This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 28, 1999.

Holy Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–285 Filed 1–5–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(A–421–701)

Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands

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

SUMMARY: On September 8, 1999, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from the Netherlands and its notice of intent to revoke the antidumping duty order. We gave interested parties an opportunity to comment on the preliminary results. We have analyzed the comments received and have made certain changes for the final results.

This review covers shipments by one respondent during the period August 1, 1997, through July 31, 1998. For our final results, we have found that sales of the subject merchandise have not been made below normal value. We will instruct the Customs Service not to assess antidumping duties on the subject merchandise exported by this company. Furthermore, we are not revoking the antidumping duty order given that shipments of subject merchandise to the United States by Outokumpu Copper Strip B.V. (OBV), the sole producer and exporter of subject merchandise from the Netherlands, have not been made in commercial quantities for each of the three consecutive review periods that formed the basis of the revocation request. See *Determination Not To Revoke Order* section of this notice.

EFFECTIVE DATE: January 6, 2000.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Jarrod Goldfeder, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4126 or (202) 482–2305, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (1999).

Case History

This review covers OBV, the sole manufacturer/exporter of merchandise subject to the antidumping duty order on brass sheet and strip from the Netherlands.

On September 8, 1999, the Department published the preliminary results of this review. *See Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order: Brass Sheet and Strip from the Netherlands,* 64 FR 48760 (*Preliminary Results*). On October 20, 1999, we received case briefs from OBV and the petitioners. We received rebuttal briefs from OBV and the petitioners on October 29, 1999. A public hearing was held on November 2, 1999.

Scope of Review

Imports covered by this review are brass sheet and strip, other than leaded and tin brass sheet and strip, from the Netherlands. The chemical composition of the products under review is currently defined in the Copper Development Association (CDA) 200 Series or the Unified Numbering System (UNS) C2000 series. This review does not cover products the chemical compositions of which are defined by other CDA or UNS series. The physical dimensions of the products covered by this review are brass sheet and strip of solid rectangular cross section over 0.006 inch (0.15 millimeter) through 0.188 inch (4.8 millimeters) in gauge, regardless of width. Included in the scope are coiled, wound-on-reels (traverse wound), and cut-to-length products. The merchandise under investigation is currently classifiable under item 7409.21.00 and 7409.29.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Determination Not To Revoke Order

The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia,* that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (NV) in the current review period and that the company will not sell at less than NV in the future; and (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department may revoke an order if it concludes that each exporter and producer covered at the time of revocation: (1) sold subject merchandise at not less than NV for a period of at least three consecutive years; and (2) is not likely in the future to sell the subject merchandise at less than NV; *see* 19 CFR 351.222(b)(1)); 19 CFR 351.222(b)(2); *see, e.g., Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part: Pure Magnesium from Canada (Pure Magnesium from Canada),* 64 FR 12977, 12982 (March 16, 1999).

In our *Preliminary Results,* we preliminarily determined that OBV sold in commercial quantities during the period of review (POR) and that it is not likely that OBV will sell at less than NV in the future (*see* Preliminary Results, 64 FR at 48765–48766). However, upon review of the criteria outlined at section 351.222(b) of the Department's regulations, the comments of the parties, and the evidence on the record, we have determined that the Department's requirements for revocation have not

been met. Based on the final results in this review and the final results of the two preceding reviews, OBV has demonstrated three consecutive years of sales at not less than NV. However, we find that OBV's aggregate sales to the United States have not been made in commercial quantities during each of the three review periods that formed the basis of OBV's revocation request. *See* Comment 5 for a discussion of the basis for this decision. The abnormally low level of sales activity does not provide a reasonable basis for determining that the discipline of the antidumping duty order is no longer necessary. Consequently, we find that OBV does not qualify for revocation of the order on brass sheet and strip under 19 CFR 351.222(e)(1)(ii).

Comparisons

We calculated export price (EP) and NV based on the same methodology used in the *Preliminary Results.*

Cost of Production

As discussed in the *Preliminary Results,* we conducted an investigation to determine whether OBV made home market sales of the foreign like product during the POR at prices below its cost of production (COP) within the meaning of section 773(b)(1) of the Act.

We found 20 percent or more of OBV's sales of a given product during the 12 month period were at prices less than the weighted-average COP for the POR and thus determined that these below cost sales were made in ''substantial quantities'' within an extended period of time, and that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2) (B), (C), and (D) of the Act. Therefore, for purposes of these final results, we disregarded the below-cost sales and used the remaining sales as the basis for determining NV, pursuant to section 773(b)(1) of the Act.

We calculated the COP for these final results following the same methodology as in the preliminary results, with the following exceptions:

A. OBV had claimed a nine-month startup period for January 1998 through September 1998 for its new continuous strip casting mill. For the final results, we have allowed OBV the startup adjustment. However, we found that the startup period ended on May 31, 1998 and not September 30, 1998. As a result, we decreased the amount of OBV's startup adjustment. In addition, we amortized the capitalized startup costs and included a portion of the amortized costs in the calculation of COP. *See* Comment 1.

B. We have calculated weighted-average monthly metal costs based on metal fix prices, which were confirmed at verification. *See* Cost Verification Exhibit (CVE) 18. For fabrication costs, we have used weighted-average annual costs based on the data reported in the COP and constructed value (CV) data files. *See* Comment 2.

C. OBV purchased major inputs from an affiliate and used the transfer prices in the calculation of its COP and CV. For the final results, we have increased the transfer prices to the affiliate's COP in calculating OBV's cost of manufacture. *See* Comment 3.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. As noted above, we received comments and rebuttal comments from OBV and the petitioners.

Comment 1: Startup Adjustment

The petitioners contend that the Department should deny OBV's request for a startup adjustment because it is not eligible for such an adjustment. To be eligible for a startup adjustment, the petitioners state that a respondent must either be starting up a completely new production facility, retooling an existing facility, or producing a new product. The petitioners argue, however, that OBV's new strip caster does not meet any of these eligibility requirements because the company merely installed an expensive piece of equipment used in a single stage of the manufacturing process. In such situations, the petitioners claim that the Department has typically found that replacing or rebuilding only part of an operation, despite a substantial level of investment, does not result in a new facility and does not warrant a startup adjustment to cost. To support this claim, the petitioners cite to several recent cases in which the Department has denied similar requests. For example, the petitioners cite *Final Results of Antidumping Administrative Reviews: Certain Cold Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea,* 64 FR 12927, 12950 (March 16, 1999) (*Flat Products from Korea*); *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Spain,* 63 FR 40391, 40401 (July 29, 1998) (*SSWR from Spain*); *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile,* 63 FR 56613, 56618 (October 22, 1998) (*Mushrooms from Chile*); *Final Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany,* 63 FR 13217, 13220 (March 18, 1998) (*Pressure Pipe from Germany*); and *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India,* 63 FR 72246, 72253 (December 31, 1998) (*Mushrooms from India*). In each of these cases, the petitioners contend, the Department disallowed the startup adjustment because the applicants failed to undergo ''substantially complete retooling'' or the improvements did not result in a ''near new facility.''

