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

Dated: July 20, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–583–828]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan

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

EFFECTIVE DATE: July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Alexander Amdur, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4740 or (202) 482–5346, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Final Determination

We determine that stainless steel wire rod (SSWR) from Taiwan is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

The preliminary determination in this investigation was issued on February 25, 1998. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod from Taiwan,* 63 FR 10836 (March 5, 1998) (*Notice of Preliminary Determination*). Since the preliminary determination, the following events have occurred:

On March 12, 1998, we received a submission from Yieh Hsing Enterprise Corporation, Ltd. (Yieh Hsing) alleging that the Department made ministerial errors in the preliminary determination. In response to Yieh Hsing's ministerial error allegations, we issued an amended preliminary determination on March 30, 1998. See *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Taiwan,* 63 FR 16972 (April 7, 1998).

In March 1998, we issued supplemental questionnaires to and received responses from the respondents in this case, Walsin Cartech Specialty Steel Corporation (Walsin) and Yieh Hsing (hereinafter ''respondents'').

In March, April, and May 1998, we verified the sales and cost questionnaire responses of these two respondents. In June 1998, Yieh Hsing submitted revised sales databases at the Department's request.

The petitioners (*i.e.,* AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and the United Steel Workers of America, AFL–CIO/CLC) and the respondents submitted case briefs on June 8 and 10, 1998, and rebuttal briefs on June 16 and 17, 1998. We held a public hearing on June 18, 1998.

Scope of Investigation

For purposes of this investigation, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of the investigation. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon	0.05 max.
Manganese	2.00 max.
Phosphorous	0.05 max.
Sulfur	0.15 max.
Silicon	1.00 max.
Chromium	19.00/21.00.
Molybdenum	1.50/2.50.
Lead	Added (0.10/0.30).
Tellurium	Added (0.03 min.)

K–M35FL

Carbon	0.015 max.
Nickel	0.30 max.
Silicon	0.70/1.00.
Manganese	0.40 max.
Phosphorous	0.04 max.
Sulfur	0.03 max.
Chromium	12.50/14.00.
Lead	0.10/0.30.
Aluminum	0.20/0.35.

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1996, through June 30, 1997.

Fair Value Comparisons

To determine whether sales of SSWR from Taiwan to the United States were made at less than fair value, we compared the Export Price (EP) and/or Constructed Export Price (CEP) to the Normal Value (NV). Our calculations followed the methodologies described in the preliminary determination, except as noted below and in company-specific analysis memoranda dated July 20, 1998.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States,* 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside

the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Investigation'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

We made product comparisons based on the same characteristics and in the same general manner as that outlined in the preliminary determination. As in the preliminary determination, in instances where a respondent has reported a non-AISI grade (or an internal grade code) for a product that falls within an AISI category, we have used the actual AISI grade rather than the non-AISI grade reported by the respondents for purposes of our analysis. In instances where the chemical content ranges of a reported non-AISI grade (or an internal grade code) are outside the parameters of an AISI grade, we have used the non-AISI (or internal) grade code reported by the respondents for analysis purposes. However, in instances in which an internal grade matches all the specified chemical content tolerance ranges of an AISI grade, but the internal grade also contains amounts of chemicals that are not otherwise specified as being included in the standard AISI designation, we have used the corresponding AISI grade rather than the internal grade. For further discussion, *see Comment 2* and *Comment 16* in the ''Interested Party Comments'' section of this notice.

Export Price/Constructed Export Price

For Walsin, we used EP and CEP methodology as defined in sections 772(a) and 772(b) of the Act. For certain unreported CEP sales made during the POI by Carpenter Technology Corp. (Carpenter), Walsin's U.S. affiliate, we applied facts available in accordance with Section 776(a) of the Act. For the reasons stated in the *DOC Position* to *Comment 1* in the ''Interested Party Comments'' section of this notice, we determined that adverse inferences in selecting among the facts otherwise available are not warranted in this instance. Therefore, as facts available, we applied the weighted-average margin calculated for all reported sales to the unreported CEP sales at issue.

For Yieh Hsing, we used EP methodology as defined in section 772(a) of the Act. In the preliminary determination, we reclassified some of Yieh Hsing's U.S. sales of SSWR as CEP sales. Based on the record developed since the preliminary determination, the Department has reconsidered its decision and has accepted Yieh Hsing's classification of all of its U.S. sales of SSWR as EP sales for purposes of the final determination. For further discussion, *see Comment 18* in the ''Interested Party Comments'' section of this notice.

A. Export Price

We calculated EP based on the same methodology used in the preliminary determination, with the following exceptions:

Walsin

We corrected for certain clerical errors found during verification with respect to Walsin, including the corrections to the response that Walsin identified in the course of preparing for verification and reported in its May 11, 1998 submission.

Yieh Hsing

We made additional deductions from the starting price, where appropriate, for U.S. handling and other charges, U.S. customs duties, harbor maintenance and merchandise processing fees (which are included in U.S. duties), and U.S. entry fees, pursuant to section 772(c)(2)(A) of the Act.

We corrected for certain clerical errors found during verification with respect to Yieh Hsing's calculations, including gross unit price, foreign inland freight, foreign brokerage and handling, U.S. commission, entry fees, U.S. handling and other charges, and U.S. credit expenses.

B. Constructed Export Price

We calculated CEP for Walsin based on the same methodology used in the preliminary determination, with the following exceptions:

We corrected for certain clerical errors found during verification with respect to Walsin, including the corrections to the response that Walsin identified in the course of preparing for verification and reported in its May 11, 1998 submission. We made additional deductions from starting price for U.S. brokerage expense pursuant to section 772(c)(2)(A) of the Act (*see Comment 9* in the ''Interested Party Comments'' section of this notice).

We recalculated indirect selling expenses incurred in the United States as a result of our findings at verification (*see Comment 1* in the ''Interested Party Comments'' section of this notice and the July 20, 1998 Memorandum from Laurel LaCivita to the File, *Walsin-Cartech Specialty Steel Corporation: Concurrence Memorandum for the Final Determination* (Walsin Concurrence Memorandum).

Normal Value

We used the same methodology to calculate NV as that described in the preliminary determination, with the following exceptions:

A. Walsin

We corrected for certain clerical errors found during verification with respect to Walsin, including the corrections to the response that Walsin identified in the course of preparing for verification and reported in its May 11, 1998 submission.

B. Yieh Hsing

We included all of Yieh Hsing's home market sales to affiliated customers in our analysis because we determined that these sales were made at arm's-length prices and thus in the ordinary course of trade.

We corrected for certain clerical errors found during verification with respect to Yieh Hsing's calculations, including interest revenue and inland freight.

Cost of Production

We calculated the weighted-average cost of production (COP), by model, based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for

home market selling, general and administrative (SG&A) expenses and packing costs in accordance with section 773(b)(3) of the Act. We relied on the submitted COP except in the following specific instances where the submitted costs were not appropriately quantified or valued:

A. Walsin

We made changes based on our findings at verification with respect to Walsin's reported yield loss. (*See Comment 11* in the ''Interested Party Comments'' section of this notice and Memorandum to Christian Marsh from Stan Bowen and Laurens Van Houten dated July 20, 1998 (''Walsin Cost Memo'')). We revised Walsin's submitted general and administrative (G&A) expense factor to include idle capacity, miscellaneous income and expenses, salvage income, and loss on the sale of equipment. (*See Comment 13* in the ''Interested Party Comments'' section of this notice and Walsin Cost Memo). We adjusted the reported transfer price for copper purchased from an affiliate to reflect the market price. (*See Comment 14* in the ''Interested Party Comments'' section of this notice and Walsin Cost Memo).

