 1994) that the deduction from USP of actual antidumping duties remains an open issue. Accordingly, contend petitioners, the court expects that the Department will approach the payment of actual antidumping duties differently than it does the payment of estimated antidumping duties.

Respondent argues that in the absence of reimbursement, it is unlawful and contrary to Department practice to deduct antidumping and countervailing duties from USP. Respondent contends that petitioners' reading of the statute is contradicted by both long-standing administrative and judicial precedent. *See, e.g., Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 60 FR 44009 (August 24, 1995), *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Administrative Reviews,* 60 FR 10900, 10907 (February 28, 1995), *PQ Corp.* v. *United States,* 652 Supp. 724, 735–37 (CIT 1987), *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 872 (1993), and *Torrington Co.* v. *United States,* 881 F. Supp. 622 (CIT 1995. Respondent further argues that the Department and the courts have long since recognized that such deductions are not authorized under the antidumping laws because they are, *inter alia,* not ''selling expenses'' within the meaning of the statute. Respondent notes that making the required adjustment would unlawfully result in the double-counting of dumping duties, and would perpetuate dumping orders thereby violating both the letter and remedial purposes of the statute. They also state that Congress has refused to yield to lobbying by the U.S. steel industry for the enactment of legislation that would for the first time authorize such a deduction.

Respondent asserts that petitioners are incorrect in their argument that the issue of deducting antidumping and countervailing duties should be considered differently in this case because the Department is determining ''actual'' rather than ''estimated'' antidumping duties. Respondent also states that petitioners are wrong in their extension of this argument to Dongbu's countervailing duty deposits on the theory that such deposits represent ''actual'' duties because the amounts deposited are ''conclusive'' since no party requested an administrative review. Respondent notes that the countervailing duty order is currently on appeal to the Court of International Trade and liquidation of these entries has been suspended pending the outcome of that appeal.

By assessing duties beyond the actual margins of dumping, according to respondent, petitioners' recommended deduction would also violate international law as embodied in the World Trade Organization's antidumping agreement. *See Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*, April 15, 1994, and *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, article 2¶ 4.

Respondent claims that petitioners are incorrect in arguing that their proposal will not result in a double-counting of antidumping duties. Rather, respondent asserts it is a ''mathematical certainty'' that this will be the result. Respondent argues that if petitioners' suggestion were followed, it would be impossible for a company engaged in indirect PP sales to ever eliminate its margins. Respondent concludes its argument by stating that petitioners have provided no legal support for their position either in the language of the statute, legislative history, court decisions, international law or the Department's historical interpretation of the law.

Department's Position

We disagree with petitioners. In *Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom (''UK Lead and Bismuth''*), 60 FR 44009, 44010 (August 24, 1995), petitioners made arguments similar to those presented here '' that ''actual'' antidumping duties are a ''selling expense'' and that the Department has not previously considered whether to deduct ''actual'' expenses under section 772 (d)(2)(A). In *UK Lead and Bismuth*, we responded that ''[a]ntidumping duties are intended to offset the effect of discriminatory pricing between the two markets. In this context, making an additional deduction from USP for the same antidumping duties that correct this price discrimination would result in double-counting. Therefore, we have not treated cash deposits of estimated antidumping duties as direct selling expenses.'' *Id.* at 44010. *See also Color Television Receivers from the Republic of Korea, Final Results of Administrative Review*, 58 FR 50333, 50337 (September 27, 1993); and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Administrative Reviews*, 60 FR 10900, 10906 (February 28, 1995). This same reasoning would also hold where ''actual'' antidumping duties are known. The fallacy of petitioners'' argument for treating antidumping duties as a cost is that antidumping duties, although paid by an importer, are not selling expenses, nor are they normal customs duties. Antidumping duties are unique in that they represent antidumping duty *margins*—a measure of price discrimination between FMV and USP. The statutory remedy for such unfair price discrimination is to assess antidumping duties against the imported merchandise in an amount equal to the amount by which the FMV exceeds the USP for the merchandise. 19 U.S.C. 1673. To then subtract this amount from USP in order to recalculate a supra-antidumping duty margin would be creating additional price discrimination that did not exist. This is the same as saying that dumping margins must be adjusted to account for dumping margins. Such double counting of antidumping duties is contrary to the Act, which is designed to comport with Article 8¶ 2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (''GATT'') 1994* in that the duty collected must not exceed the margin of dumping.

We also disagree with petitioners' extension of their argument to Dongbu's countervailing duty deposits on the basis that the amounts deposited are ''conclusive'' since no party has requested an administrative review. Even though the countervailing duty order is currently on appeal to the Court of International Trade and liquidation of these entries has been suspended pending the outcome of that appeal, we still would not deduct the actual duties from USP for the reasons outlined above.

Comment 8

Petitioners note that in the preliminary results of this review, the Department calculated Dongbu's dumping margins using Dongbu's reported U.S. credit expenses. However, at verification, the Department determined that Dongbu's short-term interest rate during the period of review should be revised upward.

Department's Position

We agree with petitioners. The Department recalculated Dongbu's credit expenses using the revised interest rate as determined at verification for the final results of this review.

Comment 9

Petitioners argue that Dongbu's freight charges for home-market sales should be reduced by the amount of the intra-company transfer of funds between Dongbu and Dongbu Express. They assert that transportation services for Dongbu's home-market sales are provided by unrelated trucking companies pursuant to contracts with Dongbu's wholly-owned subsidiary, Dongbu Express; and that as such, Dongbu's payment to Dongbu Express for those services is nothing more than ''an internal price constructed for bookkeeping purposes.'' Petitioners contend that the Department should revise these expenses to exclude markups charged by Dongbu Express on the grounds that such markups represent intra-company transfers of funds. They cite *Final Determination, Rescission of Investigation, and Partial Dismissal of Petition High Information Content Flat Panel Displays and Display Glass Therefor from Japan*, 56 FR 32376 (July 16, 1991), and *Final Results of Antidumping Duty Administrative Review: Color Picture Tubes from Japan*, 55 FR 37915 (September 14, 1990), in arguing that the Department has previously disregarded the same type of markup paid to Dongbu Express when calculating adjustments to FMV, and that the Department attempts to value sales-related services at actual market rates, rather than at the rates established between related parties.

Respondent counters that payment of a markup for such valuable services in this case is consistent with commercial considerations. Respondent argues that the Department has similarly acknowledged and accepted that an administration fee paid by a respondent to its related shipper reflected additional services which would have to be assumed by either another trucking company or the respondent itself. According to respondent, there is no dispute regarding the services covered by the markup (*i.e.*, that Dongbu Express acts as a freight forwarder in arranging for and subcontracting trucking services for Dongbu). Respondent states that Dongbu has also demonstrated that the markup reasonably reflects the value of those services.

Dongbu states that it has shown that, on average, the percentage of Dongbu Express' general expenses to its cost of sales is equal to the profit it earns. The sum of these two elements equals the markup to the cost from the unrelated freight company charged to Dongbu. Thus, according to respondent, to ensure that the reported freight amounts accurately reflect market rates, the Department must use the price from Dongbu Express to Dongbu.

Department's Position

We disagree with petitioners. We find that the markups charged by Dongbu Express to Dongbu were commercially reasonable charges for the services provided by Dongbu Express. Although the Department does not have a standard policy requiring it to deduct related-party markups in all cases, in *Final Determination, Rescission of Investigation, and Partial Dismissal of Petition: High Information Content Flat Panel Displays and Display Glass Therefor from Japan,* 56 FR 32376, 32393 (July 16, 1991), the Department rejected the price between related parties not because there was a markup, but because it was determined that the reported amount reflected a price constructed for ''internal bookkeeping purposes'' rather than a market value. Also, in *Final Results of Antidumping Administrative Review: Color Picture Tubes from Japan,* 55 FR 37915, 32922–23 (September 14, 1990), the Department acknowledged and accepted the respondent's argument that an administrative fee paid by the respondent to its related shipper reflected additional services that would have been sustained by either another trucking company or the respondent directly. In the present review, we verified the arm's-length nature of Dongbu's freight charges and found no basis for reducing home-market inland freight charges. We agree with respondent that Dongbu has demonstrated that: (a) on average, the percentage of Dongbu Express's general expenses to cost of sales is equal to the profit Dongbu Express earns; (b) the sum of these two items equals the markup to the cost from the unrelated freight company to Dongbu; and (c) the prices charged to Dongbu by Dongbu Express accurately reflect market rates.

Comment 10

According to petitioners, the amounts reported by Dongbu and used by the Department to determine the market rates for Dongbu's foreign brokerage and handling charges are incorrect. They reject the amounts used for the following reasons: (1) the evidence presented by Dongbu that freight charges are provided at arm's-length rates is irrelevant to whether the same company also provides unloading charges at arm's-length rates, and (2) Dongbu has not demonstrated that Dongbu Express provides freight services at arm's-length rates. On this basis, argue petitioners, the Department must determine the value of unloading charges incurred in Korea using alternative information, specifically, the highest reported brokerage and handling charge for any U.S. sale as the adjustment for all of Dongbu's U.S. sales.

Respondent argues that the record demonstrates that the charges Dongbu reported in connection with related party transactions are at arm's-length, and that the small amounts reported which reflect Korean unloading charges are for a service performed solely by Dongbu Express and provided solely for Dongbu. Respondent argues that Dongbu has shown that other, more valuable and significant services provided by Dongbu Express (*i.e.*, inland freight charges, both to the United States and in the home market) are on an arm's-length basis. Respondent also notes that it is a matter of record that Dongbu Express was profitable throughout the review period. Accordingly, states respondent, this evidence provides a sufficient and reasonable basis to conclude that the transactions for relatively small brokerage and handling charges are also at arm's length.

Department's Position

We disagree with petitioners. Although the Department generally prefers to demonstrate that a related-party service was provided at arm's length by comparing those rates with charges for similar services provided by unrelated companies, the Department does not automatically resort to best information available when that methodology is unavailable. Verification is the Department's means of testing information; it is not intended, nor is it possible, that every single item be examined during verification. *See Monsanto Co.* v. *U.S.*, 698 F. Supp. 275, 281 (CIT 1988). As our verification report indicates, we performed an arm's-length test on Dongbu's related party, Dongbu Express. We reviewed invoices from an unrelated trucking company to Dongbu Express, and found that inland freight charged by the unrelated party in question was lower than that charged by Dongbu Express. On the basis of this verification, we have no reason to believe that Dongbu's brokerage and handling expenses are not also at arm's length.

Comment 11

Petitioners contend the Department should have applied total BIA to Union because of the respondent's inability, at verification, to properly document home-market product characteristics. As a consequence of the flawed verification, petitioners believe that the Department cannot be confident that (1) it is matching U.S. sales to the proper home-market transactions in price-to-price comparisons; (2) it is matching the COP assigned to a home-market model to the proper home-market price in the sales-below-cost test; and (3) it is properly resorting to CV in cases where there is no similar, contemporaneous home-market product or the home-market sale price is below the COP.

Petitioners also argue that failure to verify Union's product characteristics taints not only Union's product comparisons, but also Union's COP and CV data, since those data are reported on the basis of specific control numbers, and each control number (''CONNUM'') is defined by a unique set of unverified product characteristics. To derive the per-ton cost of each CONNUM reported in its response, petitioners state that Union allocated costs on the basis of the total quantity produced of that CONNUM. If the home-market product characteristics used as a basis for defining CONNUMs are suspect, according to petitioners, then the production quantities and cost allocations based on those CONNUMs are unreliable.

Petitioners claim that, in a number of cases where the use of unverified data would have rendered meaningless any calculation employing that data, or where the Department was unable to verify a respondent's home-market product characteristics, the Department has resorted to total, rather than partial, BIA. In addition, petitioners note that the Department has routinely resorted to total BIA where a respondent has destroyed, or has been unable to produce, documents supporting critical aspects of its submitted data. Petitioners point out that the CIT has recognized that parties who initiate unfair trade proceedings—as did Union by requesting this review—bear the burden of maintaining and retaining records relevant to the proceeding. *See, e.g., Krupp Stahl AG v. United States,* 822 F. Supp. 789 (CIT 1993) (''*Krupp Stahl*''). Indeed, petitioners note, even DKI, a company that—unlike Union—did not anticipate being reviewed in this proceeding, retained production records and other customer correspondence relevant to home-market sales during the POR. Petitioners contend that Union's data deficiency, which was caused by its failure to retain relevant production records and customer correspondence in a review that it requested, is every bit as pervasive and significant as in prior cases where the Department has resorted to BIA. According to petitioners, when this data deficiency is combined with the Department's inability to verify the accuracy of Union's home-market date of sale and Union's failure to report

accurate dates of sale for a significant percentage of its U.S. sales, the Department has no alternative but to resort to total BIA in its final results in petitioners' view.

