DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–831]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils (''SSPC'') from the Republic of Korea

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

EFFECTIVE DATE: March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0165 or (202) 482–3818, respectively.

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 of Commerce (''Department'') regulations are to the regulations at 19 CFR part 351 (1998).

Final Determination:

We determine that stainless steel plate in coils (''SSPC'') from the Republic of Korea are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils (''SSPC'') from the Republic of Korea* (''*Preliminary Determination*''), 63 FR 59535 (November 4, 1998)), the following events have occurred:

On November 5, 1998, petitioners alleged ''significant ministerial errors'' made in the Department's margin calculation for the preliminary determination. On November 6, 1998, respondent, Pohang Iron & Steel Co., Ltd. (''POSCO''), responded to petitioners'' comments. On November 23, 1998, the Department found that the errors alleged by petitioners were policy decisions and not unintentional errors of the kind covered by the ministerial error provision (*see* 19 CFR 351.224(f)). *See Memorandum to Edward Yang: Stainless Steel Plate in Coils from the Republic of Korea—Analysis of Alleged Ministerial Errors*, dated November 23, 1998. POSCO submitted revisions and corrections to its questionnaire responses during October, November, and December 1998. During November 1998, we conducted the sales verification of POSCO's responses to the antidumping questionnaire. Following verification, we requested that POSCO submit a revised sales database, which POSCO submitted on November 30, 1998. During December 1998, the Department conducted the cost verification of POSCO's responses to the antidumping questionnaire. On December 18, 1998, the Department postponed the final determination to 135 days after publication of the preliminary determination (*see Postponement of Final Antidumping Determinations: Stainless Steel Plate in Coils from Canada, Italy, Republic of Korea, South Africa, and Taiwan*, 63 FR 70101. On January 5, 1999, we issued our sales verification report (*see Memorandum to the File: Report on the Sales Verification of Pohang Iron & Steel Company, Ltd.* (''*Sales Verification Report*''), dated January 5, 1999). Also, on January 12, 1999, we issued our cost verification report (*see Memorandum to the Neal Halper, Acting Director, Office of Accounting: Cost Verification Report—Pohang Iron and Steel Company, Ltd.* (''*Cost Verification Report*''), dated January 12, 1999. Finally, on January 14, 1999, the Department issued its report on the U.S. sales verification of Pohang Steel America (''POSAM'') (*see Memorandum to the File: Report of the U.S. Sales Verification of Pohang Steel America* (''*POSAM Verification Report*''), dated January 14, 1999).

On January 19, 1999, petitioners withdrew their request for a public hearing. Petitioners and POSCO submitted case briefs on January 26, 1999, and rebuttal briefs on February 2, 1999.

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1997, through December 31, 1997.

Transactions Investigated

As in the preliminary determination, the Department has excluded POSCO's sales to the affiliated service centers and considered the affiliates' resales of the subject merchandise. Also, as discussed in Comment 11, the Department has included POSCO's local letter of credit (''local'') sales in its margin analysis because these sales are consumed in the home market. Additionally, as described in Comment 2, the Department has determined that for U.S. and home market sales the date of invoice is the appropriate date of sale as this is the date on which the material terms of sale are set.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the *Scope of Investigation* section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product

on the basis of the characteristics listed in the antidumping duty questionnaire and the May 27, 1998 reporting instructions.

Fair Value Comparisons

To determine whether sales of SSPC from the Republic of Korea to the United States were made at less than fair value, we compared export price (''EP'') or constructed export price (''CEP'') to the Normal Value (''NV''), as described in the ''Export Price/Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In the preliminary determination, for all sales, we compared EP to NV. However, as discussed in Comment 4, the Department has found that POSCO's U.S. sales through POSAM constitute CEP sales and has compared CEP to NV for those sales. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs or CEPs for comparison to weighted-average NVs.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (''SG&A'') and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT from EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

For the preliminary determination, we concluded that POSCO performed similar selling functions in the U.S. market and HM Channels 1 (sales from POSCO to the unaffiliated customer) and 2 (sales from POSCO Steel Sales & Services Co., Ltd. (''POSTEEL''), POSCO's affiliate responsible for the majority of home market sales and all U.S. sales, to the unaffiliated customer) and that a LOT adjustment was not warranted for comparisons between the U.S. market and HM Channels 1 and 2. No party to this investigation commented on this determination. However, as POSCO's response detailing the type of selling functions performed by the affiliated service centers (HM Channel 3) was not received until October 30, 1998, the Department could not make a determination for the preliminary determination whether the affiliated service centers' resales were sold at a different level of trade than other home market channels or U.S. channels. Additionally, as noted above, for the final determination we have classified POSCO's U.S. sales through POSAM as CEP sales.

In its October 30, 1998 supplemental response, POSCO stated that HM Channel 3 sales were made at the same LOT as the U.S. sales and other HM sales. It reported that the only selling functions performed by the service centers are inventorying the subject merchandise and arranging for freight. Additionally, POSCO indicated that the sales process is the same for both service centers: The customers contact the service centers by fax or phone. If the requested merchandise is in inventory, the service centers issue a shipping order sheet with the merchandise. If the merchandise is not in inventory, the service centers will order the merchandise from POSCO. At verification, the Department confirmed the selling functions performed by the affiliates. *See Sales Verification Report* at pg. 5. Therefore, we determine that selling functions performed in HM Channel 3 are similar to the selling functions performed in HM Channels 1 and 2: Freight and delivery, invoicing, sales negotiation, and limited amounts of market research, warranty services, and technical advice. Consequently, we find that the home market constitutes a single LOT.

In order to determine whether normal value was established at a different LOT than EP or CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between POSCO and its U.S. customers, and then compared those functions to the single LOT, we previously identified in the HM. In the U.S. we identified three channels of distribution: (1) Sales from POSTEEL directly to the unaffiliated U.S. customer (U.S. Channel 1); (2) sales from POSTEEL to POSAM to the unaffiliated U.S. customer (U.S. Channel 2); and (3) sales from POSTEEL to the unaffiliated Korean trading company (U.S. Channel 3). For the EP sales, U.S. Channels 1 and 3, we verified that POSTEEL arranges freight and delivery, and performs sales negotiation and invoicing. We also found that POSTEEL provides limited amounts of market research, warranties, and technical advice. In examining the LOT of the CEP sales (U.S. Channel 2), after deducting for economic activities which occurred in the United States, pursuant to section 772(d) of the Act, we found that POSTEEL performs the following activities: arranging for freight and delivery to the U.S. port, sales negotiation, and invoicing. Because of the similar selling functions performed between the EP sales (U.S. Channels 1 and 3) and the CEP sales (U.S. Channel 2), we find that all U.S. sales are made at a single LOT. Finally, because of the similarity in the chains of distribution and selling functions performed for sales in the home market and in the U.S., we find that no LOT adjustment or offset is necessary.

Export Price/Constructed Export Price

For those U.S. sales made through POSAM, we calculated CEP based on packed prices to unaffiliated customers in the United States. We made deductions for movement expenses in accordance with section 772 (c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. Customs Duty, and U.S. brokerage and wharfage charges. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activity occurring in the United States, including direct selling expenses (credit costs, bank charges, and U.S. commissions) and indirect selling expenses. Also, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. Finally, we added to U.S. price an amount for duty drawback pursuant to section 772 (c)(1) (B) of the Act.

We calculated EP based on the same methodology used in the preliminary determination.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

1. Home Market Viability

As discussed in the preliminary determination, we determined that the home market was viable and no parties have contested that decision. For the final determination, we have based NV on home market sales.

2. Cost of Production Analysis

As discussed in the preliminary determination, we conducted an investigation to determine whether POSCO made sales of the foreign like product in the home market during the POI at prices below their cost of production (''COP''). In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of POSCO's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, interest expenses, and packing costs. We used the information from POSCO's December 17, 1998 supplemental questionnaire response to calculate COP, except in the following instance.

POSCO purchased a significant amount of ferroalloys from an affiliated party during the POI. For each affiliated purchase, we compared the prices paid to affiliates to the average market price and to the affiliated party's cost of production. Where appropriate, we increased POSCO's per unit costs to the higher of transfer price, market price, or cost of production. *See Memorandum to Neal Halper, Acting Director, Office of Accounting: Cost of Production (''COP'') and Constructed Value (''CV'') Calculation Adjustments for the Final Determination of Pohang Iron & Steel Co., Ltd. (''POSCO'')* (*''Cost Analysis Memorandum''*), dated March 19, 1999. *See also*, Comment 5.

3. Test of Home Market Sales Prices

As in our preliminary determination, we compared the weighted-average COP for POSCO, adjusted where appropriate (*see* above), to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and direct and indirect selling expenses.

4. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'', as defined in section 773(b)(2)(C)(i) of the Act, within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases because we compared prices to weighted-average COPs for the POI , we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

Calculation of CV

As in our preliminary determination, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, interest expenses and profit. We calculated the COP included in the calculation of CV as noted above, in the ''Calculation of COP'' section of the notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Price-to-Price Comparisons

As in our preliminary determination, for those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We calculated NV based on the same methodology used in the preliminary determination, with three exceptions. Where appropriate, we deducted from NV the amount of indirect selling expenses capped by the amount of the U.S. commissions. Also, we recalculated POSCO's indirect selling expenses reported for HM Channel 1 sales (sales through POSCO) and HM Channel 2 and U.S. Channel 3 sales (sales through POSTEEL). As discussed in Comment 7, we determined that POSCO incorrectly excluded sales to affiliated parties in its calculation of POSCO's indirect selling expense ration. Also, at verification, the Department found that POSCO had included PSC division figures in its calculation of indirect selling expenses for domestic sales through POSTEEL, based on the fact that, in the flat-rolled cases, PSC had a role in selling the merchandise. However, POSCO acknowledged that these divisional expenses should not have been included in this calculation. *See Sales Verification Report* at pg. 15. Therefore, for the final determination, we have recalculated the indirect selling expense for HM Channel 2 sales and U.S. Channel 3 sales by excluding PSC division figures. Also, we added to NV an amount for duty drawback pursuant to section 772 (c)(1)(B) of the Act, where appropriate.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. If appropriate, we deducted from CV the amount of indirect selling expenses (adjusted as described in the ''Price-to-Price Comparisons'' section above) capped by the amount of the U.S. commissions.

Currency Conversion

In the preliminary determination, the Department determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. Therefore, the Department used daily rates exclusively for currency conversion purposes for HM sales matched to U.S. sales occurring between November 1 and December 31, 1997. *See Preliminary Determination* at 59539. As discussed in Comment 3, the Department continues to find that use of daily exchange rates is warranted during the November/December period.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and

original source documents provided by the respondent.

Interested Party Comments

Comment 1. Sales to a Bankrupt Customer. Petitioners argue that by excluding POSCO's sales to a U.S. customer that later went bankrupt and making no other adjustments to account for these unpaid sales, the Department failed to follow its own precedent. Citing *Color Television Receivers from the Republic of Korea: Final Results of Antidumping Administrative Review,* 61 FR 4408, 4412 (February 6, 1996) (''*Color Televisions*''), petitioners maintain that it is the Department's practice to treat sales to a bankrupt customer as a direct selling expense. They contend that had the Department based its treatment of these sales on *Color Televisions,* the preliminary margin would have been approximately 11 percent, not the 2.77 percent margin POSCO received in the preliminary determination. Furthermore, they allege that the domestic industry continues to suffer from less than fair value sales of SSPC from Korea, notwithstanding the Department's preliminary determination.

Petitioners contend that even if the Department disagrees with their argument that the sales were significant and were not ''atypical'', the Department must consider the cost of these sales to POSCO to be direct selling expenses. Petitioners claim that POSCO mis-characterized its sales to the bankrupt U.S. customer as insignificant. They maintain that these sales represent a significant portion of POSCO's U.S. sales by every measure, and as such, should have been included in the Department's analysis. They cite several cases in support of their contention that these sales are significant, including *Gulf States Tube Div.* v. *United States,* 981 F. Supp. 630 (CIT 1997). They maintain that prior to the URAA changes to the Act, the Department would consider respondent's request to exclude insignificant ''outlier'' sales, if the inclusion of such sales would significantly complicate reporting or calculation aspects of the proceeding. They explain that respondent bore the burden of establishing the necessity of the exclusion and the exclusion acknowledged two salient practices of the time: first, the Department looked at a six-month period of investigation; and second, the Department calculated a transaction-specific margin for each sale. Subsequent to the URAA, the Department uses a twelve month POI and calculates a weighted-average product specific margin. Based on the Department's current calculation methodology in which the Department seeks to capture a complete snapshot of a respondent's selling practices by using an expanded twelve-month period of investigation, petitioners question the Department's decision to exclude these sales due to their ''atypical'' nature.

Petitioners argue that sales to customers who cannot pay for the merchandise are an everyday occurrence, and companies such as POSCO anticipate this fact. Further, they note that POSCO has many accounts and reserves to deal with potential bad debts. *See* POSCO's Section A questionnaire at Exhibit A–12. Petitioners contend that the Department's treatment of these sales is analogous to the Department excluding sales to a home market customer because the customer receives a significantly lower price than other home market customers because it purchases in large quantities. They argue that despite being ''atypical'' of sales made during the 12-month period of investigation, the Department will not exclude these sales because these sales will continue to be weight-averaged with other sales and the customer will, presumably, continue to purchase in large quantities in the future. Citing POSCO's December 7, 1998 Supplemental Questionnaire Response in the investigation of Stainless Steel Sheet and Strip in Coils from Korea at pp. 4–5, petitioners note that POSCO made sales to this customer outside of the investigation. Furthermore, they speculate that POSCO continues to makes sales to this customer. Finally, they note that POSCO has stated that it expects to recoup some amount for the unpaid sales in bankruptcy court. *See Id.* at pg. 4.

Petitioners allege that the Department's classification of unpaid sales in the companion investigation of stainless steel sheet and strip in coils (''SSSS'') from the Republic of Korea was incorrect. Although petitioners agree with the Department's decision to recognize the cost of these unpaid sales, they maintain that there was no basis for the Department to treat the cost of these sales as an indirect selling expense. They argue that the weaknesses in the Department's argument is apparent when one considers the reality under which these sales were made. First, they explain that POSCO classified (incorrectly, in petitioners' judgement) all of its U.S. sales as export price sales. They note that by treating these unpaid sales as an indirect selling expense, there is absolutely no consequence when an importer is not paid for merchandise. Additionally, they charge that POSCO must bear attorney fees, collections fees, court fees, and the cost of producing the merchandise. They maintain that these are clearly direct expenses, for if not for the customer's bankruptcy, POSCO would not incur the aforementioned charges. Petitioners argue that the best analogy for the expenses associated with these unpaid sales is a warranty expense. They explain that if the customer determined that the merchandise was defective, and failed to pay under a warranty agreement, the cost of the merchandise would be deducted as a warranty claim, a direct selling expense, charged against sales. They state that in SSSS from the Republic of Korea, the Department defined direct selling expenses as ''a direct and unavoidable consequence of the sale (*i.e.*, in the absence of the sale these expenses would not be incurred).'' *SSSS* at pg. 140. Petitioners argue that the facts in this case demonstrate that the loss resulting from these unpaid sales are ''a direct and unavoidable consequence of the sale.'' Petitioners maintain that not only is there a clear, factual basis for treating these unpaid sales as a direct selling expense, but it is also the Department's policy to treat sales to a bankrupt customer as such, citing *CTVs from Korea.*

Additionally, petitioners allege that POSCO has failed to demonstrate that the cost of the unpaid sales are indirect selling expenses. Citing several cases, petitioners argue that Department precedent requires respondent to prove that the selling expenses incurred through sales to a bankrupt customer in the U.S. are indirect selling expenses. *See, e.g., Timken Co.* v. *United States,* 18 CIT 486,852 F.Supp. 1122, 1125 (1994); *Torrington Co.* v. *United States,* 17 CIT 672,832 F. Supp. 365,376,378 (1993) aff'd 68 F.3d 1347 (Fed. Cir. 1995); *Tapered Roller Bearings, Finished and Unfinished, and Parts thereof, from Japan: Final Results of Antidumping Duty Administrative Review,* 57 FR 4951, 4955 (Feb. 11, 1992). They maintain that in this case POSCO has only argued that these sales should be ignored.

In conclusion, petitioners argue that based on precedent which directs the Department to treat unpaid sales as direct selling expenses and the fact that POSCO has not demonstrated that the Department should treat these sales as indirect selling expenses, the Department must treat the cost of the unpaid sales as direct selling expenses for the final determination. Moreover, they maintain that the cost of these unpaid sales should be allocated to subject merchandise only. Citing *Smith Corona Group* v. *United States,* 1 Fed. Cir (T) 130, 713 F.2d 1568, 1577 (1983),

they argue that a broader allocation would be inappropriate.

Respondent argues that the Department properly excluded U.S. sales for which no payment was made. They note that because the material terms of sale were finalized when POSCO shipped the merchandise, they properly reported these transactions as U.S. sales, as required under 19 U.S.C. 1677a(a) (1998). They explain that POSCO requested that the Department exclude these sales on the basis that the credit period associated with these sales would distort POSCO's margin. Respondent argues that the Department has the discretion to exclude U.S. sales in an investigation when it finds that the sales are atypical, not part of the respondent's ordinary business practice, and would undermine the fairness of the comparison, citing *Final Determination of Sales at Less than Fair Value: Fresh Cut Roses from Columbia,* 60 FR 6980, 7004 (February 6, 1995); and *Final Determination of Sales at Less Than Fair Value: Professional Electric Cutting and Sanding/Grinding Tools from Japan,* 58 FR 30144, 30146 (May 26, 1993). Respondent adds that the reason for this discretion is that the initial cash deposit rate is intended as an estimate of future behavior, which should not be calculated on extraordinary or unusual circumstances. Finally, respondent alleges that petitioners' suggestion that the Department excluded the bankrupt sales on the basis that the sales were ''insignificant'' was incorrect.