B. Yieh Hsing

Yieh Hsing failed to report a unique COP for each of the product categories it reported on its computer sales listing. Therefore, we used the COP of the most similar model for each missing product category. (*See* Memorandum to Christian Marsh from Stan Bowen and Laurens Van Houten dated July 20, 1998 (''Yieh Hsing Cost Memo'')). We adjusted the cost of billets that Yieh Hsing obtained from an affiliated supplier to reflect the higher of the market price, transfer price, or COP of the billets. In addition, we adjusted the cost of the billets that Yieh Hsing obtained from its affiliate to include revised G&A and interest expenses of the affiliate, bonus payments that the affiliate paid to its employees, and the cost of billet freight from the affiliate to Yieh Hsing. We adjusted the cost of sales figure used to compute Yieh Hsing's G&A and interest expense rates by the amount of its scrap revenue. This resulted in a revision to reported G&A and interest expense. We further adjusted the calculation of Yieh Hsing's G&A expense rate by including bonus payments that Yieh Hsing paid to its employees, and by excluding certain foreign exchange gains, gains on the disposal of long-term investments and properties, investment loss, and rental income. For further discussion, *see Comments 24, 25 and 26* in the ''Interested Party Comments'' section of this notice; and Yieh Hsing Cost Memo.

We also conducted our sales below cost test in the same manner as that described in our preliminary determination. We found that, for certain models of SSWR, more than 20 percent of Walsin's and Yieh Hsing's home market sales within an extended period of time were at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. 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. For those U.S. sales of SSWR for which there were no comparable home market sales in the ordinary course of trade, we compared EPs or CEPs to CV in accordance with section 773(a)(4) of the Act.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, G&A, U.S. packing costs, direct and indirect selling expenses, interest expenses, and profit. We relied on the submitted CVs except for the specific changes described above in the ''Cost of Production'' section of the notice.

Price-to-Price Comparisons

We made price-to-price comparisons using the same methodology as that described in the preliminary determination, with the following exceptions:

A. Walsin

In making circumstance-of-sale adjustments to NV for comparison to EP sales under section 773(a)(6)(C)(iii) of the Act and section 351.410(c)(4) of the regulations, we recalculated home market and U.S. credit expenses as a result of our findings at verification (*see Comment 7* in the ''Interested Party Comments'' section of this notice). For comparisons to both EP and CEP sales, as a result of our findings at verification, we also recalculated inventory carrying costs and indirect selling expenses incurred in the home market that were used in our calculation of the commission offset (*see Comments 7* and *8* in the ''Interested Party Comments'' section of this notice and the Walsin Concurrence Memorandum).

B. Yieh Hsing

In making circumstance-of-sale adjustments to NV for comparison to EP sales under section 773(a)(6)(C)(iii) of the Act and section 351.410(c)(4) of the regulations, we made additional adjustments for interest premium expenses and letter of credit fees. Furthermore, because we verified that Yieh Hsing properly calculated inventory carrying costs in its responses submitted subsequent to the preliminary determination, we included inventory carrying costs in the weighted-average amount of home market indirect selling expenses used to offset U.S. commissions in calculating NV. For further discussion, *see Comment 21* in the ''Interested Party Comments'' section of this notice.

Price-to-CV Comparisons

For Walsin, we made price-to-CV comparisons using the same methodology as that described in the preliminary determination.

Currency Conversion

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank in accordance with Section 773(A) of the Act.

Interested Party Comments

A. Walsin

Comment 1: Treatment of Verification of CEP Sales.

The petitioners claim that the Department's verification report covering Carpenter's CEP sales outlines serious issues, omissions, and errors that were discovered at verification. They argue that these errors and omissions were so material and so pervasive as to make the response unreliable for purposes of calculating a final antidumping duty margin. The petitioners note that these errors and omissions impeded the proceeding and prevented the Department from verifying Carpenter's questionnaire response. Consequently, the petitioners urge the Department to use adverse facts available in calculating the margin for Walsin's CEP sales and to apply the highest rate calculated for either EP or CEP sales to all of Carpenter's CEP sales for the final determination.

The petitioners claim that Carpenter did not intentionally fail verification as suggested by Walsin. Rather, they argue that Carpenter provided information to Walsin, which was submitted to the Department in consolidated form in Walsin's questionnaire responses. Carpenter also provided certifications for that information, and participated in a verification of CEP sales at Carpenter's headquarters. The petitioners note that throughout the investigation, Walsin's

counsel was in the role of assisting Carpenter, including being present at Carpenter's verification.

The petitioners argue that the Department's inability to verify Carpenter's CEP information has no connection to Carpenter's intent and status as one of the petitioners in this investigation. They further maintain that the statute requires the use of facts otherwise available in reaching a determination if any of the following circumstances are present: (1) Necessary information is not available on the record; (2) someone withholds information requested by the Department; (3) someone fails to provide such information by the deadlines or in the form and manner requested; (4) someone significantly impedes a proceeding; or (5) someone provides information but the information cannot be verified. The petitioners note that the statute directs the Department to apply facts otherwise available without making a specific finding of intent not to cooperate.

Walsin argues that any verification failure by Carpenter, the principal petitioner in this investigation, should be adverse to Carpenter's interest and not adverse to Walsin. Walsin notes that some of the information that was required to be reported on the CEP sales was in the exclusive possession and control of Carpenter, whose primary interest during the POI was domestic production of SSWR rather than importation of SSWR from Taiwan. Consequently, Walsin contends that Carpenter may not have had an interest in the success of the CEP verification. In the event that the Department is unable to use the submitted CEP information and must apply facts available in the final determination, Walsin argues that the Department should use the lowest non-aberrant, transaction-specific margin from Walsin's verified EP sales for all of the CEP transactions.

DOC Position

We discovered at verification that there were certain significant errors and deficiencies in the information submitted on the record by Carpenter. The Department's verification report of June 2, 1998, cited the following important deficiencies in the verification of Carpenter's information: Carpenter failed to report a significant percentage of sales and price adjustments to covered merchandise in its computer sales listing; Carpenter was not able to substantiate the amount of indirect selling expenses reported in its questionnaire response; and, for certain sales, Carpenter failed to report all of the freight expenses that it incurred to transport merchandise from the port and warehouse to the customer in the United States.

Section 776(a) of the Act provides that the Department may use facts otherwise available if an interested party withholds information that has been requested by the Department, fails to provide such information or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified. Section 776(b) states that the Department may use an inference which is adverse to the interest of the party in selecting from among the facts otherwise available if the party has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information.

Our analysis of the information presented on the record indicates that adverse inferences with respect to Walsin's CEP sales are not warranted, as suggested by the petitioners. With respect to U.S. indirect selling expenses and U.S. freight charges, the Department has verified information to use to correct the deficiencies for these expense items. As facts available, for indirect selling expenses, we used the verified selling expenses recorded on Carpenter's audited trial balance for the specialty steel division and adjusted for freight and commissions. We derived an indirect selling expense factor by dividing the amount of indirect selling expenses by the total value of sales recorded on the audited financial statements for the specialty steel division. We applied the factor to gross price, and used the resulting per unit indirect selling expense in our calculations. With respect to the unreported freight expenses discovered at verification, we applied the additional verified freight expense to the reported freight expense for the affected sales, and used the resulting revised per unit freight charge in our calculations. For further discussion of these issues, see Walsin Concurrence Memorandum.