Petitioners cite *Krupp Stahl* in support of their contention that the choice of which information to use as BIA must not reward a respondent. Because it applies only to price-to-price comparisons, petitioners argue that the Department's BIA methodology rewards Union Steel by failing to account for the possibility that costs assigned to a particular CONNUM might not be matched to the correct home-market price in the sales-below-cost test, or that the use of CV as a result of home-market sales falling below COP or the lack of a home-market match would be improper. It also fails to address the possibility that Union's reported COP/CV amounts do not correspond to the product to which they are assigned. Petitioners also take issue with the Department's presumption that the largest possible adjustment to the prices of comparable products is no more than 20 percent of the cost of manufacturing (''COM'') of that product. Petitioners claim that the Department can have no idea of the extent to which improper matches may understate FMV because some or all home-market products may be improperly matched. Therefore, petitioners state, any sales of any product in Union's home-market database could theoretically be compared to U.S. price, and the record shows that price differences between U.S. and Korean sales are in fact far greater than the adjustment preliminarily used by the Department. According to petitioners, the Department has therefore rewarded, rather than penalized, Union for its improper record-keeping procedures. Should the Department fail to use total BIA in its final results, the Department will invite manipulation and circumvention of the antidumping process by respondents, petitioners say.

Under the partial BIA methodology employed by the Department, petitioners claim a respondent could request a review and then destroy critical supporting documentation associated with any sale under the guise that such destruction is its normal business practice and assign to such sales the product characteristics it desires to ensure the most favorable price-to-price comparisons and sales-below-cost test result, secure in the knowledge that the Department will cap any BIA adjustment at a mere 20 percent of the product's COM. Similarly, petitioners argue, knowing that reported COP/CV amounts will not be adjusted despite the Department's inability to verify home-market product characteristics, respondents could simply assign costs to specific CONNUMS as they desire to ensure the most favorable outcome. The Department's inability to verify Union's home-market product characteristics taints price-to-price comparisons, the sales-below-cost test, and the decision to resort to CV, as well as Union's submitted COP/CV data.

The Department stated that its BIA methodology was designed to address the possibility that (1) ''U.S. sales are not being compared to sales of the most similar home-market models' and (2) ''reported costs of home-market models may not correspond to the costs of the home-market products that were actually shipped.'' (Department's internal memorandum from Joseph A. Spetrini to Susan G. Esserman, ''Treatment of Union Steel With Respect to Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,'' dated August 8, 1995. Because the Department's partial BIA methodology assigns a 20 percent COM adjustment to FMV used only in price-to-price comparisons, does not contain any adjustment to Union's COP/CV data, or affect the sales-below-cost test and the basis for resorting to CV, it fails to account for the latter. For all of the above reasons, petitioners urge the Department to apply total BIA to Union for the final review results.

Respondent rejects both petitioners' claim that there are pervasive and significant data deficiencies sufficient to warrant total BIA and the Department's use of partial BIA. Union states that the Department verified home-market date of sale and that the Department has already adjusted the data with regard to U.S. date of sale. Union contends that there is no evidence on the record indicating that the home-market codes are wrong. It notes that product code questions for home-market sales have no implications for any of the cost data.

Respondent states that petitioners' reliance on *Cold-Rolled Stainless Steel Sheet from Germany* and *Krupp Stahl* is misplaced. In that case, Union states, all records had been destroyed, preventing it from preparing a response to the Department's questionnaire and preventing the Department from conducting a verification. In this case, Union claims only two types of documents are at issue: mill certificates and customer correspondence. In Union's view, it had no reason to suspect that these documents, which it does not normally retain, would be deemed necessary at verification. Union concludes that the precedents ''underscore that the use of total BIA is appropriate only for a noncooperative respondent or a respondent whose submission is so fundamentally flawed that it cannot be used even with partial BIA.'' *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France,* 60 FR 10900. Thus, respondent states that the Department must reject petitioners' request to use total BIA.

Respondent notes that the statement in the verification report that the Department was ''unable to verify the accuracy of the product code system for [Union's] home-market sales, or determine the basis behind Union's coding of certain model-match characteristics,'' upon which petitioners rest their claim for application of total BIA, is contradicted by factual evidence on the record. Union asserts that, as part of the verification, the Department: (1) Repeatedly tied the product codes reported on Union's tape to the product codes used on commercial invoices maintained in the normal course of business; (2) traced the reported invoice data, including the product code, from the commercial invoice to Union's sales ledgers, and thus to the audited financial accounting system; (3) compared the product codes with Union's product manual, and found no discrepancies; and (4) repeatedly checked product codes for U.S. sales (which are the same product codes used in the home-market) against mill certificates. Union also asserts that the decision memorandum forwarded to the Assistant Secretary failed to mention the first three of these facts. Rather, Union avers, the Department's memorandum gives central status to two types of documents—mill certificates and customer notifications—on no basis other than the fact that these documents were not retained. Union also claims that, by not notifying the company during verification of its concerns with regard to product characteristics, the Department deprived Union of an opportunity to address those concerns.

Union, citing recent cases (*see, e.g., Brass Sheet and Strip from Canada,* and *Oil Country Tubular Goods from Korea*), argues that the Department routinely relies on commercial documentation, such as invoices and sales ledgers, to verify internal product codes, and does not normally trace product codes to production records.

Union maintains that there exists on the record production information, viewed by the Department at verification, supporting its internal product characteristics. The Department, according to Union, examined post-POR mill certificates. In

addition, Union claims that the Department's cost verifiers ascertained that Union used a single product coding system, which enabled them to test the quality and specifications of input materials to the quality and specifications of the finished product. It is Union's view that the Department's verifiers could have tied Union's product codes to its inventory withdrawal records and to entries into the finished goods inventory, which in turn could have been tied to other production records, but they did not do so. Alternatively, Union suspects the Department could have reconciled total sales to total inventory entries or withdrawals, thereby confirming that the amount sold of a given product matched the total amount produced and entered into finished goods inventory, but it did not.

Respondent reiterates that there is only one internal product coding system used for home-market sales, U.S. sales and cost of manufacturing. Respondent claims it is beyond dispute that the Department verified both the U.S. sales data and cost data, which confirms the integrity of the entire internal product coding system, even if the Department was not fully satisfied that it could tie home-market sales to mill certificates or customer correspondence.

Union also asserts that its recordkeeping practices do not differ significantly from Dongbu's, which, like Union, did not retain home-market mill certificates or customer correspondence. Even if Union had kept records in a significantly different manner from Dongbu's, Union cites *Coated Groundwood Paper from Finland; Final Determination of Sales at Less Than Fair Value* (56 FR 56363—November 4, 1991) as an example where the Department relied on very different documentation to verify two respondents' respective product characteristics. In that case, Union claims that the Department relied upon respondent Metsa-Serla's product coding sheet to verify Metsa-Serla's product characteristics. It says Metsa-Serla was not penalized because it was unable to provide mill orders and the other respondent, UPM/Rupola, was. Union maintains that the context in which the Department examined certain documents at verification is irrelevant; the key point is that the Department routinely uses commercial documentation as satisfactory evidence of the accurate reporting of product codes and characteristics.

Union disputes the Department's assertion that a majority of Union's reported home-market characteristics—derived from the internal product code—did not identify such characteristics, and therefore did not support respondent's conclusion with record evidence.

Union states that the record of this review does not provide any explanation or reasoned basis for the Department's product hierarchy. Under those circumstances, it is Union's opinion that the Department may not lawfully use partial BIA even if Union fails to support its product distinctions sufficiently.

Even assuming certain product characteristics could not be verified, Union argues, the Department's conclusion that the maximum possible adjustment for differences in physical characteristics of the merchandise (''difmer'') is necessary to account for the worst case is unwarranted. The Department could have drawn an adverse inference with respect to the specific product characteristics at issue.

Union asserts that information on the record of the cost investigation allows the Department to limit its use of partial BIA to only those product characteristics that the Department erroneously considers not to be verified. Union suggests that the Department could allow those product characteristics dependent on the product code to vary to determine the maximum possible universe of products for each reported product code. The Department could then choose the highest home-market variable cost of manufacture (''VCOMH'') for each such universe and use it to calculate the difmer (subject, of course, to the 20 percent difmer cap). Union suggests even if the Department finally concluded that the product codes were not verified, it could still calculate a margin based on submitted data.

Union also rejects the idea that its COP and CV data are tainted by the alleged failed verification of home-market product characteristics. Union claims that the Department never expressed any concern that the post-verification issue of product characteristics extends to the calculation of Union's production costs. Indeed, Union asserts, its costs were developed on the basis of withdrawals from materials inventory and pass-through quantities, which are entirely independent from the quantity of product shipped. Union claims that the cost verification report and exhibits demonstrate that the Department could trace any product's characteristics back to the daily line production reports for the final stage of processing; that these reports indicate the internal product code and the nature of the final stage of processing; and that the product could be traced back through the production process based on the mill order number. The Department's verifiers, Union maintains, identified the input coils and determined the chemistry of the input coils from the suppliers' mill certificates.

Union finally notes that, in the parallel review of Union's corrosion-resistant products, petitioners explicitly conceded that Union has a single product coding system in both the U.S. and home markets. Therefore, to the extent that the product coding system was verified in one market, it was verified generally.

Union protests that petitioners' alleged claim that the Department's final determination is driven by a single sentence in the verification report makes a ''mockery'' of the antidumping law and procedures in general and of this proceeding in particular. Union states that in petitioners' view the final decision in this case was effectively made on May 16, 1995, by the authors of the verification report when they inserted the allegedly damning sentence into the record. Union further notes that petitioners portray that one sentence as ''handcuff[ing]'' the Department without regard to any analysis of all the other information on the record of this proceeding. As a matter of law, Union avers, the Department's preliminary and final determinations must be based upon a comprehensive analysis of the total record of the proceeding. Union contends that conclusory statements in internal Department memoranda are of value only if supported by the record.

Union argues that the Department's preliminary determination that Union's home-market product characteristics were not fully verified was based on an incomplete and erroneous presentation of the facts on the record. Union claims that the decision memorandum elevates two potential ancillary means of verification (mill certificates and customer notifications) to central status on no basis other than the fact that these documents were not retained. Union claims the Department verified the accuracy of Union's home-market product characteristics through other means, and had many others available. Union also takes issue with the verifiers not having advised Union at verification of any outstanding concerns over product characteristics based on product codes. Had the Department expressed any such concerns, Union argues it could have suggested additional ways to verify its data, but was denied the opportunity.

Petitioners protest what they term Union's ''eleventh-hour attempt to ''clarify,''' long after its May 23, 1995,

submission purporting to correct certain aspects of the Department's sales verification report, the sentence in that report which stated that the Department was unable to verify Union's home-market product characteristics, by saying the sentence ''[was] in error or [ . . . ] misleading because overly broad when written.'' Petitioners argue that Union should not be allowed, at this late date in the proceeding, to assert that the report was inaccurate in this regard when it could have raised this concern long ago but elected not to do so. Union, petitioners state, simply failed to present to the Department during verification any documentation supporting the premise that Union's home-market product characteristics had accurately been verified.

Petitioners dispute Union's suggestion that only a minority of product characteristic variables were derived from the internal product code. Petitioners point out that the verification report specifically says the opposite in three different places, and that Union never attempted to clarify or rebut these statements. Union's claim that certain product characteristics were derived from the product's name is a *non sequitur* in petitioners' view. They argue that while these physical characteristics may be associated with the product name, that claim in no way demonstrates that the product actually produced and sold possesses the physical characteristics attributable to it by virtue of its product name. Petitioners add that such a demonstration could only have been effected by providing the Department with production records indicating the physical characteristics of the products produced and sold (*e.g.*, production orders or mill certificates), which Union failed to do. In any event, petitioners argue, even if a minority of Union's reported product characteristics were derived from its internal product code, it would be unreasonable to limit application of partial BIA to specific product characteristics, because Union's home-market sales, cost, and CV data would still be tainted. Petitioners suggest that the Department, if it persists in applying partial BIA to Union, could use as partial BIA the highest VCOMH reported in Union's database for purposes of calculating the difmer adjustment as well as COP and CV.

