Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 29, 1998.

Madeleine Clayton,

Management Analyst, Office of Management and Organization.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–811]

Certain Stainless Steel Wire Rods From France: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On January 26, 1998, the Department of Commerce (the Department) published the preliminary results of the third administrative review of the antidumping duty order on certain stainless steel wire rods from France. This review covers Imphy S.A. and Ugine-Savoie, two manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is January 1, 1996 through December 31, 1996. 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: June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Stephen Jacques, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–3434 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 C.F.R. Part 353 (1997).

Background

On January 26, 1998, the Department published in the **Federal Register** the preliminary results of the third administrative review of the antidumping duty order on certain stainless steel wire rods from France (63 FR 3704, January 26, 1998). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this administrative review are certain stainless steel wire rod (SSWR) products which are hot-rolled or hot-rolled annealed, and/or pickled rounds, squares, octagons, hexagons, or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from Imphy S.A. and Ugine-Savoie, manufacturers/exporters of the subject merchandise (respondents), and from Al Tech Specialty Steel Corp., Armco Stainless & Alloy Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and United Steelworkers of America, AFL-CIO/CLC (petitioners).

Comment 1: Respondents argue that the Department improperly resorted to constructed value (CV), instead of utilizing contemporaneous home market sales made in the ordinary course of trade. Respondents note that in the Department's preliminary results, the Department disregarded numerous home market sales that were below the cost of production and, therefore, outside the ordinary course of trade. In these instances, respondents contend that the Department inappropriately resorted to CV, despite the existence of contemporaneous home market sales of the foreign like product made in the ordinary course of trade. Consequently, respondents argue that the Department contravened the Court of Appeals for the Federal Circuit (CAFC) January 8, 1998 decision in *CEMEX* v. *United States*, 133 F.3d 897 (Fed. Cir. 1998) (*CEMEX*). Respondents state that in *CEMEX*, the Department disregarded home market sales of subject merchandise that was comparable to the merchandise sold in the United States, as not in the ordinary course of trade and, thus, ineligible as the basis for determining foreign market value. Therefore, the Department used CV as the basis for comparing U.S. sales.

Respondents note that although *CEMEX* was decided under pre-URAA law, the reasoning of the Court is applicable to the new statute. The new statute continues to subordinate CV to home market sales for determining normal value, therefore, allowing the Department to use CV only where price for home market sales of the foreign like product in the ordinary course of trade cannot be determined.

Respondents note that in recent Departmental decisions, the Department has referenced *CEMEX*, but never applied it's holding due to time constraints and the fact that the case was decided under pre-URAA law. Respondents contend that although *CEMEX* was decided under pre-URAA law, the principles are applicable and must be applied. Respondents argue that by applying its own matching hierarchy, the Department has the facts on the record to confirm that contemporaneous sales of foreign like product in the ordinary course of trade exist; therefore, the Department does not need to resort to CV in these instances.

Petitioners argue that the Department should not modify its preliminary results with regard to the *CEMEX* decision. Petitioners contend that the Department has examined and rejected arguments that it should depart from its normal methodology and base normal value on other models if the Department finds that all contemporaneous sales of the identical or most similar merchandise are made at below-cost prices, citing *Final Results of Antidumping Administrative Review: Canned Pineapple Fruit from Thailand;*

63 FR 7392, 7393 (February 13, 1998) (*Pineapple*). In the *Pineapple* case, petitioners note that the Department determined that it should not modify its preliminary methodology to conform to *CEMEX,* ''Because the Court's decision was issued so close to the deadline for completing this administrative review, we have not had sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of the ''post-URAA'' case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of NV.'' Petitioners also state that a similar approach was applied in *Final Results of Antidumping Administrative Review: Silicon Metal from Brazil;* 63 FR 6899 (February 11, 1998).

Petitioners state that if the Department was to revise its model-match methodology, the Department should focus on the facts on the record because, when this review began, it was assumed that the Department would use constructed value when the identical or most similar matches identified were at below-cost prices. Thus, petitioners argue that the record of this case does not permit use of the *CEMEX* methodology. Petitioners point to the preliminary determinations in the investigations of stainless steel wire rod as evidence. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod from Taiwan;* 63 FR 10841 (March 5, 1998) (*SSWR from Taiwan*). Petitioners note that in *SSWR from Taiwan,* the Department stated that in order to apply the *CEMEX* methodology, it would need information on the appropriate product comparisons following application of the below-cost test. Additionally, petitioners argue that in *SSWR from Taiwan,* the Department did not rely on respondents' internal-code systems to identify the next most similar models as a means to implement *CEMEX.* Therefore, the Department issued a supplemental questionnaire in *SSWR from Taiwan* requesting additional information on product characteristics in order to be able to search for the next most similar model when a matched product was sold below cost.

Petitioners argue that the Department's approach in the *SSWR from Taiwan* is in contrast to this case. In this review, petitioners argue that the Department has accepted respondents' internal product-coding system, in lieu of Department-developed criteria. Thus, petitioners assert that by relying on respondents' internal product-coding system and using the *CEMEX* methodology, the Department would use sales of less similar models as the basis for normal value instead of CV. Moreover, petitioners contend that the Department has not obtained additional information regarding more precise physical characteristics of the subject merchandise, or alternative matches to the models proposed, that it would need in order to implement *CEMEX.* Petitioners note that the respondents offered no more than three similar types of merchandise as a basis for comparison. Additionally, petitioners claim that the record data does not provide adequate alternative matches for the Department to apply the *CEMEX* methodology. Finally, petitioners maintain that were the Department to apply *CEMEX* in this case, it would be inconsistent with its own conclusions in *SSWR from Taiwan.* For these reasons, petitioners argue that the Department should reject respondents' allegation that it should apply *CEMEX* and state that, given the short time since the Federal Circuit decision and the lack of adequate record data, the Department will continue to apply its normal methodology of resorting to CV where the model selected for comparison is not in the ordinary course of trade.

Department's Position: We agree with the respondents. In *CEMEX,* based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' The URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales disregarded under section 773(b)(1) of the Act. *See* section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for normal value if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.''

We will match a given U.S. sale to foreign market sales of the next most similar model when all sales of the most comparable model are below cost. The Department will use CV as the basis for normal value only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Review'' section of this notice, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted. Where there were neither identical nor similar matches reported by respondents, we have used CV as the basis for normal value.