With respect to Carpenter's failure to report a significant number of CEP sales and price adjustments on its computer sales listing, we have determined not to use adverse inferences in applying facts available to account for such information. Given the nature of the relationship between Walsin and Carpenter; Carpenter's participation in this proceeding as a petitioner; and Carpenter's exclusive control of the sales and price information at issue, we find that Walsin was not in a position to report this information. Given these unusual circumstances, we have not determined that Walsin failed to act to the best of its ability to comply with the Department's request for information. Therefore, in applying facts available, we used the weighted-average margin for all of Walsin's reported sales to the CEP sales that were not reported to the Department in the course of the investigation. For further discussion, *see* the Walsin Concurrence Memorandum.

Comment 2: Model Match.

The petitioners disagree with the findings at verification, as outlined in the Department's June 2, 1998 verification report at page 5, that Walsin accurately identified which products fit into AISI codes in the ''Content and Property Tolerance'' charts submitted in Walsin's March 22, 1998, second supplemental questionnaire response. The petitioners contend that Walsin incorrectly coded several grades, and assigned more than one grade code to the same grade of material. The petitioners provided a table in their case brief identifying what they believe to be the most appropriate grade codes identifying the products sold in the home and U.S. markets.

Walsin contends that the petitioners failed to explain the methodology used to revise Walsin's grade code system. In addition, Walsin notes that there are obvious errors in the petitioners' code designations. Therefore, Walsin argues that the Department should disregard the petitioners' concordance in its entirety.

DOC Position

We agree with both the petitioners and the respondent in part. Verification revealed that the six-digit internal chemistry code contained in Walsin's product model number provides the most accurate information concerning the chemical content of each grade of steel identified in exhibit 13 of the October 24, 1997 Section A response. We found no discrepancies between the information provided in the questionnaire responses of October 24, 1997; November 12, 1997; January 20, 1998; and March 31, 1998; and the primary source documents used by the factory to produce and test the chemical specifications of the subject merchandise.

However, upon further examination, we found that Walsin often assigned more than one commercial grade name to each six-digit internal chemistry code in the normal course of business, and that it assigned grade codes for the Department's product matching purposes to each of its internal commercial grade names. As a result, in certain instances, more than one grade code applied to the same grade of

merchandise. Therefore, we conducted an analysis of Walsin's grade code designations for all of Walsin's models sold in the U.S. and home market. We compared the AISI codes identified in the GRADE1 field of the March 31, 1998 response with the grade code designations in Walsin's original section B and C response of November 12, 1997. If the grade code reported for a particular model in the March 31, 1998 response differed from that in the November 12, 1997 response, we assigned to that model a grade code corresponding to the AISI grade in the GRADE1 field. These adjustments allowed us to assign a unique grade code to each AISI grade identified in the GRADE1 field of the March 31, 1998 response. Therefore, all models identified as AISI 304 in the GRADE1 field, for example, would have the same grade code designation.

We then compared the recommendations presented in the petitioners' case brief with Walsin's code designations, and our revised grade code designations. In the event that either the petitioners or the Department disagreed with Walsin's grade code designations, we compared the internal chemistry of each model in question with the AISI standards presented in the *Worldwide Guide to Equivalent Irons and Steels,* and followed the methodology outlined in the ''Fair Value Comparisons'' section of the notice. The results of our analysis are recorded in the Walsin Concurrence Memorandum.

Comment 3: Level-of-Trade Adjustment.

The petitioners claim that the Department should not change the level-of-trade analysis performed in the preliminary determination, and should continue to deny a level-of-trade adjustment in the final determination. The petitioners note that even with slight differences in levels of selling expenses, Walsin provided similar selling functions in both the home and U.S. markets. Thus, there is no reason for the Department to make any changes regarding level of trade in its analysis for the final determination.

Walsin notes that it did not request a level-of-trade adjustment for the preliminary determination.

DOC Position

We conducted a level-of-trade analysis for the preliminary determination and found that all of Walsin's sales were made at the same level of trade. We subsequently verified the information on which our preliminary level-of-trade analysis was based. For a discussion, *see Notice of Preliminary Determination* at page 10837, and the *Concurrence Memorandum for Preliminary Determination of Investigation* dated February 25, 1998. No record evidence has been presented since our preliminary determination that would lead us to change our analysis. Therefore, we have not made a level-of-trade adjustment for purposes of the final determination.

Comment 4: Second Quality Merchandise.

The petitioners argue that the Department should exclude sales of second quality merchandise from the pool of home market sales used to calculate the margin in the final determination. It notes that Walsin did not report such sales in its computer sales listing.

Walsin notes that it reported sales of second-quality merchandise on its computer sales listing as indicated by the letter ''U'' at the end of the product model number.

DOC Position

We agree with both the petitioners and Walsin. An examination of the March 31, 1998 computer sales listing reveals that Walsin reported sales of second-quality merchandise on its computer sales listing as indicated by the letter ''U'' at the end of the product model number. We agree with the petitioners that these sales should not be used in our margin analysis since Walsin made no sales of second-quality merchandise to the United States. This is consistent with the rationale outlined in the preliminary determination. (*See Notice of Preliminary Determination* at page 10838.)

Comment 5: Affiliation in the Home Market.

The petitioners contend that the Department should regard two of Walsin's home market customers as affiliated parties for the purposes of this investigation, and disregard any home market sales that are not found to be made at arm's length.

The petitioners claim that Walsin had a ''close relationship'' with one of the customers in question in which Walsin acquired an ownership stake shortly after the POI, and to which it sold a significant amount of SSWR during the POI. They claim that the volume of sales and the knowledge that the acquisition was about to occur would have affected the price negotiations between Walsin and its customer during the POI.

The petitioners claim that Walsin directly or indirectly owned, controlled or voted five percent or more of the outstanding shares of the other customer in question during the POI. Therefore, the petitioners argue that the Department should consider this customer to be affiliated with Walsin, conduct an arm's-length test on the sales between Walsin and the customer at issue, and disregard from its margin analysis any sales which were not made at arm's length during the POI.

Walsin claims that the petitioners presented no support for the contention that Walsin had a ''close supplier relationship'' with its two customers during the POI. Walsin notes that the Department confirmed at verification that Walsin did not have any long-term investments in these two companies during the POI. In addition, Walsin points out that in the Department's long-standing practice, the ''close supplier'' relationship alone is insufficient to support conducting an arm's-length test, even when the sales at issue are subject to a 100% exclusive buy-sell arrangement between the parties.

DOC Position

We conducted extensive tests at verification to determine whether Walsin had any ownership of these two companies during the POI and found that Walsin had no ownership of either of these two companies during the POI.

In light of the issues raised by the parties, we considered whether Walsin was affiliated with these companies within the meaning of section 771(33) of the Act and section 351.102(b) of the Department's regulations. An analysis of the verified information on the computer sales listing demonstrates that the sales that Walsin made to these customers account for only a small portion of its total sales during the POI, and that a significant portion of the customers' purchases of SSWR come from producers other than Walsin (*see* Walsin Concurrence Memorandum). Based on these facts, we cannot conclude that Walsin has close supply relationships with the parties at issue in the home market within the meaning of section 351.102(b) of the Department's regulations. Based on the foregoing analysis, we have not considered these parties to be affiliated for the purposes of the final determination.

Comment 6: Home Market Sales of Merchandise Produced in France.