Respondent denies that the Department's preliminary results reward Union and urges the Department to reject the notion that, absent any evidence of manipulation, a 20 percent difmer adjustment would provide future respondents with an incentive to manipulate the model-match process.

Union argues that even if the Department justifiably determined that Union's product characteristics had inadequately been verified, its decision to resort to partial BIA was wrong, since the statute affords the Department broad discretion to base FMV on CV. Because Union's CV data was verified and reflects the cost of the products sold in the United States, and the Department's stated policy is to use as much of a respondent's data as possible, the Department had a responsibility to use Union's own, verified data rather than using a flat, across-the-board difmer of 20 percent as BIA. Respondent notes that a comparison of U.S. price to CV is totally unaffected by the perceived problems with the verification of product characteristics and suggests that in light of the Department's concerns, the use of CV is ''the obvious alternative.''

Petitioners counter that Union's CV database is just as tainted by the failure adequately to verify product characteristics as Union's sales database. Union, they claim, mistakenly believes that, because the product characteristics associated with the merchandise sold by Union in the U.S. market are not in dispute, the costs associated with producing that merchandise are also not in dispute. Petitioners state that, due to the Department's inability to verify the accuracy of Union Steel's reported home-market product characteristics, the physical characteristics of the products whose production levels Union used in calculating the unit cost of each given product are either unknown or unreliable.

Petitioners argue further that even if the per-unit costs used to calculate CV are not tainted by the product-characteristic deficiency, CV is nevertheless unreliable because the home-market profit component of CV is tainted by that deficiency. The profit component of CV is based on the weighted-average profit made on home-market sales. Since the Department cannot be certain that the reported COP of home-market products is being compared to the proper home-market sales and prices, the Department cannot be certain that the profit component of Union's CV is accurate. This deficiency, petitioners contend, renders the reported CV amounts unreliable.

Petitioners also affirm that the statute does not give the Department discretion to use CV as FMV when home-market sales data is not verified. They note the statute provides that the Department may use CV when home-market sales are found to be below cost in significant numbers and when there are no matchable numbers in the home-market because they exceed the 20 percent difmer test. In those situations, petitioners observe, the Department has before it otherwise usable and properly verified data which cannot be used in margin calculations. In this case, however, the Department did not have home-market sales data that was otherwise usable according to petitioners. Petitioners argue that when the Department is unable to verify submitted data, as it was in this case, the statute requires the Department to resort to BIA, which is always an adverse inference. In this case, they claim using Union's CV data is not adverse to Union and would reward Union.

Petitioners counter that the record is unclear as to whether the Department ''repeatedly'' tied the product codes to sales and production documents, as claimed by Union. Even if the Department did repeatedly perform each of these tasks cited by Union, petitioners argue that none of these tasks (*i.e.*, tying product codes from sales invoice to sales tape, tracing invoice data to sales ledgers, checking product codes against a product code key, checking U.S. product characteristics against mill test certificates) in any way confirmed that products sold in the *home-market* possessed the physical characteristics reported by Union.

Petitioners claim that the statute requires the Department to verify the accuracy of the data submitted, not some proxy thereof. They note that Union has admitted on the record that its home-market customers are somewhat less concerned than U.S. customers with the accuracy of product specifications. Therefore, petitioners argue, verification of U.S. product characteristics cannot serve as proxy or surrogate for verification of home-market product characteristics. Petitioners allege that, to the extent that the internal product code was the basis for matching home-market products to U.S. products, Union had an incentive to ensure that the product code assigned to an individual home-market sale resulted in the most favorable match. Petitioners claim that Union does not seem to recognize that submitted data must be verified not to its own satisfaction, but to the Department's.

Petitioners also argue that the verification reports cited by Union as evidence that the Department normally applies a lower standard for verification of product characteristics than was the case here are all inapposite. In those

cases, petitioners claim, the Department was not verifying the accuracy of product characteristics as reflected by product codes, but rather whether the merchandise was in-scope versus out-of-scope, or whether the respondent had completely reported all sales of the subject merchandise. In those cases, according to petitioners, the Department was provided with other documentation, including documentation furnished by the customer, such as purchase orders and order confirmations.

Petitioners contend there is a critical distinction between, on the one hand, verifying whether merchandise is in-scope or whether all sales of the subject merchandise during the POR were reported, and, on the other hand, whether the reported products actually possess the physical characteristics reported. The former is a preliminary, general inquiry which is designed to ascertain whether all sales have been reported, while the latter is a separate, detailed inquiry designed to ensure that the physical characteristics of comparison products were accurately reported. In this case, petitioners assert, the Department was unable to verify the accuracy of Union Steel's reported home-market product characteristics in the context of the latter inquiry.

Further, as Union has conceded, the verification techniques employed in a given instance are dependent on the specific facts of each case. Petitioners state that the Department has considerable latitude in conducting verification and ''[t]he decision to select a particular method of verification rests solely within [the Department's] sound discretion.'' *See Floral Trade Council* v. *United States,* 822 F. Supp. 766 (CIT 1993). Petitioners stress that Union, as the requester of the review, has only itself to blame for not preserving vital documentation months after the review had started. In addition, petitioners note that Union gave the Department reason to distrust the company's reported product characteristics by placing on the record a report, prepared by a private consulting firm in Union's employ, which stated that the respondent was incapable of tracing its production records to individual shipments.

Petitioners claim that Union's *post hoc* explanation of the production records it allegedly maintained does not demonstrate the accuracy of its reported home-market product codes. Petitioners allege that the explanation furnished by Union with regard to post-POR records allegedly examined by the Department's verifiers constitutes new factual information that should be stricken from Union's case brief. Petitioners argue that explanation does not exist anywhere on the record, nor is it clear that verification reports or exhibits support that purported explanation. Consequently, petitioners request that this explanation be stricken from the record and ignored on the grounds that it is untimely submitted. In any event, these materials were examined by petitioners for the limited purpose of ascertaining the accuracy of Union's reported date of sale in the home-market. Therefore, petitioners claim any assertion that these materials support home-market product characteristics is *post hoc* and unverified.

Petitioners also deny that the cost verification supports the validity of Union's internal product coding system. They claim that the cost verifiers did not ascertain whether the reported internal codes accurately reflected the characteristics of products produced and sold. Rather, petitioners say, the verifiers tested input costs on the basis of the specifications of Union's internal product code and physical dimensions. It is unclear, petitioners note, whether the products that Union reported as coming off its production line actually possessed the physical characteristics represented by the internal product code assigned to them in the accounting records maintained with respect to production. Finally, petitioners argue, the fact that the accuracy of the internal code may have verified with respect to one market (the United States) does not mean it verified with respect to the other (Korea). Even if the Department incorrectly concluded that the accuracy of Union's internal product code with respect to products produced for the home-market was verified, the accuracy of the codes appearing on self-generated commercial invoices for home-market sales remains unverified. Petitioners object to Union's suggestion that the Department could have employed alternative verification techniques, thereby trying to usurp the Department's role. They note that the verification outline clearly put the respondent on notice as to the goals of the verification and as to the type of supporting documentation Union would be required to produce. It was therefore ''unconscionable'' for Union to destroy records that would have allowed the Department to verify the accuracy of the most critical component of antidumping analysis—the product characteristics assigned to each control number, according to petitioners. It is incumbent upon a respondent to volunteer to the Department's verifiers information as to what sort of documentation is available to permit verification. It would appear that by inserting the consulting firm's report on the record of the verification, Union was fully aware of the problem posed by verifying home-market product characteristics. Yet it was not until the case brief that Union volunteered the existence of documents which Union claims would have permitted such a verification. Union had repeatedly denied that production records could be tied to shipment records. Union also suggests *post hoc* that inventory records could have been used to verify product characteristics, yet the consulting firm's report states outright that these records are inaccurate. If the product code could not be verified for home-market sales, petitioners suggest, it is doubtful that the accuracy of the product codes in the inventory records could have been verified. Petitioners affirm that there is no requirement that the Department inform a respondent, during verification, of errors and deficiencies discovered during same.

Petitioners dispute Union's contention that the Department's preliminary decision to use BIA was arbitrary because it was based on a comparison of Union's recordkeeping practices with those of Dongbu. Petitioners find this ''strange,'' since in its case brief, Union itself compared its recordkeeping practices to those of other respondents in non-flat-rolled-steel cases in an attempt to demonstrate the validity of its records. As to Union's contention that, in fact, its recordkeeping practices differ little from Dongbu's, petitioners point out that Union officials or counsel were not present at Dongbu's verification, that Dongbu never asserted (as Union did) that it was incapable of tracing production to shipment, that it was able to show certain production records to the Department, and that Dongbu had not destroyed all of its home-market production records relating to the POR.

Department's Position

We disagree with petitioners that the Department should have applied total BIA to Union. The Department applies total BIA when a respondent refuses to provide the information requested in a timely manner or in the form required, or otherwise significantly impedes a proceeding. *See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts from France, et al.; Final Results of Antidumping Administrative Reviews,* 60 FR 10900, 10908 (February 28, 1995), *Allied-Signal Aerospace Co.* v. *United States,* 996 F.2d 1185 (Fed. Cir. 1993); *NTN Bearing Corp. of America* v. *United States,* Slip Op. 93–

129 (CIT July 13, 1993). The Department considers the errors and inconsistencies in Union's submission to be of such a nature that they do not warrant the use of BIA, as discussed below. With respect to U.S. date of sale discrepancies, we agree with respondent that this has already been addressed in the preliminary results by using date of shipment as date of sale.

We agree with respondent that the cases cited by petitioners regarding the destruction of records are not applicable to this instance. In *Krupp Stahl AG* v. *United States*, 822 F. Supp. 789 (CIT 1993), for instance, respondent purposefully destroyed *all* records for the POR, making it impossible for them to respond to our questionnaire or enable us to verify any submitted information. That is not the case with Union. Following its normal procedures, Union did not retain mill certificates or other documents needed to verify home-market product characteristics. However, all other documentation was maintained and there is no evidence that respondent's failure to retain certain records was intended to impede our ability to conduct this proceeding.

Although we reassert our determination that applying only partial BIA to Union is warranted, after analyzing all comments received and re-evaluating the information on the record, we are modifying our application of partial BIA compared to the preliminary results. Because Union's reported home-market product characteristics were not verifiable, it was not possible for the Department to make reliable price-to-price comparisons. Such deficiencies may warrant the use of total BIA in many circumstances. In this particular case, however, the Department has concluded that the use of total BIA is unwarranted for the following reasons:

- Union's normal business practice at the time was not to retain certain production records, such as mill certificates;
- there is no evidence on the record that Union deliberately refrained from retaining those records with the purpose of impeding the Department's ability to conduct this proceeding;
- we were able to verify product characteristics of the merchandise sold in the U.S. market and to link specific U.S. sales to control numbers; and
- CV was associated with specific control numbers.

In light of the above, and because the Department is treating Union and DKI as a single producer of certain cold-rolled carbon steel flat products for purposes of this review, we determined to use DKI's home-market sales and our usual below-cost sales test as bases for comparison in cases where U.S. sales by Union were matched to similar, contemporaneous sales by DKI in the home market. Where Union's U.S. sales could not be matched to similar, contemporaneous DKI transactions in the home market, or where such DKI transactions failed the below-cost test, we determined that basing FMV on CV, in accordance with section 773(a)(2) of the Act, was warranted. While we were able to match all of Union's U.S. sales to similar, contemporaneous, DKI transactions in the home market, all of these DKI transactions were below cost, which caused CV to be used as the basis for FMV in all instances.

Section 773(e)(1)(B)(ii) of the Act requires that, as a component of CV, an amount for profit shall be used that is equal to that usually reflected in the sales of the merchandise made by producers in the country of exportation, except that the amount of profit shall not be less than 8 percent of the sum of such general expenses and cost. In this instance we were unable to determine the actual amount of Union's profit because the profit component of Union's reported CV data is derived from Union's home-market COP database, which, as we explained above, is not usable because we could not verify Union's home-market sales product characteristics. Because these product characteristics could not be verified, we were unable to match specific sales to specific costs; thus, it was not possible to determine the actual profit for specific products based on a transaction-by-transaction analysis. Consequently, because of this failure of verification, the Department, pursuant to section 776(c) of the Act, resorted to the use of BIA in order to determine the profit component to be used in calculating CV. As partial BIA, we have used the higher of the weighted-average profit for all of Union's above-cost home-market sales or the statutory 8 percent profit.