To further their position that the Department should disallow OBV's startup adjustment, the petitioners also assert that the respondent has not met the Department's burden of proof requirements for receiving such an adjustment. Citing *Mushrooms from Chile,* the petitioners claim that the Department normally denies the startup adjustment when the respondent has not sufficiently supported its claim for such an adjustment. In this case, the petitioners claim OBV failed to adequately provide, completely omitted, or miscalculated the following information in their startup request.

First, according to the petitioners, OBV's investment in the new strip caster was not significant in comparison to its total property, plant, and equipment value. Moreover, the petitioners argue that OBV overstated the relative investment made in the strip caster mill by relying on historical, rather than inflation-adjusted costs, to calculate its reported investment percentages. As a result, the analysis provided by the respondent leads to the erroneous conclusion that the amount invested was significant. The petitioners contend that without a significant investment, OBV does not qualify for a startup adjustment.

Second, according to the petitioners, the Department should disallow OBV's startup claim because the company's data demonstrates that technical factors related to the new strip caster did not constrain the company's production levels. The petitioners contend that the production limitations that existed during the POR were the result of the company's conscious decision to run both the old and new casters simultaneously. This, according to the petitioners, is not a technical problem. More importantly, the petitioners claim, OBV's production volume approached maximum capacity during the POR. Thus, the petitioners conclude that OBV experienced no reduction in its production levels while installing the

new strip caster and, therefore, consistent with its determination in *Mushrooms from India,* the Department must disallow the adjustment. In addition, the petitioners point out that an analysis of OBV's yield data also demonstrates that technical factors did not hinder its production levels.

Third, the petitioners argue that OBV did not provide complete information concerning technical difficulties. According to the petitioners, OBV failed to provide sufficient information on the types and frequency of technical problems that the industry generally incurs in operating casting equipment. In other words, the company should have distinguished between normal repairs and technical difficulties related to startup. Without this information, the petitioners argue that it is impossible for the Department to draw a meaningful comparison between the operation of the ring caster and the strip caster. In prior determinations, the petitioners claim that the Department has relied upon this type of failure as sufficient grounds to deny a startup adjustment (*see, e.g., Mushrooms from Chile*).

Finally, according to the petitioners, OBV's reported costs after the startup adjustment were not consistent with common industry knowledge. Specifically, the petitioners contend that the startup adjustment distorts costs because it shifts costs away from thinner gauged merchandise.

If for some reason the Department determines that it should adjust OBV's production costs, the petitioners claim that the Department should account for the adjustment as a non-recurring cost adjustment. Moreover, in making such an adjustment, the petitioners believe that the Department should specifically limit the adjustment only to non-recurring variable costs (*i.e.,* direct labor and variable overhead).

OBV, on the other hand, believes that it is entitled to a startup adjustment. OBV explains that the Department normally grants this adjustment when a producer is using a new production facility and the production levels are limited by technical factors associated with the initial phase of commercial production. According to OBV, the company's new continuous strip caster meets these qualifications because it qualifies as a new production facility and evidence on the record demonstrates that production levels were limited by technical factors associated with the initial phase of commercial production.

On the issue of whether a separate facility is required by law, OBV counters that the statute does not require that a respondent's new production facility encompass all the steps in the production process (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909 (February 23, 1998) (*SRAMs from Taiwan*)). Instead, OBV claims, the statute only directs that the startup adjustment not be the result of making an ''on-going'' or ''mere improvement'' to an existing facility. To support its claim that its new casting facility is more than just an improvement, OBV notes that the evidence provided demonstrates that the new continuous strip casting mill constitutes a wholesale replacement of the old ring casting mill. To complete this replacement, OBV states that the new facility required significant investment and was a substantial undertaking. OBV emphasizes that it had to invest in an entirely new technology which required the installation of new equipment. Furthermore, the company had to construct a new building to house the operation.

In addition, OBV, in its rebuttal brief, specifically addresses each of the petitioners' arguments for disallowing the startup adjustment, as follows:

First, OBV states that it realizes that the burden of demonstrating the entitlement to a startup adjustment rests with the party making the claim (*see, e.g., SSWR from Spain*). OBV further notes that the standard of proof for a start-up adjustment is no greater than that for any other adjustment claimed by respondent. In this case, OBV states that it has met this requirement by providing evidence which demonstrates that the new mill meets the statutory criteria for a startup adjustment.

Second, OBV refutes the petitioners' contention that the level of investment was not significant by countering that it has not overstated the size of its investment in the new caster. According to OBV, the record in this case demonstrates that it has substantially increased the value of its property, plant, and equipment base. OBV further notes that the level of investment is significant whether one measures the investment using historical or inflation-adjusted costs.

Third, regarding production levels, OBV argues that they were limited by technical factors and that the company's overall output used in the petitioners' analysis is not the appropriate benchmark for determining limitations. OBV claims that the critical factor in measuring commercial quantities and determining the length of the startup period is the number of units processed, *i.e.,* ''production throughput'' of the strip caster. On this measure, the record demonstrates that the startup period continued at least through September 1998. In addition, OBV argues that the company's decision to operate its new and old caster at the same time was based on sound business reasons that does not result in an overstatement of the company's startup adjustment.

Fourth, OBV asserts that the strip caster had lower production volumes in the beginning of commercial production because specific categories of technical difficulties caused production delays and interruptions. Moreover, the respondent states that it provided all the necessary information to allow the Department to evaluate these specific categories of technical difficulties. OBV further claims that the type of difficulties relied upon to support its claim are distinct from the company's ordinary repairs. According to OBV, production personnel tracked and recorded these difficulties as they occurred in an effort to resolve the problems quickly and to continually develop procedures to avoid similar difficulties in the future.

Finally, OBV believes that the Department should adjust OBV's production costs related to the new caster as ''startup'' and not as a ''non-recurring'' cost adjustment. If the Department were to treat the adjustment as a non-recurring cost, OBV believes that the startup adjustment should not be limited to non-recurring variable costs. According to OBV, the Statement of Administrative Action (SAA) section describing non-recurring costs does not state that only variable cost should be adjusted.

DOC Position: We agree with OBV and have determined that the company's new continuous strip casting mill is eligible for a startup adjustment in accordance with section 773(f)(1)(C)(ii) of the Act. As for the appropriate startup period, however, we have determined that the period ended in May 1998, rather than September 1998, as claimed by OBV. Specifically, section 773(f)(1)(C)(ii) of the Act states that the Department will make an adjustment for startup costs where the following two conditions are met: (1) A producer is using new production facilities or producing a new product that requires substantial additional investment, and (2) the production levels are limited by technical factors associated with the initial phase of commercial production. We have examined OBV's claim and determined that the criteria for granting a startup adjustment have been satisfied in this case.

During the POR, OBV completed construction and began operating its strip caster, which consists of a caster and a heavy gauge rolling line. The caster melts copper and zinc into brass, and the heavy gauge rolling line rolls the resulting molten brass into master coils. This new casting line, which is based on new technology, allows the company to continuously cast and roll master coils (a semi-finished product). In contrast, the old ring caster required several more production steps because OBV first had to cast large brass rings (*i.e.,* ingots). The company would then heat and roll these ingots into master coils. After fabricating the master coil, OBV then re-rolls and slits the semi-finished coil to make a finished product. To complete the new strip casting line, OBV also constructed a new building to house the new equipment. During part of the POR, OBV ran the old and new casting lines simultaneously. OBV eventually shut down the ring caster, but after the POR. For the instant proceeding, OBV claimed a startup adjustment to costs pursuant to section 773(f)(1)(C)(ii) of the Act for its new continuous strip casting line because it experienced abnormally high costs for output produced on the strip caster. OBV's proposed startup adjustment covered a nine-month startup period from January 1998 through September 1998.

In this case, under section 773(f)(1)(C)(ii) of the Act, we have determined that OBV has satisfied the first condition of the test in that it is using a new production facility. Specifically, OBV replaced its old ring caster and began using its new strip casting facility which was a wholesale replacement of the company's essential casting production facility. The Department has recognized that a company may satisfy the requirement for using new production facilities without completing a top-to-bottom reconstruction. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom,* 61 FR 51412, 51419 (October 2, 1996). Moreover, our determination that the strip casting facility in this instance is a new production facility is consistent with past Department determinations. *See Preliminary Results of Antidumping Duty Administrative Reviews and Intent To Revoke in-Part: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada,* 63 FR 37320, 37325 (July 10, 1998).[1] In that case, the Department determined that the construction of the respondent's new Electric Arc Furnace (EAF) facility, which is similar to the caster in this case, constituted a new production facility under section 773(f)(1)(C)(ii) of the Act.

As noted by the petitioners, the Department has disallowed some startup adjustments in the past because we found that they resulted from either making mere improvements to an existing facility or did not entail the replacement (or rebuilding) of nearly all of the respondent's production machinery in its claimed new facilities (*see, e.g., Flat Products from Korea,* 64 FR at 12950; *Pressure Pipe from Germany,* 63 FR at 13220). We find, however, that OBV's startup situation differs from the determinations cited by the petitioners because OBV documented that its new casting and rolling facility was more than a ''mere'' or ''on-going'' improvement to the company's manufacturing facility. The information on the record shows that the new continuous strip casting mill was the result of a significant undertaking and substantial investment. For an example of the significant undertaking involved, OBV showed that its new continuous strip casting mill constituted a wholesale replacement of the old ring casting mill. Although not determinative, we further note that this wholesale replacement required OBV to structurally modify its production facility by constructing a new building and installing new casting and heavy rolling equipment. *See* OBV's February 2, 1999 Startup Memorandum, at Exhibit 4 (containing before and after plant diagrams that identify the physical magnitude of the new facility). As for substantial investment, record evidence of the fixed asset expenditures in this case demonstrates that to construct the new strip casting facility, OBV committed a significant amount of investment capital as part of the renovation project. For example, OBV showed that it purchased new equipment and that the final cost of the strip casting facility makes up a sizable percentage of the company's total fixed assets value.[2] *See* OBV's February 2, 1999 Startup Memorandum, at Exhibit 6A (containing a schedule identifying the original cost basis of all of the fixed assets owned by OBV as reported on the audited financial statements); Exhibit 20 of the Supplemental D Questionnaire Response (containing a schedule identifying the level of investment on a constant dollar basis); and CVEs 25 and 27 (containing sample source documents that support the purchase of new equipment casting and rolling equipment).

As for meeting the second condition of limited production due to technical factors under section 773(f)(1)(C)(ii) of the Act, we found that OBV's production levels were indeed limited by technical factors associated with bringing the new facility online. *See* the proprietary Memorandum from Stan Bowen to the File, ''Analysis of Technical Factors Related to Startup Adjustment,'' dated December 21, 1999. OBV identified the number of occurrences of production starts and provided detailed descriptions on the technical restraints and problems that limited the strip caster's production volumes. We cannot identify these technical factors here due to their proprietary nature, *see* OBV's February 2, 1999 Startup Memorandum, at 14–21 (containing detailed descriptions and identifies the number of occurrences). At verification, we reviewed these items with production personnel and found no reason to consider them ordinary repairs and maintenance (*see* Cost Verification Report, at 33). Based upon the information on the record, we disagree with the petitioners that production levels were not limited by technical factors; nor do we agree that OBV failed to provide complete information concerning the types and frequency of technical difficulties. Specifically, we found that the information on the record does not lead to the conclusion that OBV's low production volumes resulted from factors unrelated to startup (*e.g.,* seasonal demand, business cycle, etc). In fact, to meet its customers' demands during the startup period, OBV continued to operate its old ring caster while working out the technical problems which limited production at the new strip caster facility. OBV actually maintained production levels in total that were consistent with its past experience. During this period, OBV incurred the extra cost of operating two casters simultaneously. However, in

[1] This preliminary determination was upheld in the final results. *See Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada,* 64 FR 2173, 2176 (January 13, 1999) (*Certain Corrosion-Resistant Carbon Steel Flat Products from Canada*). The Department denied the startup adjustment on other grounds.

[2] To perform this analysis, we excluded the ring caster investment from the total fixed asset amount reported on the financial statement. *See* the proprietary Memorandum from Stan Bowen to the File, ''Analysis of Investment,'' dated December 21, 1999.

evaluating OBV's startup adjustment, we focused upon when the new caster achieved commercial production quantities and the operational cost of this facility.

To determine when the new caster achieved commercial production levels, we reviewed the number of units processed (*i.e.,* starts) at the facility from January 1998 through October 1998. The SAA directs the Department to examine the units processed in determining the claimed startup period. *See* SAA at 836. In *SRAMs from Taiwan,* we stated ''our determination of the startup period was based, in large part, on a review of the wafer starts at the new facility during the POI, which represents the best measure of the facility's ability to produce at commercial production levels.'' 63 FR at 8930. Consistent with the SAA and the Department's practice, we continue to apply production starts as the best measure of a facility's capability to produce at commercial production levels. From this analysis, we find that the OBV had worked out the majority of technical problems that had initially restricted its production by May 1998 (*see* business proprietary information contained in Exhibit 19 of the section D supplemental questionnaire response and Cost Verification Exhibit 1). Thus, we identified May 1998 as the month in which OBV significantly increased the number of caster starts. The decision to significantly increase the number of caster starts is indicative of OBV's resolution of technical problems that had initially restricted production.

As for the petitioners' concern that OBV's reported costs were not consistent with common industry averages due to the startup adjustment, we disagree. After review of the record, we found that the startup cost adjustment does not affect the costs incurred by the company at the finished rolling and slitting stages which determine cost differences for width and thickness. In fact, OBV separated its casting costs from the costs that it incurred for finished rolling, slitting, and other brass fabrication processes. Then, OBV isolated only the fabrication costs associated with the new strip caster during the startup period and applied the startup adjustment to only the CONNUMs processed on the new caster. As for the costs OBV used to compute its startup adjustment, we found that the company appropriately used the type of unit production costs referenced in section 773(f)(1)(C)(iii) of the Act (*e.g.,* depreciation of equipment and plant, labor costs, insurance, rent, lease expenses, material costs, and overhead). Likewise, we found that OBV correctly excluded non-allowable costs (*e.g.,* sales expenses, other non-production costs, and up-front research and development costs) that the Act states are ineligible for a startup adjustment.

Since we have accepted OBV's startup adjustment, we find the arguments on accounting for the startup adjustment as a section 773(f)(1)(B) non-recurring cost adjustment to be moot.

Comment 2: Using Monthly or Quarterly Raw Material Costs Instead of an Annual Weighted-Average

The petitioners argue that the Department should deny OBV's request that raw material costs (*i.e.,* metal costs) be calculated on a quarterly or monthly basis. According to the petitioners, the Department's standard practice is to calculate POR weighted-average costs and OBV has provided no basis for deviating from this practice in this review. For the Department to deviate, OBV would have to show that the price declines it incurred were unusually significant and consistent. The petitioners claim that the facts in this proceeding, however, do not identify such a decline. Instead, the petitioners characterize the changes in price as mere short-term fluctuations that typically occur in the normal course of business. Since the Department can characterize the price fluctuations as typical, the petitioners conclude that the calculation of an annual weighted-average cost adequately mitigates the effect of price changes because it is a weighted-average of high and low prices.

The petitioners provide additional reasons as to why monthly or quarterly costs should not be used. The petitioners claim that OBV has not demonstrated that calculating costs on a quarterly basis would more accurately portray OBV's total costs recorded during the POR. In fact, the petitioners contend, given that OBV fixes the metal price at a much earlier time than it actually records its metal cost, the use of quarterly costs would distort the results of the Department's sales-below-cost test. Specifically, the petitioners claim that a quarterly cost methodology generates fictitious profits on some metal transactions that would distort the Department's sales below cost analysis. The petitioners further explain that OBV can realize these fictitious profits on certain sales because the higher metal values reflected on the sales invoice (fixed at a time prior to the date of sale) will often be matched with a non-contemporaneous lower quarterly weighted-average metal acquisition cost. Thus, the petitioners claim OBV would realize a profit where none should exist because metal costs are passed through to the customers. In addition, the petitioners argue that the record does not support a truly contemporaneous comparison on a quarterly basis because a number of OBV's home market sales have metal fix dates outside the POR. In order to make proper comparisons, the petitioners claim that the Department would need quarterly costs that occurred before and after the POR. However, the petitioners note that OBV has failed to provide this information. Likewise, the petitioners claim that the use of monthly weighted-average costs will result in similar comparisons of non-contemporaneous metal costs and metal prices. Since OBV only provided monthly costs for the POR, rather than monthly costs outside the POR, the information necessary to make contemporaneous comparisons was not provided.

Furthermore, the petitioners argue that the declining metal costs were not the only cause for declining sales prices in OBV's home market. According to the petitioners, fabrication costs also declined. Thus, the petitioners believe that associating the decline in home market sales prices with metal fluctuations is inappropriate. The petitioners additionally argue that OBV failed to provide monthly or quarterly fabrication costs for comparison purposes. For these reasons, the petitioners argue that the Department should deny OBV's request to use monthly or quarterly costs for metal charges.

OBV counters that a POR weighted-average metal cost will not counter the sharp decline in metal prices the company realized and that the Department should instead use either monthly or quarterly metal value costs. According to OBV, the Department has commonly used monthly or quarterly costs in instances where there have been significant and consistent price declines throughout a period of investigation or review. In fact, OBV states, the Department has used this methodology in several previous brass sheet proceedings due to the distortive effects that metal price fluctuations would have had on the margin calculations. For example, OBV states that in the original investigation the Department made an adjustment for metal value by dividing the period of investigation (POI) into three separate periods. According to OBV, the Department selected three periods because, within each period, metal prices were relatively stable (*see Final Determination of Sales at Less than Fair Value: Brass Sheet and Strip From Netherlands,* 53 FR 23431, 23432

(June 22, 1988) (''*Brass Sheet and Strip from the Netherlands*'')). In an Italian brass sheet proceeding, OBV claims that the Department used monthly costs to resolve the distortive effects the fluctuating metal prices had on the margin calculations (*see Final Results of Antidumping Administrative Review: Brass Sheet and Strip from Italy*, 52 FR 9235, 9236 (March 17, 1992) (''Brass Sheet and Strip from Italy'')).

As for a preference toward using quarterly or monthly weighted-average costs, OBV suggests that the Department use monthly metal costs in this proceeding because they provide the most accurate reflection of metal costs for the POR. According to OBV, customers purchase metals at a market price on a specific date (*i.e.*, metal fix date) prior to fabrication and, therefore, the metal price is a direct pass-through to the customer. OBV further notes that it maintains the information that identifies each transaction-specific metal cost in its accounting records and even submitted this information to Department. Thus, OBV believes that the Department has the necessary data to accurately measure the metal costs of any single sales transaction based on the metal fix date. Moreover, and contrary to the petitioners' claims, OBV states that this information (*i.e.*, metal fix date and monthly metal weighted-average costs since 1996) is on the record for all U.S. and home market sales made during the POR.

If the Department does not wish to use monthly weighted-average costs, then OBV suggests that quarterly weighted-average costs would provide a reasonable basis for determining sales below cost. At a minimum, OBV believes that this method is more appropriate than annual costs. OBV also states that the Department should not be influenced by the petitioners' position on the perceived time lag between metal fix and invoice dates. OBV explains that its affiliated supplier ships metals on a first-in, first-out basis. As a result of this practice, the metal ordered in one month is not delivered to OBV until sometime in the following months. According to OBV, it records the cost of metal in its inventory ledgers when the metal is received. Thus, OBV claims that any lag between the metal fix date and the invoice date is mitigated by lag time between the metal fix date and the date on which OBV recorded the cost of that metal in its books and records (*i.e.*, the date used by OBV to compute direct materials costs on a quarterly basis). In any event, if the petitioners are truly concerned about contemporaneity, OBV claims that they should support its position that the Department use monthly average costs in this review.

In addition and contrary to the petitioners' position, OBV states that the decline of metal prices during the POR was significant and consistent. According to OBV, the cost of metal can fluctuate widely depending on market conditions. In this case, OBV contends that prices decreased dramatically for the first five months of, and declined consistently throughout, the POR. To demonstrate this decline, OBV states that the variation between the average review period metal prices and the metal prices at the beginning and end of the review period are dramatic. Furthermore, OBV notes that these declines were not mere short-term fluctuations because the metal prices never recovered.

OBV also disagrees with the petitioners' contention that its fabrication costs declined significantly and consistently throughout the POR and should be accounted for in the same manner as metal costs. According to OBV, analysis of its fabrication costs shows that these amounts remained stable throughout the POR. Therefore, OBV argues that reporting quarterly or monthly fabrication costs are not necessary.

DOC Position: We agree with OBV that monthly weighted-average metal costs should be used in the instant review for the calculation of COP and CV. In the ordinary course of business, OBV accounts for metal as a pass-through item. Specifically, OBV requires customers to purchase the metals before it will fabricate the product. As a service to its customers, OBV purchases the metals on the customer's behalf and then bills the customer for the cost of metals, the terms of which are set forth on the finished brass sales invoice. The parties determine the price of the metals at a metal fix date, which occurs prior to the invoice dates of finished brass. Since OBV purchases the metal and then passes on the cost of the metal to the customer, the company must record and recognize the cost of this purchased metal in its accounting system.