The petitioners argue that the Department should include in its final determination home market sales of a certain grade of merchandise which Walsin claimed was produced in France and which Walsin failed to report in its computer sales listing. The petitioners argue that Walsin was not able to document at verification that this merchandise was actually manufactured in France, as claimed in the

questionnaire response. Consequently, the petitioners argue that the Department should make adverse inferences concerning these sales by not making any adjustments for selling expenses incurred on these sales in the calculation of NV.

Walsin claims that it provided the Department a clear documentary trail establishing that this merchandise was produced in France and not produced during the POI. Walsin further notes that its sales of this merchandise were not made in the ordinary course of trade, as they consisted of sales of either second-quality or trial-grade merchandise. Therefore, Walsin argues that the use of such sales would have a distortive effect on the determination of NV and should be excluded from the Department's final analysis.

DOC Position

We agree with the petitioners in part. Verification revealed that Walsin made a significant number of home market sales of the grade of merchandise at issue which Walsin claimed was produced in France and which it had not previously reported to the Department. At verification, Walsin was not able to provide documentary evidence that this merchandise was produced in France, as it claimed in its questionnaire responses. Therefore, we have included these sales in our final analysis. However, because Walsin made no sales of this merchandise in the United States during the POI, and this merchandise has not been identified as one of the most similar grades of steel for comparison to any products sold in the United States, the application of adverse facts available is unnecessary in reaching our final determination.

Comment 7: The Interest Rate Used for Credit Expense and Inventory Carrying Cost.

The petitioners argue that the Department should recalculate the interest rate used for credit expenses and inventory carrying costs in the United States and home market using adverse facts available, since verification revealed that Walsin's interest rate was based on the theoretical interest rate on all short-term loans that were outstanding on the last day of the fiscal year, rather than on the actual interest rate obtained by the company on its short-term loans.

Walsin disagrees, claiming that it reported a figure for the total value of loans which ties directly to the company's financial statements. It maintains that this figure is a reliable indicator of the interest rate because it ties to the financial statements. Walsin argues that the figure is reasonable and should be used in the final determination.

DOC Position

We agree with the petitioners. We found at verification that Walsin improperly reported both the value of its loans and interest payments during the POI. Walsin's reporting methodology did not allow the Department to determine prior to verification that any problems existed in the company's method for determining its interest rate, and to request that Walsin revise its methodology accordingly.

Section 776(a)(1) of the Act provides that the Department may use facts available in situations in which the necessary information is not available on the record. Section 776(b) states that the Department may use an inference which is adverse to the interest of the party in selecting from among the facts otherwise available if the party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority.

Since Walsin did not provide the information that was required by the Department in order to determine the appropriate interest rates to be used in the calculation of U.S. and home market credit expenses and inventory carrying costs incurred in the home market, and since the provision of this information was within its control, we determined that Walsin has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. Therefore, we determined that it is appropriate to make adverse inferences in this case. Therefore, as adverse facts available for credit expense, we used the lowest short-term interest rate obtained in the home market and reported in verification exhibit 18 to recalculate short-term credit expenses for home market sales. For EP sales, we used the prime interest rate as defined by the Federal Reserve Bank to recalculate short-term credit expenses. For inventory carrying cost incurred in the home market, we have used in our final calculations the highest per-unit expense reported in the May 11, 1998 submission for U.S. sales and the lowest per-unit expense reported in the May 11, 1998 submission for home market sales.

Comment 8: Indirect Selling Expenses in the Home Market.

The petitioners contend that the Department must recalculate home market indirect selling expenses to exclude direct selling expenses, foreign inland freight and travel expenses to foreign countries in accordance with our verification findings.

Walsin agrees that the reported home market indirect selling expenses included export expenses, inland freight, marine freight and royalty expenses that had already been included in direct selling expenses, and thus the amount of home market indirect selling expenses reported on the computer sales listing was overstated.

DOC Position

We agree with both the petitioners and Walsin that the reported home market indirect selling expenses incorrectly included certain direct selling expenses and export-related expenses that were reported elsewhere in Walsin's response. In order not to double-count these expenses in our calculations, we have adjusted the figures accordingly for use in the final determination.

Comment 9: The Inclusion of U.S. Brokerage and Handling in Movement Expenses.

The petitioners argue that the Department erroneously neglected to deduct U.S. brokerage and handling from Walsin's gross U.S. price.

Walsin did not comment on this issue.

DOC Position

We agree and have corrected the error.

Comment 10: Minor Corrections to the Response.

Walsin submitted a number of corrections at the start of the sales and cost verification. It claims that the Department reviewed those corrections as a part of its regular verification process, and therefore requests that the corrections be accepted for the purposes of the final determination.

DOC Position

We examined the corrections presented at the beginning of verification and have accepted them with the exception of those relating to inventory carrying costs (*see Comment 7* for the treatment of inventory carrying costs).

Comment 11: Yield Loss.

Walsin argues that it accurately reported the yield loss incurred throughout the entire SSWR manufacturing process. To support its position, Walsin states that the Department should reexamine several accounting worksheets that the verifiers took as cost verification exhibits 14, 15, and 16. According to Walsin, these exhibits, which calculate the company's cumulative yield loss, demonstrate that

it accurately reported its yield loss. Thus, Walsin argues that there is no basis to make any further adjustment in this regard. Walsin states further that if the Department does adjust its reported yield loss, it cannot rely on certain production reports taken as cost verification exhibit 30. According to Walsin, these reports only show the realized yield of its first grade products and not the accumulated yield of both first and second grade products. Therefore, Walsin claims that the yield rate reported on this exhibit is inaccurate for calculating the cost associated with its yield loss.

The petitioners contend that the Department should adjust Walsin's reported costs to reflect the fact that they do not adequately account for the company's yield loss. The petitioners argue that the Department cannot accept Walsin's reported costs because the company has understated its reported cost of manufacturing. Thus, the petitioners suggest that the Department should either adjust Walsin's reported costs according to verification findings, substitute costs based on facts available, or completely reject Walsin's costs.

DOC Position

We disagree with Walsin that it has adequately accounted for its yield loss incurred in manufacturing SSWR. For the calculation of COP and CV, we found that Walsin applied the yield loss of each production stage only to the costs incurred in that stage. This methodology, however, fails to properly account for yield costs incurred in previous stages which are input into the subsequent stages. Thus, the reported yield loss amounts do not accurately capture the actual overall yield loss incurred by the company in producing SSWR. Walsin should have calculated its reported yield loss amount by applying each production stage's yield loss rate to the sum of each stages's preceding and current production costs. In fact, Walsin calculates its overall yield loss in the ordinary course of business in the same manner by combining its previous production stage's costs with the current production stage's costs. Walsin then divides the total costs by finished output to calculate a yielded cost (*see* the last three pages of cost verification exhibit 14). As referenced by Walsin in its case brief, cost verification exhibit 14 contains worksheets that depict the company's normal recognition of its overall yield loss for a single model on a per-unit basis. We note, however, that the fully yielded material costs at the final stage of manufacturing are different from the material costs reported in Walsin's cost database. For its reported costs, Walsin only reported a material cost that it yielded at the billet manufacturing stage. This results in a yield loss that is less than the actual overall yield loss of the fully processed product. For the final determination, we adjusted Walsin's reported billet costs for the yield loss rate experienced in the rolling, annealing, and pickling production processes. We computed the yield loss rate for these production processes based on the information used by Walsin in the ordinary course of business to compute a fully yielded material cost. Walsin provided this information in cost verification exhibit 8.

Comment 12: Flood Damage Loss.