Comment 2: Respondents argue that the Department should base CV profit only on information pertaining to the POR as stated in section 773(a)(4) of the Act. Further, respondents contend that in its preliminary results, the Department did not follow this methodology, but based CV on data from both within and outside the POR. They note that the Department used the cost of manufacturing (COM) and general and administrative expenses (G&A) for the POR, but calculated CV profit on all reported home market sales made in the ordinary course of trade. Finally, respondents argue that the approach taken by the Department was inaccurate and unfair because this approach encompassed the 26-month home market window.

Respondents contend that the purpose of this administrative review is to determine whether imports into the United States during the POR were sold at prices that would constitute dumping. Respondents assert that the statute requires that ''a fair comparison shall be made between the export price or constructed export price and normal value,'' and section 773(a)(1)(A) of the Act provides that in order to achieve a fair comparison with the export price or constructed export price, normal value shall be the price ''at a time reasonably corresponding to the time of the sale used to determine the export price or constructed export price.'' They argue that CV is a surrogate for price, and must be contemporaneous with the U.S. sale being compared. Thus, the Department should use information to calculate CV that corresponds to sales during the POR.

Respondents state that they reported actual costs incurred for the POR for both COP and CV as required by the Department's questionnaire. However, in calculating CV profit for this case, the Department did not use POR data, but

used all reported home market sales, which covered the period January 1995 through February 1997. Respondents argue that basing CV profit on market behavior and conditions outside the POR leads to distortions and is inappropriate, and the Department should revise its methodology for the final results to calculate CV profit based on home market sales in 1996.

Petitioners state that the Department's calculation of CV profit is consistent with the Act and past practice. Petitioners note that the calculation of CV profit is to be based on profits earned ''in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country.'' *See* section 773(e)(2)(A) of the Act.

Petitioners note that the home market sales identified in this review are consistent with the Department's established practice. The home market sales span the period from three months before the first U.S. sale to two months after the last U.S. sale in the POR. Thus, these sales fit the meaning of the Act. Petitioners contend that the fact that respondents reported and made U.S. sales in a 26 month period is not a flaw or unfair but merely reflects respondents' particular reporting period.

Petitioners assert that the Department may not use one database of home market sales for its determination of normal value sales comparisons and another for its determination of CV profit.

Furthermore, petitioners contend that, contrary to respondents' claim, the Department has traditionally interpreted the phrase ''at a time reasonably corresponding to the time'' found in section 773(a)(1)(A) to mean a home market sale within the 90–60 day window. Since respondents accepted this window, petitioners argue that respondents must also accept this same database in identifying home market sales from which to calculate CV profit.

Petitioners state that it is the Department's practice to rely on all home market sales reported in the foreign market sales database for determining normal value as the basis for calculating CV profit. Moreover, petitioners argue that the Department has used this approach in *Notice of Preliminary Results of Antidumping Duty Administrative Review: Tapered Roller Bearings from Japan;* 61 FR 25200 (May 20, 1996). Accordingly, petitioners assert that the Department should continue using respondents' reported home market sales as the basis for calculating CV profit.

Department's Position: We disagree with respondents. In this case, the respondents reported home market sales based on the standard 60-day/90-day contemporaneous window which, in this review, encompassed a 26-month period. The Department has used the home market sales during this 26-month period to form the basis of its normal value calculation. Thus, in accordance with its normal practice, the Department calculated CV profit based on the contemporaneous sales data. In this case, U.S. sales span a period of 21 months. It would not be appropriate to limit the CV profit calculation to 12 months of home market sales, since this would not reflect profit on all contemporaneous sales.

The fact that we used costs based on a different period (in this case, 12 months) does not render our CV profit calculation inappropriate or unreasonable. The respondents only reported cost of manufacture and general administrative expenses for the 1996 calendar year (the POR) as the basis for costs of all reported home market sales. The respondents did not claim that the costs reported for this period were in any way unrepresentative of the costs incurred for sales throughout the 26-month period. In fact, these same cost figures formed the basis for COP in determining whether any of the home market sales made during the 26-month sales reporting period had been sold at below-cost prices within the meaning of section 773(b) of the Act. Thus, it was not unreasonable for the Department to calculate CV profit using the same home market cost data that it used to test for below-cost sales.

Further, if the respondents believed that for any reason the submitted costs were not representative of the 26-month period, they should have informed the Department that the 12-month costs used to calculate CV profit were not representative of its 26-month costs. Respondents knew from past experience that it is the Department's practice, when calculating CV profit based on reported home market sales, to calculate CV profit based on all reported contemporaneous home market sales. The respondents have accepted this approach in past administrative reviews (*see Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review,* 61 FR 47874 (September 11, 1996); *Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review,* 62 FR 7206 (February 18, 1997)) and have offered no compelling reason to alter it in this review.

Comment 3: Respondents argue that in calculating CEP profit in the preliminary results, the Department inappropriately excluded non-arm's length home market sales used in the calculation of CEP profit. Respondents contend that this methodology is contrary to both the statute and the Statement of Administrative Action (SAA), and is a departure from the methodology used in the prior review.

Respondents assert that section 772(f)(2)(C)(i) of the Act provides that CEP profit will be calculated based on expenses and profit for all sales in the United States and home market. Also, respondents note that the SAA states that ''the total profit is calculated on the same basis as the total expenses.'' *See* SAA at 155. Additionally, the SAA states that ''the total expenses are all expenses incurred by or on behalf of the foreign producer and exporter and the affiliated seller in the United States with respect to the production and sale of the first of the following alternatives which applies: (1) The subject merchandise sold in the United States and the foreign like product sold in the exporting country (if Commerce requested this information in order to determine normal value and the constructed export price).'' *See* SAA at 154. Therefore, respondents argue that the statute and the SAA are clear that both the expenses used to allocate the profit to the U.S. sales, and the profit to be allocated, should be based on all sales of the subject merchandise in the United States and the foreign like product in the foreign market. Respondents maintain the statute does not contain any provision for disregarding any sales in the calculation of CEP profit; and maintain that disregarding any such sales would be contrary to section 772(f) of the Act.

