DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France

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

EFFECTIVE DATE: June 8, 1999.

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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, adopted at 62 FR 27296 (May 19, 1997).

Final Determination

We determine that stainless steel sheet and strip in coils (''SSSS'') from France 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, issued on December 17, 1998 (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from France,* 64 FR 130 (January 4, 1999) (''*Preliminary Determination*''), the following events have occurred:

On January 12, 1999, we issued a supplemental questionnaire to Usinor for sections A, B, and C of our initial questionnaire. On January 26, 1999, Usinor's submitted its response to the Department's supplemental questionnaire. On January 15, and January 21, 1999, we issued our cost and sales verification outlines, respectively.

On January 8, 1999, petitioners submitted comments on the planned Usinor sales and cost verifications. During February and March 1999, we conducted sales and cost verifications of Usinor and its affiliates' responses to the antidumping questionnaires in France and the United States. Between March 30, and April 7, 1999, we issued our sales and cost verification reports for Usinor and its affiliates (i.e., Ugine, Ugine Service, Bernier, Uginox, Hague, and Edgcomb). On April 15, 1999, respondent submitted revised sales and cost databases. Petitioners and respondent submitted case briefs on April 14, 1999, and rebuttal briefs on April 21, 1999. On April 28, 1999, the Department held a public hearing.

Scope of Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip 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 sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 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, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 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 Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127

microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''. [5]

Period of Investigation

The period of investigation (''POI'') is April 1, 1997 through March 31, 1998.

Transactions Investigated

For its home market and U.S. sales, Usinor reported the date of invoice as the date of sale. See 19 CFR § 351.401(i). As explained in response to Comment 10, below, for the final determination, we have continued to rely upon Usinor's invoice dates in the home and U.S. markets as the date of sale.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Usinor covered by the description in the *Scope of Investigation* section, above, and sold in France during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): grade, hot/cold rolled, gauge, finish, metallic coating, non-metallic coating, width, tempered/tensile strength, and edge trim. These characteristics have been weighted by the Department where appropriate. The Department's questionnaire authorized respondent to make distinctions (sub-codes) within some of these characteristics, but not within others. For certain product characteristics (*i.e.,* finish and coating) Usinor reported additional sub-codes which were specifically permitted by the Department's questionnaire. However, Usinor also reported additional sub-codes in its hot/cold rolled, and tempered product characteristic categories. These are characteristics for which the Department's questionnaire did not explicitly permit sub-codes. However, for purposes of the preliminary determination, the Department included these additional codes. *See Analysis Memo from Doug Campau to The File,* dated December 17, 1998. At verification, we reviewed respondent's claims for the additional sub-codes. *See Home Market*

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Verification Report of Usinor/Ugine at pages 6–9, dated April 6, 1999. In light of our findings at verification, we conclude that use of these additional codes is appropriate, and have included them in the Department's product matching methodology.

Also, respondent commented on the Department's finish matching methodology. As explained in response to Comment 4, below, for this final determination we have not changed our finish matching methodology.

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 discussed above, which were listed in the August 3, 1998 antidumping questionnaire and the reporting instructions.

Changes Since the Preliminary Determination

On February 23, 1999, the Department published the amended preliminary determination, incorporating corrected scope language. *See Notice of Preliminary Determinations of Sales at Less than Fair Value; Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Mexico, South Korea, and United Kingdom; and Amended Preliminary Determination of Sales at Less Than Fair Value, Stainless Steel Sheet and Strip from Taiwan,* 64 FR 8799 (February 23, 1999).

Based on our analysis of comments received, we have made certain corrections to our preliminary determination. We have corrected certain programming and clerical errors in our preliminary determination, where applicable, and they are discussed in the relevant comment sections below.

Also, the Department corrected the model match and margin programs in calculating packing costs for use in the cost test and constructed value analysis. In the *Preliminary Determination,* the Department inadvertently used a sale-specific packing cost for use in the calculation of interest expenses in both the cost test and constructed value analysis. For the final determination, the Department has revised this section of the program to calculated a weighted-average packing cost per CONNUM for use in these calculations. For a more complete analysis, please see the *Final Determination Analysis Memo,* dated May 19, 1999.

Fair Value Comparisons

To determine whether sales of SSSS from France to the United States were made at LTFV, we compared constructed export price (''CEP'') to the Normal Value (''NV''), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEP sales for comparison to weighted-average NV sales or constructed value (CV) sales.

Constructed Export Price

We calculated CEP in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser took place through an affiliated purchaser after the subject merchandise was imported into the United States.

We based CEP on the packed ex-warehouse or delivered prices to unaffiliated purchasers in the United States. We identified the starting price by accounting for billing adjustments to the invoice price. See 19 CFR § 351.401(c). Where appropriate, we made deductions from the starting price for billing adjustments, credit, warranty expenses, and commissions. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: inland freight from plant to distribution warehouse, inland freight from plant/warehouse to port of exportation, international freight, marine insurance, U.S. inland freight from port to warehouse, U.S. inland freight from warehouse to the unaffiliated customer, U.S. inland insurance, U.S. warehouse expenses, and U.S. Customs duties. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses, inventory carrying costs, and other indirect selling expenses. We recalculated credit expenses for those sales with missing payment dates. For U.S. sales with missing payment dates, the Department set the date of payment to the final date of the U.S. sales verification. Additionally, for international freight by affiliated freight forwarders, we used the average of the reported rates for unaffiliated freight forwarders. See Comment 6.

For products that were further manufactured after importation, we adjusted for all costs of further manufacturing in the United States in accordance with section 772(d)(2) of the Act. We relied on Usinor's submitted further manufacturing costs, except where the Department determined that the submitted further manufacturing costs could not be relied upon.

Specifically, we made the following adjustments:

1. We adjusted Hague's further manufacturing costs by applying the percentage difference between the reported values and the subject merchandise specific value. We address this issue further in our response to comment 30 in the ''Interested Party Comments'' section of the notice. See Final Cost Analysis Memorandum at 4.

2. Because Edgcomb was unable to report further manufacturing costs in the manner required by the Department, we had to resort to facts otherwise available. Where we did find that Edgcomb's reported costs were reported correctly (i.e., SG&A and financial expense calculations), we used those costs. We also used certain yield loss and processing costs data verified at Edgcomb. However, for all other costs, as facts otherwise available, we have utilized the manufacturing costs reported by Usinor's other affiliated further manufacturer, Hague. Specifically, we developed process string specific costs to adjust Edgcomb's reported single weighted-average material and conversion costs. We address this issue further in our response to comment 25 in the ''Interested Party Comments'' section of the notice. Also, See Final Cost Analysis Memorandum at 5.

3. We also applied Usinor's adjusted financial expense factor to the further manufacturing costs reported by Hague.

We deducted the profit allocated to expenses deducted under section 772(d)(1) and (2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity (including further manufacturing costs), based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Normal Value

After testing home market viability, as discussed below, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparisons'' sections of this notice.

1. Home Market Viability

As discussed in the preliminary determination, we determined that the home market was viable. See *Preliminary Determination* at 134. The parties did not contest the viability of the home market. Consequently, for the final determination, we have based NV on home market sales wherever possible.

2. Cost of Production Analysis

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Usinor's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses, interest expenses, and packing costs. We relied on the COP data submitted by Usinor in its original and supplemental cost questionnaire responses, except in the following specific instances:

1. Usinor valued hot-rolling services proved by affiliated parties at the transfer price. In accordance with section 773(f)(2) of the Act, we compared the reported transfer price for this hot-rolling service to a reported market price provided by the affiliate to unaffiliated parties. We found that the transfer price was below the market price. Thus, for the final determination, we have increased Usinor's affiliated hot rolling cost to reflect the market value paid by non-affiliates in accordance with section 773(f)(2). We address this issue further in our response to comment 19 in the ''Interested Party Comments'' section of the notice. Also, See Final Cost Analysis Memorandum at 1.

2. Usinor did not include profit sharing expense and certain other expenses reported on the company's income statement in the calculation of COP and CV. We included these expenses in the calculation of the revised G&A expense rate. We address these items further in our response to comments 21 and 22 in the ''Interested Party Comments'' section of the notice. Also, See Final Cost Analysis Memorandum at 2.

3. We increased Usinor's reported net interest expense by the ratio of Usinor Holding's (a member of the Usinor Group generating most of the Group's financial expenses and revenues) gross and net financial expenses. We address these issues further in our response to comments 23 and 32 in the ''Interested Party Comments'' section of the notice. Also, See Final Cost Analysis Memorandum at 3.

We conducted our sales below cost test in the same manner as that described in our *Preliminary Determination* at 134–135. As with our preliminary determination, we found that for certain models of SSSS, more than 20 percent of Usinor's home market sales were at prices less than the COP within an extended period of time, and were not at prices that would provide for recovery of cost. We therefore disregarded the below-cost sales and used the remaining above cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

3. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Usinor's cost of materials, fabrication, general and administrative (G&A), U.S. packing costs, direct and indirect selling expenses, interest expenses and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Usinor in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. We relied on the submitted CVs, except as noted above in the *Cost of Production Analysis* section.

Price-to-Price Comparisons

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. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

We calculated NV based on prices to unaffiliated home market customers. Where appropriate, we deducted credit expenses, warranty expenses, inland freight, inland insurance, and warehousing expense. We also adjusted the starting price for price adjustments such as discounts, rebates and freight revenue.

We recalculated credit expenses for those sales with missing payment dates. For home market sales with missing payment dates, the Department set the date of payment as the last day of the home market sales verification.

For reasons discussed below in the *Level of Trade* section, we allowed a CEP offset for comparisons made at different levels of trade. To calculate the CEP offset, we deducted the home market indirect selling expenses from normal value for home market sales that were compared to U.S. CEP sales. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the weighted-average home market direct selling expenses and allowed a CEP offset adjustment (see *Level of Trade* section, below).

Arm's-Length Sales

Usinor reported that it made sales in the home market to affiliated end users. Sales to affiliated customers in the home market not made at arm's-length prices are excluded from our analysis under 19 CFR § 351.403(c). To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993).

Level of Trade

In accordance with section 773(a)(1)(B) 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 (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to 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 than EP or CEP, 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 an 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, but the data available do not provide an appropriate basis for determining whether the difference in levels between NV and CEP 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, 61732 (November 19, 1997).

In reviewing the selling functions reported by the respondent, we examined all types of selling functions and activities reported in respondent's questionnaire response on LOT. In analyzing whether separate LOTs existed in this investigation, we found that no single selling function was sufficient to warrant a separate LOT in the home market.

We determined that Usinor sold merchandise at two LOTs in the home market during the POI. One level of trade involved sales made through two channels: (1) Sales by Usinor's Ugine division, directly to unaffiliated service centers or end users, as well as arm's-length sales by Usinor's Ugine division, directly to affiliated service center/reseller Ugine Service (Channel 1); and (2) sales made by Usinor's Ugine division, with the assistance of Ugine-Service in its capacity as sales agent, to unaffiliated service centers or end users (Channel 2). The second level of trade involved sales from Ugine to Usinor's affiliate Bernier, together with subsequent resales by Bernier to unaffiliated end users (Channel 3). From our analysis of the marketing process for these sales, we determined that sales through Channel 3 were made at a more remote marketing stage than that for sales through Channels 1 or 2. See *Memorandum from Doug Campau to Roland MacDonald,* dated December 12, 1998, on file in Import Administration's Central Records Unit, Room B–099, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C. We also found significant distinctions in selling activities and associated expenses between the sales through channel 3 and those through channel 1 or 2. Based on these differences, we concluded that two LOTs existed in the home market.

In order to determine whether separate LOTs actually existed between the U.S. and home market, we reviewed the selling activities associated with each channel of distribution. Usinor only reported CEP sales in the U.S. market. Because all of Usinor's CEP sales in the U.S. market were made through Uginox, there was only one level of trade. For these CEP sales, we determined that fewer and different selling functions were performed for CEP sales to Uginox than for sales at either of the home market LOTs. In addition, we found that the home market sales were at a more advanced stage of distribution (to service centers or end-users) compared to the CEP sales (to the affiliated distributor).

We examined whether a LOT adjustment was appropriate. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. However, where the available data do not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). We were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found that neither of the LOTs in the home market matched the LOT of the CEP transactions. Because of this, we did not calculate a LOT adjustment. Instead, a CEP offset was applied to the NV-CEP comparisons. See *Memorandum from Doug Campau to Roland MacDonald,* dated December 12, 1998, on file in Import Administration's Central Records Unit, Room B–099, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C.

We applied the aforementioned criteria in our preliminary determination. See *Preliminary Determination* at 135. For the final determination, we continue to find that respondent has two levels of trade in the home market and one level of trade in the U.S.

Use of Facts Available

In accordance with section 776 of the Act, we have determined that the use of facts available is appropriate for certain portions of our analysis of Usinor's data. For a discussion of our application of facts available, see Comment 25.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Usinor 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 Usinor.

Interested Party Comments

Home Market and U.S. Sales

Comment 1: Use of Home Market Downstream Resales in Determining Normal Value

Respondent argues the Department should not utilize the home market downstream resales of Bernier and Ugine Service for comparison purposes in the final determination. According to respondent, in deciding whether downstream resales need to be reported, the Department should consider the nature of the merchandise sold to and by the affiliate, the volume of sales to the affiliate, the levels of trade involved, and whether sales to affiliates were made at arm's length. See *Preamble,* 62 FR at 27356. Respondent argues that these factors militate against using Bernier's and Ugine Service's downstream resales. According to respondent, Bernier's and Ugine Service's downstream resales of subject merchandise together account for approximately five percent of total home market sales. Respondent argues that Ugine's home market sales are far more representative for margin determination purposes, being at a closer level of trade to Ugine's CEP sales to Uginox. Furthermore, according to respondent, the Department could have readily included Ugine's sales to Ugine Service, rather than downstream resales. According to respondent, Ugine's sales to Ugine Service pass the Department's arm's-length test, and including these sales rather than downstream sales would have captured ninety-nine percent of the total home market sales. Respondent argues that given the significant coverage provided by the Ugine sales, there is no way the Department's margin calculation would be compromised by the absence of Bernier's and Ugine Service's resales. *Preamble,* 62 FR at 27356.

Respondent points out that the Department has determined and verified that all sales of subject merchandise in France were made at different levels of trade than sales in the United States. All sales in the United States were CEP sales made through Ugine's super-distributor Uginox, whereas Ugine's home market sales were made to end users and resellers. Thus, according to respondent, all home market sales were made at levels of distribution more advanced than that of Ugine's sales to Uginox. This difference is all the more

significant for downstream resales by Bernier and Ugine Service, which, according to respondent, involve a significant extra layer of selling activities and expenses, and which are far more remote from the factory than Ugine's CEP sales to Uginox.

Respondent argues that because the average U.S. CEP sale was—according to respondent—more than eleven times the size of the average home market downstream resale, no fair comparison can be made between Ugine's CEP sales to Uginox and downstream home market sales of Bernier and Ugine Service. According to respondent, the law requires that a fair comparison be made between CEP and normal value, and that the Department—to the extent practicable—establish normal value using sales at the same level of trade as the constructed export price. See section 773(a) of the Act. Respondent argues that current law gives the Department ample authority to favor the level of trade proximity of sales by Ugine over the more remote downstream sales by Bernier and Ugine Service in making sales comparisons. In order to make a fair comparison under current law, respondent believes the Department's matching should attempt to find satisfactory product comparisons at the nearest level of trade (i.e., involving sales by Ugine), rather than seeking identical matches at more remote levels of trade. Respondent argues that a comparison of downstream resales of merchandise of Bernier and Ugine Service can not be satisfactorily made because they are at remote, different levels of trade. Thus, respondent believes the Department's comparisons should use Ugine's sales of comparable merchandise. Respondent argues that Ugine's sales are the only sales of merchandise that may be reasonably compared with Ugine's CEP sales to Uginox.

Respondent argues that significant differences between the level of trade of Bernier and Ugine Service sales and the level of trade of sales from Ugine to Uginox are not addressed by the statute's level of trade or CEP offset provisions. Specifically, respondent believes the CEP offset applied in the preliminary determination did not address the higher costs for slitting and processing performed by the downstream resellers, nor the costs of holding coils in inventory prior to such processing. Respondent also believes the CEP offset failed to take into account the pricing/profit structure of the downstream resellers—which reflects the far lower quantities sold, the customers involved, and the risk associated with carrying inventory of finished product.

To conclude, respondent argues that the Department's consideration of downstream home market sales was distortive and did not result in fair comparisons. Consequently, respondent believes the Department should base normal value on Ugine sales, rather than home market downstream sales, for comparison purposes.

According to petitioners, respondent's request that the Department disregard downstream sales of Bernier and Ugine Service has no basis in law, is contrary to the facts of the case, and would result in a less accurate calculation of normal value. Petitioners argue that Ugine provides no argument or evidence to dispute the memoranda prepared during the preliminary phase of this proceeding that detailed the Department's analysis and rejection of Ugine's request when it was initially made.

Petitioners also argue the Department should dismiss respondent's argument that inclusion of the aforementioned downstream sales would distort the margin calculation by matching sales at widely varying levels of trade. According to petitioners, the statute provides for a level of trade adjustment, in appropriate circumstances, and for a CEP offset where a level of trade adjustment can not be calculated. According to petitioners, the very fact that the adjustment and offset exist is testament to the fact that the statute permits matching across levels of trade, contrary to respondent's argument.

Petitioners also argue that the Department captured all of the selling expenses the statute directs it to capture in calculating CEP offset. Petitioners point out that in calculating CEP offset, the Department is required to deduct only the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of foreign like product, but not more than the amount of such expenses for which a deduction is made. Thus, petitioners argue that the costs respondent claims the Department should deduct—namely costs for slitting and processing subject merchandise in very small quantities, costs for holding coils in inventory for such processing, and costs relating to the pricing/profit structure of the downstream resellers—actually have no bearing on the Department's CEP offset calculation because they are not indirect selling expenses.

Department's Position: We agree with respondent that the downstream sales of Ugine Service should be disregarded in the final determination. According to 19 CFR § 351.403(c), if an exporter or producer sells the foreign like product to affiliated parties, the Department may calculate normal value based on such sales if it determines that the net prices for such sales are comparable to the prices at which the exporter or producer sold the foreign like product to persons not affiliated with the seller. It is the Department's normal practice to run an arm's-length analysis on home market sales made by a producer to an affiliated company to determine whether the prices for such sales are comparable to prices charged to unaffiliated parties. If the Department determines that prices for sales to the affiliated company were sufficiently comparable to prices for sales to unaffiliated parties, then the Department need not use downstream sales from the affiliated company in its subsequent calculations.

Prior to making its *Preliminary Determination*, the Department ran an arm's-length analysis on Ugine's home market sales to affiliated resellers Ugine Service and Bernier. This analysis led the Department to conclude that such sales were not made on an arm's-length basis. Consequently, downstream sales from Ugine Service and Bernier to unaffiliated customers were used in all calculations for the *Preliminary Determination*. In preparing to run its analysis for the final determination, the Department discovered that the data tape used to run the arm's-length analysis for the *Preliminary Determination* contained incomplete data on the sales from Ugine to Ugine Service and Bernier. This tape had been submitted to the Department on December 1, 1998. The Department subsequently reran its arm's length analysis using a data tape containing complete data on the sales from Ugine to Ugine Service and Bernier. This tape had been submitted to the Department on November 16, 1999. In rerunning the arm's length analysis with the November tape, the Department found that Ugine's sales to Ugine Service were in fact made on an arm's length basis. Thus, for all affected calculations made for the final determination, the Department used the sales from Ugine to Ugine Service. The Department did not use the downstream sales from Ugine Service to unaffiliated customers. Conversely, the Department has continued to use the downstream sales of Bernier because the sales from Ugine to Bernier failed the arm's length analysis for the final determination.

Section 773(a)(1)(B)(i) states that "to the extent practicable", the comparison will be made at the same level of trade. Thus, where it is not practicable—e.g., where there is no sale at the same LOT—comparing across LOTs is

reasonable and permissible. Also, as Petitioners note, the very existence of the level of trade adjustment and CEP offset is testament to the fact that the statute permits matching across levels of trade, and that comparisons involving downstream resales by Bernier can be fairly and satisfactorily made. As stated in the *Preliminary Determination*, to determine whether NV sales are at a different LOT than EP or CEP, 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 an LOT adjustment under section 773(a)(7)(A) of the Act. 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 difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of New Shipper Antidumping Duty Administrative Review,* 62 FR 23760, 23761 (May 1, 1997). For the final margin determination, we again made the appropriate CEP offset. Consequently, we disagree with Usinor that it is inappropriate for comparison purposes because they may be at a different level of trade.

We also agree with petitioners that all appropriate selling expenses were captured in the Department's CEP offset calculation. To the extent Usinor discusses expenses in the Bernier sales not accounted for in the CEP offset, these are accounted for elsewhere in the margin program. For example, any additional slitting and processing performed by Bernier is accounted for in the difference in merchandise adjustment, where appropriate, under section 773(a)(6)(C)(2). The cost of holding coils in inventory prior to further processing is included in inventory carrying cost calculations. Therefore, for the final determination, the Department has continued to use Bernier's downstream sales.

Comment 2: Inclusion of Resales by Edgcomb in Determining CEP

According to respondent's submissions, all of Ugine's U.S. sales of subject merchandise were made via Uginox, a wholly-owned and U.S.-based subsidiary of Usinor. Uginox, in turn, sells subject merchandise to Edgcomb, a downstream processor and reseller. Respondent argues that, although Edgcomb is affiliated with Usinor pursuant to section 771(33) of the Act, Edgcomb should not be regarded as affiliated with Uginox. Respondent states that Uginox and Edgcomb are not under common control within the meaning of section 771(33)(F) of the Act, and that neither Uginox nor Edgcomb controls the other within the meaning of section 771(33)(G) of the Act. Furthermore, respondent argues that neither Usinor nor Uginox exercises sufficient control over Edgcomb to compel Edgcomb to provide timely and accurate responses to the Department's requests for information. In light of this, respondent believes the Department should reverse its finding that Edgcomb is an affiliated person. Respondent also believes the Department should utilize Uginox's sales to Edgcomb for comparison purposes instead of Edgcomb's sales to its downstream customers.

Respondent argues that even though Uginox and Edgcomb are each affiliated with Usinor, such affiliations do not in turn mean that Uginox and Edgcomb are necessarily affiliated with each other under section 771(33)(F) of the Act. According to respondent, to be so affiliated, Uginox and Edgcomb would have to be under common control. Respondent argues that Uginox and Edgcomb are not under common control. Respondent points out that Usinor is limited to three of ten seats on the Board of Directors of Macsteel, Edgcomb's parent company.

Respondent further argues that Uginox and Edgcomb are not affiliated pursuant to section 771(33)(G) of the Act, which provides that any person who controls any other person shall be considered affiliated with that person. According to respondent, the statute describes control as existing where one person is legally or operationally in a position to exercise restraint or direction over another person. Respondent argues that no such control exists between Uginox and Edgcomb. According to Respondent, Uginox and Edgcomb are not part of the same corporate family group, do not have intertwined computer systems, have an insignificant supply-purchase relationship, and negotiate prices on an arm's-length basis. Moreover, according to respondent, Uginox has absolutely no say in Edgcomb's business decisions, including sources of supply, customers to whom Edgcomb sells, and prices which Edgcomb charges. Consequently, respondent believes Edgcomb and Uginox should not be found affiliated under section 771(33)(G) of the Act.

Respondent further argues that exclusion of Edgcomb's resales would not distort the margin calculation because Uginox's sales to Edgcomb were made at arm's-length prices, and because there is nothing else to suggest that Edgcomb's downstream sales were distortive such that they must be included in the Department's analysis. Moreover, according to respondent, Hague's downstream sales accounted for a much larger percentage of Uginox's sales than those of Edgcomb. Respondent also asserts that the sales profiles of Hague and Edgcomb closely resemble one another, such that the absence of Edgcomb statistics would not meaningfully affect the Department's margin calculation—such calculation being based on the weighted average price of each product sold in the U.S. for the entire POI. To conclude, respondent argues the Department should include Uginox's sales to Edgcomb and should exclude Edgcomb's resales to its downstream customers in its margin calculation.

Petitioners cite section 772(b) of the Act, which defines CEP as the price at which subject merchandise is first sold to a purchaser not affiliated with the producer or exporter. Petitioners also point out that Usinor has admitted that Edgcomb and Usinor are affiliated. Thus, petitioners argue, the first purchasers not affiliated with Usinor within this particular sales channel would be Edgcomb's customers.

According to petitioners, the record establishes and the Department has determined that Edgcomb and Uginox are affiliated through the common control of Usinor under section 771(33)(F) of the Act. Petitioners believe respondent's argument that the Department should reverse its determination that Edgcomb and Uginox are affiliated is contrary to the Department's regulations and has no support on the record.

According to petitioners, for purposes of affiliation, control is defined as the quality of being legally or operationally in a position to exercise restraint or control over a person. See section 771(33) of the Act. Petitioners do not believe this definition requires a finding of actual control, but only the capacity to exercise control. *Ferro Union Inc.* v. *United States,* Slip Op. 99–27 at 32 (Ct. Int'l Trade Mar. 23, 1999). According to petitioners, the Department has emphasized that the essence of being legally or operationally in a position to exercise restraint and direction is having the potential to impact decisions concerning production, pricing or cost.

See Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27297 (May 19, 1997). Petitioners argue that the application of this standard to the facts of this case demonstrates control within the meaning of the statute. Petitioners point out that for the first half of the POI, Usinor owned 49 percent of Edgcomb through its wholly-owned subsidiary Sollac; that during the second half of the POI, Usinor indirectly owned 28.5 percent of Edgcomb; that Usinor holds three of ten seats on the board of directors during the POI; and that Edgcomb and Usinor (through Uginox) have a customer/supplier relationship. By virtue of these facts, petitioners believe Usinor is in a position to exercise restraint or direction over Edgcomb. Further, Usinor has the potential to impact Edgcomb's decisions concerning production, pricing or cost, and thus Usinor has control over Edgcomb during the POI within the meaning of section 771(33) of the Act.

Petitioner argues that the fact that Usinor's ownership interest was a minority interest and that Usinor did not have majority representation on the board of directors does not prevent the finding of control. According to petitioners, minority and majority owners can control an entity at the same time, singly or as a group. *Ferro Union,* Slip Op. 99–27 at 32. Petitioners also argue that majority stock ownership is not a prerequisite for a finding of control according to the *Uruguay Round Agreement Acts, Statement of Administrative Action,* reprinted in H.R. Doc. No. 316, 103d Cong., 2d Sess. At 838 (1994).

Department's Position: We agree with petitioners that it is appropriate to use resales by Edgcomb in the final margin calculations.

According to section 771(33)(E) of the Act, as amended by the URAA, ''any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization'' shall be considered affiliated. According to section 771(33)(F) of the Act, as amended by the URAA, ''two or more persons directly or indirectly controlling, controlled by, or under common control with, any person'' shall be considered affiliated. For purposes of section 771(33), ''a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.''

Respondent acknowledges that Edgcomb and Usinor are affiliated pursuant to section 771(33)(E). *See* Usinor Case Brief at p. 8, dated April 14, 1999. We have also determined that Edgcomb and Uginox are affiliated within the meaning of section 771(33)(F) of the Act because they are both controlled by Usinor. The evidence also establishes that Edgcomb was controlled by Usinor during the POI within the meaning of section 771(33)(F) of the Act. As noted in its letter of August 31, 1998, Usinor indirectly owned 49% of Edgcomb, through its wholly-owned affiliate Sollac, for the first half of the POI, and 28% during the second half of the POI. The legislative history makes clear that the statute does not require majority ownership for a finding of control. Rather, the statutory definition of control encompasses both legal and operational control. Indeed, the very purpose of adding the ''control'' provision to the Act was to establish that parties may be affiliated in the absence of any ownership interest at all. *See* Statement of Administrative Action (''SAA'') in H. Doc. 103–316 (vol. 1) 103d Cong., 2d Sess., at. p. 838. A minority ownership interest, examined within the context of the totality of the evidence, is a factor that the Department considers in determining whether one party is operationally in a position to control another. See *Certain Cut-To-Length Carbon Steel Plate From Brazil,* 62 FR 18486, 18490 (April 15, 1997); and 19 CFR 351.102(b). In this case, during the POI, Edgcomb was also a service center, processor, and reseller of subject merchandise produced by Usinor. Furthermore, as confirmed during verification and acknowledged in respondent's case brief, Usinor held at least three of ten seats on Edgcomb's board of directors for the duration of the POI. Finally, at verification we learned that Usinor dictated that Edgcomb use a certain accounting procedure which Edgcomb acknowledged it would not otherwise have used. These facts, juxtaposed with the substantial ownership interest, lead us to conclude that Usinor is ''in a position to exercise restraint or direction over'' Edgcomb.

Additionally, as noted in its letter of August 31, 1998, Usinor wholly owns its U.S. affiliate Uginox. Because Usinor is the sole owner of Uginox, it is ''in a position to exercise restraint or direction over'' Uginox within the meaning of section 771(33) of the Act. Usinor thus controls both Edgcomb and Uginox, fulfilling the common control element required for finding affiliation between Edgcomb and Uginox under section 771(33)(F) of the Act.

Because we find that Edgcomb and Uginox are affiliated under section 771(33)(F), and have used the downstream resales of Edgcomb in our calculations for the final determination instead of the sales from Uginox to Edgcomb, it is not necessary to address the petitioners' comment that under section 772(b) we must use the downstream resales of Edgcomb because of Edgcomb's affiliation with Usinor, regardless of Edgcomb's affiliation with Uginox.

Comment 3: Home Market Indirect Selling Expenses and CEP Offset

Respondent argues that the Department incorrectly excluded indirect selling expenses associated with Ugine's Building Products Group (''The Group'') in determining the CEP offset in the preliminary determination. Respondent states that the Department made this determination based on its conclusion such costs were ''not clearly attributable to scope merchandise.'' See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Sheet and Strip in Coils from France,* 64 FR 130 (January 4, 1999) (''*Stainless Steel Sheet and Strip from France*''). Respondent notes that this exclusion resulted in an understatement of its indirect selling expenses in the home market. Further, respondent contends that contrary to the Department's preliminary determination, the subject merchandise was in fact sold by the Building Products Group and the Group's mission is to promote the use of stainless steel products (including the subject merchandise) in France. Thus, the Group's costs are properly included in Ugine's indirect selling expenses and in the CEP offset. Furthermore, respondent notes that in its questionnaire response, Ugine allocated the expenses of the building products cost center in a reasonable manner which was pursuant to the Department's questionnaire and prior practice by allocating its home market indirect selling expenses related to sales of all products over company-wide sales. See *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Korea,* 62 FR 51420, 51426 (October 1, 1997). Specifically, respondent noted that these expenses support all sales of stainless steel products in France, not just certain products. Therefore, respondent stated that the Department should include the expenses of Ugine's Building Products Group in its calculation of home market indirect selling expenses and the CEP offset in the final determination.

Petitioners acknowledge respondent's argument that Ugine Sales Verification Exhibit UG–20 (Feb. 26, 1999) contains

proof that Ugine Building Products sold subject merchandise, and that, consequently, total indirect selling expenses should not have been reduced by indirect selling expenses related to Ugine's Building Products Division. However, according to petitioners, the Ugine Sales Verification Report provides no clear evidence or finding to support Usinor's claim. Petitioners also point out that Usinor itself has stated that the Building Products Group's mission is to promote the use of stainless steel ''products''. According to petitioners, this statement demonstrates that the activities to which the Building Products Group's activities relate are not the promotion of subject merchandise, but rather the promotion of products made from subject merchandise. According to petitioners, such activities are not clearly attributable to the subject merchandise. Thus, petitioners argue, the Department properly excluded these indirect selling expenses from the numerator of its preliminary calculation.

Department's Position: We agree with respondent. The Department has examined the respondents' home market indirect selling expenses, specifically Ugine Building Products (UBI) indirect selling expenses, and found that these expenses have been properly reported. The Department included the indirect selling expenses associated with UBI in its calculation of Ugine's indirect selling expense ratio. We have verified that Ugine has properly included UBI's expenses in its numerator of indirect selling expenses. The Department has verified that UBI was formed to develop new stainless steel products for the French and European building construction industry and UBI's main mission is improve Ugine's stainless steel sales to the building construction industry, including sales of subject merchandise. Additionally, we verified that UBI is in charge of promoting and selling stainless steel products such as the subject merchandise to the different markets as ''an attempt at trying to convince end-users (contractors and architects) to try it, switching from their traditional zinc-coated products or other non-steel products'' to Ugine's stainless steel products. See *Home Market Verification Report of Usinor/Ugine,* at page 38, April 6, 1999. Furthermore, the Department has determined that the respondent has properly included an allocated portion of UBI's selling expenses in Ugine's indirect selling expense calculation. Therefore, we have determined that the respondent has properly reported its home market indirect selling expenses.

Comment 4: Model Match Methodology/ Group Products According to Finish Overruns

Respondent argues that the Department's product matching methodology with respect to weighting of the finish characteristics is not supported by factual evidence. Respondent noted that the Department never disclosed its rationale for weighting the individual characteristics. Respondent contended that the Department disregards the level of processing required to achieve the designated finish. For example, the Department's methodology for matching finishes matches a bright-annealed finish (i.e., requires no finishing beyond the rolling mill), first to a product with a polish finish, then to a product that requires more finishing. Thus, rather than matching to other products without a finish step beyond rolling, the Department matches a product with no finish steps to products with one or two finish steps. Hence, respondent argued that the Department's weighting of finishes fails to account for the differences in finishes with respect to cost, value and difficulty in finishing. Therefore, respondent argues that the Department should first match products with identical finishes, and if no identical finish match is available, then the Department should match to all other finishes requiring the same number of finish steps, which would be reasonable and proper as well as supported by the record.

Petitioners argued that the Department should reject Usinor's proposed finish groupings because it fails to adequately distinguish between the physical characteristics created by the finishing processes as required by the statute, and consequently fails to retain important cost distinctions among different products. According to petitioners, section 771(16) of the Act requires that products be matched according to identical and similar physical characteristics. For the subject merchandise, petitioners argued that finish is an identifiable and quantifiable difference in merchandise. Petitioners asserted that the subcategories suggested by respondent, which, according to petitioners, are based on a simple count of the number of finishes, do not recognize the differences in the physical characteristics and costs of the subject merchandise that are created by the finishing process. According to petitioners, to treat products with different finishes as identical would be to ignore the strict hierarchy of section 771(16) of the Act, as well as the different costs of production of each product.

Department's Position: We disagree with respondent. In July 1998, the Department solicited comments addressing potential model match criteria. The comments respondent submitted on July 27 and 28, 1999 made no suggestion that the Department consider number of finish processes involved in production of subject merchandise in establishing its matching criteria. In fact, the suggested matching criteria for finish that respondent submitted on July 27, 1998 contained only six possible types of finish (including ''[n]one'').

In this case, level of processing is not determinative of what constitutes a best match for model match purposes. Thus, whether a product goes through three, two, one or no finishing processes is not reflected in the model match program. This is because section 771(16) requires that products be matched according to physical characteristics rather than according to production processes, as suggested by respondent. We agree with petitioners that the subcategories suggested by respondent (based on number of finish steps) do not adequately distinguish products based on the differences in physical characteristics of subject merchandise produced via the different types of finishing processes.

Finally, it is not possible—utilizing the information gathered at verification or otherwise submitted to the record by Ugine—to consistently determine how many finish processes a particular product has gone through. Exhibit 8 of respondent's case brief indicates that a majority of the finish types assigned model match codes by the Department involve more than one finish process. However, as illustrated in exhibits UG–3(f) and UG–5, the information verified and on record is not detailed enough to allow the Department to conclude that a particular quantity of subject merchandise was produced via a particular number of finish processes. Therefore, even if we wished to follow Ugine's suggestion, Ugine has not provided sufficient information to enable us to utilize the number of finish process steps in our model matching procedures.

Comment 5: Foreign Inland Freight

Petitioners stated that respondent failed to report inland freight expenses between the Gueugnon plant and the Macon containerization facility and did not provide an explanation why these expenses were not reported. Thus, petitioners argued that the Department is required to base this expense on facts

available in accordance with section 776(a) of the Act because respondent made no effort to provide the actual freight information in its pre-verification submission although its records permitted it to report other foreign inland freight for other sales. Also, because respondent did not provide any evidence that it acted to the best of its ability to provide the missing information. Further, petitioners contended that because respondent did not demonstrate that it acted to the best of its ability, the Department should apply adverse facts available. *See* section 776(b) of the Act. Petitioners argued that adverse facts available are warranted because neither the information itself or sufficient justification for its omission was provided, and not applying adverse facts available would allow respondent to selectively provide information and improperly influence the outcome of the margin calculation, which would be contrary to the purpose of the facts available provisions. *See Olympic Adhesives,* 899 F.2d at 1571. Furthermore, petitioners stated that to apply the average transportation cost for all reported sales, as suggested by respondent, would not be appropriate, because it would potentially permit the respondent to manipulate the database. Therefore, the correct facts available rate to apply for these sales, is the highest reported transportation rate paid by Ugine on any such sale. *See Circular Welded Non-Ally Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review,* 63 FR 33041, 33046–47 (June 17, 1998).

Respondent argues that petitioners' contention that it failed to report inland freight expenses between the Gueugnon plant and the Macon containerization facility is erroneous. According to respondent, it disclosed in its September 28, 1998 section C response that the company was unable to collect the foreign inland freight expense data for certain shipments destined for Hague, and that for such shipments, an average per-unit expense was reported. Respondent further explains that prior to verification, Ugine discovered the average expense had been inadvertently omitted for these sales, and subsequently presented the average freight expense as a minor correction. Respondent also notes that during the Hague verification, it provided the Department with actual freight expenses from the Gueugnon plant to the Macon containerization facility for the sales transactions selected for review, and that such actual freight expenses were approximately equal to the reported average freight expense. Respondent claims it resorted to utilization of average transportation cost only for those sales where transaction-specific data were unavailable.

Respondent further asserts that petitioners' citation to *Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review* does not support petitioners' claim that the Department should apply the highest reported transportation rate paid by Ugine to all sales for which no expense was reported. *Id.* According to respondent, the Department applied facts available in the aforementioned case only after having placed the respondent on notice—in prior reviews—that verifiable freight expense information was required and should not be destroyed, and where the respondent continued to destroy its freight records. Respondent asserts that in the present case, Ugine presented verifiable expense information, and average freight expense information only where transaction-specific data were unavailable. According to respondent, Ugine has cooperated fully and to the best of its ability with all of the Department's requests. Thus, respondent believes the Department should deny petitioners' request for use of facts available for foreign inland freight expenses on Hague transactions.

Department's Position: We disagree with petitioners. In this instance, although we verified that respondent was unable to report the freight expense at issue for all transactions, respondent has been fully cooperative and has acted to the best of its ability to provide the Department with all available information as the Department has requested. Moreover, respondent has provided a reasonable estimate of the freight amount for those transactions where respondent could not identify the exact amount. Thus, we do not believe the facts warrant the application of an adverse assumption as facts available in this instance. We note that the Department allows respondents to correct for minor changes in preparation of verification. The verification outline of January 21, 1999 provided for ''presentation by Usinor of minor changes, if any, to the response resulting from verification preparation. Identification of the specific observation(s) involved, and corresponding database(s), must also be provided.'' *See Verification Outline* at page 3, dated January 21, 1999. Respondent provided minor corrections for its freight on U.S. sales/foreign inland freight on Hague sales at the start of Ugine's home market sales verification. *See Home Market Verification Report of Usinor/Ugine* at page 3, April 6, 1999. Furthermore, during Ugine's home market sales verification, we compared several of the reported average freight figures with an the actual freight expense from the Gueugnon plant to the Macon containerization facility, and found that the average figures were reasonable. *See Home Market Verification Report of Usinor/Ugine,* at pages 42–45, April 6, 1999; and Exhibits UG–28, UG–35, UG–36, UG–37 and UG–39.

Moreover, we disagree with petitioners in their citation of *Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review* in support of their facts available claim for this issue. 63 FR 33041, 33046–47 (June 17, 1998). In that case, the Department stated that it was justified in applying the use of partial adverse facts available because the respondent did not cooperate to the best of its ability. In this instance, Usinor has cooperated to the best of its ability in supplying the Department with all of the relevant information, including, when necessary, careful estimates of missing information, for the inland freight expenses between the Gueugnon plant and the Macon containerization facility. In sum, for the final determination, we used respondent's information for the inland freight expenses between the Gueugnon plant and the Macon containerization facility.

Comment 6: Affiliated Freight Forwarders

Petitioners state that respondent was unable to demonstrate that rates from its affiliated freight forwarder were arm's-length rates. Petitioners argue that the fact that the affiliated freight forwarder made profit does not necessarily prove the rates it charged to respondent and its affiliates were arm's-length rates. Petitioner believes that respondent should have been able to present information to establish that the affiliate charged arm's-length prices. Because, in petitioners' opinion, respondent did not establish the arm's-length nature of the affiliated freight forwarder's rates, petitioners believe these transactions should be disregarded pursuant to section 773(f)(2) of the Act, and that the Department should base rates for affiliated freight forwarders on the highest reported rate for an unaffiliated freight forwarder.

Respondent argues that petitioners' claim that Usinor is unable to demonstrate that it deals with its affiliated freight forwarder on an arm's-

length basis—and that the Department should therefore base affiliated freight forwarder rates on the highest reported rate for an unaffiliated freight forwarder—is incorrect. According to respondent, the Department verified the fact that the affiliated freight forwarder made a reasonable profit on the services it provided to Ugine. According to respondent, no further evidence of the arm's-length character of these services is needed.

Respondent also claims that the vast majority of charges by the affiliated freight forwarder are what respondent refers to as ''pass-throughs of charges'' from unaffiliated service providers. Respondent further indicates that any charges to be found on invoices of the affiliated freight forwarder that are not what respondent refers to as ''pass-throughs of charges'' from unaffiliated entities will represent minuscule percentages of the total amounts for each invoice.

Department's Position: We agree with petitioners in part. It is clear from the record evidence that Usinor was unable to demonstrate that its affiliated freight forwarder rates were at arm's length prices. At verification, respondent stated that ''it can not show how the affiliated freight forwarder's rates are generated and charged versus the rates of other, non-affiliated freight forwarders.'' *See Home Market Verification Report of Usinor/Ugine,* at page 31, April 6, 1999. Consequently, we are unable to conclude that these affiliated party transactions were carried out at arm's length prices.

Further, we disagree with respondent's argument that a profit made on the services of the affiliated freight forwarder provided to Ugine proves that these services were at arm's length. The arm's length test compares prices charged by or paid to affiliated parties with prices which would otherwise be obtained in transactions with unaffiliated parties. *See Circular Welded Non-Alloy Steel Pipe from Korea,* 63 FR 32833, 32838 (June 16, 1998). The level of profit on these sales is not a relevant consideration.

Nevertheless, because Usinor was unable to provide the requested information, it would inappropriate to use the rate proposed by petitioners, because use of such a rate would require an adverse assumption under section 776(b) of the Act. Because we find that Usinor has acted to the best of its ability with respect to this adjustment, as non-adverse facts available, we have used the average of Usinor's reported freight-forwarder rates.

Comment 7: Product Matching

Petitioners noted that Edgcomb sometimes shipped higher quality, higher cost products than that which was ordered by a particular customer. Petitioners argued that where GRADEU (grade) and INGRADU (invoiced grade) differ, the Department should match sales according to INGRADU. According to petitioners, the statute requires the Department to match products according to the similarity of the actual physical characteristics of the products. Therefore, according to petitioners, the actual grade sold and shipped—the IN GRADU—must be the basis for product matching with home market sales in order to determine the actual level of dumping on such sales.

Additionally, petitioners argued the Department should ensure that Usinor has reported constructed value information based on INGRADU and not on GRADEU. According to petitioners, because the products shipped actually have a higher cost of production than the product invoiced, the constructed value reported must reflect the higher actual cost of production. If constructed value is not available on an INGRADU basis for any U.S. sale being compared to constructed value, petitioners believe the margin for that sale should be based on facts available.

Respondent asserted that Ugine accurately reported the physical characteristics of the material actually produced and shipped in fields GRADEH or GRADEU as required by the Department's questionnaire. Respondent stated that where the information contained in fields INGRADH or INGRADU differs from the information in fields GRADEH or GRADEU, it is because the grade invoiced differed from the grade actually produced and shipped to the customer. Respondent further stated that, per the Department's instructions, the grade reported in INGRADH or INGRADU is the grade appearing on the invoice to the customer, even though it does not always reflect the actual physical characteristics of the product in those circumstances. Hence, according to respondent, the information in fields GRADEH and GRADEU should be used for product comparisons, as such information reflects the actual physical characteristics of the material produced and sold.

Department's Position: We disagree with petitioners' contention that product matching must be based on the data reported in field INGRADU. Petitioners appear to misunderstand the reported characteristics: although they correctly argue that matching should be based on the characteristics of the merchandise actually shipped, they mistakenly state that the fields INGRADU and INGRADH are the fields which contain those characteristics. In fact, in response to the Department's initial and supplemental questionnaires, respondent reported the grades of subject merchandise invoiced to customers in fields INGRADU and INGRADH. Respondent reported the grades of subject merchandise actually produced and shipped to customers in fields GRADEU and GRADEH. As Edgcomb explained at verification, for a number of sales, the grades reported in fields GRADEU and INGRADU differ. *See United States Verification Report of Edgcomb,* at page 5, April 7, 1999. According to Edgcomb, when necessary, they would ship higher quality and higher cost product than what was ordered, while invoicing a customer for the lower quality and lower cost grade ordered. *See United States Verification Report of Edgcomb,* at page 5, April 7, 1999. Edgcomb representatives explained that this was sometimes necessary because of shortages in inventory. *See United States Verification Report of Edgcomb,* at page 5, April 7, 1999. Edgcomb would also do this at times to reduce inventory of certain products. Thus, in some cases, the fields INGRADU and INGRADH do not reflect the actual merchandise delivered to the customer. The Department is required to base its calculations on products actually sold for consumption in the U.S. and home markets. In cases where the grades reported in fields GRADEU and INGRADU differ, the Department will base its product comparison on the product actually produced and shipped. Thus, the Department used the data reported in fields GRADEU (or GRADEH, as appropriate) for comparison purposes.

Comment 8: Credit Expenses/Bernier Sales

Petitioners claimed that Bernier was not able to report its actual dates of payment for its home market sales, but instead provided an average delay between invoice and payment. Additionally, petitioners noted that Bernier recalculated the average payment period using only roughly 70 percent of its reported sales value. Thus, petitioners argued the average payment period proposed by respondent should be rejected because the recalculation is not based on the total sales value. Further, petitioners contended that the omitted 30 percent of sales could substantially reduce the average payment period, and the sales chosen

for recalculating the average payment period do not appear to be sampled randomly. Therefore, petitioners argued that Bernier's credit expense for home market sales should be rejected because Bernier has not provided either actual payment dates or accurate average date of payment for all sales.

According to respondent, at the outset of verification, Bernier made a minor correction to revise the reported delay between invoice date and date of payment in order to correct an error in its computer program used to compute the data. Respondent explains that in providing the corrected data, Bernier examined its largest sales—representing over 80 percent of the total quantity and 70 percent of total value of sales of subject merchandise—provided the Department with figures for actual payment delay on such sales, and then calculated average payment delay on its remaining sales based on the actual data. Thus, respondent believes petitioners' demand that Bernier should be denied an adjustment for credit expense should be rejected.

Department's Position: We disagree with petitioners. Respondent's methodology for reporting its credit expenses is acceptable. At the beginning of verification, Bernier presented the Department with a minor correction on its date of receipt of payment which revised the reported delay between invoice date and the receipt of payment dates which had previously been misreported due to a computer programming error. To correct this error, respondent manually researched its largest sales, which represented over 80 percent of the total quantity of their sales of subject merchandise (roughly 70 percent of the total sales value). *See Home Market Verification Report of Bernier,* at page 2, April 6, 1999 and Exhibit BE–1. Once Bernier had completed its research, it provided the Department with revised figures with the actual payment delay on the aforementioned pool of sales. *See* Sales Transactions, Verification Exhibits BE–14 through BE–16. Further, Bernier only used an average payment date for the remaining pool of sales that did not have an actual payment date, and based that average date on the actual payment date data for the largest sales. Moreover, the Department's questionnaire clearly states, ''if actual payment dates are not readily accessible in your accounting system, you may base the calculation on the average age of accounts receivable.'' *See Department's Questionnaire* at page B–28, August 3, 1998. Thus, it is reasonable for respondent to calculate an average payment date for those sales that did not have an actual payment date. Therefore, respondent has been fully cooperative and has acted to the best of its ability to provide the Department with all available information and facts available is warranted in this regard. In sum, for the final determination, the will use respondent's information for credit expense.

Comment 9: Credit Expenses/Ugine Service Sales

Petitioners stated that Ugine Service was not able to report its actual dates of payment for its home market sales, but instead provided an average delay between invoice and payment. Additionally, petitioners noted that Ugine Service recalculated the average payment period using a small portion of its sales database. Thus, petitioners argued the average payment period proposed by respondent should be rejected because the recalculation is not based on the total sales value. Further, petitioners contended that the larger omitted portion of sales could substantially change the average payment period, and Ugine Service did not provide information on how it chose the sales for its sample. Since the Department cannot determine whether the sales chosen are representative of all other sales and cover a representative period in the POI, petitioners state the validity of the sample cannot be determined and thus is not reliable. Therefore, petitioners argued that Ugine Service's credit expense for home market sales should be rejected because Ugine Service has not provided either actual payment dates or demonstrated that it has provided an accurate average date of payment for all sales.

According to respondent, Ugine Service was able to manually identify and report actual date of payment for a significant percentage of its reported home market sales. Where possible, Ugine Service computed the average days payment was outstanding based on customer-specific information. For the rest, respondent claims Ugine Service applied an overall average based on the customer-specific information. According to respondent, such data was reported to the best of Ugine Service's ability. Thus, respondent believes the Department should deny petitioners' request to reject Ugine Service's credit expense adjustment.

Department's Position: We disagree with petitioners. Respondent's methodology for reporting its credit expenses is acceptable. At the beginning of verification, Ugine Service presented the Department with a minor correction on its receipt of payment date. Respondent stated that they had to revised the date of receipt of payment due to double-counting the period from the actual invoice date to the due date. Due to this error, respondent stated that it manually researched its files and reported the actual date of receipt of payment on a transaction-specific basis for a portion of its sales file. *See Home Market Verification Report of Ugine Service* at page 2, April 5, 1999 and Exhibit UGS–1, Attachment 2. For the remaining sales, Ugine Service used an average based on customer specific data, to calculate a number of days outstanding for the credit calculation. That calculated average is very close to the average number of days based on transaction-specific information. *See Home Market Verification Report of Ugine Service,* April 5, 1999 and Exhibit UGS–1, Attachment 3. Thus, Ugine Service's calculated average days was a reasonable surrogate because Ugine Service could not provide the actual payment dates for these sales. Further, the Department's questionnaire clearly states, ''if actual payment dates are not readily accessible in your accounting system, you may base the calculation on the average age of accounts receivable.'' *See Department's Questionnaire* at page B–28, August 3, 1998. Thus, it is reasonable for respondent to calculate an average payment date for those sales that did not have an actual payment date. Therefore, respondent has been fully cooperative and has acted to the best of its ability in providing the Department with all available information and facts available is not warranted in this instance. In sum, for the final determination, we used respondent's information for credit expense.

Comment 10: Date of Sale in the Home Market

According to petitioners, the verification report for Ugine demonstrates that order confirmation date is the appropriate date of sale for home market sales. Specifically, petitioners stress that an order acknowledgment document is generated by Ugine's order entry system for each order and each change of order. Petitioners argued that the Department should conclude that order date—as defined by the order confirmation—is the appropriate date of sale because it is the date of sale on which the terms of sale are set and recorded.

According to respondent, the date of invoice properly reflects date of sale in this case. Respondent claims that Ugine and Uginox maintain their sales records based on invoice date in the normal course of business. Thus, respondent asserted that the companies reported

their sales by invoice date on the basis of the Department's regulations, the Questionnaire instructions, and the applicable facts. According to respondent, the Department verified that order date would not be the appropriate date of sale in this case, as price and quantity are subject to continued negotiation until a sale is invoiced. Thus, respondent argued that the Department should reject petitioners' contention that the home market date of sale should be based on order date.

Department's Position: We agree with respondent that invoice date is the correct date of sale for Usinor's home market sales. Under our current practice, as codified in the Department's Final Regulations at section 351.401(i), in identifying the date of sale of the subject merchandise, the Department will normally use the date of invoice, as recorded in the producer's records kept in the ordinary course of business. See *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Administrative Review*, 63 FR 55578, 55587 (October 16, 1998) (''*Pipes and Tubes from Thailand*''). However, in some instances, it may not be appropriate to rely on the date of invoice as the date of sale, where the evidence indicates that the material terms of sale were established on some date other than invoice date. See *Preamble to the Department's Final Regulations*, 62 FR 27296, 27348–27350 (May 19, 1997). Thus, despite the general presumption that the invoice date constitutes the date of sale, the Department may determine that this is not an appropriate date of sale where the evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

In this investigation, in response to the original questionnaire, Usinor reported invoice date as the date of sale in both the U.S. and home markets. On November 2, 1998, Usinor submitted a letter requesting that the Department not require the submission of order confirmation date data because the companies' record keeping systems were not equipped to report order acknowledgments, in some cases because order acknowledgments were not generated, and in some cases because they were routinely purged from the involved databases. Furthermore, Usinor reported that the essential terms of the companies' orders change between the date of order acknowledgment and the invoice date for most, but not all, of its U.S. and home market sales. For purposes of our preliminary determination, we accepted the date of invoice as the date of sale subject to verification. See *Preliminary Determination* at 133–134.

At verification, we carefully examined Usinor and its affiliates selling practices, namely, the manner in which each company records the sales in its financial records by date of invoice. For the home market, we reviewed several sales observations for which the price and quantity changed subsequent to the original order confirmation. See *Home Market Verification Report of Usinor/Ugine* at pages 12, and 39–47, dated April 6, 1999. Additionally, at verification we examined respondent's study of order modifications in 1995 and found that the terms of sale for a large portion of sales in that year were modified multiple times between the initial order date and the invoice date, and that the vast majority of orders were modified at least once. See *Home Market Verification Report of Usinor/Ugine* at pages 12, and 39–47, dated April 6, 1999. Further, we discovered at verification that when an order is changed only the most recent set of information can be retrieved from the database system. Thus, if an order is changed, Usinor would only be able to recover information from the most recent version of the changed order, and is thus not able to recover historical information about that order. In addition, at verification we discovered that Usinor purges its record keeping database system (i.e., CDSTAT) every six months in order to keep computer memory space at a maximum, and only the original order date and other original order data are retained in another (i.e., FACSTAT) database. See *Home Market Verification Report of Usinor/Ugine* at page 11, April 6, 1999. Thus, based on respondent's representations, and as a result of our examination of Usinor and its affiliates records kept in the ordinary course of business, we are satisfied that the date of invoice should be used as the date of sale because it best reflects the date on which material terms of sale were established for Usinor and its affiliates' home market and U.S. sales.

Comment 11: Reimbursement of Antidumping Duties Paid

According to petitioners, the Uginox verification report indicates that Ugine charges Uginox prices net of all export and import-related expenses. Petitioners concluded that this amounts to a discount or rebate to Uginox from Ugine of all the export and import related expenses, plus an amount for profit, on each U.S. sale. In light of this practice, petitioners argued that Ugine will now discount the price to Uginox on U.S. sales by the amount of any antidumping duties collected, contrary to the requirements of 19 C.F.R. § 351.402(f)(1)(i). Petitioners contended that the Department should apply section 353.402(f) of its regulations, find that there is an agreement between Ugine and Uginox that will result in the reimbursement of antidumping duties by Ugine to Uginox, and then add the amount of the duties to be reimbursed into the duty deposit rate for Usinor.

Petitioners asserted that the Department previously applied the reimbursement regulation in a case where duties had yet to be assessed, and that the Department specifically concluded that an agreement to reimburse was sufficient to trigger the regulation. Petitioners further stated that there is no legal or logical reason to wait until the end of the first administrative review to apply the reimbursement regulation, thereby frustrating the remedial effect of the antidumping laws for that additional time. In support of this, petitioners quote cases indicating that the regulation is designed to preserve the statute's remedial purpose by discouraging foreign exporters from assuming the cost of duties, and that the remedial effect must be preserved as soon as an agreement to reimburse duties is apparent.

According to respondent, the Department's reimbursement regulations do not apply at this stage of the proceeding. Respondent asserted that petitioners fail to cite any cases where reimbursement was found or considered in an investigation. Respondent further stated that petitioners only cite administrative reviews—covering periods for which duties had already been imposed—in support of their argument. Respondent argued that there must be a finding of sales at less than fair value before a dumping margin can be imposed, and there must in turn be an established dumping margin prior to any finding that reimbursement is taking place. Respondent contended that in this case the Department has not determined that the subject merchandise is being sold at less than fair value, so there is no basis for an actual assessment of duties. Thus, according to respondent, the Department can not find that reimbursement is taking place.

Respondent claimed that there is no agreement by Ugine to reimburse Uginox for antidumping duties. Respondent further claimed that petitioners have failed to satisfactorily allege the required elements of duty reimbursement. According to respondent, the Department's regulations require that a petitioner

show evidence that an exporter either directly pays antidumping duties for its affiliated importer or has reimbursed the importer for duties already paid. Respondent claimed that no such payments or reimbursements have been or can be made. Respondent also argued that petitioners' claim is legally infirm because the Department's policy and practice related to the treatment of possible discounts or reimbursements of the type discussed above require more and different evidence than has been presented in this case.

Finally, respondent argued the Department should reject petitioners' argument for a rebuttable presumption of reimbursement against Uginox. According to respondent, the Department's regulations state that a rebuttable presumption of reimbursement may be imposed if, at the time duties are being paid, the importer has not filed a pre-liquidation certificate with Customs. Respondent argued that such a presumption is impossible in this case because duties have not been assessed and are not being paid. Thus, respondent stated that the Department should reject petitioners' reimbursement claim.

Department's Position: We disagree with petitioners. First, our reimbursement regulations are not applicable at this stage of the proceeding. For the Department to apply the duty reimbursement provision, there must be a duty to reimburse. During the POI, there was no liability for antidumping duties to be assessed.

Second, petitioners have improperly cited certain cases in support of their argument, e.g., *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Administrative Review*, 61 FR 48465, 48470 (September 13, 1996); *Porcelain-on-Steel Cookware from Mexico: Preliminary Results of Antidumping Administrative Review*, 64 FR 1592, 1593 (January 11, 1999) (''Porcelain Cookware''). Both of these cases involve administrative reviews. In all administrative reviews—unlike in investigations—actual duties are to be assessed on the transactions under review. Therefore, these cases are not applicable.

In light of the stage of the proceeding, we conclude that there is no basis to apply the reimbursement regulation in this case.

Comment 12: CEP Sales and Home Market Level of Trade

Petitioners point out that the Department compared CEP sales to home market sales based on a constructed level of trade for those CEP sales after the adjustments under section 772(d) of the Act were made. According to petitioners, the Court of International Trade has ruled that the Department's interpretation that the adjustments under section 772(d) of the Act must be made prior to level of trade matching contravenes the purpose of the statute. *Borden, Inc.* v. *United States*, 4 F. Supp. 2d 1221 (Ct. Int'l Trade 1998). Thus, for the final determination of this investigation, petitioners argued that the Department is required to determine level of trade prior to the application of adjustments under section 772(d) of the Act.

Respondent argued the Department should adhere to its current practice of beginning its level of trade analysis after adjusting for U.S. selling expenses and profit. According to respondent, petitioners' reliance on *Borden Inc.* v. *United States* is misguided, as the Department has indicated its disagreement with *Borden*, and because the case is under appeal. 4 F. Supp. 2d 1221 (Ct. Int'l Trade 1998). Respondent also asserted that petitioners' claim is fundamentally identical to an argument expressly considered and rejected in *Certain Stainless Steel Wire Rod From France: Final Results of Antidumping Duty Administrative Review*, 63 FR 30185 (June 3, 1998).

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

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

The U.S. Court of International Trade (CIT) has recently held that the Department's practice to base the LOT comparisons of CEP sales after CEP deductions is an impermissible interpretation of section 772(d) of the Act. See *Borden Inc., et al.* v. *United States*, Court No. 96–08–01970, Slip Op. 98–36 (March 26, 1998), at 58 (*Borden*); see also *Micron Technology Inc.* v. *United States*, Court No. 96–06–01529, Slip Op. 99–02 (Jan. 28, 1999). The Department believes, however, that its practice is in full compliance with the statute, and that the CIT decision does not contain a persuasive statutory analysis. Because *Borden* is not a final decision, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) prior to starting a LOT analysis, as articulated in the regulations at section 351.412.

Comment 13: Hague's Credit Expense

Respondent argued that the Department incorrectly recalculated Hague's credit expenses when it recalculated the credit expenses associated with unpaid invoices. Respondent contended that because Hague's sales do not have specific payment dates, Hague's credit expenses are based on average days outstanding and are not transaction specific. Thus, blank payment dates for Hague sales do not indicate unpaid invoices. Respondent noted that the Department's computer program mistakenly mistook Hague sales with blank payment dates as unpaid invoices and recalculated the credit expenses for these sales. Therefore, respondent argued that for the final determination, this recalculation of credit expense for

Hague sales with blank payment dates should be removed.

Petitioners did not comment on this issue.

Department's Position: We agree with respondent and have corrected our computer programming (i.e., margin calculation program) with respect to Hague's U.S. credit expenses for sales with blank or missing payment dates for the final determination. In the final margin program, the Department added specific computer language to correct this problem. For a complete listing of the changes the Department has made to its final margin program, please see the Department's analysis memorandum and final margin computer program.

Comment 14: CEP Profit Calculation

Respondent argued that the Department incorrectly double-counted U.S. and home market freight revenue when it calculated CEP profit in the preliminary determination. Respondent states that on the home market side, the Department added freight revenue (FRTREVH) to the home market revenue (REVENVH), but the Department had already included FRTREVH in the CEP profit calculation as an offset to movement expenses. Thus, the Department should correct the double counting of FRTREVH.

Additionally, respondent argued that on the U.S. side, the Department added freight revenue (FRTREVU) to the U.S. revenue (REVENU), but the Department had already included FRTREVU in the CEP profit calculation as an offset to movement expenses. Thus, the Department should correct the double counting of FRTREVU.

Petitioners did not comment on this issue.

Department's Position: We agree with respondent and have corrected our computer programming (i.e., model match and margin calculation programs) to prevent double-counting home market and United States freight revenue for the final determination. For a complete listing of the changes the Department has made to its final margin program, please see the Department's analysis memorandum and final margin computer program.

Comment 15: CEP Profit Calculation/ Currency Conversion of U.S. Packing Expense

Respondent argued that the Department did not correctly convert the currency for U.S. packing cost in its CEP profit calculation. Respondent noted that the Department converted the packing expense variable PACKU to U.S. dollars and saved this result in the variable PACKINGU. However, respondent contended that the Department included the dollar-denominated variable PACKINGU in the calculation of the French franc-denominated variable string (COGS), therefore mixing the currencies. Thus, respondent stated that the Department should correct this currency conversion for the final determination.

Petitioners did not comment on this issue.

Department's Position: We agree with respondent and have corrected our computer programming (i.e., margin calculation program) with respect to the packing costs in the CEP profit calculation. In the final margin program, the Department has corrected the currency conversion problem in the CEP profit calculation. For a complete listing of the changes the Department has made to its final margin program, please see the Department's analysis memorandum and final margin computer program.

Comment 16: U.S. Intercompany Sales between Uginox and Edgcomb

Petitioners stated that the Department incorrectly included sales from Uginox to Edgcomb in its preliminary determination. Petitioners noted that in the preliminary determination the Department fully intended to include all downstream sales from Bernier, Ugine Service, Hague and Edgcomb in its dumping calculation but not intercompany sales. Thus, petitioners stated that by including the sales between Uginox and Edgcomb and the downstream sales of Edgcomb, the Department has double-counted these sales and calculated an improper CEP for Edgcomb sales. Petitioners stated that the Department should correct this error for the final determination and only use Edgcomb's downstream sales.

Respondent stated that it agrees with petitioners that the Department should not double-count Edgcomb's resales as well as sales from Uginox to Edgcomb. However, respondent argues that the Department should eliminate Edgcomb's resales for the reasons stated above comment 2.

Department's Position: We agree with petitioners. As stated in comment 2 above, the Department has concluded that Edgcomb should be considered affiliated with both Usinor and Uginox for the purposes of this final determination. See Comment 2. Therefore, for purposes of calculating a final antidumping duty margin for Usinor, the Department included Edgcomb's downstream sales in its margin calculation, and eliminated sales from Uginox to Edgcomb.

Comment 17: Failure to Deduct U.S. Freight Expenses From Port to Warehouse

Petitioners argued that the Department inadvertently failed to include U.S. port to warehouse expenses (i.e., the variable INLFPWU) in its calculation of total U.S. movement expenses. Petitioners stated that the Department should correct this inadvertent error for the final determination.

Respondent did not comment on this issue.

Department's Position: We agree with petitioners. In the preliminary determination, the Department inadvertently failed to include U.S. port to warehouse expenses (INLFPWU) in its calculation of total U.S. movement expenses. In the final determination, we have included INLFPWU in our calculation of U.S. movement expenses. Please see the Department's analysis memorandum and final margin computer program for this change.

Comment 18: Missing Payment Dates

Petitioners stated that in the preliminary determination, the Department recalculated credit expenses for sales with missing payment dates. However, in the Department's revised credit expense calculation, petitioners contend that the revised net price calculation failed to deduct early payment discounts and other discounts in the home market credit expense calculation, and early payment discounts in the U.S. credit expense calculation. Further, petitioners noted that the respondent included other discounts and early payment discounts in its calculations of both the U.S. and home market credit expenses. Therefore, petitioners argue that without considering these additional deductions, the credit expense calculation is not consistent with the respondent's reported data for credit expenses.

Respondent stated that petitioners objection to the Department's calculation of credit expense for sales with missing payment dates has been overtaken by events. Specifically, credit expense on the revised files has been recalculated to account for actual payment dates, where available, or average days outstanding. Therefore, respondent argued that there is no basis for alteration of the Department's program with regards to credit expenses.

Department's Position: We agree with respondent in part. On April 8, 1999, the Department provided respondent an opportunity to revise its sales and cost files with minor corrections found at the

recent sales and cost verifications in France and the United States. See *Memorandum to the File*, dated April 8, 1999. On April 15, 1999, respondent provided the Department with revised sales and cost tapes. The Department has confirmed that Respondent's U.S. credit expenses do not need to be recalculated because the respondent has already recalculated all of its U.S. credit expenses to account for actual payment dates, where available, or average days outstanding. However, in the preliminary determination, we did not deduct early payment discounts and other discounts in the home market credit expense calculation. Additionally, respondent's revised home market sales tape continues to have missing payment dates for certain sales which have not been paid. Therefore, for the final determination, we have recalculated respondent's home market credit expense for sales with missing payment dates by designating the last day of the home market verification as payment date, and have deducted early payment discounts and other discounts in our recalculation of home market credit expense, where appropriate. For a complete listing of the changes the Department has made to its final margin program, please see the Department's analysis memorandum and final margin computer program.

Cost of Production/ Constructed Value

Comment 19: Affiliated Party Transactions (Usinor)

Petitioners argue that the Department should adjust Usinor's reported hot rolling costs to reflect a market value in accordance with the major input rule. According to the petitioners, the Department determines the value of a major input purchased from an affiliated party based on the highest of the price paid to the affiliated party, the market price, or the cost of producing the major input (see *Final Results of Antidumping Duty Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom*, 62 FR 2081, 2115 (January 15, 1997); *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or less in Outside Diameter, and Components Thereof, from Japan*, 61 FR 57629, 57644 (Nov. 7, 1996)). In this instance, the petitioners claim the record shows that the market price is higher than either the reported transfer price or the affiliates cost of production (''COP'').

Usinor disagrees with the petitioners' assertion that an adjustment is necessary. According to Usinor, Ugine properly valued affiliated party inputs at the transfer price which exceeded actual cost. As for the comparison to a market price, Usinor claims that the Department cannot make a proper comparison between the reported market price and the reported transfer price because of the differing market conditions. Thus, Usinor states that no adjustment to hot rolling costs is necessary for the final determination.

Department's Position: We agree with petitioners that the hot rolling services Usinor obtained from an affiliate should be adjusted to a market price. Section 773(f)(2) allows the Department to test whether transactions between affiliated parties involving any element of value are at prices that ''fairly reflect * * * the market under consideration.'' Section 773(f)(3) allows the Department to test whether transactions between affiliated parties involving a major input is above the affiliated supplier's cost of production. In other words, if an understatement in the value of an input would have a significant impact on the reported cost of the subject merchandise, the law allows the Department to insure that the transfer price or market price is above the affiliated supplier's cost. The determination as to whether an input is considered major is made on a case-by-case basis. *See Final Rule* 62 FR at 27362.

In determining whether an input is considered major, among other factors, the Department looks at both the percentage of the input obtained from affiliated suppliers (verses unaffiliated suppliers) and the percentage the individual element represents of the subject merchandise's COM (*i.e.,* whether the value of inputs obtained from an affiliated supplier comprises a substantial portion of the total cost of production for subject merchandise). In the instant case, we looked at these percentages for hot rolling services provided by an affiliate. The cost of these services represent a relatively small percentage of the subject merchandise's COM, which reduces the risk of misstatement of the subject merchandise's costs to such a degree that we have determined that section 773(f)(3) of the Act does not apply to these inputs. However, we found that the weighted-average transfer price of hot rolling services reported by Usinor was below market price and therefore, in accordance with section 773(f)(2) of the Act, we have increased the subject merchandise's COM accordingly.

As for Usinor's concern that the reported market price is not comparable to the reported transfer price, we disagree. For the market price, Ugine reported the arm's length sales price the affiliate charged to non affiliates for performing analogous hot rolling services. Thus, we note that the reported market price does represent the amount usually reflected in sales of the major input in the home market under consideration as required by section 773(f)(3) of the Act.

Comment 20: Depreciation Expense (Usinor)

To calculate COP and CV, petitioners claim that the Department should rely on the depreciation expense recorded in Ugine's cost accounting system rather than the depreciation expense reported on the financial statements. According to petitioners, section 773(f)(1)(A) of the Tariff Act of 1930, as amended, provides that the Department normally relies on data from a respondent's books and records in which its costs are normally kept if those records are prepared in accordance with the home country's generally accepted accounting principles (''GAAP''), and where they reasonably reflect the cost of producing the merchandise. In this instance, the petitioners claim that the cost accounting system is in fact the company's normal books and records. Thus, in order for the Department to reject Ugine's cost accounting system for the valuation of the depreciation expense, the petitioners argue that the Department must find that Ugine's cost accounting system is not in accordance with French GAAP, or that costs recorded in the cost accounting system are not reasonably reflective of the production costs. Moreover, petitioners claim that there is no record evidence to suggest that Ugine's cost accounting system does not reasonably reflect the costs associated with the production of stainless steel sheet and strip in coils. Petitioners assert that the burden is on Usinor to demonstrate on the record that the costs recorded in their normal books and records are not reasonable (*see Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 29553, 29559 (June 5, 1995); *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe from the Republic of Korea,* 57 FR 53693, 53705 (November 12, 1992) and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa,* 60 FR 22550, 22556 (May 8, 1995)). Without

such demonstration on the record by Usinor, the petitioners assert that the Department should, in the final determination, base depreciation on the figures recorded in Ugine's cost accounting records.

Usinor contends that it properly relied on the depreciation expense reported in the company's audited financial statements prepared in the accordance with French GAAP to calculate depreciation expense. According to Usinor, Ugine's cost accounting system does not reflect depreciation in accordance with GAAP and therefore such depreciation cannot properly be used in this investigation. Usinor states that the Department has traditionally preferred to use the figures found on the financial statements (*see Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Romania, Singapore, Sweden, and the United Kingdom,* 62 FR 54043, 54080 (1997)). Moreover, Usinor claims that the Department has traditionally relied on the depreciation expense reported on the financial statements rather than the depreciation expense reported in the respondent's cost accounting system (*see Usinas Siderurgicas de Minas Gerias S.A.* v. *United States,* No. 93–09–00557–AD, 1998 WL 442297, at *9 (CIT 1998); *FAG U.K. LTD* v. *United States,* 945 F.Supp. 260, 271 (CIT 1996); *Cinsa S.A. de C.V.* v. *United States,* 966 F.Supp 1230, 1234 (CIT 1997); *Final Results of Administrative Review: Silicon Metal From Brazil,* 64 FR 6305, 6321 (February 9, 1999); and the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire From Canada,* 64 FR 17324, 17335 (April 15, 1999)). Therefore, Usinor requests that the Department reject petitioners' attempt to overturn the Department's longstanding practice in this area and use the depreciation as recorded in Usinor's financial accounting system.

Department's Position: We agree with Usinor that in this case the depreciation expense reported on Usinor's audited financial statements should be used in the calculation of COP and CV. Specifically, Ugine S.A. became a division of Usinor at the end of 1995. As a result of the merger, Usinor revised Ugine's depreciation expense. This revision to Ugine's depreciation expense was made in accordance with French GAAP. Although Usinor revised Ugine's depreciation expense for financial statement purposes, Ugine never revised its internal financial accounting and cost accounting depreciation ledgers to reflect the change. Thus, Ugine's cost accounting system and financial accounting system generate different depreciation results than the amount Usinor officially recognizes for the division. For submission purposes, Usinor adjusted the depreciation expense reported in Ugine's cost accounting system to the amount Usinor reported for the Ugine division in Usinor's financial statements. Contrary to petitioners' claim, we found that the depreciation expense recorded in the cost accounting system conforms to French GAAP only after the company has made adjustments to reflect the amount reported on Usinor's audited financial statements. We note that the independent auditors base their opinion on the final amounts reported on the financial statements and not on the amounts that may be recorded in the internal cost accounting system. Moreover, Ugine demonstrated that its depreciation expense contained in its cost accounting system eventually reconciled to Ugine's divisional financial statement and that the depreciation expense reported on this divisional statement reconciled to the depreciation expense reported on Usinor's financial statements. Since the amount of depreciation expense detailed in Ugine's cost accounting system reconciles to Usinor's audited financial statements, we believe that Ugine's reported depreciation expense does not distort its COP and CV figures. Finally, we note that Usinor's ''change'' to Ugine's depreciation expense was made prior to the POI.

Additionally, our use of amounts reported on a company's financial statement has been upheld by the Court of International Trade (see, *FAG U.K. LTD* v. *United States,* 945 F.Supp. 260, 271 (CIT 1996) (upholding the Departments reliance on a firm's expense as recorded on the firm's financial statements); *Hercules, Inc.* v. *United States,* 673 F. Supp. 454 (CIT 1987) (upholding the Department's reliance on COP information from the respondent's normal financial statements maintained in conformity with GAAP); See also: *Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire From Canada,* 64 FR 17324, 17335 (April 9, 1999)) (The Department relied on respondent's expense as recorded on the firm's financial statements). More importantly, the Court of International Trade has consistently sustained our practice of relying on the depreciation expense reported in the company's audited financial statements (see *Cinsa S.A. de C.V.* v. *United States,* 966 F.Supp 1230, 1234 (CIT 1997) (upholding the Department's reliance on depreciation expense reported on the financial statements); *Laclede Steel Co.* v. *United States,* 965 Slip OP 94–160, *24 (CIT 1994) (upholding the Departments reliance on depreciation expense reported on the financial statements); *Final Results of Administrative Review: Silicon Metal From Brazil,* 64 FR 6305, 6321 (1999). For the final determination, we relied on the depreciation expense reported by Usinor.

Comment 21: Including Employee Payments in the Cost of Production (Usinor)

For the final determination, petitioners assert that the Department should recalculate Ugine's COP and CV to include certain employee profit-sharing payments. According to petitioners, the Department has addressed this issue before, and in each case has determined that ''profit-sharing'' payments are appropriately considered an employee remuneration cost to the company and should be included in the calculation of COP and CV. As examples of such instances, the petitioners cite the *Final Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cooking Ware From Mexico,* 60 FR 2378 (January 9, 1995); the *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria,* 60 FR 33551, 33557 (June 28, 1995); and the *Final Results of Antidumping Administrative Review: Porcelain-on-Steel Cooking Ware from Mexico,* 58 FR 43327, 43331 (August 16, 1993), in which Department included similar profit-sharing costs in the calculation of COP.

Respondent had no comment on this issue.

Department's Position: We agree with the petitioners that Usinor's profit sharing expense should be included in the calculation of COP and CV. Under French law, an employer is required to distribute a portion of its profit to employees. This distribution of profits is reflected on the company's income statement as an expense. With respect to the employees involved in the production and administration of the subject merchandise, the distribution represents a form of compensation. Moreover, our established practice is to include this type of compensation in the calculation of COP and CV, because this profit sharing represents an expense recognized within the POI and should be reflected in the product cost, in accordance with full absorption costing principle (see *Final Results and Partial*

Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey, 63 FR 68429 (December 11, 1998); *Notice of Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate From Germany,* 61 FR 13834, 13838 (March 28, 1996); and *Final Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cooking Ware from Mexico;* 60 FR 2378 (January 9, 1995). For the final determination, therefore, we included Usinor's profit-sharing expense in the calculation of COP and CV to reflect the fully absorbed cost of producing the stainless steel sheet and strip.

Comment 22: Including "Exceptional" Expenses and Other Expenses in the General and Administrative Expense Calculation (Usinor)

Petitioners state that the Department should include certain omitted expenses in the calculation of Ugine's general and administrative expense ratio. According to the petitioner, these expenses represent normal general and administrative expenses for the operations. Thus, they should be included in the general and administrative expense calculation for the final determination.

Usinor asserts that it properly excluded the expenses in question because they do not relate to the production of the subject merchandise. According to Usinor, Ugine's exclusion of certain non-operating and extraordinary expenses was entirely justifiable. Moreover, Usinor claims that the Department verified these omitted expenses and only had a concern with donations and football club expenses. Thus, Usinor believes that the items excluded, as verified by the Department, are not production costs. Therefore, consistent with past Department's practice (see *Final Results of Administrative Review: Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan,* 56 FR 41508, 41516 (1991); and *Final Results of Administrative Review: Television Receivers, Monochrome and Color, From Japan,* 56 FR 5392 (1991)), Usinor claims that they properly should not be included in Ugine's G&A expenses.

Department's Position: We agree with both petitioners and respondent in part. We agree with petitioners that some of the omitted expenses in question should be included in the calculation of the G&A expense rate. For instance, we agree that contributions (i.e., donation and the football expenses) should be included in the calculation of G&A expense because these expenses are a part of Usinor's overall administrative expenses attributable to all production, including production of subject merchandise. As for the exceptional expenses, we agree with the respondents that these items are related to investing activities and should not be included in the calculation of COP and CV (see, *Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey,* 62 FR 9737, 9748 (March 4, 1997); and *Final Results of Administrative Review: Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan,* 56 FR 41508, 41516 (1991) (Department included extraordinary expenses).

Comment 23: Disregarding Usinor's Claim for an Offset of Short-Term Interest Income in Its Financial Expense Calculation (Usinor)

Petitioners argue that the Department should deny Usinor's claim for an offset of short-term interest income in its financial expense calculation because the respondent could not distinguish short-term interest income from total interest income. Moreover, the petitioner asserts that Usinor could not support its claim that interest income was generated from short-term sources. Petitioners state that the Department will not allow an offset in such circumstances and cite the *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 62 FR 61964, 61970 (November 20, 1997) in which the Department stated that it "* * * will offset interest expense by short-term interest income only where it is clear from the financial statements that the interest income was indeed short-term in nature." In that case, the Department did not offset the interest income in the financial expense calculation. Therefore, the petitioners argue that since Usinor was not able to clearly distinguish short-term interest income from total interest income in the financial statements, the Department should disallow and reverse the offset taken by Usinor in its financial expense calculation.

Usinor claims that the Department should accept Ugine's offset of short-term interest income in calculating its financial expenses—just as the Department has done in other cases involving Usinor (see *Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France,* 58 FR 68865, 68872 (December 29, 1993)). According to the respondent, Ugine calculated the offset in the same manner as previously approved by the Department. Thus, Usinor contends that petitioners' request to disallow Ugine's short-term interest income offset is without merit.

Department's Position: We agree with petitioners. Usinor's consolidated financial statements only reported a net interest expense figure. Therefore, in order to calculate a financial expense figure Usinor imputed its gross interest expense, long-term interest income, and the short-term interest expense offset based on an adjustment methodology used by the Department in a previous antidumping investigation involving Usinor (see *Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France,* 58 FR 68865, 68872 (December 29, 1993)). In that case, the Department made an adjustment to financial expense because Usinor incorrectly deducted both short-term and long-term interest income, rather than limiting the deduction to short-term income as required by the Department's practice, when calculating its reported financial expense rate. As a result, the Department limited the interest income offset claim to an estimated short-term amount. By contrast, in this proceeding, we have excluded Usinor's short-term interest offset because neither of respondent's audited financial statements reported any breakdown of long- vs. short-term investments or investment income, nor was the respondent able to provide support for its claimed short-term interest income. Therefore, based on the Department's past practice, we have disallowed Usinor's short-term interest income offset in the financial expense calculation (see, e.g., *Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Silicon Metal From Brazil,* 64 FR 1974 (February 9, 1999) (Department disallowed the short-term offset.).

Comment 24: Accepting New Information Presented by Usinor on the Costs of Products Sold but Not Produced (Usinor)

Petitioners claim that the Department should not accept Usinor's minor correction provided on the first day of verification that relates to products sold but not produced during the POI. According to petitioners, this change is not a minor correction because the correction is the submission of new costs for thirteen control numbers. More important, the revision is based on new factual information that was not submitted a week before verification took place. As a result, neither the Department nor the petitioner had time

to review the submitted information before verification.

Petitioners further argue that while they recognize the need to allow respondents an opportunity to correct minor errors at the beginning of the verification, they do not believe that verification is an appropriate venue for the submission of new factual information. According to petitioners, the Department generally only collects and uses information obtained at verification when minor discrepancies are found or when the Department believes that a respondent's methodology may not have been reasonable but can be simply changed (see *Final Results of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China,* 63 FR 16758, 16761 (April 6, 1998)). Verification, claim the petitioners, is used by the Department to clarify and support information already on the record. Thus, the Department will correct errors found at verification as long as those errors are minor and do not exhibit a pattern of systemic misstatement of fact (see *Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil,* 59 FR 732, 736 (Jan. 6, 1994)). Therefore, the petitioners assert that the submission of these new costs cannot be considered minor by any measure and should not be used in the margin calculation.

Usinor disagrees with petitioners position that the presentation of revised cost data for these thirteen control numbers is inappropriate. According to Usinor, the revised cost data does constitute a minor correction because the reported costs of these control numbers were incorrectly submitted due to a computer error. Moreover, Usinor asserts this type of correction is typically accepted by the Department at the commencement of verification. Usinor further states that this minor correction was thoroughly verified by the Department. The Department, therefore, should reject petitioners' attempt to create an issue where none exists.

Department's Position: We agree with Usinor that the revised cost of the thirteen control numbers in question is a minor correction appropriately provided at the beginning of verification. Contrary to the petitioners' argument, this revision is not based on the submission of new information because the change relates to the correction of existing information for these control numbers. Specifically, Usinor presented the Department with revised cost data for 13 control numbers (i.e., models) on the first day of verification. In its original submission, Usinor thought that these thirteen models had been produced outside the POI. To calculate the POI cost of these models in its response, Usinor relied on surrogate values (i.e., the costs of the most similar control number produced during the POI). During the preparation for verification, however, Usinor realized that these models had actually been produced during the POI. As a result, the company did have the actual cost of the model available to make more accurate calculations. During verification, we obtained and reviewed with company officials a list of the actual cost of manufacture for these control numbers (see cost verification exhibit 1). We noted costs had changed but did not find the difference to be significant. As for the collection of the corrected information, we believe the revised calculation of the cost of these models was properly submitted prior to the beginning of verification since the error was found as a result of verification preparation (i.e., reconciliation of costs, as requested in the agenda). Therefore, we have accepted the revised costs for the final determination.

Comment 25: Application of Facts Available to Edgcomb's Further Manufacturing Data (Edgcomb)

Petitioners contend that the dumping margin for U.S. sales further manufactured by Edgcomb should be based on adverse facts available. According to petitioners, it is appropriate for the Department to use adverse facts available pursuant to section 776(b) of the Act in this case because Usinor has failed to cooperate by not acting to the best of its ability to comply with a request for information within the meaning of section 776(b) of the Act. The verification report establishes this non cooperation in several different areas. According to petitioners, in similar cases, the Department has applied the highest margin in the petition, the notice of initiation, or the highest non-aberrant calculated margin in the database (see *Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8910 (Feb. 23, 1998)).

Petitioners first argue that Edgcomb did not provide the most product-specific costs available. According to petitioners, Edgcomb has a standard cost system that calculates model-specific costs, but Edgcomb elected not to use it for submission purposes. Petitioners argue that Edgcomb calculated and reported a single weighted-average per-unit further manufacturing cost based on an inappropriate allocation methodology that was found to be inaccurate and distortive by the Department. Specifically, petitioners first point out that Edgcomb's reported costs did not account for the processing steps through which the merchandise actually passed. In addition, the reported costs were an average of all stainless steel products rather than just subject merchandise. Thus, Edgcomb included costs for non subject merchandise like bars and angles. Then, the petitioners note that the respondent allocated costs using sales quantities (which do not accurately represent production quantity, due to product-specific changes in inventory) and sales values (which do not account for differences in product mix). As a result of failing to provide information based on their cost accounting system and of creating an entirely new costing system, the petitioners argue that the information on the record concerning Edgcomb's further manufacturing costs is so incomplete that it cannot serve as the basis for the final determination, and the data cannot be corrected and used without undue difficulty.

Petitioners further allege that Edgcomb deviated from its normal accounting system in reporting its costs without obtaining authorization from the Department for the methodologies used. Thus, the company failed to provide information requested by the Department in the form and manner requested. According to petitioners, the Department's instructions required Usinor to contact the Department before offering an alternative methodology, which respondent failed to do. As a result, petitioners maintain that Edgcomb's unilateral decision to use an average rather than product-specific costs were improper. The burden, according to the petitioners, is on the respondent to create a complete and accurate record (see *Final Results of Administrative Review: Circular Welded Carbon Steel Pipes and Tubes From Thailand,* 62 FR 53808, 53814 (October 16, 1997)). Moreover, respondents cannot be allowed the unilateral discretion to decide which information to provide the Department (see *Olympic Adhesives, Inc.* v. *United States,* 899 F.2d 1565, 1571 (CIT. 1990) and *Mitsubishi Heavy Indus., Ltd.* v. *United States,* 833 F. Supp. 919, 924 (CIT 1993) (It is Commerce, not the respondent, that determines what information is to be provided for an investigation)). Lastly, petitioners contend that

Edgcomb failed to provide verifiable information that significantly impeded the investigation. As a result, Edgcomb has not demonstrated that it has acted to the best of its ability to provide requested information to the Department.

Usinor asserts that no basis exists to apply adverse facts available to Edgcomb's further manufacturing costs. Usinor claims that Edgcomb clearly disclosed in its section E questionnaire response that it was not relying on its cost accounting system to calculate its further manufacturing costs. Moreover, Usinor asserts that the Department never requested revised data from Edgcomb, nor did it even request a further explanation of Edgcomb's methodology. Thus, Usinor asserts that Edgcomb should not be penalized for the Department's failure to give Usinor adequate notice of any perceived deficiencies in Edgcomb's methodology. Respondent also claims that it would be particularly unfair and inappropriate to penalize Usinor for any perceived shortcomings in Edgcomb's cost data. According to Usinor, it fully cooperated with the Department's investigation and provided the Department with further cost of manufacturing data to the best of its ability. Usinor maintains that it does not control Edgcomb, and although Usinor believes that Edgcomb cooperated fully, it was unable to compel Edgcomb to proceed in a particular manner or with specified resources to provide the information pertinent to the investigation.

Moreover, Usinor argues that the further manufacturing data is acceptable and reasonable and should be used in the Department's final determination. Usinor argues that the methodology Edgcomb used was the only feasible method available and that this method accurately represents the cost of further processing. Usinor then asserts that Edgcomb's cost accounting system did not calculate accurate costs during the entire POI because the system was brand new. According to Usinor, Edgcomb installed the system during the POI but was slow to correct the cost inaccuracies the system calculated because further processing cost represents an insignificant portion of the Company's total cost. Since the cost system generated inaccurate results during the POI, Usinor claims that Edgcomb's cost accounting system could not be used. As an alternative, Usinor claims that Edgcomb appropriately used its financial accounting system to calculate the submitted single weighted-average per-unit cost.

If the cost accounting system had been completely implemented and usable, Usinor then argues that Edgcomb would still not be able to use the system to calculate its further manufacturing costs. According to Usinor, the company would have to overcome the problem of linking the sales orders back to the original plant that processed the subject merchandise. Usinor claims that this would involve extensive computer programming as well as an unreasonable amount of manual work on Edgcomb's behalf. In such instances, Usinor claims that the Department does not normally request such extensive undertakings and cites *Usinor Sacilor* v. *United States,* 872 FS 1000, 1007 (CIT 1994) to support its position that such an undertaking is not necessary.

Usinor then contends that calculating a single weighted-average further manufacturing costs for Edgcomb is not distortive. According to Usinor, the single weighted-average cost is appropriate because Edgcomb's slitting and cutting fabrication costs represent approximately the same amount. Usinor maintains that the Department often accepts single weighted-average per-unit costs. To support its position, Usinor cites several cases in which the Department accepted respondent's non-product specific weighted-average production costs when product-specific costs were not available (see *Final Results of Antidumping Review: Certain Porcelain-on-Steel Cookware from Mexico,* 62 FR 42496, 42506 (August 7, 1997) (''Cookware from Mexico''); *Final Results of Antidumping Review: Certain Welded Carbon Steel Pipe From Turkey,* 61 FR 69067, 69072 (December 31, 1996) (''Steel Pipe from Turkey''); *Final Results of Antidumping Review: Certain Cold-Rolled Carbon Steel Flat Products From Germany,* 60 FR 65264, 65266 (December 19, 1995) (''Steel Sheet Flat Products from Germany''). In the same context, Usinor disagrees with the Department's finding discussed in the further manufacturing cost verification report that indicates that the required processing route of a model does have an impact on the model's specific costs. According to Usinor, the verifiers incorrectly compared the fabricating costs associated with the cutting and slitting processes and not the average gross unit prices of the models involved. If the verifiers had compared the gross unit price, Usinor maintains that the total difference in costs would be found to be de minimis. In addition, Usinor asserts that the Department based its findings on a limited sample that is unrepresentative of the total population.

As for using sales quantity and value as an allocation bases, Usinor maintains that the approach is not distortive. According to Usinor, sales quantity is appropriate as an allocation base because it approximates Edgcomb's actual production quantity. In such instances, Usinor claims that the Department normally accepts the sales quantities in lieu of production quantity. To support this claim, Usinor cites several cases in which the Department accepted sales quantities in lieu of production quantities (see *Final Results of Antidumping Duties: Certain Welded Carbon Steel Pipe and Tube from Turkey,* 61 FR 69067, 69071 (December 31, 1996); *Final Determination of Sales at Less Than Value: Stainless Steel Round Wire from Canada,* 64 FR 17324, 17330 (April 9, 1999)). As to the use of sales value as an allocation base, respondent notes that this allocation base was used principally because the data for other allocation bases were not available.

Usinor then disagrees with the petitioners' contention that Edgcomb's reported costs were based on incomplete data. Usinor maintains that the only instance of Edgcomb basing its calculations on limited data is its process material yield loss calculations. According to Usinor, Edgcomb had to calculate this cost based on the last three months of the POI because of the deficiencies in its cost accounting system. Specifically, Edgcomb's cost accounting system did not retain all the production data for the POI. Moreover, Usinor claims that the sample used to generate the yield loss is representative because it is based on Edgcomb's experience and there is no reason to believe the yield losses change over time.

Department's Position: We agree with petitioners that the further manufacturing costs cannot be used for the final determination, and therefore the Department must resort to facts otherwise available. While we agree with petitioners that the further manufacturing costs contain errors that are not correctable, we disagree that the application of adverse facts available is warranted in this case. Section 777(b) allows the Department to use an inference that is adverse to the respondent, if it finds that the ''interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.'' However, we were able to verify that, because Edgcomb was in the process of switching accounting systems during the POI, it experienced extraordinary difficulties in reporting to the Department. While we agree with

petitioners that Usinor or Edgcomb should have notified the Department—prior to the submission of the further manufacturing response—that it did not intend to use its normal cost accounting system for reporting purposes, the Department did not direct Edgcomb to resubmit its further manufacturing costs. Therefore they have not failed to cooperate and an adverse inference is not warranted.

However, based on our findings at verification, we conclude that the cost methodology reported by Usinor for Edgcomb's costs is unusable. We disagree with Usinor's argument that the reporting of one single weighted-average per-unit further manufacturing cost does not distort the analysis. Edgcomb's single weighted-average per-unit cost not only obscured all cost differences associated with some of the physical characteristics identified in this investigation as being significant, but also included all cost differences associated with the physical characteristics of non-subject merchandise. At verification, we found that Edgcomb included the fabricating costs of both subject and non-subject merchandise in its submitted weighted-average cost.

We also disagree with Usinor that the use of sales values and quantities is appropriate. While the Department has allowed the use of sales quantities when it is established that they are reflective of production quantities, the use of sales values is seldom appropriate. Sales values are not typically appropriate for purposes of allocating cost because they do not necessarily reflect the actual factors that drive certain costs. The court of appeals has found the use of sales value as an allocation base leads to a circular methodology, in the context to antidumping calculations (see *IPSCO, Inc.* v. *United States,* 965 F. 2d 1056 (Fed. Cir. 1992) (Court determined price-based allocations of costs methodologies circular, and ''contradict the express requirements of the statute which set forth the cost of production as an independent standard for fair value.'').

Additionally, we disagree with Usinor's interpretation of several cases which Usinor relies upon to support its claim that the Department has normally accepted respondent's non-product specific weighted-average production costs when product-specific costs were not available. For example, in *Cookware from Mexico,* 62 FR at 42506, the Department actually determined that the respondent's reported costs ''were allocated to a sufficient level of product specific detail in accordance with the Department's questionnaire instructions.'' In *Steel Pipe From Turkey,* 61 FR at 69072, the Department determined that, even though respondent's reported cost did provide some level of product specificity, it did not reflect the same level as the costs maintained in its normal course of business. Therefore, the Department made necessary adjustments through application of partial facts available to reflect more product-specific data available on the record. In *Steel Flat Products from Germany,* 60 FR at 65266, the Department determined that the reported costs did have a certain level of product specificity and did reflect the costs as reported in the company's normal cost accounting system.

Finally, Usinor has also argued that the samples the Department obtained of the cost accounting system are not representative of the total population. We disagree. We note that the court has upheld our use of testing the respondent's data through the use of samples. In *Tatung Co.* v. *United States,* Slip Op. 94–195 (CIT 1994), the court opinion stated ''verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness, so that Commerce can justifiably rely on that information.'' Moreover, we note that Usinor itself selected the two samples upon which the Department's conclusions are based prior to verification. See *Memo to the File from Garri Gzirian,* dated March 19, 1999.

Therefore, we have not relied on Edgcomb's reported cost of manufacturing data. Where we did find that Edgcomb's costs were reported correctly, we have used those costs. However, in other instances, as facts otherwise available we have utilized the manufacturing costs of Usinor's other further manufacturer, Hague. We adjusted Hague's reported costs using certain yield loss and processing costs data verified at Edgcomb. We have relied on Edgcomb's SG&A and financial expense calculations.

Comment 26: Combined Financial Statements of Edgcomb and EEHC, and Leasing Arrangement Between the Entities (Edgcomb)

Petitioners assert that Usinor understated Edgcomb's further manufacturing costs by not including the true cost of leasing its plant and equipment (''P&E'') from an affiliate. According to petitioners, Usinor relied on the amounts reported in Edgcomb and EEHC's combined financial statements. The combined financial statements collapsed the results of Edgcomb and EEHC (which is a partnership that leases P&E to Edgcomb) into a single reporting entity. However, by relying on amounts reported in the combined financial statements, petitioners assert that Edgcomb only included the depreciation expense associated with this leased P&E rather than the actual lease payments incurred. Petitioners argue that this combination is improper because Edgcomb and EEHC are distinct entities with separate revenues and costs. Thus, petitioners contend that Usinor inappropriately understated Edgcomb's further manufacturing costs.

Usinor disagrees with the petitioners' contention. According to Usinor, Edgcomb manages EEHC's financial records in the normal course of business and normally combines the financial results of the two entities. Moreover, Usinor maintains that EEHC is simply a paper company that was created solely for the purpose of implementing the sale/leaseback financing arrangement. As such, Usinor maintains that there is no actual substance to the separateness of these business entities. In addition, Usinor claims that it is the Department's normal practice to collapse such affiliated entities into a single reporting entity. To support its claim, Usinor cites *Koenig & Bauer Albert AG* v. *United States,* LEXIS 23, at *12 (CIT 1999) and *Asociación Colombiana de Exportadores de Flores* v. *United States,* 6 FS 2d 865, 892–896 (CIT 1998) (Demonstrates the Department's practice of collapsing affiliated parties and treating them as a single entity.). Usinor further notes that Edgcomb's recording of EEHC's actual depreciation expenses instead of the actual rental expense in the combined financial statements is in accordance with U.S. GAAP. Therefore, according to respondent, the Department should continue its practice of adhering to a respondent's accounting practices in accordance with GAAP so long as the practices do not significantly distort the firm's financial position and actual costs. To support this point, respondent cites *Laclede Steel Co.* v. *United States,* 965 LEXIS 186, at *28 (CIT 1994) and *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Italy,* 63 FR 40422, 40429 (July 29, 1998).

Department's Position: We agree with petitioners that Edgcomb understated its reported costs by only reporting the depreciation expense on its leased assets rather than the transfer price. However, we find this issue is moot because we are not relying on Edgcomb's reported fabrication costs for the final determination.

Comment 27: Value of Scrap Sales Used To Offset Further Manufacturing Material Costs (Edgcomb)

Usinor admits that Edgcomb may have slightly understated its material costs by overstating its scrap revenue used as an offset to these costs. However, Usinor claims that revising the value would only increase further manufacturing costs by a de minimis amount.

Petitioners refer to the overstatement of the value of scrap sales offset as another reason for not accepting Edgcomb's reported further manufacturing costs. However, if the Department does not resort to facts available, petitioners claim that the Department should make an adjustment to correct for this understatement of costs.

Department's Position: We agree with petitioners that Edgcomb understated its reported material costs by overstating its scrap revenue offset. However, this issue is moot because we are not relying on Edgcomb's fabrication costs for the final determination.

Comment 28: Including the Consolidation Depreciation Adjustment to Further Manufacturing Costs (Edgcomb)

Usinor argues that the Department should not include the depreciation adjustment reported in Edgcomb's 1997 financial statements in the company's further manufacturing cost. According to Usinor, this depreciation is the result of making a year-end adjustment for financial statement purposes. Specifically, Usinor notes that this adjustment was made in accordance with U.S. GAAP because the new parent (i.e., Samsteel) of Edgcomb changed the useful lives used by Edgcomb previous parent (i.e., Usinor). Moreover, Usinor claims that this adjustment was later eliminated through consolidating entries when Samsteel prepared its 1997 consolidated financial statements. In 1998, Usinor notes that this adjustment wasn't even recorded at Edgcomb's level. If the depreciation adjustment is added to Edgcomb's further manufacturing costs, Usinor notes that the resulting change would have a de minimis impact on the margin calculations.

To capture accurately the expenses incurred, petitioners contend that the Department should include the adjustment in Edgcomb's further manufacturing costs.

Department's Position: We agree with petitioners that this expense should be included in Edgcomb's further manufacturing fabrication costs. However, this issue is moot because we are not relying on Edgcomb's fabrication costs for the final determination.

Comment 29: Applying Facts Available to Hague's Further Manufacturing Costs (Hague)

Petitioners argue that the Department cannot accept the further manufacturing costs reported by Hague, and should base the margin calculations on adverse facts available. Petitioners point out that Hague reported its unit cost of material based on overall figures that include the total cost and quantity of subject and non-subject merchandise. Petitioners claim that information presented on the verification exhibits show that Hague's accounting system is capable of providing a more detailed cost of material. Based on this conclusion, petitioners assert that Hague failed to provide the most product-specific costs allowed by its cost of production records, which creates grounds for application of the adverse facts available under section 776 of the Act.

Usinor argues that petitioners' claims of inaccuracy and demands to apply adverse facts available to Hague's further manufacturing cost should be rejected. Usinor refutes petitioners' conclusion on the capabilities of Hague's accounting system by claiming that it was not feasible to provide more product-specific calculations based on the information generated by the system. According to Usinor, in those cases, where the system keeps track of major grade categories, it does not allow to separate subject from non-subject material within each grade. In other cases, where it does allow identification of the source and process (which is essential for identifying subject merchandise), it does not contain information by grade. Respondent contends that Hague's further manufacturing data is based on a reasonable methodology, consistent with the available records that Hague maintains in its normal course of business.

Department's Position: We disagree with the petitioners' contention that the methodologies used by Hague to calculate its reported cost of further manufacturing warrant the application of adverse facts available. To calculate model specific costs, Hague relied on the most specific and reasonable allocation methods available within its normal record keeping system. Specifically, Hague relied on the costs reported in its financial accounting system to calculate its reported further manufacturing costs because the company does not have a detailed cost accounting system that generates model-specific costs. Using the amounts reported in its financial accounting system and available production reports, Hague was able to calculate a unique further manufacturing cost for each major fabrication process. Where the respondent has provided model specific costs that reasonably reflect the cost of production, our practice is to accept the respondent's reported costs (*see Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey,* 61 FR 69067 (December 31, 1996). In accordance with section 782(e) of the Act, even where information does not meet all of the established requirements, we will use it where it is timely, reliable, and can be used without undue difficulty.

Moreover, our verification revealed nothing to contradict Hague's claim that it does not maintain more product-specific data in its normal course of business. We also verified that Hague was not able to calculate more model specific fabrication costs than those provided. While the accounting records identified by petitioner could in theory be used to calculate more specific costs for each specific order, Hague does not retain all the necessary production records in its normal course of business to make such calculations. As a result, Hague's methodology does provide a reasonable level of product specificity that is consistent with the company's records maintained in the normal course of business. Moreover, we found that the deficiencies we had identified in our further manufacturing cost verification report (e.g., understatement of material costs, additional process strings, etc.) can be adjusted without undue difficulties using data available on the record. Therefore, we find that the application of adverse facts available is not warranted in this instance.

Comment 30: Adjusting the Reported Further Manufacturing Material Costs (Hague)

Usinor maintains that the Department does not need to adjust Hague's reported material costs. Usinor argues that the methodology used by the Department in its further manufacturing cost verification report to show that costs may be understated is inaccurate. Specifically, Usinor points out that the numerator in the verifiers' calculations includes non-subject as well as subject material purchases. In addition, the Department's calculated cost is based on 1997 calendar year figures. In contrast, the denominator includes only subject merchandise sales and is POI based. To make the Department's calculation more accurate and to show that the reported

material cost is not distortive, Usinor provided a revised calculation of Hague's material costs in its case brief. Since the resulting figure is only slightly higher than the reported costs, Usinor believes that Hague's approach was fair and reasonable and should be accepted by the Department.

Petitioners argue that the Department should adjust Hague's cost of material to exclude non-subject materials in accordance with the methodology suggested in the cost verification report.

Department's Position: We have reviewed the information on the record and agree with Usinor that the material cost calculated in Hague's cost verification report was overstated. In addition, we reviewed the methodology suggested by Hague in its case brief and have found it to be reasonable and more product-specific. Therefore, for the final determination, we have adjusted Hague's further manufacturing costs using the method outlined in Usinor's case brief.

Comment 31: Claim Reimbursement Offset Further Manufacturing Costs (Hague)

Usinor argues that the Department should not reverse the adjustment made to Hague's raw material costs to exclude a warranty expense. According to Usinor, Hague appropriately reduced its reported costs for an expense that relates to the resolution of a 1996 warranty claim on a 1995 sale.

Petitioners contend that the Department should reverse the adjustment to include this warranty cost because it was expensed during the POI.

Department's Position: We agree with Usinor that Hague should not include this expense in the calculation of its further manufacturing costs. We note that the adjustment in question (''Claim Reimbursement—95'') actually represents a finished goods inventory adjustment. Specifically, information on the record show that a customer rejected a shipped product because of a defect caused by the fabrication process. Regardless of the timing of the events and transactions underlying this adjustment, the adjustment essentially represents a revaluation of finished goods inventory which should not be considered a part of Hague's further manufacturing costs. Therefore, consistent with our normal practice, we have allowed Hague to exclude this cost from its costs calculations (see *Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada*, 64 FR 17324, 17334 (April 9, 1999)).

Comment 32: Adjusting Further Manufacturing Financial Expense Ratio (Hague)

Usinor argues that the Department should not adjust Hague's reported further manufacturing financial expense. According to Usinor, Hague appropriately deducted imputed amounts from the consolidated financial expense figure to avoid double counting. Usinor maintains that imputed credit and inventory carrying costs are already deducted from the sales price in the margin calculations. Therefore, these expenses should not be included in the calculation of the further manufacturing costs which is also a deduction to the sales price. Respondent asserts that it is the Department's standard practice to avoid such double-counting. To support this assertion, respondent cites *Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea*, 64 FR 12927, 12931 (March 16, 1999) (''Carbon Steel Flat Products From Korea''); *Final Determination of Sales at Less Than Fair Value: New Minivans From Japan*, 57 FR 21937, 21956 (May 26, 1992) (''New Minivans From Japan''); and *Final Results of Antidumping Duty Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany,* 56 FR 31692, 31721 (July 11, 1991) (i.e., ''AFB from Germany'').

Petitioners, however, argue that in fact *Carbon Steel Flat Products from Korea* undercuts the respondent claim, and demonstrates that, to the contrary, the Department's standard practice is not to accept such adjustments.

Department's Position: We disagree with Usinor. It is not appropriate for Hague to reduce the consolidated financial expense with imputed amounts. In fact, we have always maintained that regular interest expenses represent a legitimate production cost of a U.S. further manufacturing affiliate and therefore should not be reduced by imputed interest (see *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan*, 61 FR 38139, 38165 (July 23, 1996). In that case, the Department disagreed with the respondent that we double counted costs in the further manufacturing interest expense by deducting both interest and imputed credit in our CEP calculation. As for Usinor's citations to support their position, we note that the Department's position is taken out of context. Specifically, our position in *Carbon Steel Flat Products From Korea* (which references *Minivans* and *AFBs From Germany*) addresses the possibility of double-counting of imputed interest in the context of U.S. indirect selling expenses. However, we note that indirect selling expenses are not a component of further manufacturing cost. Furthermore, even in the context of U.S. indirect selling expenses, the Department stated its position that ''because activities of U.S. sales affiliates differ considerably across cases, the Department must determine the appropriate universe of CEP deductions on a case-by-case basis.'' Therefore, we have disallowed the adjustment in question, and applied the financial expense ratio calculated at the consolidated level.

Comment 33: Further Manufacture Financial Expense Ratio Calculation (Edgcomb)

Usinor states that the Department should accept Edgcomb reported further manufacturing financial expense that was calculated using Samsteel, Inc.'s consolidated financial statements. Usinor maintains that Edgcomb's ultimate parent, the Macsteel Group of South Africa, does not prepare a consolidated financial statement. Thus, Edgcomb calculated its financial expense ratio using the consolidated amounts from the highest level financial statement obtainable (i.e., that of Samsteel). Usinor also notes that the financial expense ratio for Samsteel is not significantly different from Usinor's consolidated financial expense ratio.

According to petitioners, Edgcomb is not cooperating in this investigation by refusing to provide the consolidated financial figures of Edgcomb's ultimate parent, Macsteel Group of South Africa. Petitioners refer to the overstatement of the value of scrap sales offset as another reason for not accepting Edgcomb's reported further manufacturing costs. If the Department does not resort to adverse facts available for Edgcomb, petitioners claim that the Department should still adjust respondents financial expense.

Department's Position: We agree with Usinor that Edgcomb appropriately relied on the financial statements of the highest consolidation level available to calculate the company's further manufacturing financial expense ratio. During verification, we confirmed that no higher level of consolidation existed (*see*, Edgcomb's cost verification exhibit 13). Moreover, relying on Samsteel's consolidated statements as being the

highest level available is consistent with our prior practice (see *Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire From Canada*, 64 FR 17324–17336 (April 9, 1999) (Department relied on the amounts reported on the consolidated financial statements of the highest level available to calculate the financial expense ratio). Likewise, we found that it would be inappropriate to use the Usinor Group's consolidated financial expense ratio as a surrogate. We note that the Usinor Group only held a minority interest in Edgcomb. As a result, Edgcomb's financial results were not consolidated into the Group's financial results. Since Edgcomb's financial expense is not a component of the reported further manufacturing costs which are being based on facts available, as discussed above, we have relied on the company's submitted financial expense ratio for the final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Tariff Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from France that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999 (the date of publication of the *Preliminary Determination* in the **Federal Register**). The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. The suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
Usinor	10.64
All Others	10.64

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, or withdrawn from warehouse, 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: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

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