Walsin asserts that the Department should not consider the company's flood damage loss component of COP. Walsin explains that in its normal course of business it treated the loss as an extraordinary item and not a manufacturing or general expense item because it was the result of an unusual and infrequent occurrence. According to Walsin, this treatment is in accordance with Taiwanese Generally Accepted Accounting Principles (GAAP) and, thus, the Department should accept it. Moreover, the respondent argues that the exclusion of this cost reasonably reflects the costs associated with producing SSWR and it avoids aberrant cost fluctuations. Walsin also notes that in *Certain Fresh Cut Flowers From Columbia* 62 FR 19772, 19778 (April 8, 1997), the Department allowed the respondent a similar exclusion for severe water damage and consequent loss of production.

The petitioners argue that the Department should include the loss from the flood in Walsin's calculation of COP and CV. According to the petitioners, Walsin incurred the expenses associated with the flood during normal operations. Thus, it is appropriate that the Department include this expense in the calculation of COP and CV.

DOC Position

We agree with Walsin that it is appropriate in this case to exclude its flood damage loss from the calculations of COP and CV. Walsin reported that during the POI, the area in which Walsin's manufacturing plant is located received a historically high amount of rainfall over a short period of time. The excessive amount of rainfall caused the local levy to break and flood the surrounding area. Because of the flood, Walsin incurred out-of-the-ordinary cleanup expenses and losses associated with the write-off of damaged equipment and supplies. Consistent with our position in the *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, 38153 (July 23, 1996) (*''LNPP from Japan''*), it is the Department's practice to allow respondents to exclude out-of-the-ordinary losses if such losses stem from an accident that constitutes an unforeseen disruption in production which is beyond the management's control. *See Uruguay Round Agreements Act Statement of Administrative Action* (SAA) at 162. In such instances, we rely on the actual costs incurred for production exclusive of the costs associated with the unforeseen event.

At verification, we confirmed that the flood and the damages resulting from the flood were unforseen and beyond management's control. Therefore, for the final determination, we did not include any of the additional expenses incurred as a result of the flood in the calculation of COP and CV.

Comment 13: Idle Capacity Loss.

Walsin argues that the Department should not include its idle capacity loss in the calculation of COP and CV because it is an extraordinary loss. According to Walsin, this loss consists of the idle depreciation expense on plant and equipment that was not in use or was underutilized during the POI. Walsin maintains that because the company is a relatively new producer it determined that it was reasonable to classify this type of cost as extraordinary until the company reaches a normal production level. Moreover, Walsin emphasizes that classifying this cost as extraordinary is appropriate and acceptable under Taiwanese GAAP. Therefore, Walsin requests that the Department follow Taiwanese GAAP which considers the idle capacity loss charge as extraordinary, and exclude the loss from the calculation of COP and CV.

The petitioners disagree, stating that the Department should include Walsin's idle capacity loss, which the company reported on its audited income statement, in the calculation of COP and CV. According to the petitioners, the Department is directed to adjust a respondent's cost if it determines that the respondent has shifted costs away from production of the subject merchandise as stated in the SAA.

DOC Position

We disagree with Walsin that we should exclude its idle capacity loss from the calculation of COP and CV. As

Walsin has noted, the idle capacity loss consisted of depreciation expense that the company incurred on holding idle production assets. For this type of expense, it is our normal practice to include it as part of G&A. For instance, in the *Final Results of Antidumping Duty Administrative Review: Silicomanganese From Brazil*, 62 FR 37869, 37871 (July 15, 1997) and *Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread From Malaysia*, 61 FR 54773, 54772 (October 22, 1996), we considered ''idle depreciation to be period costs (*i.e.*, costs that are more closely related to the accounting period rather than the current manufacturing costs) and included the expense in our calculation of G&A expenses.'' As for Walsin's contention that its idle capacity loss is an extraordinary expense under Taiwanese GAAP and should therefore be excluded from the company's reported costs, we disagree. Simply because a company characterizes certain expenses as extraordinary in the ordinary course of business in accordance with its home market GAAP does not mean the cost automatically is the result of an unforeseen disruption in production that is beyond management's control and should therefore be excluded from COP and CV (*see LNPP from Japan* at 38153). In this instance, we see nothing unusual or unforeseen about depreciation expense incurred on idle assets for a manufacturing company. Thus, for the final determination we have included Walsin's idle capacity loss in the calculation of its COP and CV.

Comment 14: Transfer Price for Copper.

The petitioners state that the Department should revise the reported transfer price for copper obtained from affiliates to reflect the market value paid to non-affiliates. According to the petitioners, the reported transfer price is less than the purchase price of comparable copper obtained from non-affiliates. Based on these facts, the petitioners maintain that the Department should revise the reported transfer price for copper to reflect the market value.

Walsin contends that the transfer price for copper included in its reported costs should not be revised. According to Walsin, there is no evidence to support that the affiliated-party copper sales were not made on an arm's-length basis. Therefore, Walsin states that the Department should not revise the transfer price of copper in Walsin's reported section D database.

DOC Position

We agree with the petitioners. We compared the reported transfer price paid for copper purchased from an affiliated supplier to reported market prices and the affiliated suppliers' cost, and found that the average market price was the highest. We performed this comparison in accordance with section 351.407(b) of the Department's regulations, which sets forth the method by which the Department will determine value under the major input rule for the purposes of section 773(f)(3) of the Act. This provision, which applies to the calculation of both CV and COP, states that the Department will determine the value of a major input purchased from an affiliated person based on the higher of: (1) the price paid by the exporter or producer to the affiliated person for the major input; (2) the amount usually reflected in sales of the major input in the market under consideration; or (3) the cost to the affiliated person of producing the major input. We have relied on this methodology in the *Final Results of Antidumping Duty Administrative Review; Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 62 FR 18449, 18457 (April 15, 1997), *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), and the *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 (November 7, 1996). In this case, we found the market price to be higher than the reported transfer price and the affiliated suppliers' cost. Thus, for the final determination, we have increased Walsin's affiliated supplier's copper cost to reflect the market value paid by non-affiliates.

B. Yieh Hsing

Comment 15: Modification of Control Numbers.

Yieh Hsing argues that the Department should not modify Yieh Hsing's reported control numbers (CONNUMs) as Yieh Hsing reported in its March 31, 1998 submission. Yieh Hsing claims that the Department verified that Yieh Hsing correctly assigned the CONNUMs in accordance with AISI grades, and in accordance with the Department's instructions.

The petitioners agree with the respondent, except in two cases: 1) if the Department decides to reclassify grades for all respondents based on any general model-match decisions, and 2) if the Department decides to reclassify one of Yieh Hsing's steel grades based on its verification findings (*see Comment 16* below).

DOC Position

For purposes of the final determination, we have continued to employ the same general model-match methodology as that outlined in the preliminary determination (*see* ''Fair Value Comparison'' section of this notice for further discussion.) Therefore, there is no need to generally reclassify the grades reported by Yieh Hsing and verified by the Department. (*See* also *DOC Position* to *Comment 16* below).

Comment 16: Classification of An Internal Grade.

The petitioners disagree with Yieh Hsing's classification of one of its internal grades as AISI grade 304. The petitioners argue that this internal grade is more appropriately classified as another AISI grade, and request that the Department reclassify this internal grade accordingly. The petitioners base their argument on the chemical specifications listed on the mill certificate for this grade that were discussed in the Department's verification report.

Yieh Hsing argues that the Department should not reclassify this steel grade. Yieh Hsing contends that the Department verified that Yieh Hsing correctly classified this grade as AISI 304. Yieh Hsing also states, based on the chemical specifications of this grade that it reported to the Department, that this grade may not be classified as the AISI grade suggested by the petitioners. Yieh Hsing also notes that the Department verified for one selected home market transaction that the grade at issue met the specifications for AISI grade 304. Yieh Hsing also argues that if, notwithstanding these facts, the Department still decides to reclassify this grade as the AISI grade requested by the petitioners, the Department should recalculate COP and CV for the latter grade to reflect the reclassification.

DOC Position

We agree with Yieh Hsing. Based on our review at verification of a mill certificate for the grade at issue, we found that this grade meets the specifications of AISI grade 304, and does not meet the specifications of the grade proposed by the petitioners, or of

any other AISI grade of which we are aware. Furthermore, we note that in instances in which an internal grade matches all the specified chemical content tolerance ranges of an AISI grade, but that the internal grade also contains chemicals that are not otherwise specified as being included in the standard AISI designation, it is appropriate to classify the internal grade as the AISI grade. We therefore have accepted Yieh Hsing's classification of this grade as AISI grade 304 in the final determination. For further discussion, *see* Memorandum from Alexander Amdur to Holly Kuga on *Yieh Hsing Enterprise Corporation, Ltd.: Analysis of Issues Raised in the Case and Rebuttal Briefs for the Final Determination* (Yieh Hsing Concurrence Memorandum).

Comment 17: Model Matching Program.

Yieh Hsing argues that the Department should modify its SAS program to correctly match Yieh Hsing's U.S. sales with home market sales. Yieh Hsing claims that the SAS program that the Department used for the preliminary determination, by comparing the absolute values of the control numbers, would result in improper matches of the most similar grades identified in Yieh Hsing's March 31, 1998 submission.

The petitioners argue that the Department should continue to use the model-match program from the preliminary margin calculation. The petitioners state that this program accurately identified the most similar grades based on the comparison of the absolute values of the control numbers, and this program is more accurate than Yieh Hsing's reported most similar models.

DOC Position

We agree in part with both the respondent and the petitioners. In the preliminary determination, the model-match program correctly identified matches of identical grades by comparing the absolute values of the control numbers. In cases where no matches of identical grades existed, we inserted language into the model-match program to correctly identify the most similar grades based on Yieh Hsing's reported most similar grades. For the final determination, we have continued to use this program, and have made any necessary modifications to ensure that this program correctly identifies the most similar grades as reported by Yieh Hsing in its March 31, 1998 submission, and clarified in its June 8, 1998 case brief.

Comment 18: Classification of Sales as EP or CEP.

Yieh Hsing argues that the Department incorrectly determined in the preliminary determination that Yieh Hsing's sales to one of its U.S. customers were CEP sales. Yieh Hsing claims that the Department, in reclassifying these sales as CEP sales, incorrectly determined that Yieh Hsing's sales agent acted as more than a ''processor of sales-related documentation'' and a ''communication link'' with this customer. Yieh Hsing notes that it explained in its March 31, 1998 submission (submitted after the preliminary determination) that its sales agent refaxed messages received from Yieh Hsing to this customer, and that the sales agent was not required to, and did not, make any sales promotion efforts during the POI. Yieh Hsing argues that a letter examined by the Department at verification shows that its U.S. sales agent acted as a communication link between Yieh Hsing and this customer, and shows that the sales agent did not negotiate sale terms. Citing to the Department's verification report, Yieh Hsing also argues that the Department verified that Yieh Hsing correctly explained its sales agent's role in its March 31, 1998 submission.

Yieh Hsing further claims that the Department improperly cited Yieh Hsing's January 13, 1998 submission for the conclusion that Yieh Hsing's U.S. sales agent performed various selling functions on behalf of Yieh Hsing. Yieh Hsing states that it reported that its sales agent acted on behalf of Yieh Hsing to distinguish the sales agent from working on behalf of Yieh Hsing's customer. Yieh Hsing also states that it reported that it gave a quotation to the sales agent because Yieh Hsing communicated with its customer through the sales agent. Yieh Hsing states that it never stated that the sales agent negotiated sales terms with the customer, or that it instructed its sales agent to solicit customers on its behalf.

The petitioners argue that the Department properly concluded that Yieh Hsing's sales to this U.S. customer meet the statutory definition of CEP sales. The petitioners further argue that the Department's preliminary conclusion is further supported by documents found at verification. The petitioners state that a letter examined by the Department at verification (also referred to by Yieh Hsing) demonstrates that Yieh Hsing's sales agent negotiates price and seeks out customers on its own, and thus is more than a ''paper-pusher'' and a ''communications link'' between Yieh Hsing and Yieh Hsing's customer.

DOC Position

We agree with the respondent that its U.S. sales to this customer should be treated as EP sales. In the preliminary determination, in order to determine whether sales made prior to importation through Yieh Hsing's sales agent in the United States were EP or CEP transactions, we analyzed whether Yieh Hsing's U.S. sales to this customer met the Department's three criteria for EP sales: (1) whether the merchandise in question is shipped directly from the manufacturer to the unaffiliated buyer without being introduced into the physical inventory of the selling agent; (2) whether direct shipment from the manufacturer to the unaffiliated buyer is the customary channel for sales of the subject merchandise between the parties involved; and (3) whether the selling agent in the United States acts only as a processor of sales-related documentation and a communication link with the unaffiliated U.S. buyer.

Based on the information on the record at the time of the preliminary determination, we determined that Yieh Hsing's U.S. sales to this customer during the POI met the first two of the Department's three criteria for EP sales. We further determined that Yieh Hsing's U.S. sales to this customer did not meet the Department's third criterion for EP sales since the reported sales-related responsibilities (including seeking out customers on its own and negotiating sales terms) of Yieh Hsing's sales agent in the United States demonstrated that the sales agent functioned as more than a ''paper-pusher'' in the U.S. sales process.

The record, as it has been developed since the preliminary determination, continues to show, and both parties do not contest, that Yieh Hsing's U.S. sales to this customer meet the first two criteria. In reexamining whether the third criterion (*i.e.*, whether the selling agent acts as more than a document processor), is satisfied, we considered whether the U.S. sales agent's involvement in making the sale is incidental or ancillary. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 63 FR 13170 (March 18, 1998). *See also Viscose Rayon Staple Fiber From Finland: Final Results of Antidumping Duty Administrative Review*, 63 FR 32820 (June 16, 1998).

The record now shows that Yieh Hsing's U.S. sales agent's role was incidental or ancillary in making the sales to this customer during the POI. Yieh Hsing clarified in its March 31,

1998 response, and we verified, that the role of Yieh Hsing's sales agent in Yieh Hsing's sales to this customer during the POI mainly involved refaxing messages between Yieh Hsing and this customer, communicating Yieh Hsing's price quotations to this customer, and assisting Yieh Hsing in handling U.S. Customs clearance of Yieh Hsing's merchandise. We also verified that all sales were initiated by this customer based on its production requirements. We further agree with the respondent that the letter examined at verification that is referenced by both the respondent and the petitioners shows that Yieh Hsing's U.S. sales agent acted as a communication link between Yieh Hsing and this customer, and that the sales agent did not negotiate sale terms. We also note that other letters examined at verification show the following: that Yieh Hsing and this customer communicated with each other through Yieh Hsing's U.S. sales agent; that Yieh Hsing, and not its agent, determined the terms of sale with this customer; and that Yieh Hsing, and not its agent, accepted or rejected all sales to this customer.