Respondent contends that when it delivers merchandise to a customer, it expects to be paid. Furthermore, respondent adds that the Department verified that POSAM does not have an account for bad debts or unpaid sales and that POSCO officials had never before sold merchandise to the U.S. through U.S. Channel 2 to a customer that did not pay. Respondent claims that petitioners' analogy in which a customer receives a discount for high volume sales is misleading. They note that volume discounts are negotiated and voluntary terms of sale and, as such, represent a type of selling practice. They argue that it is not a selling practice of POSCO's to sell to customers that do not pay. Moreover, respondent notes that although it continues to sell to this customer, it does so on a pre-paid cash basis. *See* POSCO's October 22, 1998 submission at pg. 4. Thus, POSCO argues that under these extraordinary circumstances, the Department correctly exercised its discretion and excluded these sales from its margin analysis.

POSCO argues that the fact that it has not yet been paid for these sales does not alter their character from a sale to a bad debt. Citing several cases, they explain that in administrative reviews, the Department normally leaves unpaid sales in the database and applies a credit expense for the period the sales remain unpaid. *See Brass Sheet and Strip from Sweden, Final Results of Antidumping Administrative Review (''Brass Sheet and Strip''),* 60 FR 3617, 3621 (January 18, 1995); *Polyethylene Terephthalate Film, Sheet and Strip from Korea: Final Results of Administrative Review,* 60 FR 42835, 42839 (August 17, 1995); and *Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Administrative Review,* 57 FR 3167, 3173 (January 28, 1992). Also, respondent maintains that POSAM is in the process of collecting on unpaid invoices through bankruptcy proceedings and expects to be paid for these sales. *See POSAM Verification Report* at pg. 9. Respondent indicates that because POSCO has not accepted that payment will not be made on these sales, the Department cannot redefine these sales as bad debt.

However, respondent continues, even if these sales could be characterized as bad debt, they could not be treated as a direct selling expense. They argue that petitioners' reliance on *Color Televisions* is inapposite as it was an administrative review and the characterization of the bad debt was never in issue. POSCO contends that it is the Department's policy to treat recognized bad debt as an indirect selling expense, rather than a direct selling expense, citing *Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers from Colombia,* 52 FR 6842, 6850 (March 5, 1987); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea, 63 FR 40,404, 40406 (July 29, 1998);* and *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026, 19041 (April 30, 1996). Also, respondent notes that in the companion investigation of SSSS from the Republic of Korea, the Department classified the transfer cost of the unpaid sales as an indirect selling expense. Although respondent disputes the Department's characterization of these sales as bad debt, respondent maintains that the Department's logic was correct. Respondent adds that the cost incurred by POSAM, the transfer price, bears no direct relationship to any other sale, and that the cost would have been incurred even if POSCO made no other U.S. sales. Likewise, respondent maintains that had the sales been paid during the period of investigation, even petitioners would not suggest that the transfer price be deducted as a direct selling expense of those sales.

In conclusion, respondent argues that the Department should continue to exclude the bankrupt sales from its margin analysis as it did in the preliminary determination to avoid distortions to the margin. However, respondent maintains that in the event the Department determines that these unpaid sales should be treated as bad debt, the law mandates that the Department treat the cost of these sales as indirect selling expenses, as the Department did in the preliminary determination in the SSSS investigation.

Department's Position: We agree with petitioners in part. First, we find that the sales to the bankrupt customer for which payment was not received should be included in the margin analysis. In its U.S. sales file, POSCO reported the bankrupt sales as U.S. sales because the material terms of sale were final, as required under the statute. 19 U.S.C. 1677a(a) (1998). However, POSCO requested that the Department exclude these sales based POSCO's stated belief that payment could still be collected, and thus that the extensive credit period associated with the outstanding payment would distort its margin. It has been the Department's recent practice to calculate the credit period for sales not paid during the POI using the last day of verification as the date of payment. *See* Comment 8. We agree with POSCO, however, that employing such a methodology in this instance would be inappropriate, albeit for different reasons. In this case, the Department verified that POSAM had reversed the sales in its books at at year-end by issuing negative invoices to the customer for the unpaid merchandise in question. *See POSAM Verification Report* at pp. 8–9 and POSAM Verification Exhibit 5. Therefore, POSCO has effectively written-off the sales, its statements that it still expects payment notwithstanding. Consequently, the expense should be treated as bad debt.

It is the Department's practice to include sales which incur bad debt in the database and treat the bad debt as a direct selling expense when the expense is incurred on sales of subject merchandise. *See Color Televisions* at 4412. As stated above, at verification, the Department found that POSAM reversed the sales in its books at year-end by issuing negative invoices to the customer for the unpaid merchandise in

question. Thus, although POSAM does not maintain separate bad debt accounts, these sales have been effectively classified as a type of bad debt. Although we disregarded the sales in the preliminary determination, we find that the sales account for such a large percentage of POSCO's U.S. sales that they cannot be dismissed as abnormalities. Moreover, the price of the sales themselves is not necessarily distortive because, at the time they were made, POSCO was not aware that the customer would declare bankruptcy. Therefore, these sales must be included in the database. However, these sales led to a bad debt expense which is directly related to sales of the subject merchandise. *See, AOC International* v. *US*, 721 F. Supp. 314 (CIT 1989) and *Daewoo Electronics* v. *US*, 712 F. Supp. 931 (CIT 1989). For calculation, *see Analysis Memorandum*.

Comment 2. Date of Sale. Petitioners argue that both the Department's regulations and precedent recognize the Department's discretion in determining the appropriate date of sale. Moreover, they maintain that the facts of the record in this case clearly compel the Department to use order confirmation date as the date of sale. Moreover, citing *Budd Co.* v. *United States*, they contend that it would be an egregious error for the Department to convert orders that were agreed to at pre-currency-crisis prices using post-crisis exchange rates.

In its analysis of the sales examined by the Department during the verification, petitioners contend that some of the sales records contain documentation that is incomplete. For example, they cite documentation that is sparse, poorly copied, and either partially translated or not translated at all. They argue that without a complete record documenting the reasons for a material change in the terms of sale, they must assume that the change was part of the initial negotiations between the parties. Moreover, they maintain that it is incumbent upon the respondents to ''prove'' that the material terms of sale changed between the order date and the invoice date. Finally, with respect to changes in quantity, they allege that POSCO knew what the quantity shipped would be well before the actual shipment date. Additionally, petitioners maintain that orders are routinely filled using multiple invoices. In other words, an order for 75 metric tons may be filled with three separate shipments of 25 metric tons each. In any event, petitioners claim that without proof of agreed-upon quantity changes, the Department should examine only changes in price between the order date and invoice date.

Petitioners claim that where POSCO has provided adequate documentation, the record is clear that material terms of sale are set on order date, and that they do not change prior to shipment and invoice. They state that in all eight of the 13 U.S. sales where POSCO purportedly provided adequate documentation, it is clear that order date is the proper date of sale, and in five of the six home market sales with allegedly adequate sales documentation, it is clear that the terms of sale are set at order date.

POSCO responds that consistent with its regulations, the Department used invoice date as date of sale for both the U.S. and home market and thoroughly verified this issue during verification. POSCO maintains that at verification the Department verified that all POSCO's sales were subject to change between order date and shipment, verified the number of instances in which the materials terms of sale change during the POI, and verified that POSCO records invoice date as the date of sale in its records. POSCO explains that the Department's regulations state that ''in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice as recorded in the exporter or producer's records kept in the ordinary course of business.'' 19 CFR 351.401(i) (1998). POSCO acknowledges that the Department may use a date other than invoice date as date of sale if it ''is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' 19 CFR 351.401(i).