The metal cost included in OBV's audited financial statements reflects the cost at the metal fix date of metal consumed to produce the sold items. Rather than reporting the cost of the metals consumed, OBV used the average quarterly metal cost at the metal fix date for metals received. As a result, for any given month, the average metal cost of metal physically received reflects a mix of metal prices from differing time periods depending on how far in advance of receipt the metals were purchased (in certain instances, this range varies from less than one month to up to six months). We calculated an adjustment factor to account for the differences between the reported purchase cost and the consumption cost.

As for the costs of metals (*i.e.*, copper and zinc) in this review, we have found and verified that OBV's reported metal costs make up a significant portion of the total cost of manufacturing brass sheet and strip. *See* CVE 12 (identifying the portion metal costs make up of the total cost of manufacturing). Moreover, after reviewing the information on the record, we found that the market values of these inputs sharply and consistently decreased from the beginning to the end of the POR. Specifically, we reviewed monthly London Metal Exchange (LME)[3] prices, which we verified as being the basis for OBV's metal cost. We found that the drop in metal prices did not affect OBV's brass fabrication business as a result of the pass through of the cost of metals to its customers. However, the drop in price does affect the margin calculations because the Department normally calculates direct material costs as a POR weighted-average. As a result of using the normal POR average cost methodology, the decline in metal prices would tend to create below-cost sales when the LME metal purchase price falls below the weighted-average LME POR price. *See, e.g.*, OBV's August 11, 1999 Letter (identifying OBV's sales that are above and below costs). Hence, in this review, the method of calculating metal costs does have an impact on the comparisons used in the margin calculations. For example, and as noted by the petitioner, the normal cost methodology could create fictitious profits (or losses) on home market sales.

Our normal practice for a respondent in a country that is not experiencing high inflation is to calculate a single weighted-average cost for the entire POR except in unusual cases where this preferred method would not yield an appropriate comparison. *See, e.g., Brass Sheet and Strip from the Netherlands* (dividing POI into three periods because of the effect metal price fluctuations had on the margin calculations and finding that metal portion of price was a pass through); *Brass Sheet and Strip Italy* (using monthly costs to resolve the distortive effects the fluctuating metal prices had on the margin calculations); *Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of*

[3] The London Metal Exchange is an international commodity, futures and options exchange that specializes in non-ferrous metals.

Korea, 64 FR 30664, 30676 (June 8, 1999) (concluding that weighted-average costs for two periods were permissible where major declines in currency valuations distorted the margin calculations); *Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8925 (February 23, 1998) (the Department will utilize shorter cost periods if markets experience significant and consistent price declines); *Final Determination of Sales at Less than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, 58 FR 15467, 15476 (March 23, 1993) (determining that the Department may use weighted-average costs of shorter periods where there exists a consistent downward trend in both U.S. and home market prices during the period); *Final Determination of Sales at Less than Fair Value: Erasable Programable Read Only Memories from Japan*, 51 FR 39680, 39682 (October 30, 1986) (finding that significant changes in the COP during a short period of time due to technological advancements and changes in production process justified the use of weighted-average costs of less than a year).

In applying these criteria to this case, we have reviewed the information on the record and note that both OBV's sales prices for the subject merchandise and the cost of metal used in the manufacture of this merchandise correspondingly and consistently declined during the POR. Specifically, our analysis of data from the LME identifies a significant drop in metal values. In this case, we have determined that computing a single POR weighted-average cost would distort the results of the cost test because: (1) the cost of copper and zinc are treated as pass-through items when brass is sold to customers; (2) these metal costs represent a significant percentage of the total cost of producing brass sheet and strip; and (3) the cost of the metal dropped consistently and significantly throughout the POR. To avoid this distortion, we have relied upon monthly weighted-average costs rather than calculating quarterly or a single weighted-average POR cost for metal. Moreover, the use of monthly costs for a pass-through item is consistent with *Brass Sheet and Strip from Italy*, 52 FR 9235, 9236; *Brass Sheet and Strip from the Netherlands*, 53 FR 23431, 23432; and *Final Results of Administrative Review: Brass Sheet and Strip from Canada*, 56 FR 57317, 57318 (November 8, 1991) (using monthly metal costs to calculate differences in merchandise adjustments).

We find that using monthly weighted-average metal costs is the most appropriate method in this proceeding for several reasons. First, the record indicates that the monthly changes in selling prices and input metal costs are significant. *See* the proprietary memorandum from Geoffrey Craig to John Brinkmann, ''Analysis of Metal Costs,'' dated December 28, 1999. In addition, we have the information on the record to determine accurate monthly metal costs that reasonably correspond to the amounts paid by the customer, which makes the petitioners' concerns with quarterly costs moot. We also note that using monthly metal costs calculated from the company's metal fix prices conforms with the company's normal accounting records which are kept in accordance with home market generally accepted accounting principles (GAAP). Finally, by using weighted-average monthly price fixed metal cost, we are able to make a contemporaneous comparison of metal values which results in a more accurate calculation of the margin of dumping in this case than using either the reported quarterly or POR weighted average costs.

We also agree with the respondent that calculating fabrication costs on a monthly basis is unnecessary. After reviewing the information on the record, we found no significant fluctuations in OBV's fabrication costs that would require averaging periods of less than a year.

For the final results, we recalculated OBV's COP and CV. Specifically, we calculated monthly metal costs using metal fix date information (*see* CVE 18) and calculated annual fabrication costs using the reported costs in the section D data file.

Comment 3: Affiliated Purchases and the Major Input Rule

The petitioners state that the Department should adjust OBV's costs for metals (*i.e.*, copper and zinc) obtained from affiliated suppliers to reflect the highest of market price, cost of production or transfer price.

OBV believes that the Department should not make this adjustment. According to OBV, the petitioners' argument reflects a lack of understanding of the verified data on the record. OBV states that the small differences between market price, cost of production and transfer prices are not the result of non-arms length transactions, but simply the result of timing differences and differences in purchase terms. To make a proper comparison, the company argues that the timing differences and the difference in purchase terms would have to be accounted for. More important, OBV claims that the Department should continue to use OBV's metal costs as reported since the differences are slight.

DOC position: We agree with the petitioners. OBV submitted a schedule which shows that, on average, its POR purchases of zinc and copper from an affiliated party were made at prices lower than the cost of production. We have adjusted the cost of metals to reflect the affiliate's higher cost of production in accordance with section 773(f)(3) of the Act because the information provided by OBV supports the conclusion that the purchases from the affiliated party were made below the affiliate's cost. *See* CVE 28. We are unable to address OBV's claim that timing differences and the differences in purchase terms may account for the difference between the reported transfer price and the affiliate's cost of production, since OBV did not submit any information to support its contention.

Comment 4: Including Lower of Cost or Market Inventory Adjustment in COM

The petitioners claim that the Department should include OBV's lower of cost or market (LCM) adjustment in the calculation of COP and CV. According to the petitioners, the SAA states that the Department normally will calculate costs on the basis of records kept by the producer of the merchandise, provided such records are kept in accordance with GAAP of the producing country and reasonably reflect the costs associated with production of the merchandise. *See* SAA at 834. According to the petitioners, OBV stated that its accounting practices are in full compliance with GAAP in the Netherlands. The petitioners, therefore, contend that the Department should revise OBV's COP and CV data to include the lower of cost or market adjustment reflected in OBV's accounting records and in OBV's financial statements.

OBV counters that the Department should not revise the reported costs to include the company's LCM adjustment reflected in the financial statements. According to OBV, this adjustment has no impact on the actual cost of materials used in production because it makes a monthly adjustment to the balance sheet reserve accounts. OBV further argues that inclusion of the adjustment is not necessary because it did not rely on inventory movement values to calculate its reported metal costs. Instead of

inventory movement values, OBV states that it used actual metal acquisition costs paid during the review period to compute metal costs. If the Department includes the entire LCM adjustment, OBV claims that metal costs will be distorted.

DOC Position: We agree with the petitioners in part because our general practice is to include the LCM adjustments associated with raw materials and work-in-process (WIP) in the respondent's COP and CV. We do not include the loss realized on holding finished goods (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above (DRAMs) From Taiwan*, 64 FR 56308, 56326 (October 19, 1999)); *see also Notice of Final Determination of Sales Less Than Fair Value: Stainless Steel Wire Rod from Italy*, 63 FR 40422, 40430 (July 29, 1998)).

As for OBV's concern that including the LCM adjustment distorts COP and CV, we disagree. In OBV's normal course of business, the company values its copper and zinc inventory at the lower of cost or market. Since the market price of inventoried copper and zinc (*i.e.*, metals) fell below the acquisition costs, OBV had to recognize a loss on metals held in inventory in accordance with home market GAAP. Company officials noted that they did not include this loss in the calculation of the reported costs and identified the loss as a reconciling item. However, as noted above, we normally include this type of cost in the calculation of COP and CV. Consistent with section 773(f)(1)(A) of the Act, it is the Department's practice to rely upon a company's normal books and records where they are prepared in accordance with the home country's GAAP and reasonably reflect the cost of producing and selling the subject merchandise. In this case, we found, consistent with the Netherlands' GAAP, that OBV includes, in its normal books and records, the write-downs of its raw material inventories as an element of its current costs per its financial statements. *See* Cost Verification Exhibit 17, which contains worksheets that reconcile reported direct material costs to the corresponding amount reported on the audited income statement. In addition, we disagree with OBV's position that this cost should be excluded because it used acquisition cost to compute metal cost. We note that the LCM adjustment is a separate and unique expense associated with maintaining an adequate base stock of goods to service daily operating needs. For the final results, we have included a portion of OBV's LCM adjustment relating to raw material and WIP in the calculation of COP and CV.

Comment 5: Commercial Quantities

The petitioners contend that OBV's request for revocation should be denied because OBV did not sell in commercial quantities during each of the three administrative reviews that formed the basis of OBV's revocation request. According to the petitioners, the Department is justified, under § 351.222 of the Department's regulations, in requiring OBV to have sold subject merchandise in the United States in commercial quantities during the three review periods that form the basis of OBV's revocation request. However, contrary to the Department's methodology in the preliminary results, which focused on OBV's shipments to the United States during the period covering the last three administrative reviews, the petitioners assert that commercial quantities should be evaluated in light of the entire history of the proceeding, not just a few segments. A historical overview of OBV's shipments to the United States, the petitioners continue, demonstrates that OBV has not been making sales to the United States in commercial quantities at prices above NV in the three review periods in question.

The petitioners argue that subsequent to the antidumping duty order and prior to the acquisition of Outokumpu American Brass (American Brass) in 1990 by OBV's parent company, Outokumpu Oyj (Outokumpu), OBV continued to export substantial quantities of subject merchandise to the United States at prices below NV, as evidenced by the margins calculated in each of the administrative reviews covering that period. Rather than eliminating the dumping, the petitioners contend, the Outokumpu Group shifted production from OBV to American Brass, thereby allowing the Outokumpu Group to maintain its U.S. customer base while avoiding the imposition of antidumping duties. The petitioners contend that OBV has been able to avoid a finding of dumping in the last three review periods by shipping a minimal amount of ''niche'' or ''specialty'' product to the United States at prices intended to result in a de minimis dumping margin.

Moreover, the petitioners allege that: (1) OBV's current shipments to the United States of the subject brass products are minuscule compared to shipment levels both prior and immediately subsequent to the imposition of the antidumping duty order; (2) OBV's current shipments do not correspond to the current size of the U.S. market for radiator strip; (3) OBV's current shipments of subject merchandise to the United States are significantly lower than its level of exports of non-subject brass products that have minimal physical differences from subject merchandise; (4) OBV's current shipments of subject merchandise to the United States are significantly lower than its current home market shipments and its shipments of total shipments (*i.e.*, both subject and non-subject merchandise) to other industrial countries; and (5) OBV's current shipments are not reflective of its projected shipment levels to the United States, which OBV has acknowledged will be at a level similar to the pre-order level and shipments during the first three annual reviews, where the company was found to be dumping. Based on the foregoing, the petitioners conclude that the Department should find that OBV has not made sales to the United States in commercial quantities and, accordingly, should deny OBV's request for revocation.

OBV counters that its sales to the United States during the three consecutive review periods that form the basis of its revocation request have been in commercial quantities and at prices above NV. According to OBV, the Department properly selected 1990, rather than the pre-order period, as the benchmark for the commercial quantities test because the commercial quantities test must be applied in light of Outokumpu's acquisition of American Brass. OBV disputes the contention that the company discontinued shipments to the United States because it was unable to sell in the United States at prices above NV; instead, OBV attributes its cessation of U.S. shipments in 1990 exclusively to the purchase of American Brass, which OBV characterizes as a ''significant'' and ''unusual intervening event.'' Furthermore, OBV states that its parent company forbids OBV from shipping subject merchandise to the United States in order to prevent its products from competing with those of American Brass. OBV resumed shipments in order to service a niche market for certain U.S. customers of subject brass products that could not be produced efficiently by American Brass or where the customers specifically requested that the brass be produced by OBV.

OBV further contends that the petitioners' proposed assortment of alternative benchmarks are of no probative value in determining commercial quantities, arguing that: (1)

In light of American Brass' role in the U.S. market, a pre-order or post-order comparison is not a reliable indicator of OBV's ability to sell in the United States without dumping; (2) OBV did not need to continue exporting subject merchandise in substantial volumes to preserve its position in the U.S. market due to the fact that American Brass produced the same merchandise for sale in the United States; (3) shipment levels of non-subject merchandise do not provide a demonstrable basis for determining what constitutes commercial quantities of subject merchandise; (4) a comparison of OBV's U.S. shipments to its shipments to other industrial countries' markets is not of probative value because OBV's ability to sell in the U.S. market, unlike its ability to sell in other industrial countries' markets, is limited due to the presence of an affiliated company, American Brass; and (5) the notion of comparing current shipment levels to future shipment levels is flawed because the Department would be required to defer revocation in order to conduct subsequent reviews. Finally, OBV argues that a comparison of OBV's U.S. sales to third country sales demonstrates that OBV's U.S. sales are not aberrational, but instead reflect OBV's normal commercial activity. *See, e.g., Pure Magnesium from Canada*, 64 FR 12977, 12979 (March 16, 1999) (recognizing that comparisons of a respondent's U.S. sales to sales made in other markets by that respondent is a reliable indicator of whether the U.S. sales are in commercial quantities).

DOC Position: We agree with the petitioners that OBV's U.S. sales during the three administrative reviews under consideration for revocation purposes have not been made in commercial quantities. As we explained in the *Preliminary Results*, ''the Department must be able to determine that past margins are reflective of a company's normal commercial activity.'' 64 FR 48760. Although OBV has demonstrated three consecutive years of sales at not less than NV, we find that the limited volume of exports to the United States of brass sheet and strip from the Netherlands do not reflect OBV's normal commercial behavior. Based on the facts on the record of this case, therefore, we find that OBV's sales to the United States have not been made in commercial quantities during any of the relevant administrative reviews considered for revocation in this proceeding.

We have developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires that a company requesting revocation must submit a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the request. Therefore, we must determine, as a threshold matter, in accordance with our regulations, whether the company requesting revocation sold the subject merchandise in commercial quantities in each of the three years forming the basis of the request. In examining commercial quantities for purposes of revocation, the Department must be able to determine that past margins are reflective of the company's normal commercial activity. *See Certain Corrosion-Resistant Carbon Steel Flat Products from Canada*, 64 FR 2175. Sales during a POR which, in the aggregate, are of an abnormally small quantity, either in absolute terms or in comparison to an appropriate benchmark period, do not generally provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping. *Id.*; *see also Pure Magnesium From Canada*, 64 FR 12977 (March 16, 1999). However, the determination as to whether or not sales volumes are made in commercial quantities is made on a case-by-case basis, based on the unique facts of each proceeding. Neither the statute nor the Department's regulations prescribes a specific standard for determining whether sales have been made in commercial quantities. *See* section 751(d) of the Act; 19 CFR 351.222.

When determining whether a company's sales have been made in commercial quantities we must look at each case on an individual basis. In many instances, we will use the original period of investigation (*i.e.*, pre-order shipment levels) as a benchmark for a company's normal commercial behavior. The period of investigation generally provides a valid benchmark for assessing whether sales have been made in commercial quantities. As we stated in the *Preliminary Results*, however, where a company has experienced a substantial and unusual change in business practice since the imposition of the order that may explain a substantial sales drop-off in U.S. sales, a more recent POR that is reflective of the company's normal commercial experience may provide a more appropriate benchmark. *See Pure Magnesium from Canada*, 64 FR at 50489; *Professional Electric Cutting Tools from Japan: Preliminary Results of Antidumping Administrative Review and Intent to Revoke in Part*, 64 FR 43346, 43351 (August 10, 1999).

In this case, the quantity and number of OBV's U.S. sales of subject merchandise have decreased since the imposition of the antidumping duty order, as evidenced by the volume of sales in the three reviews forming the basis of OBV's revocation request. In the *Preliminary Results*, however, we found that OBV's aggregate sales to the United States were made in commercial quantities during the relevant proceedings examined for purposes of the revocation determination. We based this finding on the fact that Outokumpu's acquisition of American Brass and the subsequent transfer of in-scope radiator strip production to the United States represented the type of ''unusual occurrence'' contemplated by the Department in promulgating its regulations as an acceptable explanation of why exports of subject merchandise have declined. *See Proposed Regulations*, 61 FR 7307, 7320 (Feb. 27, 1996). Specifically, we explained that:

> Prior to this acquisition, in 1989 and 1990, OBV continued to ship in similar quantities to the pre-order period and the subsequent cessation of shipments until 1995 was an immediate result of the 1991 acquisition. Based upon these circumstances, it is reasonable to conclude that the company's commercial practices were permanently changed in 1991, and that 1991, rather than the pre-order period, should be the benchmark for measuring whether the company's sales during the three years without dumping were made in commercial quantities.

64 FR 48760. Thus, we preliminarily determined that the zero margins calculated for OBV in each of the last three administrative reviews were reflective of the company's normal commercial experience. Accordingly, we preliminarily determined that OBV met the requirements for revocation of the order on brass sheet and strip from the Netherlands with respect to three consecutive years of sales in commercial quantities at not less than NV.

Upon review of the comments of the parties, all of the evidence on the record, and the Department's past practice, we have determined that OBV's sales were not made in commercial quantities during the three years upon which OBV is relying to support its request for revocation. We agree that OBV's commercial practices changed subsequent to the 1990 purchase[4] of American Brass by OBV's ultimate parent company, Outokumpu.

[4] As discussed in a memorandum to the file dated December 20, 1999, we cited June 1991 in the *Preliminary Results* as the month and year of Outokumpu's acquisition of American Brass based on statements made on the record by OBV. However, after a thorough review of the responses and exhibits submitted by OBV, we confirmed with OBV that American Brass was acquired by Outokumpu in June 1990, rather than June 1991.

Contrary to our preliminary assessment of the effects of Outokumpu's purchase of American Brass on OBV, however, we now find that it is not reasonable to conclude that OBV's commercial practices were ''permanently'' changed or that OBV's current selling practice is reflective of the company's normal commercial experience.

First, following Outokumpu's 1990 purchase of American Brass, OBV did not maintain consistent export volumes of its ''niche'' products, but instead ceased selling to the United States altogether for over three years while American Brass provided subject merchandise entirely to Outokumpu's U.S. customer base. OBV reentered the U.S. market in 1995 when it began selling what it termed ''niche products.'' Our preliminary finding regarding commercial quantities was based, in part, on the presumption that ''OBV resumed shipments of in-scope radiator strip in 1995 to service a niche market for certain United States customers who prefer brass strip with more exacting tolerances, which for a variety of reasons cannot be produced efficiently by American Brass.'' *See Preliminary Results*, 64 FR at 48765. However, as stated by OBV at the public hearing, during the three year period in which OBV was shipping radiator strip to the United States, American Brass was also producing and selling the same products to the same customers. *See* Public Transcript of the Hearing on Brass Sheet and Strip from the Netherlands, dated November 2, 1999, at 183–85 (Hearing Transcript). Furthermore, in a prior submission OBV made the following statement with respect to the company's resumption of shipments to the United States:

> In addition to the superior position of OBV, vis-a-vis American Brass, in terms of the production of quality radiator strip, OBV has resumed exporting subject radiator strip in order to accommodate the ability of American Brass to focus upon the production of brass strip for electrical connectors (*i.e.*, ''electrostrip'' or ''connector strip''). As explained by [American Brass' president] Mr. Bartel, the production of radiator strip is interfering with the ability of American Brass to focus on production ''for the fastest growing segment of the brass strip market, *i.e.*, brass strip used to manufacture electrical connectors.''

See OBV's Memorandum in Support of Revocation, dated April 1, 1999, at 22–23. These statements further indicate that when OBV resumed shipping to the United States in 1995, its participation in the U.S. market was not limited to servicing unique customers with needs specially suited to OBV's abilities. Rather, for whatever considerations, it was determined by Outokumpu that the U.S. customers who were purchasing certain subject brass products from American Brass would be supplied by OBV. Thus, we cannot reasonably conclude that OBV's participation in the U.S. market during the three year period under consideration has been meaningful.

Second, this case is distinguished *from Professional Electric Cutting Tools from Japan*, where respondent Makita made a substantial investment in a U.S. manufacturing facility, and subsequently shifted production of subject merchandise to that facility while maintaining consistent export volumes of its low-sales-volume ''specialty'' cutting tools. In that case, we found that the significant change in business practice provided a logical commercial explanation for Makita's relative drop in subject merchandise sales. Further, we noted that the U.S. production facility now manufactures comparable volumes of non-specialty merchandise that was previously being manufactured by Makita in Japan. Thus, regardless of any decrease in shipments during the course of that proceeding, we determined that Makita was selling in commercial quantities. Contrary to Makita, where less dependence was being placed on the home market manufacturing facilities, Outokumpu has recently made a substantial investment in OBV's manufacturing facility. It is Outokumpu's stated intention to shift production of brass radiator strip products from American Brass to OBV's manufacturing facilities in order to supply the U.S. market with subject merchandise from the Netherlands. *See* Hearing Transcript, at 167–70. As confirmed at the sales verification:

> OBV officials stated that due to recent investment in both American Brass and OBV, OBV will begin to take over production of the approximate 7200 metric tons[5] of subject radiator strip currently produced and sold in the U.S. by American Brass. Since OBV is currently producing to capacity, this additional demand would be met by adjusting their current product mix and cutting back on shipment to other export markets.

Sales Verification Report at 39.

In determining whether a company's exports to the United States constitutes ''normal'' commercial behavior for that company, where appropriate, we will weigh other factors. In this case, Outokumpu made a significant business decision to supply its U.S. customer base with subject merchandise produced at American Brass' U.S. facilities rather than from OBV's facilities in the Netherlands. However, the record indicates that the current Outokumpu business plan is not intended to be long-term or permanent in light of OBV's acknowledgment that its projected shipment levels to the United States, should the order be revoked, will be substantially greater than its current imports and at a level similar to when the order was imposed and the first three annual reviews were conducted. *See* Hearing Transcript, at 65–66. Given the temporary nature of American Brass' role in the Outokumpu business plan of servicing subject radiator strip customers in the U.S. market and the decision to transfer radiator strip production for purposes of servicing the U.S. market back to the Netherlands at pre-order levels, we find that OBV's pre-order import level is the appropriate benchmark.

Finally, based on the current record and similar to our findings in *Pure Magnesium from Canada*, we find that OBV's sales volume during the three consecutive review periods that form the basis of the revocation request are so small when compared to the pre-order benchmark that we are not able to conclude that the reviews are reflective of what the company's normal commercial experience would be without the discipline of an antidumping duty order. *See Pure Magnesium from Canada*, 64 FR 12977, 12982. As discussed in the business proprietary memorandum from Jarrod Goldfeder to John Brinkmann, ''Shipments of Brass Sheet and Strip to the United States by Outokumpu Copper Strip B.V.,'' dated December 28, 1999 (*Commercial Quantities Memorandum*), OBV sold only a few tons of subject merchandise in the United States during the last three review periods, respectively, whereas during the period covered by the antidumping investigation, OBV made substantially greater sales. For example, in their brief the petitioners, citing U.S. Census Bureau data (which OBV did not contravene), state that OBV exported approximately 7000 tons of subject merchandise in 1987, the year in which the POI fell. *See* Petitioners' Case Brief, at Exhibit 8. In calendar years 1997 and 1998, during which the current POR falls, OBV exported to the United States approximately 110 tons of subject merchandise (23 tons and 86 tons in 1997 and 1998, respectively). *See Commercial Quantities Memorandum*, at Exhibit 1.

Thus, for the most recent review period under consideration for revocation, the total volume of

[5] This is a range figure provided by the respondents.

merchandise sold in calendar years 1997 and 1998 was approximately 1.6 percent of the volume of merchandise sold in 1987, *i.e.*, in the period preceding the imposition of the order. OBV's sales volume figures are so small, both in absolute terms and in comparison with the period of investigation, that we cannot reasonably conclude that the zero margins OBV received are reflective of the company's normal commercial experience. We further note that OBV's projected sales level to the United States of 7200 tons, which is similar to the amount sold prior to issuance of the order, is over 65 times greater than the amount sold during the period covered by the current administrative review. Consequently, this abnormally low level of sales activity during each of the three review periods forming the basis of the revocation request does not provide a reasonable basis for determining that the discipline of the antidumping duty order is no longer necessary to offset dumping. Based on the record evidence with respect to OBV's current sales practices, we find that the de minimis margins calculated for OBV were not based on sales volumes that are reflective of the company's normal commercial experience.

Moreover, even if we continued to rely upon the 1990 benchmark, rather than the pre-order period, for measuring whether the company's sales during the three years without dumping were made in commercial quantities, we would still conclude that OBV's total sales volume for each review is ''abnormally small.'' In 1990, the last year in which OBV made sales to the United States prior to the transfer of production to American Brass, OBV sold approximately 4750 tons of subject merchandise in the United States. *See* Petitioners' Case Brief, at Exhibit 8. For each review period under consideration for revocation, the volume of merchandise sold was still only a little more than two percent of the volume of merchandise sold in 1990. Thus, by any measure, OBV's sales did not meet the minimal requirement of sales in commercial quantities that is necessary for the Department to rely on the three administrative reviews of de minimis margins as a reflective of normal business activity.

Finally, we disagree with OBV's argument that a comparison of OBV's U.S. sales to third country sales demonstrates that OBV's U.S. sales are not aberrational, but instead reflect OBV's normal commercial activity. In *Pure Magnesium from Canada*, the Department concluded that the respondent's number and volume sales were not made in commercial quantities due, in part, upon an examination of the respondent's sales of pure magnesium to other markets for the three years in question, which showed that the respondent had maintained significant sales volumes of subject merchandise in other markets that were ''markedly smaller and more distant than the U.S. market.'' 64 FR at 12980. However, the evidence placed on the record in this proceeding by OBV details the total volume of shipments to third countries, inclusive of both subject and non-subject brass merchandise. As such, we are unable to make an accurate comparison of OBV's shipments of subject brass products to the United States with its shipments of subject brass products to third country markets.

Comment 6: Likelihood of Future Dumping

In addition to their arguments regarding the commercial quantities threshold requirement, both OBV and the petitioners submitted comments on the likelihood of future dumping.

DOC Position: Because we have determined that OBV is not eligible for revocation, based on the fact that it did not make sales in commercial quantities during the three year period being analyzed, we do not reach the likelihood of future dumping issue.

Final Results of Review

As a result of our review, we determine that the following margins exist for the period August 1, 1997 through July 31, 1998:

Manufacturer/exporter	Margin (percent)
OBV	zero.

The Department shall determine, and the United States Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212 (b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. We will direct the United States Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise entered during the POR, except where the assessment rate is zero or *de minimis* (*see* 19 CFR 351.106(c)(2)).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise from the Netherlands entered, or withdrawn from warehouse, for consumption upon publication of these final results of administrative review, as provided by section 751(a)(2) (A) and (C) of the Act: (1) The cash deposit rate for OBV will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 16.99 percent, the ''all others'' rate established in the LTFV investigation. *See Antidumping Duty Order of Sales at Less Than Fair Value; Brass Sheet and Strip From the Netherlands*, 53 FR 30455 (August 12, 1988).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as final reminder to importers of their responsibility under 19 CFR 351.402 (f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 28, 1999.

Holly A Kuga,

Acting Assistant Secretary for Import Administration.

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