There is also no evidence that Yieh Hsing's U.S. sales agent otherwise had substantial involvement in the sales process. Based on these facts, we have concluded for purposes of the final determination that EP treatment is appropriate for all of Yieh Hsing's U.S. sales to this customer, as these sales were made by the producer, Yieh Hsing, prior to importation to a purchaser in the United States not affiliated with the producer (*see* section 772(a) of the Act). For further discussion, *see* Yieh Hsing Concurrence Memorandum.

Comment 19: The Classification of Sales to Another U.S. Customer.

The petitioners argue that the Department should treat Yieh Hsing's sales to another U.S. customer as CEP sales. The petitioners state that information obtained at verification shows that this customer holds inventory of Yieh Hsing's SSWR which the customer sells *after* it enters the United States. The petitioners further state that this customer, based on documents found at verification, is more than a ''paper pusher.''

Yieh Hsing contends that the Department should continue to treat Yieh Hsing's sales to this customer as EP sales. Yieh Hsing argues that the petitioners' arguments are based on a false presumption that this customer, a U.S. distributor, is a sales agent, and notes that it sold its SSWR to this customer, and not through this customer. Yieh Hsing further maintains that the petitioners' arguments are irrelevant to sales made to an unaffiliated U.S. distributor, since the Act defines EP sales as sales to an unaffiliated purchaser in the United States. Yieh Hsing also contends that this customer's status as a distributor is insufficient to conclude that Yieh Hsing and this customer are affiliated, and that the verified facts show that there is no close relationship between Yieh Hsing and this customer that would characterize them as affiliated parties.

DOC Position

We agree with the respondent. The main factors in analyzing whether U.S. sales are EP or CEP sales are whether they are first sold to an unaffiliated purchaser before or after importation, and if such sales are made before importation, whether such sales are made outside or in the United States. *See* sections 772(a) and 772(b) of the Act. In this case, the record indicates that the U.S. sales at issue were made prior to importation by Yieh Hsing in Taiwan to the unaffiliated U.S. purchaser. We also agree with Yieh Hsing that there is no evidence on the record to suggest that this customer was acting on Yieh Hsing's behalf or is affiliated with Yieh Hsing. Therefore, since Yieh Hsing sold SSWR to this unaffiliated U.S. customer before the date of importation, Yieh Hsing's sales to this customer meet the statutory criteria of EP sales. For further discussion, *see* Yieh Hsing Concurrence Memorandum.

Comment 20: Weight-Averaging of U.S. Prices.

Yieh Hsing argues that the Department should weight-average all U.S. prices of identical SSWR to calculate Yieh Hsing's dumping margin, rather than calculating dumping margins separately for EP and CEP sales, as the Department did for the preliminary determination. Yieh Hsing states that the Act and the Department's regulations do not permit the separate averaging of EP and CEP sales in calculating the weighted-average U.S. prices. Yieh Hsing further argues, citing the ''plain meaning'' rule, that the relevant sections of the Act and the regulations, which discuss comparing the weighted average of the normal values to the ''weighted average of the export prices and constructed export prices'' (emphasis added), should be interpreted as stated, and should not be interpreted as ''the weighted average of the export prices or constructed export prices.'' Yieh Hsing also contends that even though the Department rejected Yieh Hsing's ministerial error allegation on the same issue, the Department has not yet addressed whether the methodology used in the preliminary determination was legally correct.

The petitioners argue that the Department should calculate the final antidumping margin in the same manner as that done for the preliminary margin analysis. The petitioners note that the Department stated, in response to Yieh Hsing's comment on the same subject in Yieh Hsing's ministerial error allegation, that ''the Department followed its normal methodology to calculate Yieh Hsing's dumping margins in this investigation.'' The petitioners also note that the SAA and the Department's antidumping manual support the Department's position, as both specifically mention comparing the weighted average of the normal values with ''a weighted average of export prices or constructed export prices.''

DOC Position

Given that the Department has now classified all of Yieh Hsing's U.S. sales as EP sales, we need not make a determination on this issue. *See Comments 18 and 19* above for further discussion of the Department's classification of Yieh Hsing's U.S. sales.

Comment 21: Home Market Inventory Carrying Costs.

Yieh Hsing argues that the Department should include Yieh Hsing's reported home market inventory carrying costs in the dumping margin analysis in the final determination. Yieh Hsing notes that the Department did not include Yieh Hsing's reported home market inventory carrying costs in the calculations for the preliminary determination because the Department concluded that Yieh Hsing did not correctly calculate these costs. Yieh Hsing also notes that the Department verified the inventory carrying costs as reported in Yieh Hsing's March 31, 1998 submission.

DOC Position

We agree with the respondent. We verified that Yieh Hsing correctly calculated its inventory carrying costs in its March 31, 1998 submission. Therefore, we have included Yieh Hsing's reported inventory carrying costs in our final margin analysis, where appropriate.

Comment 22: Home Market Sales of Second-Quality Merchandise.

The petitioners argue that the Department should exclude sales of second quality merchandise from the home market database as was done in the preliminary margin analysis. The petitioners state that it is not appropriate to compare sales of non-prime quality or seconds in the home

market to U.S. sales of prime quality merchandise.

DOC Position

We agree with the petitioners. In the preliminary determination, given the limited home market sales quantity of non-prime and defective merchandise and the fact that no such sales were made to the United States during the POI, we excluded sales of non-prime and defective merchandise from our analysis in accordance with our past practice. Since these facts have not changed from the preliminary determination, we have continued to exclude sales of non-prime and defective merchandise from our analysis in the final determination.

Comment 23: Corrections to the Response.

Yieh Hsing argues that the Department should incorporate the corrections to minor errors that Yieh Hsing submitted at verification in the calculations for the final determination. Yieh Hsing states that these corrections were timely submitted and verified by the Department.

The petitioners argue that the Department must incorporate all clerical errors discovered at verification in its final margin calculation. In particular, the petitioners note that the Department found at verification that Yieh Hsing incorrectly labeled its corrections submitted at verification for U.S. brokerage and letter of credit expenses.

DOC Position

We agree with both the respondent and the petitioners, and have made the appropriate corrections to all clerical errors that Yieh Hsing submitted and/or that we found at verification in our final calculations. *See* ''Export Price/ Constructed Export Price'' and ''Normal Value'' sections of this notice.

Comment 24: Treatment of Costs of Billets Purchased from An Affiliate.

Yieh Hsing claims that the Department should not adjust its reported billet costs for purchases from its affiliated supplier to reflect an imported market price. According to Yieh Hsing, its reported affiliated supplier billet costs are based on the higher of COP, transfer price or market value, in accordance with section 773(f)(2) and (3) of the Act. Moreover, Yieh Hsing states that it appropriately used the price for physically comparable billets that its affiliate sold to non-affiliates as the market price for comparison purposes. The respondent emphasizes that the price it paid to non-affiliated suppliers for imported billets is not an appropriate basis to determine market price because the imported billets are of a higher quality, most do not require grinding, and the processing time they require is substantially less than those obtained from the affiliate. Yieh Hsing argues further that because it can demonstrate that the imported billets are qualitatively different, the Department should reject the petitioners' assertion that it rely on the market price of such raw material, as it did in the *Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil,* 62 Fed. Reg. 37869, 37874 (July 15, 1997).

If the Department finds it necessary to adjust its reported billet costs for purchases from its affiliated suppliers, Yieh Hsing argues that the Department should not use the same methodology that it used in the preliminary determination. According to Yieh Hsing, the preliminary adjustment incorrectly increased the billet cost for purchases from its non-affiliated suppliers which were already reported at a market price. In addition, Yieh Hsing claims that the Department distorted costs by not making the adjustment more grade-specific. Therefore, Yieh Hsing recommends that the Department calculate more accurate grade-specific adjustment factors and apply these factors to only the billet costs for purchases from its affiliated supplier. Yieh Hsing asserts that the Department has the necessary information to make these calculations and provided several examples of such calculations in its case brief.

The petitioners contend that the Department should adjust Yieh Hsing's reported billet cost to reflect the market price for billets by using the imported price. In determining the higher of COP, transfer price, and market value, the petitioners state that the Department should use the imported price when possible and, when no import price is available, it should use the higher of the affiliated supplier's revised COP, the transfer price to Yieh Hsing, or the affiliated supplier's sales price to unaffiliated parties. As for differences in physical characteristics, the petitioners maintain that the fact that Yieh Hsing grinds a higher percentage of billets purchased from its affiliate does not constitute a ''significant difference in product characteristics.'' Therefore, they conclude that imported billets are comparable merchandise.

DOC Position

We disagree with Yieh Hsing that its reported COP and CV amounts properly reflect the cost of billets consumed. Although Yieh Hsing provided the transfer prices, its affiliated supplier's cost of production, and market values for billets used to produce SSWR, it failed to use the higher of these three amounts in accordance with Section 773(f)(3) of the Act. Therefore, for the final results we have adjusted Yieh Hsing's cost of billets purchased from its affiliated supplier to reflect a market price.

As for which market price to use in making the adjustment, we agree with Yieh Hsing that the appropriate market price to use in our comparison is the price at which the company's affiliated supplier sold comparable billets to non-affiliates. In determining a market price for an input acquired from an affiliated supplier, the Department may rely on sales transactions for a comparable input between the affiliated supplier and an unaffiliated customer in the home market, or purchase transactions for a comparable input between an unaffiliated supplier and the respondent company. In this case, however, we do not consider it appropriate to rely on Yieh Hsing's purchases of billets from its non-affiliated suppliers as a market price because of the non-comparability of the billets. The imported billets Yieh Hsing purchased from non-affiliates are physically different from those obtained from the affiliate. For instance, Yieh Hsing receives the imported billet in such fashion that it does not require grinding. However, the billets purchased from its affiliated supplier require grinding. At verification, we confirmed that there were differences between the imported billets and those obtained from the affiliate supplier. On a sample basis we examined daily grinding reports, such as those contained in cost verification exhibit 28, which show that the imported billets did not require grinding, whereas the affiliate's billets required grinding.

As for making our billet cost adjustment for the final determination, we first computed a market price for those grades which have no market price (*i.e.*, those grades which Yieh Hsing's affiliated supplier did not sell to non-affiliates). We did this by calculating a weighted-average adjustment factor based on those grades that had a market price. On a grade-specific basis, we then used the higher of transfer price, market value, and revised COP for billets purchased from affiliated suppliers (*see Comment 25*) in accordance with section 773(f)(3) of the Act.

Comment 25: Adjustments to the COP of Billets from the Affiliate.

The petitioners state that the reported COP of the billets obtained from Yieh Hsing's affiliate needs to be adjusted to include an appropriate amount of G&A expenses, financing costs, and bonus

payments. According to the petitioners, the method used by the affiliate to allocate these costs to its billets is not consistent with the Department's normal practice. Specifically, the petitioners claim that the affiliate allocated its G&A and interest expenses based on production tonnages. The petitioners, however, claim that the Department's normal practice is to allocate G&A and interest expense on a company-wide basis as a percentage of cost of sales. As for the bonus payments, the petitioners state that the affiliate excluded this cost from its calculation of the billet COP. According to the petitioners, these payments represent compensation to employees which should be included in the calculation of the billet COP.

Yieh Hsing asserts that recalculating its affiliate's COP for the alleged G&A and financing expense adjustments at issue would not affect the reported billet costs contained in the section D database. According to Yieh Hsing, these adjustments do not increase the affiliate's COP to be above the billet's reported transfer price. Thus, Yieh Hsing claims that adjusting the affiliate's COP is not necessary.

DOC Position

We agree with the petitioners that we should compute G&A and interest expenses on a company-wide basis as a percentage of cost of sales. In addition, we agree with the petitioners that the bonus payments represent compensation to employees that should be included in the billet COP. Accordingly, we adjusted the reported billet COP of Yieh Hsing's affiliate to include the revised G&A expense, revised financing costs, and bonus payments in order to properly compare the transfer price, market price and COP of billets purchased from affiliated suppliers in accordance with section 773(f)(3) of the Act (*see Comment 24*).

Comment 26: Adjustments to the Cost of Sales Figure.

The petitioners claim that the Department should adjust Yieh Hsing's cost of sales figure that was used to compute the G&A and interest expense rates in order to ensure it is on the same basis as the reported cost of manufacturing (COM) to which the rate is applied. Specifically, the petitioners state that the Department should reduce Yieh Hsing's cost of sales figure by the scrap revenue amount reported on its income statement. According to the petitioners, this adjustment is necessary to avoid the understatement of G&A and financing costs because the COM figure to which the G&A and interest expense rates are applied has been reduced by scrap revenue.

Yieh Hsing disagrees that such an adjustment is necessary because the resulting effect on its COP and CV is insignificant. Because of its insignificance, Yieh Hsing requests that the Department disregard the adjustment in accordance with section 777A(a)(2) of the Act. In addition, Yieh Hsing disagrees with the petitioners that its scrap sales revenue figure should reduce its cost of sales. Instead, the company recommends reducing its cost of sales figure by the manufacturing cost used to make the scrap it sold.

DOC Position

We agree with the petitioners that the cost of sales figure used to compute Yieh Hsing's G&A and interest expense rates should be reduced by the scrap revenue amount reported on its income statement. To calculate its reported G&A and financing expense ratios, Yieh Hsing used its cost of sales figure as reported on its audited financial statements. However, we note that this cost of sales figure is not on the same basis as the reported COM because the company offset its reported COM with the revenues it generated from the sale of scrap. Consistent with our findings in the *Final Determination of Sales at Less Than Fair Value of Certain Pasta From Italy*, 61 FR 30326, 30349 (June 14, 1996) and *Final Results of Antidumping Duty Administrative Review of Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea*, 62 FR18404, 18447 (April 15, 1997), we have reduced Yieh Hsing's cost of sales figure by its scrap revenue to obtain a cost of sales figure that is on the same basis as the reported COM. We then used this adjusted cost of sales amount to calculate revised G&A and financial expense ratios. Consequently, we disagree with Yieh Hsing that the correct method to adjust the cost of sales figure is to reduce its cost of sales by the cost of producing the scrap. We note that reducing its cost of sales figure by the cost of producing the scrap would be inconsistent with the method by which COM is calculated (*i.e.*, COM less scrap revenue). Furthermore, in accordance with section 777A(a)(2) of the Act, our normal practice is to make corrections when an error is significant in relation to the value of the merchandise.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of SSWR from Taiwan, except those produced/exported by Yieh Hsing Enterprise Corporation, Ltd., that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted average margin percentage
Walsin Cartech Specialty Steel Corporation	8.24
Yieh Hsing Enterprise Corporation, Ltd	.02
All Others	8.24

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any *de minimis* margins from the calculation of the ''All Others Rate.''

ITC Notification

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

This determination is published pursuant to section 777(i) of the Act.

Dated: July 20, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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