Respondents note that the Department's recent policy bulletin (''Calculation of Profit for Constructed Export Price'' Policy Bulletin No. 97/1 (''CEP Profit Policy Bulletin'')) is incorrect because the CEP profit calculation does not reflect actual profit or loss for actual market prices. Respondents maintain that section 772(f)(2)(D) of the Act states that ''actual profit'' represents the profit earned on all sales for which expenses were ''determined'' under section 772(f)(2)(C), and section 772(f)(2)(C) states that total expenses are all expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the home market if requested by the Department in order to determine normal value and constructed export price. Thus, because the Department

requested that respondents report all home market sales, and the Act states that the calculation of total actual profit and total expenses are made on the same basis, profits associated with non-arm's length sales must be included in determining actual profit.

Respondents argue that excluding non-arm's length home market sales from the calculation of CEP profit distorts the calculation of total actual profit and is inconsistent with the statute and the SAA. Although the Department includes unprofitable sales to an unaffiliated party in determining CEP profit—even if the sales are not in the ordinary course of trade—respondents contend that the Department has no justification for excluding sales with an affiliated party (including profitable sales) only because these sales do not pass the Department's arm's length test. Therefore, respondents argue that the Department should base its calculation of CEP profit on all home market sales, including sales found not to be made at arm's length.

Petitioners state that the Department should continue to exclude non-arm's length home market sales from its CEP profit calculation. Petitioners argue that the Department has carefully analyzed this issue in the past and has concluded that it would not be proper to consider the profit (or lack thereof) on non-arm's length sales when attempting to calculate total actual profit on CEP sales. Petitioners state that the Department provided several reasons for its decision in its ''CEP Profit Policy Bulletin.''

Petitioners state that the Department properly recognized that non-arm's length sales do not provide an indication of the actual profits associated with these sales. Thus, petitioners argue that relying on non-arm's length transfer prices affords respondents a chance to manipulate the profit calculations by shifting profit to downstream sales by affiliated customers. In order to avoid this manipulation, petitioners contend that the Department must exclude sales that are not at arm's-length prices from its calculation of CEP profit.

Furthermore, petitioners assert that the Department's policy of excluding sales that are not at arm's length from its calculation of CEP profit is consistent with the Act because it requires the calculation of total actual profit. Consequently, since the Act recognizes that non-arm's length sales are not reliable indicators of normal value or input costs, then they also are not reliable for calculating actual profit.

Department's Position: We agree with petitioners. As we stated in our CEP Profit Policy Bulletin, ''sales to affiliates made at non-arm's length prices . . . are excluded from the CEP profit calculation because they do not reflect actual market prices and, thus, do not represent actual profit (or loss).'' Further, the Department stated that ''non-arm's length sales are not a reliable indicator of 'actual profit,' just as they are not treated as a reliable indicator of normal value or input costs.'' *See* sections 773(a)(5) and 773(f) of the Act. Moreover, the Department's Bulletin states that ''inclusion of non-arm's length sales would inappropriately distort the calculation of total actual profit. Therefore, we include below-cost sales but exclude non-arm's length sales for purposes of computing sales revenues and expenses for CEP profit.''

Comment 4: Petitioners argue that the Department made a fundamental legal error in determining a CEP offset was appropriate by identifying the level of trade of CEP sales on an adjusted basis while identifying the level of trade of home market sales on an unadjusted basis. Petitioners argue that the comparison is inaccurate and leads to the wrong conclusion that CEP sales were at a different and less advanced level of trade than the home market sales. Petitioners argue that if the Department were to look at the levels of trade for sales in the U.S. and home market on the same basis, and rely on the unadjusted starting price for both sales as the proper levels of trade, the Department would conclude that the U.S. and home market levels of trade are the same and that a CEP offset would not be necessary.

Petitioners contend that the Department's position that the CEP level of trade is an adjusted price but the normal value level of trade is linked to the starting price is not supported by the statute. Section 772(b) of the Act states that CEP is ''the price the subject merchandise is first sold . . . to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). Therefore, petitioners contend that the starting price for a CEP sales comparison is the price at which the product is sold to an unaffiliated purchaser. Additionally, petitioners assert that the statute defines normal value as the price at which the foreign like product is first sold, under a variety of terms and conditions which provide for the price to be adjusted. *See* sections 773(a)(1)(A) and 773(a)(1)(B). Moreover, petitioners contend that section 773(a)(6)(C)(iii) of the Act requires that normal value be adjusted for ''other differences in the circumstances of sale,'' between the CEP and normal value sale, which includes adjustments for the same types of expenses deducted from CEP.

Accordingly, petitioners argue that it is not accurate for the Department to determine that CEP is a price that is exclusive of all selling expenses, since these expenses are required to be adjusted for pursuant to section 772(d) of the Act, but to describe normal value as a price that is inclusive of all selling functions and ignore the adjustments to normal value that are statutorily mandated by section 773(a)(6) of the Act. The Department must consider levels of trade in the same manner in order to arrive at a fair comparison. Furthermore, petitioners contend that Congress intended for the Department to look at the sale to an unaffiliated purchaser, when examining CEP sales. *See* section 772(b) of the Act. Petitioners argue that a CEP transaction is between the foreign producer/U.S. affiliate, and the unaffiliated U.S. producer. Petitioners argue that the Department has ignored these transactions and has incorrectly focused on the adjusted CEP sale. Consequently, they argue the Department is examining a level of trade between a foreign producer and U.S. affiliate that is artificial.

Respondents argue that the Department properly examined the CEP level of trade based on the price after adjustments under section 772(d) of the Act. Respondents argue that in the preliminary results, the Department properly determined that its CEP sales to MAC (*i.e.*, its U.S. super-distributor), were made at a different level of trade than home market sales (which were made to end-users).

Respondents maintain that petitioners argument is the identical argument from the first and second administrative reviews in which the Department granted a CEP offset. In fact, the argument also has been considered and rejected by the Department, in other administrative proceedings and in its final regulations. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27414 (May 19, 1997); and *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8919–8120 (February 23, 1998), *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan*, 61 FR 38139, 38143 (July 23, 1996). Respondents maintain that the Department's position is clear with

regard to identifying the level of trade of CEP sales. The Department has stated ''in those cases where a level of trade comparison is warranted and possible, then for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act . . . In every case decided under the revised antidumping statute, the Department has consistently adhered to this interpretation of the SAA and of the Act.'' *See Final Results of Antidumping Duty Administrative Review, Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea*; 62 FR 965, 966 (January 7, 1997). Therefore, respondents argue that the Department should continue its past practice of beginning its level of trade analysis for CEP sales after adjusting for U.S. selling expenses and profit, as required by the SAA and the statute. *See* SAA at 159, and section 772(d) of the Act.