Respondent argues that the facts in this case do not warrant the Department using a date other than invoice date as the date of sale. Furthermore, respondent contends that petitioners' allegation that POSCO used the invoice date as date of sale due to the effect of exchange rates on margins is without merit. Although respondent disputes the fact that use of the invoice date requires that price and/or quantity change frequently between order date and invoice date, it maintains that there were a significant number of changes in the material terms of sale between order date and invoice date during the POI, citing POSCO's Sales Verification Exhibit 10; and *POSCO Sales Verification Report* at pg. 18. Also, with respect to petitioners' dismissal of the changes in quantity, respondent notes that it provided the Department with a breakdown of quantity changes by order, not shipment, as evidenced by the inclusion of contract number, line number, and shipment date for each transaction. POSCO argues that under these circumstances, the Department's rules and precedent support using invoice date as date of sale, citing *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 64 FR 2173, 2178 (January 13, 1999). With respect to petitioners' allegation concerning the incompleteness of the sales records, POSCO responds that the verification report included no mention of these problems cited by petitioners. Furthermore, POSCO maintains that ''the Department has no statutory obligation to verify why, in every instance, price and/or quantity changed.'' *See* POSCO's Rebuttal Brief at 16. Citing *Silicon Metal from Argentina; Final Results of Antidumping Administrative Review,* 58 FR 65336, 65340 (December 14, 1993), respondent notes that the Department is ''not required to verify every figure reported in the questionnaire response. The process of verification involves spot-checking and cross-checking the information that the Department selects for emphasis in analyzing each specific response.'' POSCO concludes that based on the evidence the Department examined at verification, the Department should continue to use date of invoice as its date of sale for the final determination.

Department's Position: We agree with respondent. At verification, the Department throughly reviewed POSCO's claim that there were a significant number of changes in the material terms of sale (*e.g.*, price, quantity, physical specifications) between invoice date and order date. Moreover, we find petitioners' contention that the record supports use of order confirmation date as date of sale to be without merit.

Under the Department's regulations, we normally use date of invoice as the date of sale. 19 CFR 351.401(i). However, we may use another date, such as date of order confirmation, if that date better reflects the date on which the material terms of the sale were established. In adopting this regulation, we explained that the purpose was, whenever, possible, to establish a uniform event which could be used as the date of sale. *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27348–49 (May 19, 1997). We further explained that we do not treat an initial agreement as establishing the material terms of sale between the buyer and seller when changes to such an agreement are common, even if, for a particular sale, the terms did not actually change. Consequently, our analysis focuses on whether changes are sufficiently

common to allow us to conclude that initial agreements should not be considered to finally establish the material terms of sale. As discussed in detail in the *Analysis Memorandum* (at pp. 1–3), a review of the sales documentation supports POSCO's contention that certain material terms of sale (*i.e.*, price and quantity) are subject to change until the invoice date. In their analysis of sales documentation, petitioners focus on the price information listed on POSCO's and POSTEEL's order sheet. However, as POSCO explained, when price and/or quantity change subsequent to the date the order sheet is originally generated, POSCO simply changes the price on the order sheet. The date, however, remains the same. *See* POSCO's response to section B and C of the Department's supplemental questionnaire at pp. 6–7, dated August 26, 1998. There is, therefore, at all times just a single order sheet with a single price, giving the impression of no change over time.

Accordingly, due to the limitations of the order sheet, POSCO developed a methodology to determine the percentage of price changes between order date and invoice date. For example, POSCO calculated the number of price changes for U.S. sales of subject merchandise by manually comparing the purchase order to the commercial invoice issued by POSTEEL/POSAM. *See Sales Verification Report* at pg. 18. Also, for home market sales, POSCO calculated price changes subsequent to the original order sheet up to the invoice date by comparing monthly shipping lists (for both plate and sheet). *See, e.g.*, Sales Verification Exhibit 10 at pp. 42–44. Finally, POSCO calculated quantity changes by comparing the quantity ordered to the amount shipped. In instances where the quantity shipped was outside of POSCO's internal tolerances (which are often greater than the industry standard of plus or minus ten percent) or outside of the industry standard, POSCO determined that the quantity ''changed'' between order date and invoice date. The Department verified the methodology employed by POSCO for calculating changes in material terms of sale and noted no discrepancies. *See Sales Verification Report* at pg. 18.

Furthermore, we note that petitioners have not commented on POSCO's methodology. Indeed, petitioners have ignored this part of the Department's verification in its analysis of the appropriate date of sale in this investigation. We find that the record evidence cited by petitioners in their analysis does not support their conclusion that date of order is the appropriate date of sale. A review of the sales documentation supports the Department's finding at verification (for the Department's analysis of the sales documentation on the record of this investigation, *see Analysis Memorandum* at pp. 1–3). Although we agree with petitioners that it is likely that POSCO knew some time before actual shipment date how much would be shipped, we note that petitioners have not proposed an alternative date to order date and invoice date. Also, we disagree with petitioners that respondent's methodology of calculating quantity changes is distortive, because (as we reviewed at verification) the ''changes'' are calculated based on a comparison of the quantity ordered to the total quantity shipped under that specific contract/line number. *See, e.g.*, Sales Verification Exhibit 6.

We also disagree with petitioners' arguments concerning the supposed incompleteness of the sales records. During the course of verification, it is normal for the Department to request additional information or documentation from a respondent. The sales verification of POSCO in this investigation was no exception. Had POSCO not provided the Department with the requested information or had the Department determined that the information provided was insufficient, this fact would have been duly noted in the verification report. In this case, the Department was satisfied as to the sufficiency of the information POSCO provided on the date of sale issue. We also note that because of the large number of documents examined during the course of verification, the Department does not necessarily take all documents viewed as verification ''exhibits''. Rather, the Department only takes copies of representative or particularly significant documents. Finally, we disagree with petitioners' assertion that the Department should have reviewed the reasons why changes in the essential terms of sale occurred. Nowhere in the Department's regulations, the statute, or Departmental practice is the cause of a change to an essential term of sale a relevant factor in determining the date of sale. Therefore, the reason for the change is immaterial to the Department's analysis; it is important that the terms of sale changed, not *why* they changed. Nevertheless, for several sales, the Department did review the cause for the material change in sale. *See, e.g.*, Sales Verification Exhibit 10 at pp. 5–6; POSAM Verification Exhibit 8; POSAM Verification Exhibit 9; and POSAM Verification Exhibit 10.

Therefore, based on the Department's findings at verification and the record evidence, the Department is satisfied that the date of invoice is the most appropriate measure of when POSCO establishes the material terms of sale. Accordingly, we have continued to use invoice date as the date of sale for the final determination.

Comment 3. Devaluation. Petitioners allege that the currency conversion methodology used by the Department in the preliminary determination does not adequately account for the sudden and dramatic drop in the value of the won during November and December 1997. Alternatively, petitioners propose that the Department calculate two, separate weighted-average price comparisons for each product under investigation; one for the first ten months of the POI, and another for the November-December period. Petitioners charge that failure to employ two comparison periods will result in the elimination of pre-existing dumping margins based solely on exchange rate changes, and not in any change in POSCO's pricing practice.

Petitioners argue that the statute and legislative history provide the Department with the authority to rely on multiple averaging periods. They maintain that section 777A (d)(1)(A) of the Act gives the Department the discretion to use varying methods for comparing prices in determining whether sales at less than fair value exist. Furthermore, they state that the SAA provides that in determining sales comparability for purposes of inclusion in a particular average, ''time is a factor which may affect the comparability of sales.'' SAA at 842–843. Finally, petitioners note that in its *Notice of Proposed Rulemaking and Requests for Public Comment*, 61 FR 7308, 7349 (February 27, 1996), the Department stated that it has the discretion to use abbreviated time periods when the NV, EP, or CEP prices included in an averaging group differ significantly over the course of the POI.

In this case, petitioners argue that when NV is converted to U.S. dollars in the first ten months of the POI, the effect of time is nominal. However, when NV is converted during the last two months of the POI, they maintain that NV is dramatically reduced. Petitioners contend that the Department has exercised its authority to rely on multiple averaging periods in prior cases, citing *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14064, 14069 (March 29, 1996) (''*Polyvinyl Alcohol*''). In *Polyvinyl Alcohol*, the respondent entered into long-term contracts at the

end of the POI which served to drastically lower NV during the last six weeks of the POI. In the instant case, the Department found that ''the change in selling practices enhanced the effect of time on price comparability'' and used separate averaging periods. *See Id.*

Petitioners maintain that the case for using separate averaging periods in this investigation is even more compelling than the comparison case given that the dramatic decline in NV is solely a result of the currency conversion methodology employed by the Department, not any action undertaken by POSCO. They assert that the influence of time on the margin calculation is further exacerbated by the fact that POSCO's cost for raw materials, which are increasing as the won depreciates, are combined with pre-crisis raw material costs. They speculate that were separate costs available for the two averaging periods, all November/December NV's would be below POSCO's increasing costs, and that dumping would be found on comparisons between POSCO's U.S. prices and constructed value prices for that same period. Furthermore, they note that although POSCO is likely lowering its U.S. prices during this period, no dumping was found under the Department's current conversion methodology.