In order to determine which of Union's sales were made at prices above the COP, we calculated a simple average of all COPs reported by Union. We were unable to calculate a weighted-average COP because we could not link Union's COP database to individual home-market sales as Union's home-market sales product characteristics could not be verified. After calculating the simple average COP, we compared that cost to each individual home-market sale to determine which sales were made at prices above the average COP.

Once we had determined which home-market transactions were made at prices above the simple average COP, we calculated the transaction-specific profit on each of those sales. This was done by first calculating the sales value of each individual home-market transaction (*i.e.*, net price times sales quantity). From each sales value we subtracted the value of the COP for that particular transaction to determine the transaction-specific profit (*i.e.*, sales value minus simple average COP times sales quantity). Finally, we weight-averaged the transaction-specific profits for purposes of deriving an overall profit percentage for use in the CV calculation. We were able to weight-average profit because we verified the quantities and prices of Union's individual home-market sales transactions.

Given Union's home-market data deficiencies, we determined that this approach was a reasonable means to calculate the profit component of CV. We used as much of Union's verified data as possible. However, where verified data were not available, we resorted to partial BIA, still using Union's data but in a more adverse manner than if the data in question had not failed to verify. We concluded that adopting this partial BIA approach, rather than using the statutory minimum profit, comported with the statute, the Department's practice, and with Court precedent. As the Department has previously noted, ''the noncomplying respondent cannot find itself in a better position as a result of failing to comply with the Department's information request than had the respondent provided the Department with complete, accurate and timely data.'' *Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Antidumping Duty Administrative Review*, 56 FR 47451, 47453 (September 19, 1991). *See also National Steel Corp., et al.* v. *United States*, 870 F. Supp. 1130, 1135 (CIT 1994) (approving use of adverse partial BIA when only part of the submitted information is deficient). Because the calculated weight-averaged profit was lower than 8 percent, however, we used the statutory minimum profit for CV purposes.

In any future review of this order, however, the Department expects Union to retain any and all records, including production records, necessary to permit the Department to verify Union's home-market product characteristics.

Union argued that use of even partial BIA by the Department was inappropriate for the following reasons. Union claimed that the difficulty in verifying home-market product characteristics was limited to those defined by the internal product code,

which is only partially correct. The internal product code did serve as the basis for categorizing many of the cold-rolled model-match variables; however, it was the basis for a majority of the variables, rather than just the five referenced by respondent. In fact, five of the six most important variables in the model-match hierarchy were derived from the internal product code, and Union's methodology for categorizing an additional variable (yield strength) on specific sales was not explained to the Department. Since Union did not maintain records of any correspondence with its home-market customers prior to shipment indicating the product being sought, and the description of products sold in the home market and appearing on the commercial invoices was only the internal product code, with the exception of thickness and width, the Department could not verify that the product code represented an accurate reflection of the product sold and shipped. The fact that Union did not preserve production records for its home-market sales, such as mill certificates, which would provide this detailed information on products produced and which would link these products to specific sales, prevented the Department from determining the accuracy of this system.

With respect to Union's claims that the Department relies on commercial documentation, such as invoices and sales ledgers, to verify internal product codes, we note that Union's invoices—unlike those for many companies—do not contain a detailed product description of the product sold. Neither did Union maintain any customer correspondence or any documentation which contained such a detailed product description. With respect to the cases cited by Union, we note that the reference in *Brass Sheet and Strip from Canada* was not relevant to verifying product characteristics as it involved a volume and value trace. The reference to *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil and Germany* was also not relevant to the present case, as that case involved the use of industry-wide product codes. No such claim was made by Union; indeed Union consistently referred to its codes as ''internal'' product codes.

Union also alleges that the internal product code was the same as that used for U.S. sales and the Department was able to verify its accuracy. Products sold in the United States, however, had commercial invoices with detailed descriptions of the product sold, and the necessary mill certificates that could be used to confirm these product descriptions. In addition, products sold in the two markets possess different physical and mechanical characteristics, are made to different specifications, and are coded differently in the internal product code.

We note that Union, in its case brief of October 2, 1995 (at 15 *et seq.*), almost seven months after the verification and five months after the sales verification report (''SVR'') was issued, suggests that the Department could have used alternative verification techniques to verify Union's home-market product characteristics. If that were true, respondent could have suggested these techniques during the verification itself, but did not do so. Only the respondent is in a position to know what documentary evidence there exists in its possession; it is the respondent's responsibility to determine, prior to the verification, what documentary evidence exists in its records which supports the information previously supplied to the Department, and to provide such documentary evidence to the Department's verifiers. It is not the responsibility of the Department's verifiers to guess what records might be in the respondent's possession and to suggest to the respondent how it might best document the information provided in the questionnaire responses. We note further that, at verification, Union entered as a verification exhibit a consulting report stating that Union's production and inventory records are inaccurate. *See* Union's SVR of May 16, 1995, at 10. This calls into question the possibility of successfully employing the alternative techniques Union is now advocating. Finally, contrary to Union's claim, the Department did not examine at verification post-POR mill certificates as well as ''factory inspection cards'' for certain home-market sales within the POR.

Union's assertion that its recordkeeping practices do not differ significantly from Dongbu's is also incorrect. Dongbu, like most other parties in these flat-rolled steel proceedings, did maintain mill certificates on at least some of its home-market sales during the POR. Dongbu also retained various customer correspondence containing product descriptions. While it is not the Department's practice to mandate that respondents keep their records in a particular manner, in this case all of this information, as well as any alternative documentation which could have served to verify reported product characteristics, was lacking for Union, or not brought to the Department's attention.

We disagree in part with petitioners' assertion that the CV cost data are not viable because production quantities were used to allocate costs. While it is true that the quantities of each control number sold were used to reconcile total costs to respondent's financial statements, these quantities were not used to build up individual costs by control number. Instead, Union used average material costs based on withdrawals from inventory. The weighted-average costs were then applied to a specific control number, and therefore, the final production quantity of that control number was not relevant. For fabrication costs, Union used the pass-through quantities for each process to accumulate and allocate costs to a specific control number. Again, the final production quantity was not used to allocate costs, and therefore, is irrelevant. Thus, we are satisfied that Union's method of assigning a cost to a specific control number is reasonable and that total costs (*i.e.*, materials, labor, overhead) were allocated to either home-market, third-country, or U.S. merchandise.

We agree with petitioners that the explanation in Union's case brief with regard to post-POR records examined by the Department's verifiers does not exist anywhere on the record and that the verification reports or exhibits do not support that explanation. In fact, we had already requested that the parties delete this information from their briefs, on the grounds that it was untimely submitted. This information, therefore, is no longer on the record.

As we are not using total BIA, comments regarding the choice of a total BIA margin are moot.

Comment 12

Petitioners contend that Union Steel's submitted COP and CV data must be revised to reflect product-specific costs. According to petitioners, Union improperly assigned the same cost of manufacturing to multiple products in its COP and CV databases when these products' physical characteristics differed in yield strength, width, temper-rolling, annealing, and/or surface finish in its home-market sales listing, and differed in thickness tolerance in its U.S. sales listing. The petitioners argue that products with such differences in physical characteristics are not identical and have distinct production costs. For example, producing a product to a smaller tolerance, temper-rolling or annealing a product, or adding various surface finishes all require further processing and, consequently, entail additional costs. Union, therefore,

should not have reported these products as having the same COM. Even more troubling, according to petitioners, is the fact that Union reported different COMs for certain products possessing identical physical characteristics with the exception of width. Thus, to avoid any manipulation of cost, the petitioners request that the Department adjust Union's cost data to eliminate the distortion caused by inappropriate cost allocations.

Union contends that its cost data were reported to an appropriate degree of specificity. Union states that the petitioners claim is made without any substantial support because the Department's hierarchy is not based on physical characteristics alone, and that there are no reasons to expect any given company to track possible small differences in costs that may be associated with different classifications in the hierarchy. Additionally, the Department's hierarchy classification chose to conform to commercial practices rather than production characteristics which cause some products to have similar costs of manufacturing. Furthermore, Union states the Department thoroughly verified product costs by control number and found no discrepancies.

Department's Position

For the final results, we accepted Union's CONNUM-specific costs. We found that Union's cost data were allocated to a sufficient level of product detail following the Department's section D questionnaire instructions. Following these instructions, it is possible for some of Union's control numbers to have identical COMs for products that varied only in yield strength and width. Specifically, a product's yield strength is based mainly on the carbon content and, to some extent, micro alloying elements of the raw-material input. A raw material input with a higher carbon level will produce a product with a higher yield strength. However, even though raw-material inputs may vary in carbon content, their acquisition cost can be identical. Additionally, Union weight-averaged its raw materials based on characteristics of the material other than the carbon content (*i.e.*, commercial quality, drawing quality, and ASTM grade). Hence, it is possible for some of Union's products that are in different strength bands to have no cost differential. As for petitioners' concern that the cost of manufacturing should differ for products with different width, we are satisfied that the respondent reasonably allocated costs associated with width differentials. For certain types of cost, Union used processing times to allocate fabrication costs by deriving an average cost. This average cost was then applied to specific control numbers. Therefore, due to this averaging it is possible for identical products, with the exception of width, to have the same cost of manufacturing.

Comment 13

Petitioners contend that the conversion factor used by Union to convert home-market sales of sheet reported in theoretical-weight terms to actual-weight terms was flawed, because Union was unable to document the basis for its formula at verification and because the formula, by Union's own admission, was based on incomplete data covering only a portion of the POR. Petitioners suggest instead that the Department apply a conversion factor derived from the lowest ratio experienced by Union on the basis of information on the record.

Respondent counters that the Department was able to verify the theoretical-to-actual weight conversion factor. Union states that the sales verification report was inaccurate on this point, and that it explained the nature of the discrepancy immediately following the issuance of the report.

Department's Position

Because none of Union's home-market sales were used in our FMV calculations, and all of DKI's sales were in coil (rather than sheet) form, this comment is moot.

Comment 14

Petitioners argue the Department should deny Union's claimed circumstance-of-sale adjustment for inventory carrying costs, since during verification Union prevented the Department's staff from actually examining the area in the mill where the physical inventory is stored. Petitioners claim that allowing the claimed adjustment would only reward Union's obstructiveness.

Respondent retorts that these costs were fully verified. Union notes that it does not have a distinct warehouse for finished goods, and the verification team did examine inventory areas at the mill.

Department's Position

We disagree with petitioners. During the sales verification, the Department's verifiers were given to understand that there was a separate area in Union's mill dedicated to storing inventory, but did not in fact see this area, despite their request to do so. The cost verifiers, however, ascertained that steel coils were being stored on the mill floor. The Department also verified Union's calculation of inventory carrying costs and traced the figures to Union's accounting records. Accordingly, there is sufficient information on the record in support of this adjustment.

Comment 15

Petitioners contend that in calculating Union's USP, the Department must deduct actual countervailing and antidumping duties when they are paid by the respondent or related parties because (1) the plain language of the statute requires this conclusion; (2) court decisions are also consistent with this conclusion; and (3) the record evidence demonstrates that Union America (''UA'') is paying for countervailing and antidumping duties on behalf of Union's U.S. sales and that those costs are included in the price to the first unrelated party.

With respect to the first point, petitioners cite section 772(d)(2) of the Act, which provides in relevant part that ''the purchase price and the exporter's sales price shall be * * * reduced by—except as provided in paragraph (1)(D), * * * United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States'' (19 U.S.C. § 1677a(d)). Antidumping and countervailing duties are plainly import duties ''incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States.'' The language of the statute does not indicate that antidumping and countervailing duties are to be excluded from the phrase ''import duties.'' Moreover, petitioners say, when this provision is read in conjunction with section 772(d)(1)(D) of the Act, the conclusion that antidumping and countervailing duties constitute ''import duties'' under section 772(d)(2)(A) is inescapable. Section 772(d)(1)(D) provides that USP shall be increased by the amount of any countervailing duty imposed to offset an export subsidy. By including the phrase ''except as provided in paragraph (1)(D)'' in section 772(d)(2)(A), the drafters clearly understood the subsection's reference to ''import duties'' as including countervailing duties imposed to offset an export subsidy. This exception was necessary to ensure that the statute was consistent with Article VI¶ 5 of the GATT, which prohibits the assessment of both antidumping and countervailing duties to compensate for the same cause of unfairly low-priced imports, whether by dumping or as a result of an export

subsidy. Had the exception not been inserted, an amount would be added to USP by section 772(d)(1)(D) and deducted by section 772(d)(2)(A). Therefore, petitioners believe, Congress contemplated that antidumping and countervailing duties were to be treated as ''import duties'' and deducted from USP.