Department's Position: We disagree with petitioners. The Department is continuing its practice, articulated in section 351.412(c) of the new regulations (see 62 FR 27296, 27414), of making the level of trade comparisons for CEP sales on the basis of the CEP after adjustments provided for in section 772(d) of the statute.

As we stated in the second administrative review (*see Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, 62 FR 7206 (February 18, 1997) (''*SSWR II*'')) the starting price is not the basis for comparison for CEP sales. The comparison is based on the CEP, which is net of the CEP deductions (*i.e.*, those deductions provided for in section 772(d) of the Act which are only applicable to CEP sales). The statute requires the Department to make comparisons between NV and EP or CEP to the extent practicable, at the same level of trade. *See* section 773(a)(1)(B) of the Act. If the starting price is used to determine the level of trade for CEP sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. Similarly, using the unadjusted price to determine the level of trade of both EP and CEP sales would result in a finding of different levels of trade for an EP and a CEP sale when, after adjustment, the selling prices reflect the same selling functions. Moreover, using the adjusted CEP for establishing the level of trade is consistent with the purposes of the CEP adjustment; to determine what the sales price would have been had the transaction between the producer and its U.S. affiliate qualified as an export price sale. Accordingly, we have followed our practice from the previous administrative review, which specifies that the level of trade analyzed for EP sales is that of the unadjusted price, and for CEP sales it is the level of trade of the price after the deduction of U.S. selling expenses and profit associated with economic activity in the United States pursuant to section 772(d) of the Act. Therefore, for the final results, the Department has continued to apply the level-of-trade analysis from its preliminary results in this review.[1]

Comment 5: Petitioners argue that there are no differences in selling functions between the U.S. and home market sales. Consequently, even if the Department relies on an adjusted CEP to identify the U.S. level of trade, respondents are not entitled to a CEP offset. Petitioners maintain that the channels of distribution and the selling activities for home market sales made during the POR are comparable to the adjusted CEP sales.

Petitioners note that they informed the Department that sales in the home market were predominantly through a different channel of distribution and involved fewer selling functions than the Department had examined in past reviews. In prior reviews, petitioners stated that respondents' sales were primarily through Ugine Service (*i.e.*, channel 2) and involved an extra layer of selling expenses when compared to direct home market sales (*i.e.*, channel 1) or CEP sales, and it was the Ugine Service sales that respondents focused on to distinguish the level of trade of the CEP and the home market sales.

Petitioners assert that they ran a test on the data which showed that sales through Ugine Service are not predominate in terms of home market sales for comparison. Petitioners noted that respondents identify selling functions associated with channel 1 home market sales but not with CEP sales, such as, customer sales contacts, technical services and administrative functions. Nevertheless, petitioners contend that the record demonstrates that the selling functions and expenses associated with sales to both home market channel 1 and the CEP sales, on an adjusted basis, are the same. Petitioners maintain that the indirect selling expenses and their magnitude are the same for both home market sales through channel 1 and CEP sales. Thus, petitioners argue there can be no difference between the levels of trade for home market channel 1 and CEP sales based on the intensity or nature of the expenses for both home market channel 1 and U.S. CEP sales, citing *Professional Electric Cutting Tools from Japan: Final Results of Antidumping Duty Administrative Review*, 63 FR 6891, 6895 (February 11, 1998).

Moreover, petitioners note that the Department did not deduct indirect selling expenses in calculating the adjusted CEP price. Thus, petitioners argue that the selling functions must still be considered as selling functions associated with the CEP sale in the level of trade analysis. Petitioners contend that the indirect selling activities and expenses incurred by respondents (i.e., MAC and Techalloy) in the U.S. do not replace the selling activities and expenses incurred in the home market, but provide an extra layer of functions and expenses in the U.S. market.

Petitioners argue that the only difference in selling functions between the home market and the CEP sales is the indirect selling expenses associated with sales through channel 2 (Ugine Service). Petitioners maintain that these additional selling expenses cannot justify finding different levels of trade because the Department found that these additional selling expenses do not support a finding of different home market levels of trade between channel 1 and channel 2 sales. Therefore, petitioners argue that the record does not establish any differences in selling functions between channel 1 home market sales and CEP sales, and there are insufficient differences in selling functions between channel 2 sales and CEP sales to justify different levels of trade.

Respondents argue that they had different and fewer selling functions which were performed for the CEP sales than for home market sales to end-users, which are at a more advanced stage of distribution than the CEP sales. Therefore, respondents argue that pursuant to section 773(a)(7)(B) of the Act, the Department was correct in granting a CEP offset.

Respondents state that petitioners mischaracterize the Department's analysis of a CEP offset. Respondents assert that in the first and second administrative reviews of this case, the Department examined and compared the selling functions performed by Imphy and Ugine-Savoie for sales to its

[1] This approach was recently criticized by the Court of International Trade in *Borden, Inc.* v. *United States*, Slip Op. 98–36 (March 26, 1998), at 55–59 (*Borden*) (rejecting the Department's practice of adjusting the CEP starting price pursuant to section 772(d) of the Act prior to making the level of trade comparisons). The Department intends to appeal this decision and, thus, will continue to apply the methodology articulated in its new regulations (19 C.F.R. § 351.412).

U.S. affiliate (*i.e.*, MAC), and found the selling expenses in the home market to end-users were different than selling expenses in sales to MAC and involved different levels of trade. *See Preliminary Results of Antidumping Administrative Review: Certain Stainless Steel Wire Rods from France*, 61 FR 53199, 53201–53202 (September 11, 1996)(''*SSWR I*''). Specifically, the Department found that the record reflected that customer sales contacts, technical services, inventory maintenance, computer systems and other administrative functions were selling functions involved in home market sales to end-users and not in sales to MAC. The Department found these differences demonstrate a difference in level of trade. Respondents argue that the exact same selling functions exist in this review and more differences are apparent when the totality of selling functions are analyzed. Respondents assert that Imphy and Ugine-Savoie perform certain selling functions in the home market for direct sales, (*e.g.*, suggesting product improvements, developing sales strategy, providing information on market potential and competitors, pricing, scheduling production and delivery, visiting customers/potential customers and receiving orders, promoting new products, etc.) but only to a limited extent or not at all, for CEP sales.

Respondents assert that petitioners' argument that respondents' home market sales involved the same selling functions as CEP sales is the exact same argument from the first administrative review. Respondents argue that, in this administrative review, they have more responsibility for generating, administering and servicing sales to end-users in the home market than for U.S. sales to MAC. According to respondents, MAC's role as a super-distributor is to remove and assume virtually all of the risks and selling functions involved in selling to the U.S. market. Thus, these differences in selling functions support the Department's determination of two different levels of trade.

Respondents argue that petitioners' allegation that there is no difference in indirect selling expenses incurred by Imphy and Ugine-Savoie between home market channel 1 and CEP sales is a false allegation. Respondents state that they allocated their headquarters indirect selling expenses based on worldwide net sales revenue for the purpose of this administrative review, because respondents do not separately book selling expenses by market. Additionally, headquarters indirect selling expenses are difficult to separate by market. Any separation of these expenses could produce rough and potentially unverifiable estimates. Payroll expense is the predominant expense which is difficult to separate by market since many of the same headquarters personnel support sales to various markets. Nevertheless, respondents contend that this allocation does not negate the differences in the selling functions for sales to home market end-users, compared to sales to MAC. Respondents maintain that in responding to the Department's questionnaire, they tried to avoid obtaining any advantage through their headquarters selling expenses, and should not be penalized for the documented and verified differences in selling functions between the two markets.

Moreover, respondents argue that petitioners' argument that direct sales predominate in the home market is inaccurate because their analysis examined raw information, not what was actually used in the margin calculation. Analysis of the preliminary results shows that sales through Ugine Service predominated in the comparisons, particularly in comparisons to CEP. Respondents assert that this is important, because the Department calculates CV using home market selling expenses to derive a weighted average expense factor to add to the cost of manufacture, citing Department of Commerce, Import Administration Policy Bulletin, ''Treatment of adjustments and selling expenses in calculating the cost of production (COP) and constructed value (CV)'' (March 25, 1994). Respondents note that the selling expense factor included selling expenses attributable to sales through Ugine Service, which were greater than the selling expenses involved in direct sales. Lastly, respondents state that more than half of the CEP sales were compared to prices or CV reflecting the selling expenses of Ugine Service. Therefore, respondents argue that they are entitled to a CEP offset for comparisons to home market sales to end-users because the home market sales involve a different and more advanced level of distribution than sales to MAC and petitioners have not provided any evidence to reverse the level of trade analysis.

Department's Position: We disagree with petitioners. We reviewed respondents' selling functions and activities, and found that no single selling function was sufficient to warrant a separate level of trade in the home market. Specifically, we analyzed the respondents' level of trade chart for the home market and found that only three selling functions differed between the two home market channels of trade (visiting customers/receiving orders, promoting new products, and contacting customers/preparing claim reports). Additionally, we found that the vast majority of the selling functions were either identical or only differed moderately in intensity (*i.e.*, order evaluation for production of specific products, analyzing and paying warranty claims, pre-sale inventory, packing, post-sale warehousing, suggesting potential product improvements, developing sales strategy, providing information on market potential and competitors, pricing, scheduling production and delivery, follow-up on unpaid invoices, technical advice regarding use, general administrative support including personnel, advertising, computer systems and arranging freight and delivery). Therefore, we have determined that the selling functions reported for the home market channels of distribution are not different enough to warrant two levels of trade in the home market.

To determine whether separate levels of trade exist between the U.S. market and home market, we examined the respondents' level of trade claims. In order to make this determination, we reviewed the selling activities associated with each channel of distribution. The Department compared EP sales to home market sales, and determined that sales were made at the same LOT (*i.e.*, to end-users) in both markets. *See* May 7, 1997, Questionnaire Response, Exhibit 11.

For CEP sales, consistent with our practice, discussed above in Comment 4, we consider only the selling activities reflected in the constructed price, *i.e.*, after the expenses and profit are deducted under section 772(d) of the Act. Whenever sales are made by or through an affiliated company or agent in CEP situations, we consider all selling activities of both affiliated parties, except for those selling activities related to the expenses deducted under section 772(d) of the Act to determine the CEP level of trade.

The record indicates that the following selling functions were performed for HM sales to end users (at varying levels of intensity) but are not reflected in CEP: developing sales strategy, providing information on market potential and competitors, order evaluation for pricing and production scheduling, promoting new products, following-up on unpaid invoices, providing technical services, and performing administrative functions.

See May 7, 1997, Questionnaire Response, Exhibit 11.

The differences between the CEP level of trade and the home market level of trade are sufficient to constitute different levels of trade. We found that the data on the record did not allow the Department to determine whether the differences in levels of trade affect price comparability. Since there is only one home market level of trade which has no equivalent to the CEP level of trade, price differences between the relevant levels of trade can not be quantified. Further, the Department has determined that home market sales involved a more advanced stage of distribution (to end-users) as compared to respondents' CEP sales in the United States (MAC and Techalloy).

Section 773(a)(7)(B) of the Act states that a CEP ''offset'' may be made when two conditions exist: (1) normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP; and (2) the data available do not provide an appropriate basis for a level-of-trade adjustment.

The Department has considered petitioners' argument that there is no difference between the home market channel 1 and CEP sales with regard to indirect selling expenses and we do not find it persuasive. Record evidence indicates that there are differences in selling activities between home market sales to end users and CEP sales. Notwithstanding these different activities, the indirect selling expenses reported by Imphy and Ugine-Savoie are the same for home market channel 1 and CEP. This does not mean, however, that the selling activities are the same for these two groups of sales. The amount of selling expenses in itself is not a dispositive indicator of whether different levels of trade exist. In this case, there clearly are sufficient differences in selling activities despite similar amounts of expenses.

Comment 6: Petitioners argue that in calculating CEP, the Department failed to deduct all selling expenses incurred in selling the subject merchandise to the United States. Petitioners assert that the Department did not deduct certain selling expenses (*i.e.*, indirect selling expenses and inventory carrying costs) that were incurred with respect to U.S. sales.

Petitioners argue that section 772(d)(1) of the Act states that the Department is required to deduct all direct and indirect selling expenses ''incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise.'' Additionally, petitioners maintain that the SAA states that indirect selling expenses are to be deducted from CEP, citing SAA at 824. Also, petitioners maintain that the Department should read the SAA, at page 823, to mean that it should deduct indirect selling expenses incurred by the producer with respect to U.S. sales of subject merchandise in the home market or expenses incurred in selling to its affiliated U.S. importer.

Lastly, petitioners argue that the Court of International Trade upheld the Department's past practice of deducting indirect selling expenses incurred in the home market or in selling to an affiliated importer in the calculation of exporter's sales price (ESP), the predecessor to CEP. *See Silver Reed America, Inc.* v. *United States*, 683 F. Supp. 1393 (1988). Also, petitioners note that the URAA did not substantively amend the CEP provision to alter the deductions from CEP as compared to ESP. In fact, petitioners argue the URAA was more explicit than the prior statute in requiring all selling expenses be deducted from CEP, citing section 772(d)(1) of the Act.

Respondents argue that petitioners made the same allegations in the first and second administrative reviews of this proceeding and the Department has rejected the argument in both instances. Further, respondents contend that these expenses were not incurred with respect to U.S. sales.

Respondents assert that in the first and second administrative reviews, the Department did not deduct indirect selling expenses incurred in France or inventory carrying costs imputed to the country of manufacture in determining CEP, and there is no new information in this review to cause the Department to reconsider its decision. Respondents argue that the Department decided this exact issue in the second administrative review, wherein the Department stated that section 772(d)(1) of the Act provided for the deduction of specified expenses incurred in selling in the United States; it did not provide for the deduction of indirect expenses incurred in the home market. *See SSWR II*, 62 FR at 7210. Therefore, respondents contend that pursuant to section 772(d)(1) of the Act, home market expenses are not properly deducted from the starting price in determining CEP and they do not represent expenses associated with economic activities occurring in the United States. *See* SAA at 153.

Moreover, respondents assert that the Department's approach is consistent with its past practice and with section 351.402(b) of its new regulations. *See Preliminary Results of Antidumping Administrative Review: Calcium Aluminate Flux from France*, 61 FR 40396, 40397 (August 2, 1996). Respondents note that section 351.402(b) indicates that the Secretary will deduct only expenses associated with a sale to an unaffiliated customer in the United States. Hence, the indirect expenses reported in the DINDIRSU field are expenses associated with selling to MAC, Imphy and Ugine-Savoie's affiliated reseller in the U.S., and are not deducted in the calculation of CEP. Additionally, respondents assert that home market inventory carrying costs for sales to the U.S. reported in the DINVCARU field are imputed inventory carrying costs related to selling to MAC. Respondents argue that deducting these expenses would be inconsistent with the statute. Finally, respondents argue that petitioners' citation to *Silver Reed* is not appropriate because, as the Department previously has found, ''cases addressing pre-URAA practice are not applicable.'' See *SSWR I*, 61 FR at 47882. Therefore, respondents argue that the Department should reject petitioners' arguments and not deduct these expenses in calculating CEP.

Department's Position: We disagree with petitioners. As we stated in the final results of the first and second administrative review of this order (see *SSWR I*, 61 FR at 47874; *SSWR II*, 62 FR at 7206), the Department does not deduct indirect expenses incurred in selling to the affiliated U.S. importer under section 772(d) of the Act. Section 772(d) of the Act is intended to provide for the deduction of expenses associated with economic activities occurring in the United States. *See* SAA at 823; see also, GATT 1994 Antidumping Agreement, article 2.4; see also, *Final Results of Antidumping Duty Administrative Review; Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands:* 63 FR 13204, 13212 (March 18, 1998).

The Department's practice regarding deductions from CEP under section 772(d) of the Act is articulated in its new regulations. Section 351.402(b) of these regulations state that ''the Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid.'' 62 FR 27296, 27411. Additionally, the Department's regulations state that ''the Secretary will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States.'' *Id.* The inventory carrying costs petitioners refer to are expenses related solely to the sale to the affiliated importer (*i.e.*, MAC). Similarly, the indirect selling expenses

incurred in the home market do not represent expenses associated with economic activities in the United States. Therefore, for the final results, the Department has not deducted the indirect selling expenses and inventory carrying costs referred to by petitioners in its calculation of CEP.

Comment 7: Petitioners argue that if the Department does not deduct certain selling expenses (*i.e.*, indirect selling expenses and inventory carrying costs) from the CEP calculation, it may not deduct the same expenses from normal value through the CEP offset. Petitioners assert that the CEP offset is used to balance deductions for selling expenses made to CEP where there are different levels of trade. Petitioners maintain that certain indirect selling activities undertaken by Imphy and Ugine-Savoie in connection with their home market sales and CEP sales are the same. *See* Comment 5 above. Petitioners contend that because Department did not deduct indirect selling expenses and inventory carrying costs in the calculation of CEP, they should not be deducted from normal value as part of the CEP offset.

Respondents argue that the Department's calculation of the CEP offset in the preliminary results is in accordance with the Act. Further, respondents contend that the CEP offset can include indirect selling expenses and inventory carrying costs incurred in the home market even if those expenses are not deducted from CEP. Respondents assert that there is no statutory or other basis to consider whether a particular home market indirect expense is also incurred with CEP sales. Moreover, respondents cite to section 773(a)(7)(B) of the Act and argue that the test is whether the home market indirect expenses are incurred on sales in the home market. On that basis, all of the indirect expenses incurred in the home market (*i.e.*, indirect selling expenses for Imphy's and Ugine-Savoie's commercial departments (INDIRS1H), product liability premiums (PRLBPRMH), and inventory carrying costs (INVCARH)) should be taken into account in calculating the CEP offset for all home market sales. Additionally, respondents argue that the indirect selling expenses for Ugine Service (INDIRS2H) should be considered in calculating the CEP offset.

Department's Position: We agree with the respondents. Section 773(a)(7)(B) of the Act states that when the constructed export price offset is applicable, ''normal value shall be reduced by the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of the foreign like product but not more than the amount of such expenses for which a deduction is made under section 772(d)(1)(D).'' Accordingly, the statute directs the Department to make deductions for the CEP offset for home market indirect expense(s) incurred on sales in the home market. The statue does not require that the indirect selling expenses deducted from normal value be identical or comparable in nature to the direct or indirect selling expenses deducted from CEP.

Section 351.412(f)(2) of the Department's new regulations similarly reflect the Department's practice that the amount of the CEP offset ''will be the amount of indirect selling expenses included in normal value, up to the amount of indirect selling expenses deducted and determining constructed export price.'' 62 FR 27296, 27415. This regulation goes on to define indirect selling expenses as ''selling expenses * * * that the seller would incur regardless of whether particular sales were made, but that reasonably may be attributed, in whole or in part, to such sales.'' *Id.* These regulations are consistent with the Department's practice that the CEP offset is composed of home market indirect selling expenses and there is no requirement that the same or comparable types of expenses be deducted from CEP in order for the expenses to be included in the CEP offset. For these reasons, the Department has deducted all of the indirect expenses incurred in the home market in calculating the CEP offset for home market sales matched to CEP transactions.

Comment 8: Petitioners argue that the Department should deny respondents' adjustment for negative billing adjustments for certain home market sales. Petitioners contend that respondents have failed to correct double-counting errors with regard to these billing adjustments and warranty costs in their revised questionnaire response, and to prove that billing adjustments were due to billing errors or link the billing adjustments to billing errors.

Petitioners note that respondents stated in their July 28, 1997 supplemental questionnaire response, that ''[f]or certain sales, Ugine-Savoie erroneously reported the associated warranty claim as a billing adjustment.'' Also, petitioners note that the questionnaire response indicated that ''on the revised HM Sales File submitted with this response, the billing adjustment has been removed for these sales, as the claim was included within warranty expense.'' *See* July 28, 1997 Supplemental Questionnaire Response at page 12. Thus, petitioners note that respondents acknowledged that certain warranty expenses were double-counted in their original response because certain billing expense adjustments were also reported as warranty expenses, and the billing adjustments were made to invoice prices (BILLADPH), not quantities (BILLADQH). Therefore, petitioners contend that respondents should have made corrections to the BILLADPH computer field. However, petitioners assert that respondents did not correct the double-counting error in their amended home market sales listing. *See* Petitioners' letter of December 4, 1997.

Petitioners note that respondents stated the double-counting error was corrected in the amended home market sales listing because the double-counted amounts were removed from the BILLADQH field. *See* Respondents' letter of December 15, 1997 at pages 8–10. However, petitioners argue that the amounts reported under BILLADQH related to quantity adjustments for warranty claims, not the prices. Petitioners assert that removing the quantity amounts cannot correct the error of double-counting warranty expenses because the amounts associated with warranty claims are still reported in the invoice prices (*i.e.*, BILLADPH) and warranty expenses. Therefore, petitioners argue the Department should deny respondents' claimed negative billing adjustments because they failed to correct the double-counting of billing adjustments and warranty expenses and did not provide the Department the information needed to correct the errors.

Petitioners also argue that respondents have failed to demonstrate that the claimed billing adjustments were due to billing errors. Petitioners have identified examples of where billing adjustments took place for some sales but not others of the same product made on the same day.

Respondents argue that petitioners wrongly asserted that respondents failed to correct the double-counting of reported warranty expense in its revised sales listing (*i.e.*, July 28, 1997 supplemental questionnaire response) and failed to substantiate that the reported billing adjustments were due to billing errors or to link the billing adjustments to the billing errors. Respondents state that petitioners are confusing invoice revenue and invoice unit price. Respondents note, as stated in their December 15, 1997 letter to the Department, that billing revisions relating to warranty expense items involved adjustments to quantity (BILLADQH), rather than price (BILLADPH), and affected the QTYH

and BILLADQU fields. Respondents stated that they corrected errors in their billing adjustments and warranty expenses in their July 28, 1997 supplemental response. To correct the errors, respondents made corrections to their BILLADQH and QTYH fields to correct the errors. The warranty field was not revised.

Respondents contend that petitioners have not commented on or acknowledged their calculation example in their December 15, 1997 letter which illustrated the correction of the double-counting. In reply to petitioners' identification of eight observations (which are four pairs of transactions) that further question respondents' billing adjustments, respondents state that for two pairs of the transactions, Imphy should have reported billing adjustments in the BILLADPH field, and that Imphy had a computer programming error that caused the omission of the billing adjustments from these sales. Additionally, respondents explain that this mistake was due to credit memos against certain invoice numbers resulting from calculating invoice price on the original invoices.

Nevertheless, respondents argue that all of the other records alleged to be errors by petitioners are reported correctly. Respondents stated that for the other two pairs of observations that petitioners alleged included errors in billing adjustments to price, respondents provided the following explanations: one transaction reflected a special price adjustment granted by Ugine-Savoie, which the customer requested to meet a specific market condition, while the other transaction was a price adjustment that the customer requested. Therefore, respondents assert that petitioners have no basis to request the Department to deny any of the billing adjustments reported.

Department's Position: We agree with respondents. The Department has examined the respondents' home market sales database, specifically the sales that petitioners alleged were double-counted with regard to billing adjustments and warranty expenses, and found that the billing adjustments had been revised and correctly reported. In its analysis, the Department examined respondents' July 28, 1997 supplemental questionnaire response, home market sales database, and letter of December 15, 1997. From the information on the record, we found that respondents had eliminated the billing adjustment quantity from the BILLADQH field which respondents used to report credit memos associated with warranty claims. In addition, we found that they subsequently revised the quantity reported in the QTYH field, increasing it by the amount that had been reported in the BILLADQH field. Further, the Department performed mathematical calculations on the relevant home market sales to ensure that respondents had corrected the double-counting error. We found that respondents had indeed corrected their double-counting error, and found that their explanation that the double-counting error effected the invoice revenue and not the invoice price was consistent with the reported data.