Citing *Melamine Chem. Inc.* v. *United States,* 732 F.2d 924, 929–932 (Fed. Cir. 1984), petitioners note that the Courts have recognized that dumping margins should not be ''artificially'' created simply due to unforseen changes in the exchange rate. Likewise, petitioners argue that dumping margins should not be ''artificially'' eliminated due to unforseen changes in the exchange rate. They maintain that in similar situations the Department adjusted a respondent's costs to account for extraordinary events which occurred during the period of investigation or review. As an example, petitioners cite the case of *Floral Trade Council* v. *United States* in which the Court recognized that the Department could take into account ''extraordinary events'' that were, among other things, ''infrequent in occurrence'' (16 CIT 1014, 1016–17 (1992)). They also note that the Department has made adjusts for extraordinary events in cases such as *Newspaper Presses from Japan. See Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Presses and Components Thereof, Whether Assembled or Unassembled, from Japan,* 61 FR 38139, 38153 (July 23, 1996). Also, petitioners state that these adjustments have included altering the period of investigation to account for extraordinary events. *See, e.g., Final Determination of Sales at Less Than Fair Value: Fresh Kiwi Fruit from New Zealand,* 57 FR 13695, 13697 (April 17, 1992); *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Antidumping Investigation of Color Negative Photographic Paper and Chemical Components Thereof from the Netherlands,* 59 FR 15,181, 16,192 (April 6, 1994). Finally, petitioners argue that the Department has consistently recognized and attempted to mitigate the effects of severe currency devaluation. They explain that in *Industrial Nitrocellulose from Brazil,* the Department accounted for the hyperinflation present during the period of investigation by calculating a separate foreign market value for each price list period. *See Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from Brazil,* 55 FR 23120 (June 6, 1990). They also note that in *Fresh Cut Flowers from Columbia,* the Department revised its methodology to account for the ''devaluation of the Colombian currency.'' *See Certain Fresh Cut Flowers from Colombia: Final Results and Partial Recission of Antidumping Duty Administrative Review,* 62 FR 53287, 53297 (October 14, 1997). Acknowledging that the facts in this investigation are not identical to the facts in the cases cited, petitioners state that these cases demonstrate the Department's authority, under section 777 A(d)(1)(A) of the Act, to use a variety of methods to compare prices to determine whether sales at less than fair value exist, citing 19 U.S.C. 1677f-1(d)(1)(A).

In closing, petitioners argue that were it not for the rapid and unexpected devaluation of the won, POSCO's level of dumping would have been the same during the November and December 1997. They contend that the Department not only has the authority, but also the obligation, to rely on an alternative method to calculate dumping margins to ensure a fair result. They urge the Department to use two separate averaging periods to calculate dumping margins.

POSCO rebuts petitioners' assertion that the Department incorrectly applied its exchange rate policy in this case. POSCO maintains that petitioners' suggestion of an alternative comparison period is inapposite. POSCO explains that in addition to accounting for large fluctuations in the currency, the policy on currency conversion was also designed to ''ensure that all exporters, when they set their U.S. prices and whether under order or not, can know with certainty the daily exchange rate the Department will use in a dumping analysis.'' See Policy *Bulletin 96–1 Currency Conversions,* 61 FR 9434 (March 8, 1996). Respondent argues that the facts in this case do not warrant the use of an adjusted comparison period. In addition, POSCO contends that the use of an alternative comparison period would eliminate the certainty created under currency conversion policy and result in artificial, exchange-rate based margins. Citing the Department's regulations, respondent maintains that the Department's policy is to establish an average price for all comparable sales across the entire period of investigation. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27473.

POSCO notes that in certain cases it is within the Department's discretion to use shorter comparison periods when prices or costs vary significantly over the twelve-month POI. However, citing the preliminary determination in *Certain Preserved Mushrooms from Indonesia,* respondent argues that the Department does not vary the averaging period due to exchange rate fluctuations alone. *See Notice of Preliminary Determination of Sales at Less Than Fair Value Postponement of Final Determination: Certain Preserved Mushrooms from Indonesia* (''*Mushrooms*''), 63 FR 41783, 41785 (August 5, 1998). POSCO explains that the Department distinguished *Mushrooms* from *Polyvinyl Alcohol* based on the fact that in *Polyvinyl Alcohol,* ''the respondent changed the way it conducted business with its principal home market customers, including its price structure, while at the same time, U.S. prices and input cost trends moved in tandem.'' *See Id.* at 41785. As in *Mushrooms,* POSCO claims that petitioners have provided no evidence for, nor alleged, that POSCO changed its business practice or pricing structure during the POI. Also, POSCO argues that the cases cited by petitioners in their defense are not relevant to this case. For example, in *Kiwi Fruit* and *Color Negative Photographic Paper,* the issue concerned the appropriate period of review to use. Additionally, respondent notes that *Industrial Nitrocellulose from Brazil* was a pre-URAA case and, in any event, the economy was hyper-inflationary and the exchange rate was controlled by the government. Finally, POSCO maintains that in *Flowers from Colombia* there was never an issue of averaging periods. In closing, respondent argues that the Department has already developed a clear policy to address large and precipitous declines in the value of home market currencies and should continue to apply its currency

conversion policy to the facts of this case, using daily exchange rates for the November and December 1997 period.

Department's Position: We have continued to use daily exchange rates in this case, for the reasons explained in the preliminary determination. However, we agree with petitioners that separate averaging periods should be used. Under section 777A(d)(1)(A) of the Act, the Department has wide latitude in calculating the average prices used to determine whether sales at less than fair value exist. More specifically, under 19 CFR 351.414(d)(3), the Department may use averaging periods of less than the POI when normal value, export price, or constructed export price varies significantly over the POI. In the instant case, NV (in dollars) in the last two months of the POI differs significantly from NV earlier in the POI due primarily to a significant change in the underlying dollar value of the won. In this case, the change is evidenced by the precipitous drop in the won's value that began in November 1997 and continued through the end of the POI, without a quick, significant rebound. In the span of two months, the won's value decreased by more than 40 percent in relation to the dollar. Consequently, it is appropriate to use two averaging periods to avoid the possibility of a distortion in the dumping calculation. Moreover, we disagree with respondent's claim that the use of averaging periods is dependent upon a change in a respondent's selling practices. In the final determination of certain preserved mushrooms from Indonesia, the Department stated that ''in addition to changes in selling practices, we believe that we should also consider other factors, such as prolonged large changes in exchange rates, in determining whether it is appropriate to use more than one averaging period.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia,* 63 FR 72268, 72272 (December 31, 1998). Therefore, we have used two averaging periods for the final determination: January through October and November through December, 1997.

Comment 4 EP vs. CEP. Petitioners argue that Department should re-classify U.S. sales involving POSAM (i.e., U.S. Channel 2 sales) as CEP sales. They contend that it is indisputable that the activities performed by POSAM meet the criteria the Department has used for evaluating whether a U.S. subsidiary's involvement rises to the level of CEP classification for U.S. sales. Petitioners state that the Department has classified sales as CEP sales when the following criteria are met: (1) The U.S. subsidiary was the importer of record and took title to the merchandise; (2) the U.S. subsidiary financed the relevant sales transactions; (3) the U.S. subsidiary arranged and paid for further processing; and (4) the U.S. subsidiary assumed the seller's risk, citing *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 51882, 51885 (October 4, 1996); and *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results,* 62 FR 18404 (April 15, 1997) (''*Carbon Steel from Korea*''). Additionally, petitioners note that in *Extruded Rubber Thread from Malaysia,* the Department determined that the sales in question were CEP sales, despite not being entered into a U.S. affiliate's inventory, when the U.S. sales force contacted the U.S. customer, negotiated sales terms, arranged for production and shipment, and issued final invoices and collected payment. See *Extruded Rubber Thread from Malaysia: Final Results of Antidumping Duty Administrative Review,* 63 FR 12752 (March 16, 1998). Petitioners also point to several other cases where the Department re-classified respondent's U.S. sales as CEP transactions because significant selling functions were performed in the United States. *See, e.g., Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany: Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 47446, 47448 (September 9, 1997); *Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Brake Drums and Brake Rotors from the People's Republic of China,* 61 FR 53190, 53194 (October 10, 1996); *Certain Cut-to-Length Carbon Steel Plate From Germany: Final Results of Antidumping Duty Administrative Review,* 62 FR 18390, 18392 (April 15, 1997); and *Sebacic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 62 FR 10530, 10532 (March 7, 1997).

Furthermore, petitioners argue that based on the record evidence obtained, the Department should infer that POSAM is involved in setting U.S. prices. They claim that POSTEEL would not provide POSAM with quarterly price guides if POSAM were not meant to have at least some autonomy in day-to-day negotiations with customers, citing *POSAM Verification Report* at pg 7. Moreover, they argue that even if the Department remains unconvinced that POSAM sets prices, involvement in setting prices is not the only criterion for classifying a sale as CEP. Petitioners maintain that such activities as making contact with the U.S. customer, contacting the factory to arrange for production and shipment, and issuing the final invoice to, and collecting payment from, the customer all indicate that sales through POSAM are CEP transactions. Also, petitioners assert that the mere existence of a U.S. based subsidiary is itself a strong indicator that the activity of the sales force must be considered significant. Finally, petitioners propose that the Department adjust POSAM's indirect selling expenses for POSAM's sales to affiliates. Petitioners have provided this calculation on pages 40–41 of their case brief, dated January 26, 1999.