With respect to the second point, petitioners argue that the Department must also deduct the cost of antidumping duties equal to the amount of the calculated margin for the period being reviewed. In *Federal-Mogul Corp.* v. *United States*, 813 F. Supp. 856, 872 (CIT 1993), according to petitioners, the court recognized that section 772(d)(2)(A) of the Act requires the Department to deduct any import duties that can accurately be determined at the time the Department is calculating the current dumping margins. In this case, once the final results are issued, Union's antidumping duties will actually be determined. Therefore, petitioners urge the Department, in its final results, to deduct the difference between FMV and USP (*i.e.*, the actual duty amount) from USP before the final margin is calculated.

With respect to the third point, petitioners cite the verification report as evidence that UA is incurring the cost of antidumping and countervailing duties on behalf of Union, and that those costs are passed on to the first unrelated purchaser in the United States.

Petitioners state that the Department must deduct the full amount of the countervailing duties paid by UA for those entries covered by the first administrative review of the countervailing duty order on the subject merchandise. Since no party requested a review of this order, those duties have become final and they represent a calculable cost to Union apart from the payment of the estimated antidumping duty deposit. Therefore, petitioners claim, the payment of countervailing duties must be treated as actual import duties for purposes of calculating Union's dumping margin.

Union replies that the Department has repeatedly rejected the notion of treating AD/CVD duties as expenses to be deducted from U.S. price. Union adds that, in *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 (February 28, 1995), the Department stated as follows:

> We agree with respondents that making an additional deduction from USP for the same antidumping duties that correct for price discrimination between comparable goods in the U.S. and foreign markets would result in double-counting. Thus, we have not deducted antidumping duties or antidumping duty-related expenses from ESP in this case.

Union states that the Department disagreed with petitioners' claim that antidumping duties constitute a selling expense, and notes that the Department's practice has been upheld by the courts. Finally, Union denies that the intent of Congress has been that AD/CVD duties be deducted from USP, citing the Statement of Administrative Action that accompanied the URAA that the law ''is not intended to provide for the treatment of antidumping duties as a cost.''

Department's Position

We agree with respondent. *See* DOC Position to Petitioners' Comment 7 *supra*.

Comment 16

Because on three separate occasions the Department requested information from Union regarding its early-payment discount policies for U.S. customers, and Union failed to provide the requested information, petitioners argue that the Department should adopt BIA with respect to those discounts. Petitioners suggest, as a reasonable adverse inference, that the Department assume that Union granted an early-payment discount on any transaction where payment was received before the due date.

Union claims that it was fully responsive to the Department with regard to information about this discount and that it was fully verified. Union states that its discount ''policy'' does not matter; all that matters is that it did extend early-payment discounts, that it did report them, and that they were verified.

Department's Position

We agree with respondent. Although Union did not explain its policy with respect to early-payment discounts in the U.S. market, the Department was able to ascertain that Union in fact extended certain early-payment discounts, and to verify to its satisfaction the amount of such discounts. *See* Union's SVR of May 16, 1995, at 33.

Comment 17

Petitioners argue that the Department must revise Union's reported G&A expenses to account for expenses incurred by the Dongkuk Steel Mill (''DSM'') group as a whole. As part of its decision to collapse Union and DKI, the Department determined that neither Union nor DKI operates as a single independent entity, but rather as interrelated entities both under the control of the Chang family through its ownership in DSM. In prior cases, the Department has adjusted a respondent's submitted data to include an allocated portion of the parent company's expenses. The record in this case, petitioners assert, clearly indicates that expenses were incurred at the headquarters or DSM group level (*e.g.*, chairman's salary, group product brochures, group training center, and personnel welfare center, office costs, security expenses, entertainment expenses, *etc.*).

Since Union failed to furnish complete information regarding these expenses, petitioners argue that the Department should, as BIA, increase Union's calculated G&A expense by the ratio of all G&A expenses incurred at DSM over the consolidated DSM group's cost-of-sales.

Union contends that the Department should reject the petitioners proposed combination of DSM's and Union's G&A expenses. Union argues that there is no parent-subsidiary relationship between the two entities and that there are no DSM general expenses to attribute to Union's activities. Union also counters that Dongkuk Steel Mill was a respondent in the 1993 antidumping investigation of *Certain Cut-to-Length Carbon Steel Plate from the Republic of Korea*, and in that case the Department concluded that Dongkuk Steel Mill's G&A expenses were appropriately allocated to Dongkuk Steel Mill's activities and not to a group.

Department's Position

We disagree with petitioners. For the final results, we did not combine Dongkuk Steel Mill and Union's general and administrative costs. It is the Department's normal practice to include a portion of the G&A expense incurred by affiliated companies on the reporting entity's behalf in total G&A expenses for COP and CV purposes. However, in this specific case, we did not identify any allocable parent company costs after reviewing the information on the record. *See, e.g., Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy*, 60 FR 31981, 31992 (June 19, 1995); *Final Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe from Malaysia*, 59 FR 4023, 4027 (January 28, 1994).

Comment 18

Petitioners contend that, in contrast with the preliminary results in the parallel administrative review of certain corrosion-resistant carbon steel products from Korea, the Department's ''model-match'' computer program accidentally eliminated the fixed 20 percent BIA difmer adjustment with respect to Union's price-to-price sales comparisons. Petitioners request that, if the Department does not revise its BIA methodology as discussed above, the Department at the very least make the cold-rolled model-match program conform with the corrosion-resistant model-match program in order to ensure that the BIA difmer methodology is correctly applied.

Union counters that petitioners are themselves in error when they claim the Department's model-match program contains an error. Union believes that the lines questioned by petitioners set the limits on permissible matches in the home market. Without them, any given U.S. sale could be matched to any home-market sale, which was clearly not the Department's intention in the preliminary results. Union states that the Department's preliminary methodology was to set Union's difmer at 20 percent for the margin calculation, but only after a proper model match had been conducted to exclude comparisons resulting in a difmer of more than 20 percent. The model-match program exactly reflects that intention, according to Union.

Department's Position

This comment is rendered moot as the Department is applying a different partial BIA methodology, which does not comprise a flat 20 percent difmer adjustment, for purposes of these final results. Where DKI sales are used as a basis for comparison, the Department is using the difmers reported by DKI, capped at 20 percent of the cost of manufacture of the U.S. product, which is the Department's usual practice. Because none of DKI's above-cost home-market sales were similar to any of Union's U.S. sales, the Department based FMV on CV (*see* the Department's response to Petitioners' Comment 11 *supra*).

Comment 19

Petitioners assert, and Union concurs, that, although the Department correctly created a new, ''other'' thickness tolerance category to account for home-market sales by DKI, it failed to adjust the numerical weighting factors associated with Union's *U.S.* sales to conform with the weighting factors associated with *DKI's home-market* sales, thereby making it impossible for any home-market sale to be considered an identical match to a U.S. sale, even though the home-market product may in fact be identical. This error also allegedly undermines the accuracy of the selection of most similar home-market matches. Petitioners and Union request that the Department correct this ministerial error in the model-match program for purposes of the final results.

Union adds that code 16, created for the new, ''other'' thickness tolerance category, should be corrected to one of the other codes, if necessary on a sale-by-sale basis. Otherwise, the problem identified by petitioners remains, in that ''identical'' products are not compared. Union presumes that the Department did not intend for all DKI sales to be within a single hierarchy category differentiated from those already defined. If the Department were to modify its model-match hierarchy to make DKI sales a category unto themselves, Union argues, the Department would need to explain its reasons for such a change.

Department's Position

We agree in part with both petitioners and respondent. For purposes of these final results, we have harmonized the format of the numerical weighting factors for thickness tolerance in the model-match programs, thereby insuring that the program will function as intended. In addition, we have coded DKI material so that it most closely approximates half-mill-tolerance material produced and sold by Union in the U.S. market. The necessity for this additional thickness-tolerance category (''16'') arises from differences in thickness tolerance between Union's ''standard'' and ''half-mill'' material and that of DKI.

Because the only price-to-price comparisons we are making for purposes of these final results are those involving home-market sales by DKI, none of which are identical in physical characteristics to any U.S. sale by Union, petitioners' comment regarding the impossibility for any home-market sale to be considered an identical match to a U.S. sale is moot. By harmonizing the format of the weighting factors, DKI sales of similar, contemporaneous merchandise will now be matched to U.S. sales by Union, as the Department originally intended.

Union's presumption that the Department did not intend for all DKI sales to be within a single hierarchy category differentiated from those already defined is, in fact, incorrect. DKI reported only one thickness tolerance, which it categorized as ''standard,'' but provided no record evidence of any thickness-tolerance differences that may have existed during the review period. It was, and still is, the Department's intention to modify its model-match hierarchy to make DKI sales a category unto themselves. As the Department stated in its preliminary sales analysis memo dated September 21, 1995,

> We disagree, however, with DKI's categorization of its thickness tolerances as ''standard.'' Based on the Department's model-matching criteria, we have concluded that, DKI's thickness tolerances are much closer to U.S. ''half-mill'' tolerances than to Union's ''standard'' tolerances. We have therefore created a new category of thickness tolerance—called ''other''—for DKI, permitting the comparison of Union's U.S. sales of ''half-mill'' to DKI's home-market sales.

Since the verification, Union has not submitted any record evidence that would lead the Department to change its analysis. Therefore, we have maintained the new, ''other'' thickness tolerance category (coded ''16'') in the model-match program.

Comment 20

Petitioners allege that section 2 of the Department's margin calculation program regarding Union accidentally created additional U.S. observations, or ''clones,'' which were inadvertently included in the Department's analysis. The problem arises when two products are sold in the home market that are equally similar to the comparison U.S. product. In such cases, the program weight-averages the prices of the two home-market products and calculates a single transaction specific margin (''UMARGIN'') by comparing that weighted-average home-market price to the U.S. price. However, where one of the equally similar home-market products fails the cost test, but the other does not, the program inadvertently calculated two-transaction specific margins using the same U.S. sale. Specifically, for the same U.S. transaction, the program calculated one price-to-price margin using the weighted average home-market price of the equally similar product that does not fail the cost test, and another price-to-CV margin to account for the equally similar product that failed the cost test. The net effect of this inadvertent programming error is to reduce Union Steel's calculated margin. Petitioners therefore request that the Department correct this ministerial error and eliminate the second transaction specific price-to-CV margin for purposes of the final results.

Union agrees with petitioners with regard to the problem but not to the solution. According to Union, the Department's rule in cases in which there are two equally similar products is to use an average of both in the calculation of FMV, regardless of the basis of computation for FMV. If the Department incorrectly calculated separate margins with respect to each of the home-market products where one of the products was below cost, Union argues, then to remedy this error the Department should average the two FMVs.

Petitioners, according to Union, would have the Department change its policy and base its margin calculation only on the price-based FMV, without providing any compelling reasons to do so. Indeed, Union asserts, the Department has a well established policy of using the most similar product comparisons, regardless of whether the basis for FMV is price or CV. Ironically, Union avers, for years respondents have argued that the Department not rely on CV when a similar home-market product would permit a price comparison—but U.S. producers have steadfastly opposed such a notion, and the Department has consistently sided with the latter. In this instant case, Union contends, the Department's policy leads to two equally similar comparison products, and consistent with its policy, the Department should average the two FMVs.

Department's Position

We agree with petitioners and have fixed this programming error for the final results. It is the statutory preference to calculate FMV based on home-market sales rather than CV. As noted in the Department's position on Comment 11, it is our preference based on the facts of this case to match U.S. sales to DKI's home-market sales whenever there are appropriate matches. Accordingly, in any instances in which there are equally similar comparison products, and certain of these comparisons would result in using FMV based on a DKI price-to-price comparison and others would result in FMV based on CV, we have chosen the match or matches based on price-to-price comparisons.

Comment 21

Petitioners claim that the Department should treat Union's U.S. sales through UA as ESP transactions for purposes of the final results. Petitioners base this claim on three broad reasons: (1) Union's U.S. sales through UA do not meet the statutory definition of purchase-price transactions; (2) the limited factual information on the record only supports a conclusion that the subject sales are ESP transactions; and (3) declarations made on Customs form 7501 clearly indicate that UA is the purchaser of the imported merchandise.

In determining whether a U.S. sales transaction meets the statutory definition of purchase price, the Department looks at whether (a) the merchandise was shipped directly from the manufacturer to the first unrelated purchaser in the United States, without being introduced into the inventory of the related shipping agent; (b) direct shipment from the manufacturer to the unrelated parties was the customary commercial channel for sales of the merchandise between the parties involved; and (c) the related selling agent in the United States acted only as a processor of sales-related documentation and a communications link with the unrelated U.S. buyers. Petitioners claim that the first two factors may be indicia pointing to the conclusion that sales took place in a foreign country for exportation to the United States, but are not dispositive of the issue. In the steel industry, petitioners contend, these factors are not informative because most international shipments are shipped directly to the customer and not carried in inventory. Therefore, even if the merchandise is shipped directly to the customer and not placed in inventory in the United States, more evidence is needed to conclude that a sale is a purchase-price transaction, according to petitioners. Under the circumstances, they argue, the focus must be on the third factor of the Department's test.

Petitioners contend that the record evidence demonstrates that UA acts as more than a mere processor of sales-related documentation on behalf of Union's U.S. purchasers. They state that UA is involved in the following activities: the arrangement and payment for warehousing expenses on U.S. sales; the financing of U.S. sales; and the hiring of commission agents and entrance into commission arrangements with same. Petitioners state that UA reported substantial inventories of steel products in 1993, and that UA will, for certain warranties, independently authorize a compensatory cash discount without contacting Union. Petitioners further emphasize that:

- UA has the authority to grant rebates;
- UA is engaged in advertising on behalf of Union;
- UA assumes the seller's risk pursuant to the terms of the invoices issued to U.S. customers;
- UA is the carrier of Union's marine insurance policy and pays the premium for that insurance;
- UA is the importer of record and pays U.S. duties, brokerage, and handling on U.S. sales;
- UA pays Union the transfer price for the merchandise and in turn is paid by the U.S. customer, thereby bearing the risk of non-payment by U.S. customers; and
- UA takes title to the merchandise at the time it is loaded in Korea.

Petitioners assert that UA repeatedly declared on Customs form 7501 (''Entry Summary'') that it purchased the merchandise. Therefore, the transaction between Union and UA is a purchase ''for export to the United States,'' so that the transactions between UA and its unrelated purchasers are necessarily sales ''in the United States'' meeting the definition of ESP transactions, in petitioners' view. They add that UA entered the merchandise in question for appraisement at its ''transaction value,'' which is defined as ''the price actually paid or payable for the merchandise when sold for exportation to the United States.'' If the importer of record (UA) has entered the merchandise at the price established between the related parties as the transaction value, then by definition the sale was for export to the United States and the sale between UA and the first unrelated U.S. purchaser cannot also be the sale for export to the United States. It follows, say petitioners, that the latter sale must be an ESP transaction.

Respondent answers that the Department properly treated the vast majority of Union's U.S. sales through UA as PP sales. The terms of sales are set prior to importation. Union claims that petitioners concede that the merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into inventory of the related shipping agent, and direct shipment was the customary channel of distribution.

With regard to whether UA acted only as a processor of sales-related documentation and a communications link, Union points outs the following:

- UA does not warehouse the imported merchandise;
- UA does not sell from inventory;
- UA does not finance U.S. sales;
- UA does not have the authority to authorize a cash discount for warranty claims;
- Union sets guidelines for hiring of any commission agents;
- UA does not enter into rebate agreements;

- UA does not engage in any significant advertising on behalf of Union;
- Union ultimately assumes the seller's risk pursuant to the terms of the invoices issued to U.S. customers;
- UA's procurement of marine insurance is a normal function of a related selling agent; and
- UA's role as the importer of record and payment of U.S. duties, brokerage, and handling on U.S. sales is a normal function of a related selling agent.

Union further states that although UA issues commercial invoices as Union's proxy, it merely processes sales-related documentation, Union Steel bearing the final responsibility for the transaction. Union notes that whether or not UA takes title to the merchandise at the time of loading in Korea is irrelevant, since it must take title of the merchandise in order to resell it to an unrelated customer in the United States. Thus, in respondent's view, Union has strictly limited the role of UA to that of a conduit for Union's sales and processors of sales-related documentation and these sales should be treated as purchase price.

Department's Position

We agree with respondents. We determined that purchase price was the appropriate basis for calculating USP. Typically, whenever sales are made prior to the date of importation through a related sales agent in the United States, we conclude that purchase price is the most appropriate determinant of the USP based upon the following factors: (1) the merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related shipping agent; (2) direct shipment from the manufacturer to the unrelated buyers was the customary commercial channel for sales of this merchandise between the parties involved; and (3) the related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers. *See, e.g., Certain Stainless Steel Wire Rods from France: Final Determination of Sales at Less than Fair Value,* 58 FR 68865, 68868–9 (December 29, 1993); *Granular Polytetrafluoroethylene Resin from Japan: Final Results of Antidumping Duty Administrative Review,* 58 FR 50343–4 (September 27, 1993). These criteria were first developed in response to the Court of International Trade's decision in *PQ Corporation* v. *United States,* 652 F. Supp. 724, 733–35 (CIT 1987). These criteria have also been considered in cases with indirect purchase-price transactions involving exporters and their U.S. affiliates. *See, e.g., Zenith Electronics Corp.* v. *United States,* Consol. Ct. No. 88–07–00488, Slip Op. 94–146 (CIT 1994).

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

*Respondents' Comments*

Dongbu: Comment 1

According to respondent, the Department is required to make an additional upward adjustment to USP to account for export subsidies subject to countervailing duties. Citing Article VI¶ 5 of the General Agreement on Tariffs and Trade (Uruguay Round Agreements Act, Pub. L. 103–465, Th. § 101 (approving the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Annex 1A 1(a)), respondent states that it provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization.'' This provision was implemented into U.S. law by section 772(d)(1)(D) of the Tariff Act of 1930, amended, 19 U.S.C. § 1677a(d)(1)(d). Thus, argues respondent, purchase price and exporter's sales price shall be increased by the amount of any countervailing duty imposed on the merchandise to offset the export subsidy. Respondent also asserts that, during the original LTFV investigation of flat-rolled carbon steel products from Korea, the Department made upward adjustments to USP of this type. *See Final Determinations of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea,* 58 FR 37176, 37191 (1993). Dongbu states that such an adjustment is required both for assessment purposes and for purposes of determining the cash deposit rate applicable to future entries. As reported in the *Final Determinations,* the level of export subsidies determined in the final countervailing duty determination for cold-rolled products was 0.05 percent *ad valorem*. Because Dongbu has made deposits reflecting these amounts in conjunction with the entries of cold-rolled flat products under review in this proceeding, Dongbu claims it is therefore entitled to a further adjustment of USP in this amount.

Petitioners agree with respondent provided that the Department fully

implements the statute, which they assert also requires under section 772(d)(2)(A) of the Act that USP also be reduced by ''(A) except as provided in paragraph (1)(D), the amount if any, included in such price, attributable to any additional costs, charges and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States' (19 U.S.C. § 1677a(d)). Thus, petitioners argue that if the Department adds the amount of the export subsidy to USP, it should also treat the remaining part of the countervailing duties paid on those shipments as costs, charges and expenses, and United States import duties in accordance with the statute. Thus, petitioners agree with respondent that the amount of the export subsidy should be added to USP, but only if the Department also treats the countervailing duties paid on those shipments as costs, charges and expenses, and U.S. import duties, as defined by the statute. Petitioners conclude by stating that for Dongbu's direct PP sales, any export subsidy adjustment should be calculated against the reported gross unit price net of any movement charges incurred outside Korea, and exclusive of any duty drawback and value-added (''VAT'') adjustments. For indirect PP sales, petitioners state that the appropriate base for calculating the export subsidy adjustment is the entered value of the subject merchandise, which reflects the f.o.b. (freight-on-board) foreign port price of the merchandise.

Department's Position

We agree with petitioners and respondent in their arguments that Dongbu is entitled to a 0.05 percent *ad valorem* adjustment to the USP. However, we disagree with petitioners regarding their contention that, if the portion of the countervailing duties attributable to export subsidies is added to USP, any remaining countervailing duties paid on those shipments must also be treated as costs, charges and expenses, and United States import duties. As noted earlier in our comments, we determined in *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review* (60 FR 44009, 44010—August 24, 1995) that making an additional adjustment to USP for the same antidumping duties that correct the price discrimination between the U.S. and home markets would result in double-counting, and inconsistency with administrative and judicial precedent. The same principle applies with regard to countervailing duties. Article VI¶ 5 of the General Agreements on Tariffs and Trade (''GATT'') provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.'' Section 772(d)(1)(D) of the Act implements this provision.

Comment 2

Respondent argues that the Department erred by including imputed inventory carrying expenses in the selling expenses used to calculate CV for the preliminary results of this review. Respondent notes that the Department included imputed credit expenses and inventory carrying expenses in CV, and that while this methodology might be acceptable if the comparison were being made to ESP, the inclusion of imputed inventory carrying expenses in CV is contrary to long-standing practice at the Department when the comparison is being made to purchase price rather than ESP sales. Specifically, respondent notes that despite its inclusion of inventory carrying expenses in CV for the preliminary results of this review, the Department did not make an additional adjustment to the interest rate factor for CV to account for interest expenses associated with the carrying of inventory. They contend that this is contrary to long-standing precedent and leads to double-counting of inventory carrying expenses. Respondent asserts that should the Department improperly include an amount for inventory carrying expenses in CV, it must also make an additional adjustment to the interest rate factor to account for inventory carrying expenses. The proper approach to these errors is to simply exclude imputed inventory carrying expenses from the CV calculations consistent with long-standing practice.

Petitioners counter that the Department appropriately included in CV the sale-specific inventory carrying charges reported by Dongbu, whether Dongbu's sales are classified as either PP sales or ESP sales. They state that during this review, Dongbu incurs inventory carrying costs for home-market sales of subject merchandise, and that it reported sales-specific inventory carrying costs in its February 15, 1995 response. *See* Letter from Morrison & Foerster to the U.S. Department of Commerce, Case No. A–580–814 at 15 and Exh. B–40 (Feb. 15, 1995). Thus, according to petitioners, the Department included the sale-specific inventory carrying costs in CV in the preliminary results of this review, and given that the sale-specific amounts reported by Dongbu provide the most accurate measure of Dongbu's costs of holding subject merchandise in inventory, the Department should continue to use the sale-specific inventory carrying charges reported by Dongbu in calculating CV for the final results of this review. Petitioners further argue that since the Department's practice has been to reduce the respondent's reported financing costs by an amount that reflects the interest costs associated with holding inventory, the Department should revise its calculation of Dongbu's financing costs to eliminate the double-counting of inventory carrying charges in CV for the final results.

Department's Position

We agree with respondent. For the final results, we have excluded imputed inventory carrying costs from Dongbu's CV calculation, because Dongbu reported only PP sales. The Department normally includes inventory carrying costs as an indirect expense in cases involving ESP transactions. In ESP transactions, the imputed inventory carrying costs consist of the cost of financing the inventory from the time the merchandise leaves the production line at the factory to the time the goods are shipped to the first unrelated customer. To avoid the double counting of interest expense, we allow the respondent to offset its CV interest expense by the imputed inventory carrying costs. However, the Department does not normally include this cost or the related offset in PP sales.

Comment 3

Respondent contends that for purposes of the preliminary results of this review, the Department erred by excluding certain adjustments from the gross unit price used to determine VAT on home-market sales. Respondent argues that although the Department followed the newly adopted ''Zenith footnote 4'' methodology for determining adjustments to USP for home-market consumption taxes (*see Federal Mogul Corp.* v. *United States,* 63 F. 3d 1572 (Fed. Cir. 1995)), the Department made an error in determining the absolute amount of VAT paid on home-market sales where the customer was subsequently granted this adjustment. Specifically, respondent notes, the Department improperly calculated the amount of VAT paid on home-market sales by applying the statutory 10 percent rate to a gross unit price net of applicable adjustments when, in fact, according to

the Korean law and practice, VAT must be paid on the full gross unit price.

Petitioners argue that in calculating VAT taxes for the preliminary results of this review, the Department has appropriately deducted certain adjustments from the gross unit price used to determine the tax base. According to petitioners, at the time Dongbu's sales transactions occur, these adjustments are not known and should therefore not be deducted from the tax base at the time of the transaction. They contend that although these adjustments may not be deducted from the VAT base at the time of sale, it is not clear whether the VAT paid by Dongbu's customers ultimately is net of the same adjustments. Petitioners argue that if the VAT paid on the amount of the adjustment were not refunded to the customer, the effective tax rate incurred by the customer would be in excess of the statutory rate of 10 percent; and that the payment of these adjustments therefore would be accompanied by a refund of the VAT amounts associated with the adjustment.

Department's Position

We agree with respondent. Dongbu has provided information indicating that under Korean law, VAT taxes associated with home-market sales are assessed based on the price of goods and services at the time of delivery, and that certain adjustments made to the price after the goods and services have already been delivered do not result in adjustments to VAT taxes already paid.

Union: Comment 1

Union contends that the Department's decision to collapse Union and DKI in the instant review is contrary to the Department's practice. Not only does a strong possibility of price manipulation not exist, according to Union, but the Department's standard of a strong possibility of price manipulation *per se* violates respondents' right to due process. In determining whether two companies should be collapsed, the Department should look to evidence of actual manipulation, rather than to suspicion or speculation of possible manipulation at an unspecified future time. If the Department is concerned about the possibility of price manipulation in the future, it should consider any evidence of such manipulation in future reviews.

Petitioners assert that the Department's decision to collapse the two entities is entirely consistent with record evidence. Petitioners object to Union's statement, for the first time on the record of this proceeding, in its case brief that ''the Department's standard of 'strong possibility of price manipulation' violates respondent's right of due process.'' In not one of its four submissions contesting petitioners' collapsing request did Union ever claim that the Department's standard for collapsing related parties violates respondents' due process rights. If anything, petitioners assert, Union explicitly endorsed the Department's standard by not contesting it directly and addressing each of the four criteria used to ascertain whether the standard has been met. Petitioners strongly protest Union's eleventh-hour raising of this due process argument nine months after the collapsing decision was made and request that the Department dismiss it outright. In any event, petitioners maintain, the Department's four-point standard is entirely reasonable and has been applied by the CIT. *See, e.g., Nihon Cement Co.* v. *United States*, Slip Op. 93–80 at 48–54 (CIT May 25, 1993). To require parties to demonstrate actual price or production manipulation would impose a quasi-insurmountable burden on petitioners.

Department's Position

The Department's practice of collapsing affiliated parties if the record evidence indicates a strong possibility of price manipulation is longstanding and was upheld by the CIT in *Nihon Cement Co.* v. *United States*, Slip Op. 93–80 at 48–54 (CIT May 25, 1993). Therefore, Union's argument that the Department's test is legally deficient is unfounded. Moreover, Union has in no way been denied due process in this determination. Throughout the course of this proceeding, Union had ample opportunity to submit evidence and arguments with regard to this issue. We note that at no time during the period between the Department's decision to collapse (May 22, 1995) and the preliminary review results (December 15, 1995) did Union ever challenge the Department's collapsing test.

Comment 2

Union claims that the Department erred in (1) concluding that Union had understated its U.S. credit expenses by not including bank charges therein, and (2) increasing Union's U.S. credit expenses by the amount of those charges. In fact, Union maintains, it included its U.S. bank charges in U.S. brokerage and handling expenses, so that they were double-counted by the Department. In addition, Union claims, the Department compounded its error by mistakenly dividing two years' worth of interest expenses by 18 months' worth of short-term borrowings.

Union urges the Department, for purposes of the final results, to follow its own practice and treat bank charges as selling expenses. Union claims to have reported its bank charges on a sale-by-sale basis, which is the most accurate form of reporting. Also, respondent asserts, including bank charges in an interest-rate calculation is illogical, since a bank charge need not be connected to the time value of money, but can simply consist of a flat fee for services rendered.

Petitioners reply that Union's claims regarding double-counting are unsubstantiated. Petitioners note that Union's claims that it included transaction-specific bank charges in its reported U.S. brokerage and handling expenses is not supported by any sample calculations or documents. Petitioners state that it is the Department's practice to include bank charges in credit expenses when they are not elsewhere reported. Because of the absence of specific data pertaining to bank charges alone, petitioners agree that the Department had no alternative but to use Union's combined interest and bank charge data for the two fiscal years.

Department's Position

We agree in part with both petitioners and respondent. As there is no evidence on the record supporting Union's claims that it included bank charges in its reported brokerage and handling expenses, we have increased Union's reported credit expenses to account for these bank charges. We acknowledge our error, however, in dividing two years' worth of interest expenses by 18 months' worth of short-term borrowings, and have corrected this error for purposes of these final results by prorating the short-term borrowings used in the denominator to 24 months.

Comment 3

Union disagrees with the Department's treatment of its home-market warehousing expenses as indirect selling expenses, and contradicts the Department's statement that these expenses were evenly allocated across-the-board to all home-market sales. In fact, Union affirms that all warehousing expenses other than labor were traced to the particular areas devoted to subject and non-subject merchandise, because Union separates warehouses subject and non-subject merchandise, and thus can determine the proportion of warehousing expenses attributable to each. Union also maintains that a selling expense is not indirect simply because it occurs prior to sale. For these reasons, and because

the warehousing expenses in question are attributable to a later sale of the subject merchandise, Union requests that the Department treat these warehousing expenses as direct for purposes of the final results.

Petitioners respond that Union stores three broad, distinct types of merchandise in the same warehouse—cold-rolled, corrosion-resistant, and pipe products. Petitioners state that Union did not link specific warehousing charges to specific sales, but rather allocated costs based on the square footage dedicated to each product type and on the total quantity of each product type warehoused. Petitioners believe that the Department's preliminary results correctly denied Union's claim that these expenses be classified as direct.

Department's Position

We agree with petitioners. Union did not tie warehousing expenses to specific sales, but merely allocated them. The amount reported by Union on its computer tape for this expense in Korean wŏn is identical for all sales transactions where a warehousing expense was claimed, regardless of the length of time the merchandise was actually warehoused. Therefore, we do not consider these expenses to be direct.

Comment 4

Union disagrees with the Department's treatment of pre-sale inland freight expenses in the home market as indirect. Union argues that the Department must examine the facts of each case to determine whether warehousing and pre-sale freight are so linked that they must necessarily be treated in the same fashion. In the final results of redetermination on remand (January 5, 1995) pursuant to *The Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, Slip Op. 94–151 (1994), the Department noted that ''warehousing and movement expenses are, for analytical purposes, inextricably linked'' and ''if pre-sale warehousing is an indirect expense, then, in the absence of contrary evidence, pre-sale movement expenses should also be treated as an indirect expense.'' Earlier in the case, the Court had stated that ''if the pre-sale warehousing expense in this case is not shown to be a direct expense, then it follows that the cost of transporting the cement to the warehouse is also not shown to be a direct expense.''

Union argues that in this case, pre-sale freight and warehousing are not inextricably linked. Union claims that pre-sale freight was constant, since the merchandise was moved over the same route for all sales. Therefore, each ton sold from the warehouse led to an exactly identified increment to costs—the amount of the pre-sale freight—and the expense was incurred on a one-on-one basis with each unit of subject merchandise sold. Therefore, Union maintains the expense in question is clearly direct.

Petitioners respond that the Department correctly determined that Union's pre-sale freight expenses were indirect. Petitioners state that the Department's standard is clear: pre-sale warehousing and freight expenses are inextricably linked; thus, in the absence of contrary evidence, if pre-sale warehousing is an indirect expense, so too must be pre-sale freight. Petitioners note that it is always true that each ton shipped leads to an additional charge for freight, but this does not mean that pre-sale freight is always a direct selling expense.

Department's Position

In the preliminary review results, the Department stated that it ''considers pre-sale movement expenses as direct selling expenses only if the movement expenses in question are directly related to the home-market sales under consideration. In order to determine whether pre-sale movement expenses are direct under the facts of a particular case, the Department examines the respondent's pre-sale warehousing expenses, since the pre-sale movement charges incurred in positioning the merchandise at the warehouse are, for analytical purposes, inextricably linked to pre-sale warehousing expenses. If the pre-sale warehousing constitutes an indirect expense, the expense involved in getting the merchandise to the warehouse must also be indirect. Conversely, a direct pre-sale warehousing expense necessarily implies a direct pre-sale movement expense. We note that, although pre-sale warehousing expenses in most cases have been found to be indirect selling expenses, these expenses may be deducted from FMV as a circumstance-of-sale adjustment in a particular case if the respondent is able to demonstrate that the expenses are directly related to the sales under consideration.'' *See Preliminary Results of Review; Certain Cold-Rolled Carbon Steel Flat Products from Korea* (60 FR 65284, 65287—December 19, 1995). The Department is continuing to treat Union's pre-sale home-market inland freight expenses as indirect, because Union did not distinguish between pre- and post-sale warehousing expenses or demonstrate that these expenses were directly related to the sales under consideration.

Comment 5

Union argues that the Department should differentiate Union's painted products according to specific paint types, because (1) there are significant cost, price, and commercial differences among Union's painted products; (2) these differences demonstrate that Union's customers perceive significantly different applications for such products; and (3) if the Department compares different paint types, it must make an appropriate difmer adjustment.

Petitioners state the Department was correct not to revise the existing paint categories for the preliminary results of this review and should also reject this argument for the final results. Petitioners note that Union's arguments do not address the criteria used by the Department to establish categories of products and determine whether certain products may be compared and are not supported by the record evidence. Petitioners state that Union ignores that the primary basis for creating product categories is physical characteristics. Thus, according to petitioners, the Department can accept Union's proposed paint categories only if Union demonstrates that the physical characteristics of the various paint types are so dissimilar that the paint types cannot be compared—which Union has not done. Petitioners cite *Koyo Seiko Co.* v. *United States*, Slip Op. 94–1363 at 15 (Fed. Cir. Sept. 20, 1995) which states that products with significant physical similarities need not be ''technically substitutable, purchased by the same types of customers, or applied to the same end use'' in order to be compared. Petitioners add that the record does not support Union's contention that its different paint types exhibit significant differences in cost or price.

Petitioners reject the notion of making a difmer adjustment for differences in paint types. Petitioners state that it is the Department's position in these flat-rolled proceedings that it will not make adjustments to account for differences between physical characteristics of U.S. and home-market products when the products are identified by the same control number. If products have the same control number, according to petitioners, they are in effect identical for purposes of this review and no difmer adjustment should be granted.

Department's Position

We agree with petitioners. As stated in our memorandum to the file of August 10, 1995, discussing our preliminary results of review, Union

provided insufficient and non-compelling information to support the necessity for differentiating additional types of painted products. Union did not demonstrate how each of the proposed additional paint types possesses physical characteristics that are significantly different from those of the other proposed paint types, and how each paint type is intended for significantly different applications and uses. Therefore, we did not create additional paint categories for purposes of these final results.

Comment 6

Union argues that the Department should not combine the financing expenses of Union and DKI with those of other member companies of the Dongkuk group because this collapsing of interest expense is entirely at odds with the Department's practice. Union states that it is the Department's established policy to calculate interest expense from the costs of borrowing incurred by the respondent and its related parties only when the companies are consolidated in the normal course of business. Union states that there are two fundamental reasons for this. First, the accounting practicality of consolidating different companies, particularly with respect to cost of goods sold, demands that an audited consolidated statement be generated in the normal course of business. Second, the parent into which the subsidiary is consolidated is assumed to control the financing decisions of the subsidiary. *See Final Determination of Sales at Less Than Fair Value; Small Diameter Circular Seamless Carbon Alloy Steel, Standard, Line and Pressure Pipe from Italy* (60 FR 31981, 31990 June 19, 1995).

In the instant review, according to Union, neither of the two standards articulated above applies to Union or DKI. Union states that the financial statements of Union and DKI are not consolidated into those of DSM. Union also states that no evidence on the record suggests that the financial decisions of Union and DKI are controlled by DSM. Just because two entities have been collapsed, Union claims, is not necessarily a reason to calculate circumstance-of-sale adjustments or cost adjustments on a collapsed basis. For example, selling expenses are not calculated for the group as a whole, but specifically; the COM is calculated on a company-specific basis, unless the collapsed entities have identical control numbers, which they do not; general expenses reasonably associated with the COM remain company specific. Likewise, Union argues, there is no reason to combine interest expenses, which are properly allocated on a company-specific basis. Union cites to our *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Semiconductors of One Megabit and Above from the Republic of Korea* (58 FR 15467, 15475—March 23, 1993) (''*Korean DRAMS*''), where the financial statements of two companies that were members of the same *chaebol* were not consolidated in the normal course of business, and where the Department did not require the respondent to submit a combined interest rate. Indeed, Union asserts, when the respondent sought to persuade the Department to use the interest expense for the group as a whole, the Department rejected the idea on the grounds that ''[t]he Department does not perform an audit at verification; rather, verification relies on audited records.'' Similarly, Union points out that in its *Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea* (56 FR 16305, 16313 '' April 22, 1991) (''*Korean PET Film*'') the Department held that, absent evidence of inter-company production financing arrangements, a respondent's own financial statements provide the most accurate picture of its financing activities for the production of subject merchandise.

Additionally, Union states that the Department's calculation of its financing factor was incorrect because it failed to offset DKI and DSM's financing costs with short-term interest income. The respondent argues that the Department's calculation only offset Union's financing costs with short-term interest income. Therefore, the Department's calculation did not make an appropriate ''apples-to-apples'' comparison.

Petitioners contend that the Department properly combined Union's interest expense with the interest expense of other members of the Dongkuk group. Petitioners state that this decision is consistent with the Department's normal practice because the companies are under common control and produce similar subject merchandise. Petitioners contend that capital acquisition costs are fungible and that any borrowing by Union, DKI, or DSM may be used for a variety of beneficial purposes for the group as a whole. Therefore, petitioners believe that the Department should continue to use the combined interest expenses of Union, DKI and DSM in its calculation for the final results of this instant review.

In fact, petitioners claim, contrary to Union's statements, the Department did reduce both DKI's and DSM's reported interest expense by each company's respective short-term interest income. Accordingly, the Department should simply ignore Union Steel's comments with respect to this issue.

Petitioners also state that the Department deducted an appropriate short-term interest income figure in its net financing factor calculation. Furthermore, they state that the respondent's argument of requiring an apples-to-apples comparison is inappropriate in this circumstance because symmetrical results are not necessary in this step of the net financing calculation.

Department's Position

For the final results, we calculated a combined net interest factor using Union's, DSM, and DKI's audited financial figures obtained from verification exhibits, respondent's submissions and public records. This methodology of calculating a single net interest factor is consistent with our longstanding practice for computing interest expense in cases involving parent-subsidiary corporate relationships. DSM's ownership interest in Union and DKI places the parent in a position to influence Union's financial borrowing and overall capital structure. We note that, contrary to Union's assertions that Union is an independent company and not controlled by DSM, the two companies share common directors and related stockholders. Based on this information, it is difficult to see how Union's operations are independent of its parent to such an extent that we should ignore our normal practice of computing interest. *See Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand* (60 FR 10552, 10557—February 27, 1995). Additionally, we find it appropriate to collapse the financing costs of these three companies in this instant review because we consider that the financing costs of the parent and its subsidiaries to be fungible.

Furthermore, the facts of this instant review differ from both the *Korean DRAMS* and *Korean PET Film* with regard to combining interest expense factors. In *Korean DRAMS* and *Korean PET Film*, the respondents requested that the Department combine limited brother-sister companies to derive a consolidated group-level interest expense factor. In those cases, however, the Department determined that a consolidated group-level interest factor was inappropriate because, while the respondents' own financial statements were audited, those of the sister

companies and the group-level financial statements were unaudited. As the Department stated in *Korean DRAMS,* ''[a]bsent detailed testing usually associated with an audit, the Department cannot rely on the statements as submitted.'' *See* DOC Position on Comment 24, 58 FR 15475. Not only, therefore, would consolidating the entities in question have placed an undue burden on the Department to review unaudited information, but the respondents' own audited financial statements provided the most accurate reflection of the cost of financing the production of subject merchandise. In the instant review, by contrast, each of the entities in question—Union, DSM, and DKI—prepared separate audited financial statements, which we could therefore combine to calculate a group-level interest expense factor.

Additionally, we agree with the respondent in that it is the Department's practice to allow a respondent to offset financial expenses with interest earned from the general operations of the company. *See, e.g., Timken* v. *United States,* 852 F. Supp. 1040, 1048 (CIT 1994). The Department does not, however, offset interest expense with interest income earned on long-term investments. *See Final Determination of Sales at Less Than Fair Value; Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy* (60 FR 31981, 31991—June 19, 1995). Therefore, for the final results we offset the combined financing costs by the respective short-term interest income of the three entities.

Comment 7

Union argues that the Department should not include the company's ''special depreciation'' that was reported as an extraordinary item on its audited financial statement in the cost of production of subject merchandise. Union contends that the Department's established policy with respect to this kind of expense is to exclude the cost because it relates solely to tax law and represents no real additional cost to the company. *See Final Determination of Sales at Less than Fair Value; Stainless Steel Angles from Japan* (60 FR 16608, 16617—March 31, 1995) (''*Angles*''). Therefore, Union believes that the Department should follow the precedent established in that determination and remove the special depreciation from Union's production costs.

Petitioners argue that the Department should continue to include Union Steel's accelerated depreciation costs in its calculation of the company's COP and CV. Petitioners contend the Department does not have an established policy of excluding accelerated depreciation as a cost of production. To support their argument, petitioners state that in recent determination the Department rejected a similar contention made by the respondent and included the company's accelerated depreciation charges in the calculation of COP and CV. *See Final Determination of Sales at Less Than Fair Value; Canned Pineapple Fruit from Thailand* (60 FR 29553, 29560—June 5, 1995). Furthermore, petitioners contend that the cost should be included in COP and CV because it is reported on Union's financial statements that are in accordance with generally accepted accounting principles (''GAAP'') in Korea.

Department's Position

We disagree with the respondent and have included Union's entire special depreciation as a production cost for these final results. Unlike the situation in *Angles,* where the respondent company used special financial accounting treatment to reflect only its regular depreciation (*i.e.,* non-tax depreciation) as a cost in its audited income statements for that year, Union recorded the full special depreciation charge as a cost in its audited income statement in accordance with Korean GAAP. We note that it is the Department's normal practice to use costs recorded in normal books and records of the respondent unless it can be shown that such costs do not reasonably reflect the amounts incurred to produce the subject merchandise. *See, e.g., Final Determination of Sales at Less Than Fair Value; Oil Country Tubular Goods from Argentina* (60 FR 33539, 33548—June 28, 1995); *High-Tenacity Rayon Filament Yarn from Germany; Final Results of Antidumping Duty Administrative Review* (59 FR 15897, 15898—March 28, 1995).

**Final Results of Review**

As a result of this review, we have determined that the following margins exist for the period August 18, 1993, through July 31, 1994:

CERTAIN COLD-ROLLED CARBON STEEL FLAT PRODUCTS

| Producer/manufacturer/exporter | Weighted-average margin |
|---|---|
| Dongbu | 6.07 % |
| Union | 1.08 % |

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

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of certain cold-rolled carbon steel flat products from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed companies named above which have separate rates will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate for this case will continue to be 14.44 percent, which is the ''all others'' rate in the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea,* 58 FR 37176 (July 9, 1993).

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

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

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could

result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

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

Dated: December 29, 1997.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 98–276 Filed 1–6–98; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–009]**

### Color Television Receivers from Taiwan; Notice of Final Scope Ruling Coach Master International Corporation

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

**ACTION:** Notice of final affirmative scope ruling—antidumping duty order on color television receivers from Taiwan.

**SUMMARY:** On July 7, 1997, Coach Master International Corporation (CMI) requested that the Department of Commerce (the Department) issue a scope ruling excluding the ''Kitchen Coach Unit'' (KCU) from the scope of the antidumping duty order on color televisions from Taiwan. On August 22, 1997 we initiated a formal scope inquiry pursuant to 19 CFR 353.225 and requested that interested parties submit comments and/or factual information addressing the scope issue. In addition, we requested that interested parties address the criteria for scope determinations which are listed at 19 CFR 351.225(k)(2). We have analyzed the record in this case, including comments of interested parties submitted during this scope inquiry. For the reasons outlined below, we recommend that the Department determine that CMI's KCU is covered by the scope of the antidumping duty order.

**Background**

In its July 7, 1997 request for a scope ruling, CMI maintains that its Kitchen Coach Unit meets the established criteria for exclusion from the scope of the order covering color television receivers (CTVs) from Taiwan. CMI argues that the primary purpose of the KCU is to provide in-home, learn-while-doing cooking instruction. The KCU is in the category of combination CTV units, which include products that function as of color televisions as well as have characteristics not mentioned in the scope of the order. Many of the features of the KCU have received design and utility patents, which CMI claims distinguish the Kitchen Coach from other combination CTV units already included in the order.

On July 25, 1997, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, and the Industrial Union Department (AFL–CIO) (the petitioners in this case), submitted comments in support of their contention that the Kitchen Coach Unit falls within the scope of the order. They contend that ''[the product's] surface physical resemblance to a color television receiver is reinforced by its internal componentry (such as its color picture tube, deflection yoke, tuner, and so on) that results in the KCU's ability to receive and display color television broadcast signals.'' The petitioners base their position on the physical characteristics of the KCU and prior cases whereby the Department found combination color televisions to be within the scope of the order. *See Scope Inquiry in Color Television Receivers from Korea, A–580–008, Concerning Gold Star Combination TV/VCR Model KMV–9002, (Gold Star) and Combination TV/Radio Model RCV–0615 (April 5, 1991).*

**Analysis**

19 CFR 351.225 of the Department's regulations govern scope proceedings. On matters concerning the scope of an order, our primary basis for determining whether a product is covered are the descriptions of the product contained in the petition, the initial investigation, and the International Trade Commission, Treasury, or Department determinations. When these criteria are not dispositive we further consider additional criteria: (1) The physical characteristics of the product; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade, and (5) the manner in which the product is advertised or displayed. *See* 19 CFR 351.225(k)(2). In this case, the descriptions of the product contained in the petition, the investigation and relevant agency determinations are not dispositive of the scope issue. Accordingly, we have analyzed the record with respect to the five additional criteria listed in 19 CFR 353.225(k)(2).

To determine whether this model was within the scope of the order, we reviewed the descriptions of the merchandise in the petition, the ITC determination, and the antidumping duty order.

The petition defined the scope of the investigation as the following:

> The class or kind of merchandise embraced by this petition (''color television receiver'') includes devices which are capable of receiving and processing both broadcast and nonbroadcast electronic signals and converting those signals into a visual and audio practice. This class or kind of merchandise includes all CTVs that (1) have the same or similar general physical characteristics; (2) are considered CTVs in the expectations of ultimate purchasers; (3) move through the same or similar channels of trade; (4) are advertised and displayed in the same or similar manner; and (5) are capable of use as TVs.

(*See* Petition for Relief Under the U.S. Antidumping Law with Respect to Color Television Receivers Imported from Taiwan, May 2, 1983).

The ITC Report states that an industry in the United States is materially injured by reason of imports from Taiwan * * * of color television receivers, provided for an item 685.11 and 685.14 of the Tariff Schedules of the United States (TSUS). Additionally, the report states:

> The imported products subject to these investigations are complete and incomplete color television receivers, including color television receiver kits. Complete receivers are fully assembled and ready to function when purchased by the consumer * * * Also included are projection television receivers. Consumers use these television receivers for watching broadcasts directly off the air or from a cable source. Television receivers may also be used as display units for video games, video tape recorders, or computers.

*See* ITC Investigation No. 731–TA–134 (Final), *Color Television Receivers from the Republic of Korea and Taiwan,* 49 FR 17824 (April 25, 1984).

Subsequently, the antidumping duty order on color television receivers from Taiwan defined the scope of the investigation as ''color television