Additionally, the Department has determined that respondents have properly reported all of their billing adjustments. We examined respondents' December 15, 1997 letter and related home market sales and found that the alloy surcharge and billing adjustments were reported correctly. Therefore, we have determined that respondents have properly reported all of their billing adjustments with the exception of the two invoices (fifteen home market sales observations) that did not have adjustments reported due to a computer programming error. Respondents reported these errors in their case briefs. The information submitted regarding the correction of these errors constituted new factual information which was untimely submitted. Petitioners did not have an opportunity to comment on this new factual information which was submitted too late for consideration by the Department. For these reasons, the Department did not take this information into account for these final results.

Comment 9: Petitioners argue that the Department incorrectly categorized certain U.S. sales as sales that were made outside the POR, and excluded these sales from its model match program. Petitioners state that the Department's computer program indicates that even though the subject merchandise of these sales entered the U.S. prior to the POR, the sales were made during the POR. Moreover, they contend that the Department's past practice has been to examine CEP sales during the POR, considering there is a significant lag between entry date and sale date for the CEP sales. *See Gray Portland Cement and Clinker from Japan: Final Results of Antidumping Duty Administrative Review,* 58 FR 48826 (1993).

The respondents did not comment on this argument.

Department's Position: We agree with the petitioners. The Department incorrectly categorized certain U.S. sales as sales that were made outside the POR, and excluded these sales from its model match program. Therefore, for the final results, the Department has corrected its computer program to include these sales.

Comment 10: Respondents argue that the Department incorrectly recalculated its reported home market credit expenses for sales with missing payment and shipment dates. In the preliminary results, respondents note that the Department stated that it intended to calculate the missing payment or shipment date based on the average time period between invoice date and payment or shipment date, respectively. Respondents argue, however, that the Department committed two programming errors in this recalculation. Therefore, respondents stated that the Department should correct its errors and provided programming language to fix the alleged errors.

The petitioners did not comment on this argument.

Department's Position: We agree with respondents and have corrected the home market credit expense calculation for sales with missing payment and shipment dates for the final results.

Comment 11: Respondents argue that the Department did not include indirect selling expenses related to EP sales in the total expenses used to calculate CEP profit pursuant to section 772(d)(3) of the Act, because the Department set indirect selling expenses for EP sales to zero before calculating the CEP profit rate. Respondents maintain that the Department requested indirect selling expenses related to both EP and CEP sales, and the Department's recent policy bulletin on the calculation of CEP profit states that the calculation of total actual profit under section 772(f)(2)(D) includes all revenues and expenses from EP sales. Thus, indirect expenses related to EP sales should have been included in the expenses used to calculate CEP profit.

The petitioners' did not comment on this argument.

Department's Position: We agree with the respondents in part. We agree that the calculation of total actual profit under section 772(f)(2)(D) of the statute includes all revenues and expenses resulting from the respondent's U.S. sales and home market sales. *See Final Results of Antidumping Duty Administrative Review; Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands;* 63 FR 13204, 13211 (March 18, 1998). The Department, however, has not adopted the computer programming changes suggested by respondents. Instead, in the final margin program, the Department changed the definition of a variable (INDEXUS) to be

the sum of indirect selling expenses and inventory carrying costs incurred in the United States, and deleted another variable (INDEXPU) from the final margin program. For a complete listing of the changes the Department has made to its final margin program, please see the Department's analysis memorandum and final margin computer program.

Comment 12: Respondents argue that the Department did not calculate CV profit consistent with its determination of the CV profit rate. Respondents assert that the Department calculated the CV profit rate as the ratio of total home market profit on above-cost sales to the sum of the total cost of manufacture, G&A, net financial expense, and packing expenses. However, the Department applied the CV profit rate to a larger base, in calculating the profit amount used to calculate profit for CV. Respondents maintain that the CV profit rate should be applied to the same expenses that were included in the denominator used to calculate the CV profit rate. Therefore, respondents state that the Department should correct its program to exclude direct and indirect selling expenses from the base to which the CV profit ratio was applied.

The petitioners did not comment on this argument.

Department's Position: We agree with respondents and have corrected this error for the final results.

Final Results of Review

As a result of our review, we have determined that the following margins exist:

Manufacturer/ exporter	Time period	Margin (per-cent)
Imphy/Ugine-Savoie	1/1/96—12/31/96	7.46

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review. For duty assessment purposes, we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total value of subject merchandise entered during the POR for each importer.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of certain stainless steel wire rods from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) if the exporter is not covered in this review, or the original 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 (3) the cash deposit rate for all other manufacturers or exporters will continue to be 24.51 percent for stainless steel wire rods, the all others rate established in the LTFV investigation. *See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Wire Rods from France* (59 FR 4022, January 28, 1994).

These 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 or the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective 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.

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 353.33(c)(5).

Dated: May 26, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–14759 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 970520119–7284–02]

RIN 0693–ZA15

Grant Funds—Materials Science and Engineering Laboratory—Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform potential applicants that the Materials Science and Engineering Laboratory (MSEL), National Institute of Standards and Technology (NIST), is continuing its program for grants and cooperative agreements in the following fields of research: Ceramics, Metallurgy, Polymer Sciences, Neutron Scattering Research and Spectroscopy. Each applicant must submit one signed original and two copies of each proposal along with a Grant Application, (Standard Form 424 REV. 7/95 and other required forms), as referenced under the provisions of OMB Circular A–110 and 15 CFR 24.

DATES: Applications must be received no later than the close of business September 30, 1998.

ADDRESSES: Applications should be submitted to the National Institute of Standards and Technology, Materials Science and Engineering Laboratory, Building 223, Room A305, Gaithersburg, Maryland 20899–0001; Attention: Patty Salpino. Each application package should be clearly marked to identify the field of research.

FOR FURTHER INFORMATION CONTACT: Technical inquiries should be directed to the following Program Managers: Dr. Ronald Munro—(301) 975–6127 [Ceramics Division], Bruno Fanconi—(301) 975–6762 [Polymers Division], John Manning—(301) 975–6157 [Metallurgy Division—transformations, phases, microstructure and kinetic processes in metals and their alloys], Dr. Neville Pugh—(301) 975–5960 [Metallurgy Division—sensors for analytical models for metallurgical processes], Richard Ricker—(301) 975–6023 [Metallurgy Division—degradation of materials in their service environment], John Rush—(301) 976–6220 [NIST Center for Neutron Research]. Inquiries should be general in nature.

Specific inquiries as to a laboratory's needs, the usefulness or merit of any particular project, or other inquiries with the potential to provide and