Respondent contends that the Department's classification of POSCO's U.S. sales through POSAM as EP sales in the preliminary determination was correct. Respondent argues that the EP classification is supported by the verified record evidence and is consistent with the Department's recent determination in *Stainless Steel Wire Rod from Korea* that U.S. sales through POSAM were properly classified as EP sales. *See* Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea (''*Stainless Steel Wire Rod*''), 63 Fr 40404, 40417–40418 (July 29, 1998). Respondent contends that in Stainless Steel Wire Rod, POSAM's role in sales from Changwon, a POSCO affiliate, was identical to its role in subject sales from POSTEEL. Furthermore, respondent notes that petitioners have failed to distinguish the wire rod determination from this determination.

Respondent argues that it has met the conditions of the three-prong test used by the Department in determining whether U.S. sales made by an affiliated U.S. importer prior to importation should be classified as EP or CEP sales. With respect to the first two criteria, respondent maintains that it is undisputed that POSCO's sales through POSAM were shipped directly from the manufacturer to the unaffiliated U.S. customer and that is the customary channel of distribution for U.S. sales. *Citing Preliminary Determination* at 59538. Finally, with respect to the final criterion, respondent contends that evidence on the record and verified by the Department demonstrates that POSAM's selling functions were limited to that of a processor of sales-related documentation and a communications link with POSCO's unaffiliated U.S. customer.

Respondent states that for U.S. sales through POSAM, POSTEEL determined price and terms of sale and performed all sales-related activities (with the exception of arranging for U.S. freight for certain delivered sales and extending credit for certain transactions). Citing *Groundwood Paper from Belgium,* respondent notes that the fact that an affiliated U.S. company quotes prices to U.S. customers on behalf of its affiliated exporter does not lead to CEP designation of the sale. See *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Belgium,* 56 FR 56359, 56362 (November 4, 1991). Respondent also argues that the Department has determined that ''identifying and maintaining contact with customer'' is not sufficient in and of itself to warrant CEP treatment of a sale. *See Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland,* 56 FR 56359, 56363, 56371 (November 4, 1991); *see* also, *Stainless Steel Wire Rod* at 40417–19. Challenging petitioners' argument that the post-importation services performed by POSAM (*i.e.,* collecting payment and arranging for U.S. inland freight) are significant enough to warrant CEP treatment of the sales, respondent states that the Department has found that a branch office whose functions include ''receiving orders, preparing and executing order confirmations, invoices, packing lists, and other sales-related documentation, and receiving and processing payments from customers,'' was not so substantial to conclude that it was more than a processor of documents or communications link. *See Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia,* 57 FR 38465, 38469 (August 25, 1992); *see* also, *Stainless Steel Wire Rod* at 40417–19. Additionally, respondent asserts that the Department has never classified a sale as CEP based on the U.S. affiliate's status as importer of record, citing *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from France,* 56 FR 56384; *E.I. DuPont de Nemours & Co.* v. *United States,* 841 F. Supp. 1237, 1249–1250 (Ct. Int'l Trade 1994); *Independent Radionic Workers of America,* 19 CIT at pg. 375; and *Stainless Steel Wire Rod* at 40419. Finally, respondent disputes petitioners' contention that existence of a U.S.-based subsidiary is enough to warrant CEP treatment, and states that petitioners have greatly overstated the size and significance of POSAM.

Department's Position: We agree with petitioners that sales through POSAM are more appropriately treated as CEP transactions. Although the facts in this investigation are similar to the facts in the stainless steel wire rod determination cited by respondent, there are several significant differences on the record of the present case which lead the Department to change its decision from the preliminary determination and conclude that POSCO's U.S. sales through POSAM warrant classification as CEP sales.

The Department treats sales through an agent in the United States as CEP sales, unless the activities of the agent are merely ancillary to the sales process. Specifically, where sales are made prior to importation through a U.S. based affiliate to an unaffiliated customer in the United States, the Department examines several factors to determine whether these sales warrant classification as EP sales. These factors are: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of the affiliated selling agent; (2) whether this sale is the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. selling agent are ancillary to the sale (*e.g.,* arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.,* negotiating prices), we treat the transactions as CEP sales. *See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review,* 62 FR 18389, 18391 (April 15, 1997); *Mitsubishi Heavy Industries* v. *United States,* Slip Op. 98–82 at 6 (CIT, June 23, 1998).

We note that neither party has disputed that POSCO's U.S. sales through POSAM meet the first two criterion of the Department's standard. Therefore, the determining factor in this case is the degree of involvement by POSAM in the sales process. In the preliminary determination, the Department based its EP classification of sales through POSAM on POSCO's statement that POSTEEL determined price and terms of sale. However, in our preliminary determination, we noted that we would conduct an in-depth examination of the most appropriate classification of POSCO's U.S. sales through POSAM (*i.e.,* CEP versus EP) at verification. *See Preliminary Determination* at 59538.

Although it is clear that POSTEEL performs many selling activities for U.S. sales through POSAM, including undertaking business trips to meet with potential U.S. customers of the subject merchandise (*see* Sales Verification Exhibit 17), the record contradicts POSCO's assertion that POSAM is merely a processor of sales-related documentation. First, POSAM is the first and only point of contact for the U.S. unaffiliated customer. POSAM officials explained that because of the time zone difference and the cost of long distance, it would be expensive and inconvenient for the customer to contact POSTEEL directly. *See POSAM Verification Report* at pg. 6. While a U.S. affiliate may act as a communications link without transforming the sales into CEP, POSAM acts as more than a conduit between the unaffiliated U.S. customer and POSTEEL.

Also, as demonstrated by the unpaid sales to the bankrupt customer, POSAM incurs the ''seller's risk'' for U.S. Channel 2 sales. The record indicates that it was POSAM, not POSTEEL, who incurred the cost of the unpaid sales, as POSAM pre-pays POSTEEL. *See POSAM Verification Report* at pg. 9. Moreover, it is POSAM, not POSTEEL, who is responsible for collecting payment from the customer through bankruptcy proceedings. Bearing such financial risk is indicative of a seller, not a mere facilitator. This selling arrangement between POSAM and POSTEEL differs from the one between POSAM and Changwon, addressed in *Stainless Steel Wire Rod,* where the ''U.S. customers remit payment to POSAM, which subsequently transfers the payment to POSTEEL, which, in turn, transfers it to Changwon.'' *See Stainless Steel Wire Rod* at 40419 (emphasis added). In addition, for one of the five sales examined by the Department during the POSAM verification, we found that POSAM was given discretion in adjusting the price of the sale. *See POSAM Verification Report* at pg. 5 and POSAM Verification Exhibit 10. Thus, although POSAM is not independent from POSTEEL, we believe that the record evidence shows that it has sales negotiating authority, at least in some instances.

Therefore, because of the significant risk incurred by POSAM in addition to its other selling activities, we find that POSAM's activities are more than ancillary to the sales process and have classified POSCO's U.S. sales through POSAM as CEP transactions. We note that the Department's classification of

POSCO's U.S. sales through POSAM as CEP transactions is consistent with the Department's decision in the third review of carbon steel flat products from Korea. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170, 13182–83 (March 18, 1998). Additionally, we disagree with petitioners that the reported indirect selling expenses for POSAM should be adjusted. Petitioners have not stated that POSCO's calculation was incorrect or is in any way distortive. We verified POSCO's calculation of POSAM's indirect selling expense at verification and noted no discrepancies. *See POSAM Verification Report* at pp. 5–6. Thus, for CEP sales, we have deducted an amount for indirect selling expenses incurred in the United States using POSCO's reported indirect selling expense for POSAM.

Comment 5. Affiliated Party Purchases. Petitioners argue that POSCO's purchases from affiliated parties should be valued at the higher of transfer price, the affiliate's COP, or market value. Petitioners listed five specific examples where the affiliate's COP was higher than the transfer price for the particular item purchased. Petitioners cite 19 U.S.C. 1677b(f)(3) as the basis for valuing the major input at the higher COP amount. 19 U.S.C. 1677b(f)(3) states, ''If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production.''

POSCO argues that the price paid to the affiliated parties represents an arm's length transaction and the purchases do not qualify as major inputs. POSCO contends that prices for alloys are governed by the international market rather than by affiliation. According to POSCO, at verification the Department had the opportunity to compare the transfer price to the market price and concluded that there were minimal or no differences between the prices charged by affiliated and unaffiliated suppliers. Any differences between the price charged by the affiliate and the cost of that affiliate are connected with the world market and not with affiliation. POSCO asserts that no adjustment is necessary because, on average, it paid its affiliated suppliers a higher price than it paid to its unaffiliated suppliers. Furthermore, the impact on the cost of production would be so minor as to have virtually no effect on the final cost of production.

Department's Position: We agree with petitioners in part. In accordance with section 773(f)(3) of the Act, we have treated as major inputs materials that both were purchased from affiliated suppliers in significant quantities and represented a significant portion by value of the per-unit cost of SSPC. Accordingly, we have applied the higher of the materials' transfer price, cost of production or market value. Therefore, we have treated ferroalloys as major inputs and adjusted costs to reflect the higher of the input's cost, market price, or transfer price. In accordance with section 773(f)(2) of the Act, when the materials supplied by affiliated parties were not major inputs, we only compared transfer price to market price, when market price was available and cost was not necessary to establish market price. In this case, the relatively large percentage of purchases from unaffiliated suppliers, the relatively small percentage of the elements' value to the per-unit cost, and the relatively small difference between transfer price and market value, rendered any adjustment to cost insignificant. Moreover, our analysis (*see Cost Analysis Memorandum*) shows that on average the transfer price and market value for purchases from these affiliated and unaffiliated suppliers were comparable.

Comment 6. Credit Expense. Petitioners maintain that POSCO improperly excluded U.S. dollar denominated usance loans from its calculation of the home market interest rate. They argue that the Department should recalculate the home market interest rate. Also, petitioners state that if the Department uses the short-term interest rate provided by POSCO in determining the short-term interest rate for U.S. sales through POSTEEL, the Department should recalculate the interest rate based on the average monthly balance. Petitioners contend that POSCO's method of calculating its interest rate is only reasonable when a loan balance remains fairly constant; however, it will overstate the interest rate when the balance is declining and understate the interest rate when the balance is increasing. In their rebuttal brief, petitioners provide the calculation of POSTEEL's interest rate based on the average monthly loan balance. *See* Petitioners' Rebuttal Brief at pp. 4–6.

Respondent argues that it calculated its short-term interest rates for U.S. and home market sales in accordance with the Department's policy, citing *Import Administration Policy Bulletin 98–2* (February 23, 1998). POSCO notes that the home market interest rates submitted for POSCO (HM Channel 1) and POSTEEL (HM Channel 2) were based on the short-term, Korean won borrowings of each company during the POI. POSCO notes that U.S. market interest rates submitted for POSTEEL (U.S. Channel 1 and 3) and POSAM (U.S. Channel 2) were based on short-term, U.S. dollar denominated loans. Additionally, respondent states that at verification the Department confirmed that the short-term interest rate for U.S. sales through POSTEEL was denominated in U.S. dollars, citing *Sales Verification Report* at pg. 15.

Department's Position: We agree with respondent. The Department's stated policy on imputed credit expenses and interest rates is to ''use a short-term interest rate tied to the currency in which the sales are denominated.'' *See Policy Bulletin 92–2* at pg. 6, dated February 23, 1998, which is an attachment to the *Analysis Memorandum*. During its verification of POSCO, the Department confirmed that the interest rates calculated by POSCO were based on short-term loans denominated in the currency in which the sales were made. *See, e.g., Sales Verification Report* at pp. 14–15 and Sales Verification Exhibit 40 and 41.

Also, we disagree with petitioners' argument that POSCO's calculation of POSTEEL's U.S. interest rate is distortive (*see Analysis Memorandum*). At verification, the Department confirmed that, in its normal course of business, POSCO records the monthly ending balance of its short-term borrowings. *See, e.g.,* Sales Verification Exhibit 39 and 40. Based on this and other information that is business proprietary, we find respondent's methodology of calculating POSTEEL's interest rate to be reasonable and have accepted respondent's reported credit expense for U.S. Channel 1 and 3 sales. For a further discussion of this issue, *see Analysis Memorandum*.

Comment 7. Indirect Selling Expenses. Petitioners argue that the Department should adjust POSCO's reported home market indirect selling expenses by allocating the indirect selling expense over sales both to affiliated and unaffiliated parties. Citing the Department's verification report, petitioners note that POSCO has excluded sales to affiliated parties from the denominator of its calculation of the home market indirect selling expense ratio. *See Sales Verification Report* at pg. 15. They state that if the Department

finds that POSCO misreported its home market indirect selling expense ratio or provided an incomplete record it should recalculate POSCO's indirect selling using information on the record of this investigation.

Respondent states that it reported all domestic selling expenses incurred during the POI, and allocated those expenses over the related sales. Respondent maintains that the domestic sales divisions do not ''sell'' to affiliated customers, but on the contrary, the affiliated customers are used as an extension of POSCO's sales division. As an example, respondent notes that the large majority of sales of the subject merchandise during the POI were made to POSTEEL, and that POSCO's involvement in POSTEEL's sales is limited to receiving the order and producing the merchandise. Thus, respondent continues that the focus of the domestic sales divisions is sales to unaffiliated customers and, by extension, the expenses incurred by those divisions are on sales to unaffiliated customers. Finally, respondent maintains that their allocation methodology is reasonable.

Department's Position: We agree with petitioners. At verification, POSCO provided no material support for its claim that sales to affiliated parties (*e.g.*, POSTEEL) should be excluded from the denominator of its home market indirect selling expense calculation other than to state that it ''would not waste resources'' on sales to affiliates. *See* Sales Verification Exhibit at pg. 15. Moreover, we note that it is standard Departmental practice to allocate indirect selling expenses over all sales. For its U.S. sales, POSCO has calculated the indirect selling expense ratio consistent with this methodology. *See* Sales Verification Exhibit 41 and POSAM Verification Exhibit 6. Additionally, at least some of the selling expenses reported by POSCO as indirect (*i.e.*, payroll) are associated with sales to affiliates and non-affiliates. Therefore, we have recalculated POSCO's reported indirect selling expense for HM Channel 1 sales by including POSCO's sales to affiliates. For calculation, *see Analysis Memorandum.*

Comment 8. Unpaid U.S. Sales. Petitioners argue that POSCO should not be permitted to estimate payment dates when payment has not been made. Citing *Sales Verification Report* at pg. 2. They advocate that the Department apply an adverse inference regarding the payment date for any unpaid sales.

POSCO responds that there is no basis on which to apply adverse inferences. Respondent explains that as it indicated to the Department during verification, it used the first day of verification as the payment date for the small portion of two sales that remained outstanding as of verification. *Citing Sales Verification Report* at pg. 2 and Sales Verification Exhibit 1. POSCO argues that this approach is consistent with the Department's normal treatment of unpaid sales. *Citing Stainless Steel Wire Rod from Japan,* 63 FR 40434, 40448 (July 29, 1998).

Department's Position: We disagree with respondent and petitioners. As noted by respondent, for the two sales which remained partially unpaid, POSCO did not estimate payment dates, but rather used the date of first date of the sales verification. However, the Department's recent practice regarding this issue has been to use the last day of verification as the date of payment for all unpaid sales. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Italy,* 62 FR 40422, 40428 (July 29, 1998); *Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review (''Extruded Rubber Thread from Malaysia*''), 63 FR 12752,12757 (March 16, 1998); and *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909 (February 23, 1998). Therefore, for the final determination, we are applying the last day of the U.S. sales verification (November 20, 1998) as the date of payment for the two unpaid U.S. sales. For the calculation of the credit period for these sales, *see Analysis Memorandum,* dated March 19, 1999.

Comment 9. Sales of Non-Prime Merchandise. Respondent argues that the Department should distinguish between prime and non-prime merchandise for purposes of the cost test and margin analysis in the final determination. Respondent maintains that it is the Department's policy to differentiate between prime and non-prime merchandise in its analysis. Citing *Memorandum from Roland L. MacDonald to Joseph A. Spetrini,* dated April 19, 1995 (''*Carbon Steel Memorandum*'') and *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands* (''*Carbon Steel from the Netherlands*)'', 61 FR 48465, 48466 (September 13, 1996). A copy of the *Carbon Steel Memorandum* is an attachment to a *Memorandum to the File from Carrie Blozy,* dated March 19, 1999.

Petitioners support the Department's decision to ''collapse'' sales of prime and non-prime merchandise for purposes of the cost test. They note that in *Carbon Steel from the Netherlands,* the Department stated that it continues to follow *IPSCO* and that prime and secondary merchandise incur identical costs. See Id. at 48461–67. Moreover, in *Extruded Rubber Thread from Malaysia,* petitioners note that the Department stated that it is not its practice to distinguish prime and non-prime merchandise for the cost test. *See Extruded Rubber Thread from Malaysia at 12757.*

Department's Position: We agree with respondent. As noted in the *Carbon Steel Memorandum,* ''separating prime and seconds for the cost test has the benefit of facilitating an untainted analysis of the majority of sales (prime merchandise).'' *See Carbon Steel Memorandum* at pg. 4. Consistent with *Carbon Steel from the Netherlands* and *IPSCO,* in this case, POSCO has reported the same cost of production for sales of prime and non-prime merchandise. *See* Cost of Production Sales Listing which is attached to POSCO's December 17, 1999 submission. However, we do not regard prime and non-prime merchandise as identical. Finally, we note that the *Extruded Rubber Thread from Malaysia* case cited by petitioners has been taken out of the context in which it was made. The language quoted by petitioners merely states that the Department, consistent with the IPSCO case, calculated the same costs for prime and non-prime merchandise. However, while using the same costs, consistent with the *Carbon Steel Memorandum,* in *Extruded Rubber Thread from Malaysia,* the Department ran separate cost tests for prime and non-prime merchandise in order to avoid distortions. Thus, for the final determination, we have used POSCO's reported control numbers (which differentiate between prime and non-prime merchandise) in our margin analysis.

Comment 10. Local Letter of Credit Sales. POSCO argues that the Department should include local letter of credit sales (''local sales'') in its calculation of normal value. Also, respondent maintains that its calculation of normal value should be based on the U.S. dollar price at which the local sales were invoiced. Respondent states that local customers pay POSCO in Korean won based on the U.S. dollar invoiced price. Moreover, respondent notes that it reported the U.S. dollar price for local sales consistent with the Department's requirements and practice. Respondent explains that in *Fresh Cut Roses from Colombia,* the respondent also invoiced home market sales in U.S. dollars but like POSCO, received payment from the

customer in the home market currency, pesos in that case. *See Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia* (''*Fresh Cut Roses from Colombia*''), 60 FR 6980, 7006 (February 6, 1995). POSCO states that in this case, the Department accepted the U.S. prices for the calculation of normal value. *See Id*. Respondent contends that not using the U.S. dollar value in its calculation of normal value in this investigation could have a potentially significant distortive effect on the margin.

Although petitioners' support the inclusion of local sales in the analysis, they object to POSCO's request to use nominal dollar prices for home market customers. Instead, they recommend that the Department use the won price that the customers actually pay. They argue that it would be bad policy to use nominal prices in the margin analysis. Further, they continue that even if the Department were to find that in some instances use of the nominal price is warranted, the facts in this case do not support such a methodology. Petitioners allege that the *Fresh Cut Roses from Colombia* case cited by POSCO differs from this case in several important aspects. Specifically, in *Fresh Cut Roses from Colombia:* (a) The effect of inflation in Colombia was being taken into account in the Department's cost of production analysis and costs were being converted to dollars; (b) the Department stated that it had verified that the payments in pesos had reflected the prevailing dollar/peso exchange rates at the time of payment; and (c) all home market sales were invoiced in dollars and paid in pesos. *See Fresh Cut Roses from Colombia* at 6980. In contrast, they note that in this case the Department has not accounted for the effects of inflation on POSCO's costs and prices. Also, they state that the Department did not verify whether the exchange rates used were proper. Finally, they note that in this case, home market sales were also quoted in won. Therefore, because the Department has not accounted for inflation and did not verify the dollar won exchange rates used, petitioners argue that POSCO's dollar prices are meaningless because POSCO's customers pay in won.

Department's Position: We agree with both parties that local sales should be included in the margin analysis. At verification, the Department found that local sales were made to end-users and, as such, must be properly considered as home market sales. Accordingly, these sales should be accounted for in our margin analysis. However, we disagree with respondent that the Department should use the U.S. dollar invoiced price for the purposes of calculating normal value. Based upon the facts of the record, as discussed below, we find that it is more appropriate to use the won price in which the customer pays.

For HM sale number 1, POSCO provided an internal document which shows the exchange rates used by POSCO to convert U.S. dollar prices into Korean Won prices for the month of November 1997. *See* Sales Verification Exhibit 6. The record indicates that although customers are invoiced in U.S. dollars (for HM Channel 2 sales the shipping invoice also shows the won price), the customer pays in won, not U.S. dollars, and the sales value of the merchandise is charged to the sales ledger in won, based on the aforementioned exchange rate. See Id. Moreover, a comparison of the internal exchange rate used by POSCO to the market exchange rate used by the Department shows that the two exchange rates are quite dissimilar (*see Analysis Memorandum*). We note that this is in contrast to *Fresh Cut Roses from Colombia* in which the Department verified that the payment in pesos reflected the market exchange rate at the time of payment. See *Fresh Cut Roses from Colombia* at 6980. Therefore, for the final determination, we have used the won price for home market local sales.

Comment 11. Date of Sale—U.S. Channel 2. Petitioners allege that POSCO improperly reported POSTEEL's invoice to POSAM as the date of sale for U.S. Channel 2 sales. They maintain that the use of the date of POSTEEL's invoice to POSAM is incorrect because the price is a transfer price on an intra-company transaction. Conversely, they argue that it is the date on POSAM's invoice to its customer that controls whether a transaction was invoiced during the POI. Finally, they contend that to the extent that any U.S. sales were not reported based on POSCO's reporting of date of sale for U.S. Channel 2 sales, the Department should apply adverse facts available to the unreported quantity.

POSCO maintains that it properly used the date of POSTEEL's invoice to POSAM as the date of sale for U.S. Channel 2 sales because the material terms of sale were finalized upon shipment to the customer. Furthermore, respondent argues that it is the Department's well-established practice that the date of sale must precede or be equal to the date of shipment, citing *Certain Cold-Rolled and Corrosion Resistant Carbon Flat Products from Korea,* 63 FR 13170, 13172–3. POSCO notes that the date of shipment to the unaffiliated customer is the date that the merchandise left the Korean port of exportation for delivery to the unaffiliated U.S. customer. Moreover, respondent alleges that petitioners have ignored the statutory definition of export price and the Department' definition of date of sale.

Department's Position: We agree with petitioners. As noted in Comment 4, the Department has classified POSCO's U.S. sales through POSAM as CEP sales. Therefore, for U.S. Channel 2 sales we have used the date of POSAM's invoice to the unaffiliated customer as the date of sale.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from the Republic of Korea, that are entered, or withdrawn from warehouse, for consumption on or after November 4, 1998 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Pohang Iron & Steel Co., Ltd. ..	16.26
All others	16.26

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7533 Filed 3–30–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–830]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Canada

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

EFFECTIVE DATE: March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0405 or (202) 482–3833, respectively.

Applicable Statute and Regulations

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 of Commerce (''Department'') regulations are to the regulations at 19 CFR part 351 (1998).

Final Determination

We determine that Stainless Steel Plate in Coils (''SSPC'') from Canada is being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the Suspension of Liquidation section of this notice.

Case History

The preliminary determination in this investigation was published on November 4, 1998. *See* Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Canada, 63 FR 59527 (November 4, 1998) (''Preliminary Determination''). On November 5, 1998, Atlas Stainless Steels (''Atlas'') requested a postponement of the final determination to 135 days after publication of the preliminary determination and an extension of the provisional measures to no more than six months, pursuant to 19 CFR 351.210(b)(2)(ii) and 351.210(e)(2). Because our preliminary determination was affirmative, and Atlas is a producer/exporter that accounts for a significant proportion of exports from Canada of the subject merchandise, the Department postponed the final determination until March 19, 1999. Notice of postponement was published in the **Federal Register** on December 18, 1998. *See* Postponement of Final Antidumping Determinations: Stainless Steel Plate in Coils from Canada, Italy, Republic of Korea, South Africa and Taiwan, 63 FR 70101.

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this investigation are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1 through December 31, 1997.

Facts Available

In the Preliminary Determination, the Department based the margin on facts otherwise available under section 776(a)(2) of the Act because Atlas refused to respond to the Department's cost questionnaire. The Department also used an adverse inference under section 776(b) of the Act and used the highest rate alleged in the petition because Atlas did not cooperate to the best of its ability. Since then, no interested parties have provided comments on the Preliminary Determination and no request for a hearing has been received by the Department. Therefore, we are continuing to use as adverse facts available the highest rate alleged by petitioners.

The All Others Rate

The foreign manufacturer/exporter in this investigation is being assigned a dumping margin on the basis of adverse facts available. Section 735(c)(5) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated All Others rate for exporters and producers not individually investigated. Therefore, consistent with the Statement of Administrative Action (''SAA'') at 873, we are using an alternative method to establish the estimated All Others rate. In the Preliminary Determination, as an alternative, we based the All Others rate on a simple average of the margins in the petition. We received no comments on this issue, and therefore continue to use this basis for the final determination. As a result, the All Others rate is 11.10 percent.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of SSPC from Canada, that are entered, or withdrawn from warehouse, for consumption on or after November 4, 1998 (the date of publication of the preliminary determination in the **Federal Register**). We will instruct the Customs Service to require a cash deposit equal to the percentage margins, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows: