whether imports of stainless steel sheet and strip in coils from Germany are materially injuring, or threaten material injury to, the U.S. industry. If the Commission determines that material injury, or threat thereof, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the Commission finds that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to sections 735(d) and 777(i)(1) of the Tariff Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

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

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

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Lesley Stagliano or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0190; (202) 482-3818 respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR part 351 (April 1998).

Final Determination

We determine that stainless steel sheet and strip in coils (''SSSS'') from Italy are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination, issued on December 17, 1998 (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Italy* (''*Preliminary Determination*'') 64 FR 116 (January 4, 1999)), the following events have occurred:

On December 17, 1998, AST submitted its quantity and value reconciliation and computer programs for its affiliated U.S. reseller (''reseller 001''). On December 28, 1999, Acciai Speciali Terni, S.p.A. (''AST'') submitted its response to the Department's December 7, 1998 supplemental questionnaire. On January 8, 1999, the Department requested that AST provide additional information for reseller 001's downstream sales. On January 15, 1999, AST submitted its response to the Department's January 8, 1999 request. On February 16, 1999, we issued a supplemental questionnaire to AST regarding its December 11, 1998 reseller 001 submission. On February 23, 1999, we received AST's response to the Department's supplemental questionnaire.

On February 24, 1999, AST submitted information regarding additional U.S. sales that it had found in preparation of the home market verification. On March 5, 1999, the Department rejected AST's February 24, 1999 submission on the grounds that it was untimely. On March 8, 1999, at the onset of the verification of AST USA, AST submitted the additional U.S. sales. The Department rejected these sales as soon as they were presented to it. On March 10, 1999, petitioners submitted comments and information pertaining to the additional U.S. sales. On March 19, 1999, the Department rejected petitioners' March 10, 1999 submission because it contained untimely new information which was based on U.S. sales data that were previously rejected by the Department. On March 16, 1999, AST once again submitted information regarding the additional U.S. sales. On March 19, 1999, the Department rejected AST's March 16, 1999 submission because it contained untimely new factual information, and because it was submitted in response to petitioners' March 10, 1999 letter, which the Department rejected in its entirety. On March 22, 1999, AST submitted a letter stating that according to section 351.104(a)(2)(ii)(A) of the Department's regulations, the Department must retain a copy of AST's March 16, 1999 response on the official record. On March 30, 1999, the Department responded to AST's March 22, 1999 letter stating that pursuant to section 351.104(a)(2)(iii) of the Department's regulations we would not retain a copy of AST's response to petitioners' rejected March 10, 1999 letter, because it was an untimely submission.

During January, February and March 1999, we conducted sales and cost verifications of AST's and its affiliates' responses to the antidumping questionnaires in Italy and the United States. On March 15, 1999 and March 25, 1999, we issued our cost and sales verification reports for AST, AST USA, and reseller 001. Petitioners and respondents submitted case briefs on April 5, 1999, and April 6, 1999, and rebuttal briefs on April 9, 1999, and April 13, 1999. On April 19, 1999, petitioners and respondents withdrew their requests for a public hearing, dated January 13, 1999 and January 22, 1999, respectively.

On April 1, 1999, the Department requested that AST provide monthly shipment data for 1996, 1997, and 1998 by April 12, 1999. On April 12, 1999, AST submitted this information.

Scope of the Investigation

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

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05,

7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

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

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

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

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

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

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

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

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

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives). [4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and

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

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

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

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

1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

Period of Investigation

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

Critical Circumstances

On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from Italy. In accordance with 19 CFR 351.206(c)(2)(i), we preliminarily determined that critical circumstances did not exist with respect to respondent AST, because the Department found that the estimated dumping margin was not 15 percent or greater, the threshold for the Department to impute knowledge on the part of the importer that dumping was occurring when the transactions are CEP sales. *See Preliminary Determination* and discussion below.

Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 735(a)(3)(A)(i) of the Act, the Department considers evidence of an existing antidumping order on SSSS from the country in question in the United States or elsewhere to be sufficient. We are not aware of any antidumping order in any country on SSSS from Italy.

In determining whether an importer knew or should have known that the exporter was selling SSSS at less than fair value and thereby causing material injury, the Department normally considers margins of 15 percent for CEP sales and 25 percent for EP sales sufficient to impute knowledge of dumping and of resultant material injury. *See Notice of Final Determination of Sales Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 63 FR 61964, 61967 (November 20, 1997); *see also Notice of Final Determination of Sales Less Than Fair Value: Manganese Sulphate from People's Republic of China* 60 FR 52155, 52161 (October 5, 1995).

In this investigation, AST, which the Department has determined has CEP sales, does not have a margin over 15 percent. Based on these facts, we determine that the first criterion for ascertaining whether critical circumstances exist is not satisfied. Therefore, we determine that critical circumstances do not exist with respect to imports of SSSS from AST. Because the first criterion is not met, we did not analyze the respondent's shipment data to examine whether imports of SSSS have been massive over a relatively short period. *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails from Korea,* 63 FR 25895, 25898 (May 12, 1997).

Regarding all other exporters, an ''All Others'' rate has been determined (*see* ''The All Others Rate'', below); because this rate does not exceed 15 percent, we determine that critical circumstances do not exist for companies covered by the ''All Others'' rate.

Verification

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

Affiliation

As explained in the *Preliminary Determination,* we find that, for purposes of this investigation, AST is affiliated with Thyssen AG (''Thyssen''). Record evidence established that AST is 75 percent owned by a joint venture company, Krupp Thyssen Stahl (''KTS''). KTS, in turn, is 40 percent owned by Thyssen Stahl AG (''Thyssen Stahl''), itself a wholly-owned subsidiary of Thyssen AG (the remaining sixty percent of KTS is controlled by Thyssen's joint-venture partner, Fried. Krupp. AG Krupp-Hoesch (Fried. Krupp)). Consequently, Thyssen AG, indirectly has a 33.75 percent equity holding in AST and, because this is greater than five percent, Thyssen AG is affiliated with AST within the meaning of section 771(33)(E) of the Act. *See Preliminary Determination* at 64 FR 118 and *Memorandum to the File; ''Affiliation of AST and Thyssen AG, and AST and A Thyssen Affiliate (company A),''* December 17, 1998 (*Affiliation Memorandum*).

In addition, we continue to find that AST is affiliated with Thyssen's home market and U.S. sales affiliates. Section 771(33)(F) of the Act authorizes the Department to find companies to be affiliated where two or more companies are under the common control of a third company. Section 771(33) of the statute defines ''control'' as one person being ''legally or operationally in a position to exercise restraint or direction over the other person.'' The actual exercise of control by one person over the other is not required in order to find the parties affiliated. In this investigation the nature and quality of corporate contact necessitate a finding of affiliation by virtue of Thyssen's common control of its affiliates and of AST. The record demonstrates that Thyssen, as the majority equity holder in, and ultimate parent of, its various affiliates, is in a position to exercise direction and restraint over the affiliates' production and pricing. As we stated in the *Preliminary Determination,* ''Thyssen retained the ability to control the production and pricing decisions of AST through the joint venture of KTS. Because both company A and AST are controlled by Thyssen AG within the meaning of section 771(33)(F), we have found that AST and company A are affiliated.'' *See* 64 FR 119. For a discussion of AST's affiliated parties,

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

see Comment 3 below, the Affiliated Party Memorandum, and *Memorandum For the File; ''Antidumping Duty Investigation on Stainless Steel Sheet and Strip in Coils from Italy—Final Determination Analysis for Acciai Speciali Terni SpA'' (Final Analysis Memorandum*) May 19, 1999.

Transactions Investigated

As in the preliminary determination, the Department has determined that for U.S. and home market sales the date of invoice is the appropriate date of sale because this is the date on which the material terms of sale are set. For further discussion see Comment 6.

Product Comparisons

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

As discussed in Comment 8, the Department has considered that sales of side-cuts and pup coils to be sales of prime merchandise for the purposes of this final determination. For matching purposes, we have matched AST's sale of prime merchandise in the home market to sales of prime merchandise in the U.S. market. We have also matched sales of non-prime merchandise in the home market to sales of non-prime merchandise in the U.S. market.

Fair Value Comparisons

To determine whether sales of SSSS from Italy to the United States were made at less than fair value, we compared the constructed export price (''CEP'') to the normal value (''NV''), as described in the ''constructed export price'' and ''normal value'' sections of this notice, below. In the preliminary determination, we calculated weighted-average EP for some of AST's U.S. sales. However, as discussed in Comment 5, the Department has found that all of AST's U.S. sales, which were made through AST USA, constitute CEP sales and we have therefore compared CEP to NV for those sales. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

Level of Trade

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

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

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between AST and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade.

In this investigation, AST did not request a LOT adjustment. To ensure a LOT adjustment was not necessary and in accordance with principles discussed above, we examined information regarding the distribution systems in both the United States and Italian markets, including the selling functions, classes of customer and selling expenses for each respondent.

For its home market sales, AST reported: (1) three customer categories—industrial end-users, white goods manufacturers, and service centers/distributors; and (2) two channels of distribution'direct factory sales (sales of prime merchandise) and warehouse sales (the majority of which are sales of non-prime merchandise). AST claimed two levels of trade in the home market based solely on the quality of subject merchandise, *i.e.,* prime vs. non-prime.

In reviewing AST's LOT in the home market, we asked AST to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing to customers in the home market and the United States. As mentioned above, AST identified two channels of distribution in the home market based entirely on whether the sale to the customer was of prime or non-prime merchandise. For sales of prime merchandise, AST sold to all three of the types of customers mentioned above, and provided the same selling functions to each of the customer types. Specifically, AST provided freight and delivery, credit, technical services, and warranties. For sales of mostly non-prime merchandise sold from AST's warehouse, AST performed the same selling functions (except for providing warranties) as for sales of its prime merchandise, but AST also engaged in the additional selling activities of advertising for its mostly non-prime merchandise and maintaining inventory of this merchandise at AST's warehouse. Because the selling activities engaged in by AST were identical for each customer when selling prime merchandise and were identical for each customer when selling mostly non-prime from inventory, and because the selling activities for both groups of sales were very similar, we continue to determine, as we did in the preliminary determination, that there exists one level of trade for AST's home market sales.

For its U.S. sales, AST reported that its affiliated importer, AST USA, made sales to two customer categories—industrial end-users and service centers, and through three channels of distribution—direct factory sales, warehouse sales, and consignment sales. AST claimed two levels of trade in the U.S. market based solely on the quality of subject merchandise: (1) non-prime; and (2) prime. We examined the claimed selling functions performed by AST and its U.S. affiliate, AST USA, for

all U.S. sales. For back-to-back sales made directly to the unaffiliated U.S. customer, AST performed the following selling functions: it provided technical and warranty services; arranged for freight and delivery; and extended credit. For sales which AST reported as CEP sales, AST engaged in identical selling activities, providing technical and warranty services, freight and delivery and credit.

Based on a comparison of the selling activities performed in the U.S. market to the selling activities in the home market, we conclude that there is not a significant difference in the selling functions performed in both markets. The Department confirmed this information at the verification (*see Verification Of Sales of Acciai Speciali Terni S.p.A.,* dated March 25, 1999 (''*Verification Report of AST*''). Therefore, for the final determination, we determine that there is one LOT in the U.S. and that sales to these customers constitute the same LOT in the comparison market and the United States. Therefore, a LOT adjustment for AST is not appropriate.

Additionally, as noted in Comment 5, we have classified all of AST's U.S. sales as CEP sales. Because we determine that there exists only one level of trade for all of AST's sales in both markets, we conclude that no CEP offset is warranted for the final determination.

Constructed Export Price

As discussed in Comment 5, we determine that all of AST's U.S. sales are CEP. We calculated CEP based on the packed, duty paid or delivered prices to unaffiliated purchasers in the United States. We made adjustments to the starting price for price-billing errors, where applicable. In addition, we made adjustments to the starting price by adding alloy surcharges, and skid charges where appropriate. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, freight equalization charges, foreign inland freight, marine insurance, U.S. customs duties, U.S. inland freight, foreign brokerage and handling, international freight, foreign inland insurance, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and warranty expenses), inventory carrying costs, and other indirect selling expenses. We also added insurance revenue by allocating it across all U.S. sales of subject merchandise. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Affiliated-Party Transactions and Arm's-Length Test

To test whether sales to affiliated parties were made at arm's-length prices, we compared, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina* (''*Certain Cold-Rolled Carbon Steel Flat Products from Argentina*''), 58 FR 37062, 37077 (July 9, 1993); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil,* 63 FR 59509 (November 8, 1998), citing to *Certain Cold-Rolled Carbon Steel Flat Products from Argentina.* Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Normal Value

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

1. Home Market Viability

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

2. Cost of Production Analysis

As discussed in the preliminary determination, we conducted an investigation to determine whether AST made sales of the foreign like product in the home market during the POI at prices below its cost of production (''COP''). In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of AST's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, interest expenses, and packing costs. We used the information from AST's December 2, 1998 supplemental questionnaire response to calculate COP. As noted in Comment 25, we have reduced AST's financial expenses by Fried. Krupp's short-term income from investments. Additionally, we recalculated AST's G&A rate, adding the ''other operating expense'' to G&A and removing the expenses that AST had reported in other fields. *See* Comment 26. Lastly, we used the corrected variance in the COP calculation for the final determination. *See* Comment 28.

3. Test of Home Market Prices

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

4. Results of the COP Test

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

Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. For those U.S. sales of SSSS for which there were no comparable home market sales in the ordinary course of trade, we compared the CEP to CV in accordance with section 773(a)(4) of the Act. *See Analysis Memorandum.*

Calculation of Constructed Value

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

Price-to-Price Comparisons

As in our preliminary determination, for AST's home market sales of products that were above COP, we calculated NV based on FOB or delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length. We made adjustments for price billing errors, discounts, and rebates where appropriate. We made deductions, where appropriate, for foreign inland freight, warehousing, and foreign inland insurance expenses, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, for imputed credit, warranty expenses, and technical expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6) (A) and (B) of the Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to CEP, we deducted from CV the average home market direct selling expenses.

Currency Conversion

As in our 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 773A(a) of the Act.

Facts Available

We determine that the use of partial facts available is appropriate for AST in accordance with section 776(a) of the Act, because it failed to report all of its U.S. sales made during the POI, and its U.S. affiliated reseller's (company A) downstream sales are unreliable. *See* Comments 1 and 2 below.

Where necessary information is missing from the record, the Department must use the facts otherwise available, in accordance with section 776 of the Act. Further, where that information is missing because a respondent has failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the Department to use an inference adverse to the interests of that respondent when selecting from the facts available. An adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. For AST's unreported U.S. sales, we have chosen the highest non-aberrational margin from the rest of AST's U.S. sales as partial facts available. *See* Comment 1 below. For company A's downstream sales, we have also selected the highest non-aberrational margin from the rest of AST's U.S. sales. *See* Comment 2 below.

The All Others Rate

For this final determination, since AST was the only respondent, the all other's rate is simply the calculated rate for AST.

Interested Party Comments

Comment 1: Application of Facts Available to Additional U.S. Sales

Respondent argues that the Department should ignore additional U.S. sales that AST attempted to report prior to verification. Respondent maintains that, in preparing for verification, it discovered additional U.S. sales that it had previously failed to report to the Department.

Respondent argues that its first attempt to file this new information, on February 24, 1999, effectively allowed the Department eleven days to review the information prior to the beginning of the U.S. sales verification at AST U.S.A. Respondent notes that the verification team for the sales verification at AST U.S.A. was different than the team attending the verification of AST in Italy, and argues that this allowed adequate time to review the new information. Respondent also notes that the Department did not return the February 24, 1999 submission until nine days later. Respondent asserts that during this period of time the Department had the opportunity to review the new information.

Respondent further argues that petitioners would not have been prejudiced by the acceptance of this new information given the timing of the February 24, 1999 submission, the verification of AST U.S.A., and the deadlines for submission of case briefs.

Respondent maintains that the additional U.S. sales would not have materially affected AST's final margin. Respondent argues that the record, as supported through verification, shows that the additional U.S. sales constitute a relatively small percentage of AST's total U.S. sales during the POI. Respondent asserts that this relatively small percentage would have an even more negligible effect if the Department were to accept petitioners' argument that order date should be used to determine date of sale in the U.S. market.

Respondent continues that, under established Department precedent for investigations, the Department should ignore these additional U.S. sales. Respondent points out that the Department's margin calculation in an investigation will be used only to determine an estimated dumping margin for cash deposit purposes, and also notes that the statute requires the Department to use weighted-average U.S. prices rather than individual U.S. prices to determine dumping margins. Therefore, according to respondent, the Department need not consider every U.S. sale in calculating the final dumping margin. Respondent cites several cases in which, respondent argues, the Department has either accepted and verified similar data or has simply excluded additional sales from consideration in determining the margin (citing, *e.g.*, *Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (''Antifriction Bearings''),* 54 FR 18992, 19039 (May 3, 1989); *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China (''Bicycles''),* 61 FR 19026 (April 30, 1996); and *Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Japan (''Gray Portland*

Cement and Clinker from Japan''), 56 FR 12156 (March 22, 1991)).

Respondent argues that if the Department decides not to ignore these additional sales and apply facts available, it would be inappropriate for the Department to apply adverse facts available in this case because respondent argues that it has cooperated fully throughout the proceeding. To support its argument, respondent cites to *Allied-Signal,* 996 F.2d at 1188, and *Final Results of Antidumping Administrative Review: Color Picture Tubes from Japan (''Color Picture Tubes''),* 62 FR 34201, 34209 (June 25, 1997), where the respondent ''substantially cooperated'' but simply failed to supply some of the information in a timely manner or in the form required.

Moreover, respondent argues that it did not withhold this information, but rather, disclosed this information to the Department as soon as it discovered these additional sales and sought repeatedly to submit this and more detailed information regarding these sales before, during, and after verification. Respondent cites *Notice of Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar from Italy (''Stainless Steel Bar''),* 59 FR 66921, 66924 (December 28, 1994) as an analogous situation in which the Department in fact was not aware of additional U.S. sales until verification, but, nevertheless, the Department still verified that the gross unit prices for the unreported sales were comparable to those for reported sales of the same products. In that case, respondent notes that the Department determined that ''it is reasonable to fill this gap with a neutral surrogate'' and ''assigned (the respondent's) overall weighted-average calculated margin to these unreported sales.''

Petitioners contend that, contrary to respondent's assertions, substantial evidence on the record demonstrates that AST failed to cooperate to the best of its ability to provide information requested by the Department and the use of total facts available is therefore warranted. First, petitioners claim that respondent has relied primarily on ''old law'' cases to support its contention that the Department should not apply facts available with an adverse inference. However, under the current adverse facts available standard, petitioners argue that the Department ''shall'' apply facts available when necessary information is not on the record, or a respondent withholds information requested by the Department, fails to provide such information by the deadline for its submission, significantly impedes a proceeding, or provides information that cannot be verified. Petitioners maintain that the record demonstrates that respondent has withheld information that has been requested by the Department.

Petitioners argue that the critical question in this case is whether the reporting failures by respondent surpass the Department's standard for the use of an adverse inference in applying facts otherwise available. Petitioners contend that respondent's failure to provide complete sales information, while stating ''without detail'' that the reporting failure was ''inadvertent'', constitutes a failure on the part of respondent to act to the best of its ability to respond to the Department's request for information.

Petitioners assert that the data withheld by respondent is crucial to the Department's investigation. Petitioners cite to *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa (''CTL Steel Plate''),* 62 FR 61731, 61747 (November 19, 1997), *Florex* v. *United States,* 705 F. Supp. 582, 588 (CIT 1988), and *Tatung Co.* v. *United States,* 18 CIT 1137 (1994) in support of the proposition that the Department and the CIT have recognized that the failure to report U.S. sales data is one of the most serious errors, if not the most serious error, a respondent can commit.

Petitioners maintain that although AST attempted to submit new information on the record, the Department properly rejected the new information, citing several cases supporting the rejection of information not submitted within regulatory guidelines, including *NSK, Ltd.* v. *United States,* 798 F.Supp. 721 (CIT 1992). Petitioners take issue with respondent's interpretation of *Allied Signal.* Petitioners point out that, in that case, respondent was unable to provide the requested data. Petitioners note that AST does not argue that it was unable to provide the requested U.S. sales data.

In rebutting respondent's claim that the Department does not need to consider every U.S. sale in calculating the final dumping margin, petitioners argue that, given the Department's calculation methodology in investigations, in which weighted average prices by the U.S. and home market are compared on a control number-specific (''product-specific'') basis, there could indeed be a significant effect on the calculated margin for certain control numbers by excluding a ''significant'' quantity of U.S. sales.

Petitioners take issue with respondent's interpretation of certain cases in which the Department has not applied an adverse inference when information is not submitted. In *Antifriction Bearings* (54 FR 18992, 19039), petitioners note that the Department found that respondent had not reported sales of one tenth of one percent (by volume) of 33 percent of the U.S. sales it was required to report. Moreover, the Department found, in that case, that the unit prices of the unreported sales were nearly three times greater than the unit prices for the same products to other customers which were reported in the sales listing. According to petitioners, this fact pattern is not present in the instant proceeding.

In *Bicycles* (61 FR 19026, 19041), petitioners argue, the Department allowed the exclusion of a ''minor'' amount of U.S. sales in certain extenuating circumstances not present in this investigation. First, in *Bicycles,* respondent had believed the excluded sales to be of non-subject merchandise. Second, the record in that case permitted the Department to calculate a margin on those excluded sales. Third, the sales in question represented a minor amount of U.S. sales. Finally, the sales at issue in *Bicycles* were of a higher-priced model. Petitioners contend that none of these facts are present in this investigation.

Petitioners state that in *Gray Portland Cement and Clinker from Japan* (56 FR 12156, 12165), the Department determined that respondent's sales of bagged cement represented an insignificant portion of total U.S. sales. Again, according to petitioners, the same is not true in this proceeding.

In *Color Picture Tubes* (62 FR 34201), petitioners note that respondent Mitsubishi stated that a ''very small number of U.S. sales were made of models for which COM data was not available.'' Petitioners argue that this is not tantamount to a decision by the Department that it ignores unreported U.S. sales and does not resort to facts available when U.S. sales data are not reported. In addition, Mitsubishi was unable to provide the COM data because they were not available. Again, according to petitioners, AST has never claimed that this sales data was unavailable.

In *Stainless Steel Bar from Italy* (59 FR 66921), petitioners claim, the Department's decision not to apply adverse BIA turned ''entirely'' on the unique circumstances noted during verification. Moreover, in that case, the Department determined that the unreported sales were limited in number, and the gross unit prices of the

unreported sales were comparable to those for reported sales of the same products. In contrast, petitioners argue that in this investigation the sales were not limited, and also note that the Department did not verify the gross unit prices of the unreported sales.

Petitioners maintain that the discrepancies in the company's U.S. sales volume found at verification and the company's inability to explain the exclusion of several U.S. sales from its response is sufficient evidence of AST's lack of cooperation. Petitioners argue that both the Department and the courts consider the omission of U.S. sales a serious error (citing *Tatung Co.* v. *United States*, 18 CIT 1137, 1141 (1994)), and that such an omission warrants the use of adverse facts available (citing *CTL Steel Plate*, 62 FR 61731, 61747 (November 19, 1997). Petitioners also cite to *Persico Pizzamiglio, S.A.* v. *United States*, 18 CIT 299, 304 (1998), noting that the Department used best information available, in large part due to respondent's failure to report U.S. sales accurately.

Department's Position: We agree with petitioners, in part, and have applied partial adverse facts available with respect to the additional U.S. sales that AST omitted from its response.

Although we repeatedly gave AST the opportunity to submit data pertaining to its sales database, AST did not submit its additional U.S. sales until three days prior to the start of the verification of AST in Terni, Italy, well after the deadlines for responding to our questionnaires. Therefore, contrary to respondent's assertion, there can be no reasonable argument that this information was timely submitted. Pursuant to section 351.301(c)(2)(ii) of the Department's regulations, failure to submit requested information in the requested form and manner by the date specified for questionnaire responses may result in the use of facts available under section 776 of the Act and section 351.308 of the Department's regulations.[6]

Nevertheless, respondent argues that we should have accepted the additional U.S. sales information, pursuant to section 782(e) of the Act, which provides that the Department shall not decline to consider such information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. However, section 782(e) is not applicable in this case, because this section only applies to information that is submitted by the established deadline. Indeed, timely submission by the established deadline is the first requirement for this section to apply. As discussed above, AST did not submit this information by the deadline for the questionnaire response, and therefore, section 782(e) is not applicable.

According to section 776(a)(2)(B), if an interested party fails to provide information in a timely manner or in the form or manner requested, the Department shall use facts otherwise available in reaching the applicable determination. As explained above, AST failed to provide the information for the additional U.S. sales in a timely manner. Therefore, pursuant to section 776(a), the Department must use facts otherwise available to assign margins to these additional U.S. sales.

Finally, AST argues that if we rely on facts otherwise available, an adverse inference is not appropriate. Section 776(b) of the Act provides that, if the administering authority ''finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' then in selecting from the facts available it ''may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.'' We find, based on the evidence set out below, AST did not act to the best of its ability in complying with our request for sales data. Because AST submitted these sales only three days prior to verification, this information was not provided by the deadline set for AST's responses to Section C of the Department's questionnaire.

Failure to report significant amounts of import data, such as U.S. sales data, indicates a lack of best efforts, unless there are extenuating circumstances that explain the failure. There is no evidence of such circumstances in this case. As noted in the *Verification Report of AST USA*, AST stated at verification that it did not know the reasons why these sales were excluded. *See Verification Report of AST USA* at 2. Furthermore, we note that AST submitted its sale reconciliation package on November 12, 1998, the deadline for responding to the supplemental questionnaire. If AST had acted to the best of its ability, it is reasonable to assume that it would have discovered these additional U.S. sales when preparing the reconciliation package. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting a margin for the U.S. sales that AST omitted from the response because AST did not act to the best of its ability in providing U.S. sales information to the Department. As adverse facts available for these unreported U.S. sales, we have applied the highest non-aberrational margin calculated from the rest of the U.S. sales. *See* Comment 2 below, and *Analysis Memorandum*.

The cases cited by respondent where the Department either accepted and verified additional sales data or excluded it from consideration in determining the margin are distinguishable from this case. Unlike this investigation, the Department, in *Antifriction Antifriction Bearings, Bicycles* and *Gray Portland Cement and Clinker from Japan*, had sufficient time to analyze the additional data submitted by the respondent, and determined that the additional sales had no effect, or a negligible effect, on the calculated margin. As noted by petitioners, *Color Picture Tubes* concerned a situation where COM data was not available for some U.S. sales, not a situation of unreported U.S. sales. AST's reference to *Stainless Steel Bar* also does not apply to this case because it concerns a unique circumstance in which the Department noted at verification that the gross unit prices of the unreported sales were comparable to those for reported sales of the same products, and that the unreported sales were limited in number. Therefore, respondent's reliance on these cases is misplaced. Moreover, as noted in *CTL Steel Plate*, the Department believes that the failure to report U.S. sales data is one of the most serious errors a respondent can commit.

Comment 2: Application of Facts Available to Downstream Sales of Reseller 001

Petitioners note that at verification of reseller 001, and contrary to AST's claim, the Department found that a portion of its affiliated reseller's sales previously identified as having an untraceable supplier, were in fact traceable. In addition, petitioners note that the number of significant errors found at the reseller's verification, including its failure to report early-

[6] In initially rejecting AST's submission of additional U.S. sales, we erroneously cited section 351.301(b)(1) of the Department's regulations because AST submitted them later than seven days before the date on which the verification of any person is scheduled to begin. The relevant regulation is 351.301(c)(2). We subsequently rejected other attempts that AST made to submit this information, pursuant to section 351.302(d) of the Department's regulations, because it was untimely filed.

payment discounts and the improper application of prime and non-prime designations to its reported sales, warrant the use of adverse facts available. Finally, petitioners note that under section 782(e) of the Act, AST's reporting of the ''unidentified supplier'' sales by its affiliated reseller should be considered untimely, and that, under section 776(a), the Department should use facts otherwise available in reaching the applicable determination.

Petitioners argue that AST had the burden to create a complete and accurate record and failed to meet this burden, citing *Pistachio Group of the Ass'n of Food Indus.* v. *United States,* 11 CIT 668, 671 F.Supp. 31, 39–40 (1987). Petitioners also maintain that respondent in this case is not just AST: the investigation directly involves AST's affiliates, as well. Thus, contend petitioners, AST's efforts to ''absolve itself from any responsibility for its affiliates'' reporting efforts' should also be rejected.

Petitioners contend that AST has withheld requested information and failed to cooperate to the best of its ability, and that the Department should apply total adverse facts available. Petitioners argue that this is an investigation of AST and its affiliates as a collective entity selling to the United States, not just an investigation of AST's main plants. Petitioners cite *Koyo Seiko* v. *United States,* 905 F. Supp. 1112, where the CIT stated that, when parties are affiliated, as AST is with reseller 001, the burden of producing information sought by the Department rests with the manufacturer, even if the respondent alleges that the affiliate is unwilling to cooperate. Petitioners assert that AST's affiliate Thyssen, under whose common control AST and reseller 001 operate, was also affiliated with and controlled reseller 001 and could have added its influence to encourage reseller 001 to comply and provide the requested information to the best of its ability, which it did not do.

Respondent refutes petitioners' claim that AST and other parties have been uncooperative and have not fully participated during the investigation, and states that it made every effort to comply with the Department's numerous requests for additional information. Respondent argues that it does not have operational control over reseller 001, and thus, cannot compel, or participate in, the preparation and submission of the requested data over which it exercises no control. With regard to the unattributed sales, respondent claims that it had no direct involvement in the preparation of reseller 001's data and had no knowledge of their contents.

Respondent argues that despite the fact that some errors were identified at verification, reseller 001 did not fail verification because the errors were isolated and do not undermine the basic integrity of the data. Respondent states that the Department should consider that reseller 001 developed the cost allocation program specifically to respond to the Department's highly detailed reporting requirements. Respondent argues that as a service center distributor rather than a steel producer, reseller 001 has no need for, and therefore had never developed, a computer system linking each and every coil or sheet that it sells to a particular input metal product (coil or sheet) purchased from a supplier. Respondent asserts that at verification reseller 001 demonstrated that the programming problems that were encountered were not widespread, but instead were extremely isolated. Respondent notes that Exhibit 18 of reseller 001 Cost Verification Report, including the complete description of the programming errors and a list of the problematic transactions, was presented to the Department at the start of the third day of the cost verification. Respondent states that had the verifiers truly been interested in further testing this listing or learning more about how it was generated, they had adequate time to do so.

Respondent argues that even if, despite evidence to the contrary, the Department were to determine that AST had failed to comply with requests for information, the Court of International Trade's decision in *Ferro Union, Inc.* v. *United States,* Slip Op. 99–27 (CIT March 23, 1999) (*''Ferro Union''*) precludes the application of adverse facts available in this case. Respondent argues that under the standards set by *Ferro Union,* ''sufficiently impeding the review'' is not a sufficient ground to warrant an application of adverse facts available, but that the Department must also find that a party failed to ''comply to the best of its ability.'' Respondent asserts that if the Department determines that the data submitted by reseller 001 is not complete or verifiable, it was not due to AST's deliberate recalcitrance. Respondent argues that the Department should not use adverse facts available because AST simply lacks the ability to respond any more completely than it already has.

Department's Position: We agree with petitioners and find that adverse facts available is warranted with regard to sales through AST's affiliated U.S. reseller. Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination.

In the instant case the use of facts available is warranted for the sales in question. The computer programming used by reseller 001 to identify its products' physical characteristics and to match each of these products with its associated costs were found at verification to be accomplishing neither end consistently or accurately. Moreover, both the frequency of the errors and the absence on the record of information necessary to correct certain of these errors serve to undermine the overall credibility of the further-manufacturing response as a whole, thus compelling the Department to rely upon total facts available for further-manufactured sales by reseller 001. Reliance upon facts available is required for these further manufactured sales because the submitted data do not permit calculation of the adjustments required under section 782(d)(2) of the Act for ''the cost of any further manufacture or assembly (including additional material and labor) * * *''.

Although the Department will correct some errors in reported costs or will adjust incorrect data with facts otherwise available when the errors are relatively minor and easily corrected based on verified data on the record (*see e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan,* 64 FR 17336, 17337 (April 9, 1999), correction of the database is not a viable option in this case because of the high percentage of errors found through our testing at verification (nearly 40 percent of the items tested were found to be in error). In addition, some of these errors cannot be corrected using information on the record. More importantly, the fundamental and pervasive nature of these errors raises concerns as to the validity not only of the data subjected to direct testing, but of the remainder of the response as well.

The Department's antidumping questionnaire put interested parties on notice that all information submitted in this investigation would be subject to verification, as required by section 783(i) of the Act, and, further, that pursuant to section 776 the Department may use the facts otherwise available if

all or any portion of the submitted information could not be verified. In addition, in letters dated February 17 and 23, 1999, the Department provided reseller 001 with the sales and cost verification agendas it intended to follow, both of which repeated the warning that any failure to verify information could result in the application of facts available. The cost verification agenda identified nine transactions that the Department intended to test. Reseller 001 had a full week to gather supporting documentation for these nine transactions and to test for itself the accuracy of the further manufacturing data. Clearly, reseller 001 did not avail itself of these opportunities, since our testing at verification revealed that costs for three of the nine selected transactions were in error. When the Department then selected nine additional transactions for review, four of these were found to contain errors. The first step identified in the Department's verification agenda calls for the respondent, at the outset of verification, to present any errors or corrections found during its preparation for the verification. None of the errors discussed here were presented by reseller 001 at the outset of verification.

We disagree with AST's assertion that the numerous errors identified by the Department affect only a small number of products out of the possible universe of transactions and that the effect of the errors is minuscule. As mentioned above, reseller 001 created a computer program to respond to the Department's questionnaire which sought to match an input coil to each output coil sold and to assign a cost for each processing step through which the finished coil supposedly passed. As noted, at verification we tested this computer program to assess its accuracy and reliability and found that seven of eighteen transactions tested contained errors in either the allocation of processing costs or in the matching of input coils to output coils. In two of these cases reseller 001 had assigned processing costs to products which had, in fact, undergone no processing whatever. We note that this discrepancy arose from the input coils and output coils identified by reseller 001's own computer program. In another transaction the combined widths of the finished products were greater than the original width of the input coil as identified by the system, an obvious physical impossibility that should have been identified by reseller 001 as an error. The nature of these errors raises serious doubts as to the accuracy of the overall program used to match input master coils to output slit coils as sold. Further, several of these errors served to understate the costs of further processing by shifting portions of these costs to non-further-processed merchandise. Since these errors affect the entire population of products sold (i.e., both processed and unprocessed products), it is not possible for the Department to isolate the problems and adjust for the errors accordingly.

The program also failed to assign properly certain finishing costs. Certain coils with a pre-buff finish applied to the underside had no finishing costs reported for the additional processing. Finally, other transactions contained errors in the application of surcharges for processing small quantity orders. In the samples tested reseller 001 had reported quantity extra charges in excess of what should have been reported. This error led to an understating of the variance between the costs as allocated for purposes of the response and the costs as maintained in the reseller 001's financial accounting system. Once again, both errors reduced the costs allocated to further processed products, thus creating further doubts as to the accuracy of the underlying reporting methodology.

We also find unpersuasive AST's suggestion that because reseller 001 had to develop the computer program as a result of the Department's highly detailed questionnaire it should therefore be held blameless for any errors arising from its implementation of its chosen computer logic. The surfeit of errors in reseller 001's data was not the result of any unduly burdensome reporting requirements imposed by the Department; rather, these shortcomings resulted in their entirety from reseller 001's reliance on faulty computer programming and data which reseller 001 apparently failed to review prior to verification.

Finally, we disagree with AST's assertion that reseller 001 was able to quantify the extent of the cost errors on the final day of verification. First, we note that reseller 001 made no attempt to explain or quantify two of the errors discovered by the Department, the allocation of processing costs to unprocessed material and the misreporting of the small-quantity surcharge. More importantly, due to the volume of information that must be verified in a limited amount of time, the Department does not look at every transaction, but rather samples and tests the information provided by respondents. See, e.g., *Bomont Industries* v. *United States,* 733 F. Supp. 1507, 1508 (CIT 1990) ([v]erification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness.'') and *Monsanto Company* v. *United States,* 698 F. Supp. 275, 281 (''[v]erification is a spot check and is not intended to be an exhaustive examination of a respondent's business.''). It has been the Department's long-standing practice that if no errors are identified in the sampled transactions, the untested data are deemed reliable. However, if errors are identified in the sample transactions, the untested data are presumed to be similarly tainted. This is especially so if, as here, the errors prove to be systemic in nature. The fact remains unchallenged that for two days of a scheduled three-day verification we tested a number of further-manufactured transactions to assess the reliability of reseller 001's methodology for reporting costs and discovered numerous errors. Reseller 001 claimed on the last day of verification that it had reviewed its further-manufacturing data and isolated the magnitude of these errors. AST's assertion that reseller 001 succeeded in identifying all of the errors is unsubstantiated, and could not be verified in the time remaining. The only way to test this eleventh-hour claim would have been to re-verify the entire further-manufacturing database. Moreover, the proper time for reseller 001 to check the accuracy of its reported data was before these data were submitted, or, at the latest, prior to the start of the verification. We presented reseller 001 with the cost verification agenda one week in advance precisely to allow it to prepare properly for verification. Had reseller 001 reviewed the accuracy of the computer program used to report its further manufacturing costs prior to verification, it could have identified the errors and presented them to the Department on the first day of verification. We consider it inappropriate for respondents to expect the Department to retest the entire further manufacturing database on the last day of verification after the Department uncovers numerous errors as a result of its routine testing. Furthermore, the requirements of section 782(d) that the Department provide a respondent the opportunity to remedy such errors is inapplicable. Rather, as we stated in *Certain Cut-to-Length Carbon Steel Plate from Sweden,*

> [w]e believe [respondent] SSAB has misconstrued the notice provisions of section 782(d) of the [Tariff] Act. Specifically, we find SSAB's arguments that the Department was required to notify it and provide an opportunity to remedy its verification failure are unsupported. The provisions of section 782(d) apply to instances where ''a response

to a request for information'' does not comply with the request. Thus, after reviewing a questionnaire response, the Department will provide a respondent with notices of deficiencies in that response. However, after the Department's verifiers find that a response cannot be verified, the statute does not require, nor even suggest, that the Department provide the respondent with an opportunity to submit another response.

Certain Cut-to-Length Carbon Steel Plate from Sweden, 62 FR 18396, 18401, April 15, 1997.

In this case a partial correction is not a viable option, because of both the high percentage of errors found through our sample testing and the fact that some of the errors cannot be corrected with information on the record. Therefore, pursuant to section 776(a) of the Act, facts otherwise available are applicable to the downstream sales of reseller 001.

Respondent, in citing *Ferro Union,* argues that if the data submitted by reseller 001 is not complete or verifiable, it was not due to AST's deliberate recalcitrance, and therefore, adverse facts available are not applicable because AST complied to the best of its ability and could not respond any more completely than it already had. However, not only do such fundamental errors as found at verification raise concerns as to the validity of the data not directly tested, but they also demonstrate that the respondent failed to act to the best of its ability to report such information. Indeed, a reasonable check by company officials could have shown that (1) products that underwent no further processing were being assigned further-processing costs, (2) further-processed products were not being assigned further-processing costs, (3) coils passing through certain processes were not being allocated any cost for the process, and (4) the output width of slit coils generated by a given master coil exceeded the original width of that input coil.

Where CEP transactions (in this case, the downstream sales) are involved, respondents are required, in accordance with section 772 of the Act, to report sales data for the sales to the first unaffiliated purchaser. As discussed above, we find that AST, as the respondent, did not cooperate by failing to comply to the best of its ability to provide the CEP sales information requested by the Department. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in calculating the margin for reseller 001's downstream sales (*see* below).

With respect to the unattributed downstream sales reported by reseller 001, we determine, pursuant to section 776(a) of the Act, that it is appropriate to apply facts otherwise available to these sales, because these sales were unverifiable. In addition, pursuant to section 776(b) of the Act, where an interested 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, the Department may use an inference that is adverse in selecting from among the facts otherwise available. At verification, we found that reseller 001 could have supplied the Department with the supplier names for these unattributed sales. As discussed above, where CEP transactions, (in this case, the unattributed downstream sales) are involved, respondents are required, in accordance with section 772 of the Act, to report sales data for the sales to the first unaffiliated purchaser. Therefore, we determine that pursuant to section 776(b), the use of adverse facts available is appropriate for the entirety of the data submitted by reseller 001. As adverse facts available, we have assigned the highest non-aberrational margin calculated for this final determination to the weighted-average unit value for sales reported by reseller 001. To determine the highest non-aberrational margin we examined the frequency distribution of the margins calculated from AST's reported data. We found that roughly 28 percent of AST's transactions fell within a reasonably narrow range of 20 to 29 percent; we selected the highest of these as reflecting the highest non-aberrational margin. Further detail on our selection of the facts-available margin is contained in the *Analysis Memorandum*. We then multiplied the resulting unit margin by the total quantity of resales of subject merchandise by reseller 001. This total quantity includes that material affirmatively verified as being of AST origin, as well as a portion of the merchandise of unidentified origin allocated to AST. *See Analysis Memorandum*. Since we are relying on verified data for use as adverse facts available for these unattributed sales, corroboration under 776(c) is not necessary.

Comment 3: Affiliation Between AST and Reseller 001

Respondent argues that the Department should not consider AST to be affiliated with a certain U.S. reseller (''reseller 001'') which is indirectly wholly-owned by Thyssen AG, and therefore, reseller 001's downstream sales should not be included in the margin calculation for the purposes of the final determination. Respondent argues that, for the purposes of assessing whether the requisite direct relationship exists, the appropriate inquiry in this case is whether AST and reseller 001 (and not AST and Thyssen) are affiliated under the statute, because during the POI AST did not sell subject merchandise or the foreign like product to Thyssen or any Thyssen affiliate other than reseller 001. In this regard, respondent maintains that neither AST nor reseller 001 directly or indirectly owns, controls, or holds the power to vote 5% or more of the other company's outstanding voting shares, and the two companies do not share a direct bilateral control relationship that allows one company to control the other company. Respondent asserts that the Department did not find affiliation under 19 USC 1677(33)(G) (section 771(33)(G) of the Act) in a case involving what respondent believes to be similar relationships (*see Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews (''Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea''),* 62 FR 18404–01 (April 15, 1997).

Respondent asserts that AST and reseller 001 cannot be deemed to be affiliated unless they directly or indirectly control, are controlled by, or are under common control with another party. Respondent argues that the Department improperly concluded, in the preliminary determination, that Thyssen has the ability to control AST. Respondent argues that, in this case, it is Krupp, not Thyssen, which controls the operations of KTS and AST. Thus, according to respondent, Thyssen does not have the potential to impact AST's production, pricing, and cost decisions. Respondent asserts that record evidence supports this ''market reality.'' Specifically, respondent notes that, by its terms, the KTS Shareholders Agreement ensures that Thyssen does not have the ability to control KTS' operational decisions, and that the ability to make such decisions rests solely with Krupp. Moreover, respondent argues that Krupp's industrial control over KTS is also reflected in the financial structure of the company.

Respondent maintains that, similarly, Krupp controls AST, and Thyssen does not have the ability to control AST. Respondent points to the composition of AST's Board of Directors during the POI in support of this argument.

Respondent asserts that the Department, in its affiliation memorandum of December 15, 1998, erred in relying upon the ''now-repealed

'related parties' provision'' in the pre-URAA statute to posit that ''arguably a minority equity interest of over 20 percent would be tantamount to control under the statute.'' Respondent argues that 19 U.S.C. 1677(33)(F) (section 771(33)(F) of the Act) replaces the 'related parties'' provision with the ''affiliated persons'' provision. According to respondent, the fact that Congress might have intended the Department to consider a broader range of relationships under the relevant portion of the new statute does not *ipso facto* mean that Congress intended for the Department to apply the ''repealed 'related parties' '' provision standards in resolving affiliation issues.

Respondent also asserts that the Department erred in relying on *Queen's Flowers and Asociacion Colombiana de Exportadores de Flores* v. *United States*, because neither of these cases addressed whether two companies' respective subsidiaries were affiliated by virtue of their parent companies' participation in a joint venture.

With regard to the KTS Shareholders Agreement between Krupp and Thyssen Stahl, respondent argues that, in its affiliation memorandum, the Department ignored the provisions in the KTS Shareholders Agreement which, according to the respondent, establish Krupp's control over KTS. For example, AST asserts that there is nothing in the preamble, in which the purpose of the KTS joint venture is defined, to suggest that Thyssen Stahl has the actual or potential ability to control KTS. Respondent also argues that the Department draws an erroneous inference by equating the ability to affect a party with the ability to control that party. Respondent objects to the Department's statement that Thyssen Stahl retains the authority to control KTS operations based on Paragraph 2 of the Shareholders Agreement. In addition, respondent argues that the Department incorrectly focused on the corporate structure of KTS, as opposed to the operational structure, in concluding that ''Thyssen Stahl's 40 percent holding in KTS is critical'' to certain appointments at KTS. Finally, respondent asserts that the Department fails to note that Paragraph 5 of the Shareholders Agreement allows only for minority representation of Thyssen.

Respondent argues that the KTS joint venture's existence does not, in and of itself, establish affiliation between the joint venture partners' respective subsidiaries. Respondent asserts that petitioners have incorrectly argued that *Mitsubishi Heavy Industries, Ltd.* v. *United States* (15 F. Supp. 2d 807, 831 (CIT 1998)) stands for the proposition that it is ''impossible'' for the respective subsidiaries of two companies participating in a joint venture not to be affiliated. In fact, respondent maintains that the court did not address the issue presented in this case: namely, whether the two companies' respective subsidiaries were affiliated by virtue of their parent companies' participation in a joint venture. In the instant proceeding, respondent argues that even if Krupp and Thyssen were deemed to be affiliated with each other, such affiliation would not necessarily flow through to the companies' respective subsidiaries ''merely'' by virtue of the KTS joint venture.

Petitioners argue that the Department has correctly evaluated AST's affiliations in this investigation. First, petitioners assert that because Thyssen owns 100 percent of reseller 001, the Department should find that reseller 001 is essentially an operating arm of Thyssen and that the reseller 001 is affiliated with AST just as Thyssen is affiliated with AST. Therefore, petitioners conclude that, because reseller 001 is an ''operating arm'' of the Thyssen ''family'' including Krupp Thyssen Stainless GmbH (''KTS''), which indirectly owns more than 5 percent of AST, AST and reseller 001 are affiliated pursuant to 19 U.S.C. 1677(33)(E) (section 771(33)(E) of the Act).

Second, petitioners contend that respondent has confused the discussion by misusing the terms ''direct'' and ''indirect'' ownership. Petitioners argue that the direct relationship referred to by respondent in fact clearly may be achieved through the indirect ownership of 5 percent of another company. Moreover, petitioners argue that the indirect relationship referred to by respondent analogously may involve direct control.

Third, petitioner argues that the fact that AST did not sell stainless steel sheet or strip to Thyssen or any other Thyssen affiliate other than reseller 001 is irrelevant in considering the affiliation relationships at issue here.

Petitioners believe that Thyssen's large ownership share in AST, as well as other factors, demonstrate its potential to impact business decisions. Petitioners assert that the Department properly recognized that Thyssen need not be a majority shareholder in a company for the Department to determine that control exists. Petitioners cite to the *Final Determination of Certain Cut-to-Length Carbon Steel Plate from Brazil,* 62 FR 18486, 18490 (April 15, 1997) as support for the Department's position that ''even a minority shareholder interest, examined within the totality of other evidence of control, can be a factor that (the Department) consider(s) in determining whether one party is in a position to control another.''

Petitioners also claim that evidence of actual control is not required under the statute: instead, the ability to control is sufficient, where the company has ''the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product'' (citing 19 CFR 351.102(b)). In this regard, petitioners point to other indicators of Thyssen's control over AST, beyond the ''substantial'' shareholdings in AST through KTS by Thyssen Stahl AG and Thyssen AG. According to petitioners, another indicator is that AST is publicly described and well-known as a member of both the Krupp and Thyssen ''groups.'' Furthermore, petitioners claim that the record demonstrates that the two industrial groups have had a high and increasing degree of cooperation and coordination.

Petitioners claim that the agreement's nominal structure to give Krupp ''operational and industrial control over KTS'' is not dispositive. Petitioners argue that the preamble to the regulations makes clear that the proper inquiry is whether one firm is ''in a position to exercise restraint or direction,'' regardless of whether such control is actually exercised. In this regard, petitioners argue that the very nature of a joint venture agreement is to operate a business for mutual benefit, and with a large degree of consensus. It would be unreasonable, according to petitioners, for Thyssen to enter into such a joint venture if it did not expect that venture to be responsive to Thyssen's own commercial interests to some extent. Furthermore, petitioners conclude that it would also be reasonable to expect that Thyssen would be able to insist that KTS would undertake its own operations in a manner consistent with Thyssen's interests. Also, petitioners contend that the recent merger of Krupp and Thyssen confirms the closely allied interests of the two firms.

Petitioners argue that respondent's reliance on *Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea* is misplaced. Petitioners assert that the situation in the Korean case shows only that Krupp is not necessarily affiliated with reseller 001.

Department's Position: We disagree with AST. As we discussed in our *Preliminary Determination* and the accompanying Affiliation Memorandum, we have determined that

AST is affiliated with Thyssen Stahl and Thyssen. Section 771(33)(E) of the Act provides that the Department shall consider companies to be affiliated where one company owns, controls, or holds, with the power to vote, five percent or more of the outstanding shares of voting stock of the other company. Where the Department has determined that a company directly or indirectly holds a five percent or more equity interest in another company, the Department has deemed these companies to be affiliated. Respondent's reference to *Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea* is not applicable in this case because in that case, the Department found no record evidence indicating that either POSCO (supplier) or Union (respondent), directly or indirectly, own or control five percent or more of any of the other party's securities, and are not under the common control of any party.

We examined the record evidence to evaluate the nature of AST's relationship with Thyssen Stahl and Thyssen and have determined that AST is affiliated with Thyssen and Thyssen Stahl. Evidence establishes that AST is 75 percent owned by a joint venture company, Krupp Thyssen Stahl (''KTS''). KTS, in turn, is forty percent owned by Thyssen Stahl AG (''Thyssen Stahl''), itself a wholly-owned subsidiary of Thyssen AG (the remaining sixty percent of KTS is controlled by Thyssen's joint-venture partner, Fried. Krupp. AG Krupp-Hoesch (Fried. Krupp)). Consequently, Thyssen AG has a 33.75 percent equity holding in AST. On December 17, 1998 we placed publicly available data on the record for this investigation that confirmed both the foregoing shareholding interests and that Thyssen Stahl is a wholly-owned subsidiary of Thyssen. This information was submitted on October 20, 1998 by petitioners in the concurrent stainless steel sheet and strip case from Germany. Consequently, AST, as the 75 percent owned subsidiary of KTS, is affiliated Thyssen Stahl and its parent company Thyssen pursuant to section 771(33)(E). *See Stainless Steel Wire Rod From Sweden,* 63 FR 40449, 40453 (July 29, 1998).

In addition, we have determined that AST is affiliated with reseller 001. Contrary to respondent's claim that the Department relied upon the ''now-repealed ''related parties'' provision,'' we have found that AST is affiliated with reseller 001 under section 771(33)(F) of the Act. *See Affiliation Memorandum*. Section 771(33)(F) of the Act provides that the Department shall consider companies to be affiliated where two or more companies are under the common control of a third company. The statute defines control as being in a position legally or operationally to exercise restraint or direction over the other entity. *See* 771(33) of the Act. Actual exercise of control is not required by the statute. See *ADD, CVD; Final Rule,* 62 FR 27295, 27348 (May 19, 1997). In this investigation, the nature and quality of the relationship between corporations require a finding of affiliation by virtue of Thyssen's common control of reseller 001 and of KTS. Such a finding is consistent with the Department's determinations in *Carbon Steel Plate From Brazil,* 62 FR at 18490, and *Stainless Steel Wire Rod From Sweden,* 63 FR at 40452.

We also agree with petitioners that record evidence demonstrates that Thyssen, as the majority equity holder and ultimate parent company of reseller 001, is in a position to exercise direction and restraint over this affiliate. Thyssen also holds indirectly a substantial equity interest in AST, plays a significant role in AST's operations and management and, thus, enjoys several avenues for exercising direction or restraint over AST's business activities (*see* the *Affiliation Memorandum*).

In sum, Thyssen's substantial equity ownership in AST and reseller 001, along with other reasons based on information which is proprietary (*see Affiliation Memorandum*), supports a finding that AST and reseller 001 are under the common control of Thyssen.

Comment 4: Home Market Selling Expenses

Petitioners argue that if the Department does not resort to facts available for AST's unreported home market downstream sales in the final determination, the Department should not allow the selling expenses that AST has claimed for these sales. Petitioners maintain that AST claimed expenses relating to the downstream sales notwithstanding the fact that AST did not report the prices for those downstream sales. For example, petitioners contend that the technical service expense claimed by AST on it sales to affiliated resellers was most likely incurred as a result of services provided to the reseller's customers rather than the reseller.

Respondent argues that the Department should reject petitioners' request to disallow AST's reported selling expenses for sales to affiliated resellers in the home market. Respondent asserts that this claim is unsupported by fact or law because it implies that the Department should disregard the conclusions drawn from the Department's arm's-length test.

Department's Position: We disagree with petitioners. The Department continues to find that it is appropriate to calculate normal value based on AST's sales to the affiliated resellers rather than the affiliates' resales as long as AST's sales to the home market resellers pass the Department's arm's length test. Section 351.403(d) of the Department's regulations states that, ''the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question or if sales to the affiliated party are comparable.'' Since AST's sales through all of its affiliated resellers except one are made at arm's length (*i.e.*, are ''comparable''), and since the circumstances surrounding this lone exception are such that the Department determines it is most appropriate to simply exclude these sales from our margin calculation (*see Final Analysis Memorandum*), we determine that it is appropriate to calculate normal value based on AST's sales to its affiliates. As part of this calculation, the Department reviewed AST's claimed direct selling expenses for its home market sales to the affiliated resellers during the home market verification (*i.e.*, credit, warranty, and technical service expenses) and found that the expenses were properly reported (that is, the expenses ''result from, and bear a direct relationship to, the particular sale in question'' (section 351.410(c) of the Department's regulations (emphasis added)). *See Verification Report of AST* at pg. 28. Regardless of petitioners' assertion (unsupported by record evidence) that AST's reported technical service expenses were likely incurred as a result of services provided to the resellers' customers, the fact remains that these technical service expenses were directly related to the sales in question. Therefore, based on the Department's verification findings and the fact that petitioners have not cited to any tangible evidence to support their assertion, we have continued to make a circumstance of sale adjustment for AST's claimed direct selling expenses for it sales to home market affiliated resellers.

Comment 5: CEP/EP

Petitioners assert that the Department should determine that all of AST's U.S. sales were constructed export price

transactions. Petitioners state that AST's description of its sales procedures indicates that AST USA is involved in every aspect of the sales process for AST's direct U.S. sales: AST USA is contacted by the U.S. customer; AST USA negotiates orders with the U.S. customers; AST USA negotiates with AST concerning the purchase order and the order confirmation; AST USA negotiates with AST concerning the purchase order and the order confirmation; AST USA issues the order confirmations to the U.S. customers; AST USA invoices the U.S. customers; and AST USA provides technical and warranty services to the U.S. customers.

Petitioners argue it is the Department's policy that, if the U.S. affiliate had more than an incidental involvement in making sales or performed other selling functions, the sales should be treated as CEP sales. In support of this, petitioners cite *Certain Cold-Rolled and Corrosion Resistant Steel from Korea: Final Results of Antidumping Duty Administrative Review* 63 FR 13170, 13172 (March 18, 1998) (*''Carbon Steel Products from Korea''*), where the Department determined that the respondent's sales were CEP sales because the U.S. affiliate was first contacted by interested customers and because the U.S. affiliate signed the sales contracts and engaged in other sales support functions. Petitioners assert that similar to this case, in *Carbon Steel Products from Korea,* the respondent claimed that the U.S. sales were EP sales because the respondent, not the U.S. affiliate, approved all sales prices. Petitioners point out that the Department determined that this approval process does not make the U.S. affiliate's role in the sales process incidental or ancillary. In addition, petitioners cite *Extruded Rubber Thread from Malaysia: Final Results of Antidumping Duty Administrative Review,* 63 FR 12752 (March 16, 1998); *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany: Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 47446, 47448 (September 9, 1997); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Brake Drums and Brake Rotors from the People's Republic of China,* 61 FR 53190, 53194 (October 10, 1996); *Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review,* 62 FR 18390, 18392 (April 15, 1997); and *Oil Country Tubular Goods from Mexico: Final Results of Antidumping Duty Administrative Review,* 64 FR 13962, 13966 (March 23, 1999); and *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 62 FR 10530, 10532 (March 7, 1997), in which, petitioners claim, the Department reclassified respondents' U.S. sales as CEP transactions because significant selling functions were performed in the United States.

Petitioners argue that information obtained by the Department during verification showed that AST USA, rather than AST, is contacted by the U.S. customers, negotiates the terms of sales to the U.S. customers, sets the prices to these customers, and performs support activities related to the U.S. sales. Additionally, petitioners state that the verification report explains that there is no interaction between AST and the U.S. customers regarding specific sales transactions, and that AST's activities with U.S. customers is limited to participation in a biannual golf outing that is arranged by AST USA.

Respondent claims that petitioners ignore the Department's final determination in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Italy,* 63 FR 40422 (July 29, 1998), where the respondent (Cogne Acciai Speciali S.r.L, ''CAS'') produced and sold subject merchandise in the U.S. market through a channel of distribution similar to that of AST's back-to-back (EP) sales. Respondent argues that in this case, the Department determined that CAS's sales through AST USA were EP sales because the sales process for these sales was nearly identical to that of CAS's sales through CAS USA.

Respondent asserts that the determination of classifying sales as EP or CEP depends on more than a U.S. affiliate's involvement in the transactions, and that it additionally depends on the following three criteria: whether (1) the merchandise is shipped directly to the unaffiliated buyer without entering the affiliate's inventory; (2) this procedure is the customary sales channel between the parties; and (3) the affiliate in the United States acts only as a processor of documentation and a communications link between the foreign producer and the unaffiliated buyer. Respondent maintains that AST's back-to-back sales meet all of these criteria, and should therefore be classified as EP sales. Moreover, respondent argues that the Court of International Trade has affirmed the Department's finding of EP (formerly purchase price ''PP'') classification where the U.S. affiliate engaged in activities that were at least equal to, if not greater than, those undertaken by AST USA in the following cases: *Outokumpu Copper Rolled Products* v. *United States; E.I. DuPont de Nemours & Co.* v. *United States; Zenith Electronics Corp.* v. *United States;* and *Independent Radionic Workers* v. *United States.*

Respondent asserts that, as mentioned in the AST USA verification report, AST gives the final approval of a sale which is outside of the pricing guidelines that AST has approved is done by AST. Citing *Preliminary Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from Germany,* 62 FR 47446, 47448 (September 9, 1997), respondent contends that knowledge of and influence over final price terms for U.S. sales has played an important and decisive role in determining whether such U.S. sales are properly treated as EP or CEP sales.

Respondent concludes by stating that the Department should reject petitioners' argument to change AST's EP sales to CEP sales because it would go against the Department's three-part test, mentioned above, and it is not consistent with the distinction between EP and CEP sales set forth in the statute.

Department's Position: We agree with petitioners. Section 772(b) of the Act defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted.'' Based on the Department's practice, when an affiliate in the United States is involved in the sales process, as is the case here, the Department presumes the sales to be CEP unless the following three criteria are met: (1) the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) this was the customary commercial channel between the parties involved; and (3) the function of the U.S. selling agent was limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, the Department has determined the sales to be EP sales. Where one or more of these conditions are not met, indicating that the U.S. sales agent is substantially involved in

the U.S. sales process, the Department has classified the sales in question as CEP sales (*see, e.g., Viscose Rayon Staple Fiber from Finland: Final Results of Antidumping Duty Administrative Review,* 63 FR 32820, 32821 (June 16 1998); *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170 (March 18, 1998)). In this case, the crucial distinction lies in the last factor, *i.e.*, whether the entity in the United States acted only as a processor of documentation and a communication link. This factor entails a fact-based analysis to determine whether the entity in the United States is actually engaged in significant selling activities, in which case CEP applies, or is merely performing ancillary functions for a foreign seller, in which case EP is appropriate.

Our analysis of the facts indicates that, while AST's U.S. sales meet the first two conditions, they fail to meet the third one. AST USA is substantially involved in the process of selling AST merchandise in the United States. The Department looks at the totality of the evidence to determine whether an agent's role in the sales process is beyond an ancillary role. *See e.g. Final Determination at Less Than Fair Value: Extruded Rubber Thread from Malaysia,* 64 FR 12967–01 (March 16, 1999), and *Final Determination at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15444–01, (March 31, 1999). At verification, we found that AST USA is contacted by the U.S. customer; AST USA negotiates the order with the U.S. customers; AST USA negotiates with AST concerning the purchase order and the order confirmation; AST USA issues the order confirmations to the U.S. customers; AST USA invoices the U.S. customers; and AST USA provides technical and warranty services to the U.S. customers. Additionally, although CEP treatment may still be appropriate even if AST has final approval authority, we note that AST was unable to provide any evidence at verification that it did anything other than accept purchase orders (without altering the essential terms of sales). *See Verification Report of AST* at 13. Additionally, at verification, we found that there was substantial AST USA involvement in developing clients, for example, through its lead role in organizing the golf tournaments. *See Verification Report of AST* at 14. Therefore, even if the agent's role is not autonomous with respect to the final sales terms as respondent claims, this does not mean that its role in the process is ancillary. (*See Carbon Steel Products from Korea,* 63 FR 13170 (March 18, 1998); and *Final Results of Administrative Review: Industrial Nitrocellulose from the United Kingdom,* 64 FR 6609, 6612, (February 10, 1999).) Because the selling activities of AST USA were more than ancillary to the sales process in the U.S., *i.e.*, the function of AST USA is not limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer, we determine that in accordance with section 772(b) of the Act, CEP methodology is required.

Comment 6: Order Date/Invoice Date

Petitioners claim that the Department should use the order date as the date of sale for all of AST's U.S. sales. Petitioners state that the facts of this case parallel *Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* 63 FR 32833, 32835 (June 16, 1998) (''*Circular WNASP from Korea*'') a case in which the Department determined the order date to be the proper date of sale. Petitioners claim that information contained in AST's questionnaire response and from AST's verification reports supports the proposition that the material terms of sale (*i.e.*, price and quantity) are set on the order date for both AST's warehouse sales and back-to-back sales that are made to order and, therefore, that the order date is the proper date of sale for those U.S. sales. Petitioners assert that even if the Department determines that the date of sale for simple CEP sales out of inventory can be determined by invoice date, consistent with the Department's practice, the nature of further-manufactured sales orders and the additional time lag engendered by the sales process requires that the date of sale be determined as the date of the confirmation or change order.

Respondent argues that for the final determination, the Department should use the invoice date for all home market sales and for CEP sales, and the shipment date for EP sales, as it did in the Preliminary Determination. Respondent cites section 351.401(i) of the *Department's Final Antidumping Regulations,* (1998), noting that the Department's stated practice is to ''use invoice date as the date of sale unless the record evidence demonstrates that the material terms of sale, *i.e.*, price and quantity, are established on a different date.'' Respondents argue that if a date other than the invoice date is to be used for the final determination, petitioners bear the burden of demonstrating that another date is more appropriate.

Respondent claims that AST demonstrated that in a large percentage of its home market sales (based on quantity) during the POI, the price and/or quantity changed between order and invoice date. Respondent argues that petitioners have offered no evidence to support their assertions that ''an allowance of plus or minus ten percent of the quantity order is common in the industry for sales of stainless steel sheet and strip'' and that ''adjusting the agreed upon price by an alloy surcharge formula is generally accepted as part of the sales process for sales of stainless steel products.'' Respondent adds that petitioners have not demonstrated that AST's sales adhere to these industry-wide practices. Respondent contends that at verification, AST demonstrated that large-volume customers will not accept a quantity that is ten percent higher or lower than the ordered quantity. Respondent also argues that AST demonstrated that, irrespective of alloy surcharges, the negotiated price may change between order confirmation date and invoice date.

Respondent argues that petitioners offer no legal authority supporting their position that the Department should ignore post-order confirmation changes because such changes are common in the industry. Respondent argues that the existence of an industry practice to accept changes in price and/or quantity up until the date of invoice establishes that invoice date is the appropriate date of sale. Additionally, respondents contend that at verification, the Department verified that for a certain percentage of its reported POI home market sales (based on quantity), the price changed between order confirmation date and invoice date for reasons unrelated to the alloy surcharge.

Respondent asserts that AST's inability to perform an analysis of the frequency of price and quantity changes between order and invoice date for the U.S. market does not indicate that order date or confirmation date is the appropriate date of sale for AST's U.S. sales. Respondent points out that in all of the U.S. sales that the Department verified, either the quantity invoiced was different from the quantity set forth in both the order and order confirmation, the price changed between order confirmation date and invoice date for reasons unrelated to the alloy surcharge, or both.

Department's Position: We agree with respondent. We found no evidence on the record to indicate that order date is the appropriate date of sale. As noted by

respondent, under the Department's regulations, we normally use date of invoice as the date of sale unless record evidence shows that the material terms of sale are established prior to that date. *See* 19 CFR 351.401(i). However, we may use another date, such as date of order confirmation, if that date better reflects the date on which the material terms of the sale were established. In adopting this regulation, we explained that the purpose was, whenever possible, to establish a uniform event which could be used as the date of sale. Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27348–49 (May 19, 1997). We further explained that we do not automatically treat an initial agreement as establishing the material terms of sale between the buyer and seller when changes to such an agreement are common, even if, for a particular sale, the terms did not actually change. *See Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils (''SSPC'') from the Republic of Korea,* 64 FR 15450 (March 31, 1999). Consequently, our analysis focuses on whether changes are sufficiently common to allow us to conclude that initial agreements should not be considered to finally establish the material terms of sale. At verification of AST USA, we found that the price and/or quantity (excluding price changes resulting from changes in the alloy surcharge) changed from the order date to the invoice date for all of the sales traces, thus supporting AST's contention that certain material terms of sale (*e.g.*, price and quantity) are subject to change until the invoice date. *See Verification Report of AST USA,* Exhibits 7–10.

Petitioners' reference to *Circular WNASP from Korea* is misplaced, because in that case, evidence showed that the material terms of sale in the United States were set on the contract date, and subsequent changes rarely occurred. In this case, based on the Department's findings at verification and the record evidence indicating that the material terms of sale often change up to invoice date, the Department is satisfied that the date of invoice is the most appropriate measure of when AST establishes the material terms of sale. Accordingly, we have continued to use invoice date as the date of sale for AST's CEP sales for the final determination. As stated above, the Department has determined that all of AST's U.S. sales are CEP. Therefore, we have used the invoice date for all of AST's home market and U.S. sales (unless invoice date is after shipment date, in which case the Department will use shipment date). *See* section 351.401(i) of the Department's regulations.

Comment 7: CEP Offset

Respondent argues that AST's final margin calculation should include a CEP offset, based on respondent's assertion that the Department failed to consider that AST's sales to its affiliated U.S. distributor, AST USA, are at a less advanced level of trade than the level of trade (LOT) of AST's home market sales.

First, respondent argues that its home market sales are made at a more remote level of trade than its CEP sales. Respondent claims that most home market sales are direct factory sales which AST manufactures to order. Respondent argues that in the home market, AST is responsible for the entire chain of distribution for the foreign like product, from production in the plant through delivery to the local distributor, end-user, or service center. Respondent notes that in this regard, AST S.p.A. has established a large, complex distribution system.

Respondent argues that, by contrast, AST's CEP sales are warehouse sales. Respondent asserts that the LOT for these sales is properly based on the transaction between AST and AST USA, not AST USA and the first unrelated U.S. customer. Respondent continues by asserting that, in order to identify different levels of trade, the Department compares starting prices in the U.S. and home markets. Respondent asserts that, in this case, the requisite comparison reveals that the starting prices in Italy and the United States are vastly different. In support of its argument, respondent notes that AST's U.S. and home market sales to the first unaffiliated customer are at the same level or trade because: (1) AST S.p.A's home market sales and AST USA's CEP sales are at the same point in the chain of distribution; (2) AST S.p.A's Italian customer and AST USA's U.S. customers are in the same customer categories; and (3) AST S.p.A and AST USA provide the same selling services for CEP sales. Respondent argues that the CEP adjustments made under 19 USC 1677a(d) (section 772(d) of the Act) remove all of AST USA's marketing, sales and distribution expenses, thereby altering the LOT of its CEP sales to a less remote link in the chain of distribution.

Finally, respondent argues that, in applying the CEP offset, the Department should deduct AST's indirect selling expenses and technical services expenses from normal value, since available data do not indicate whether the purported difference in LOT affect price comparability.

Petitioners maintain that the Department should reject respondent's request that the Department apply a CEP offset to respondent's final margin calculation, based on the fact that the Department preliminarily concluded that there was no difference in LOT between AST's sales in the U.S. and home markets.

Petitioners argue that respondent did not request a LOT adjustment or a CEP offset prior to the preliminary determination, and that respondent's request for a CEP offset is not supported by substantial evidence, including evidence of differences in selling functions. Petitioners argue that the burden was on respondent to prove its entitlement to a LOT adjustment or CEP offset, and to have provided the Department new evidence to demonstrate the appropriateness of such an adjustment, citing section 773(f)(1)(A) and the *Statement of Administrative Action* accompanying H.R. 5110 (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994), at 829 (''SAA'')); *Final Rule,* 62 FR 27370; and *Mitsubishi Heavy Industries, Ltd.* v. *United States,* Slip Op. 98–82 (CIT 1998). Petitioners maintain that AST did not provide such new evidence.

Petitioners argue that the Department examined the LOT that existed following the adjustments specified under 19 U.S.C. 677a(d) (section 772(d) of the Act), and properly determined that those adjustments to the price at which AST USA sold subject merchandise did not alter the channels of trade or selling functions upon which a determination regarding level of trade difference is based in this investigation. Petitioners also argue that the Department's verifications confirmed that essentially the same selling functions were offered by AST for both its home market and U.S. sales.

Petitioners continue that the Department clearly stated in its preliminary determination that it made the adjustments called for by 19 U.S.C. section 1677a(d) prior to examining LOT. Finally, because a difference in LOT must exist prior to granting a CEP offset, petitioners assert that no CEP offset may be granted in this investigation.

Department's Position: We disagree with respondent. For the preliminary determination, the Department thoroughly reviewed the channels of distribution and selling functions performed for sales in the home and U.S. market and determined that all sales were made at one level of trade (including its analysis whether NV was

established at a different LOT than CEP sales). *See Preliminary Determination* (64 FR 120–121), and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Korea,* 64 FR 17342, 17344 (April 9, 1999), specifically, AST provided freight and delivery, credit, technical services, and warranties for its home market sales of prime merchandise. Also, for sales of mostly non-prime merchandise sold from its warehouse, AST performed essentially the same selling functions. While it did not provide warranties for non-prime merchandise, it did perform other selling functions for those sales (advertising and maintaining inventory of this merchandise at AST's warehouse), which were not performed for sales of prime merchandise. For the preliminary determination (and as upheld in this final determination, see discussion in ''Level of Trade'' section above), the Department found that there was one LOT for AST's home market sales because the selling activities for both groups of sales were very similar. *See Preliminary Determination* (64 FR 120). For all of its U.S. sales, AST engaged in identical selling activities, providing technical and warranty services, freight and delivery and credit. As explained above, the Department compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade. Based on our analysis of the chains of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we continue to find that both are made at the same stage in the marketing process and involve substantially similar selling functions.

Absent significant differences in selling functions, we do not determine that there are different LOTs, and therefore, we do not even reach the issue of a LOT adjustment or CEP offset. Furthermore, AST has not provided any substantial evidence which would counter the Department's preliminary determination, but rather only stated that the starting prices between home market sales, which are direct factory sales, and AST's CEP sales, which are warehouse sales, are notably different. Because the Department has found there to be just one LOT, the difference in prices is irrelevant to our LOT analysis.

Moreover, in the original questionnaire, the Department requested that respondent ''explain why you believe a level of trade adjustment is appropriate and provide worksheets demonstrating the calculation of the adjustment as attachments to your response.'' *See Questionnaire* at pg. B–23, dated August 3, 1998. AST did not claim any LOT adjustment or CEP offset in its questionnaire response, nor provide any explanation for such a claim.

Comment 8: Side Cuts/Pup Coils

Respondent asserts that side cuts and pup coils are non-prime merchandise, and therefore sales of this merchandise should not be compared with sales of prime merchandise. First, respondent argues that it has submitted record evidence demonstrating that the U.S. steel industry, including petitioners, markets and sells side cuts and pup coils as non-prime merchandise. Therefore, respondent argues that the burden is with petitioners to demonstrate that such products are not legitimately classified as non-prime merchandise.

Second, respondent argues that side cuts and pup coils suffer defects during the production process and at other times prior to delivery to the customer.

Third, respondent states that side cuts and pup coils are not produced to order and do not otherwise meet customers' specifications, such as finish, width and/or weight specifications.

Fourth, respondent argues that side cuts and pup coils are used in applications for which knowledge of certain of the product's characteristics is unimportant. These applications would include such non-prime applications as strappings, bands, brackets and washers for side cuts, and hog feeders, pig pens, fertilizers, spreaders and roofing and siding for pup coils.

Fifth, respondent asserts that the sales process for side cuts and pup coils differs significantly from sales of prime merchandise. For example, respondent notes that its side cut and pup coil sales are all done from inventory (as opposed to its direct factory sales that were produced for a specific customer to that customer's specifications).

Finally, respondent maintains that side cuts and pup coils are sold at a discount, with no warranties.

Petitioners respond that AST has not provided any information to support its claim that all of its sales of pup coils and side cuts were sales of non-prime merchandise. Petitioners argue that the only difference between pup coils and a regular coil is the size of the coil, not the quality of the product. Similarly, petitioners argue that making a coil narrower does not convert that merchandise into secondary material simply because it was separated from the mother coil.

Petitioners argue that respondent did not identify any physical defect in pup coils and side cuts in AST's record description of non-prime merchandise, and furthermore, that the submitted description distinguished pup coils and side cuts from ''second quality merchandise.''

Petitioners further submit that the Department's investigation of respondent's classification of secondary merchandise at verification does not support a finding that side cuts and pup coils are of secondary quality.

Petitioners also take issue with respondent's claim that pup coils and side cuts are second quality material because they were not produced to order, but instead were inventory sales from the warehouse, given the percentage of respondent's U.S. sales which were warehouse sales. Petitioners also argue that the limited applications of pup coils and side cuts cannot define these products as secondary, given that prime merchandise is also produced within certain weight and size tolerances and therefore is also ''limited to certain uses.''

Petitioners further argue that the absence of a warranty does not mean that the product is defective. Likewise, petitioners believe that the fact that these sales were made at a discount does not demonstrate that these sales are of secondary merchandise, especially given the fact that, according to petitioners, one would expect discounts on merchandise for which there is no warranty.

Department's Position: We agree with petitioners that AST's sales of pup coils and side-cuts should be considered sales of prime merchandise. As noted in the Department's April 19, 1995 *Memorandum from Roland L. MacDonald to Joseph A. Spetrini,* the Department defines non-prime (or secondary merchandise) as ''steel which has suffered some defect during the production process, or at any time before delivery to the customer.'' In its submissions to the Department, AST identified side-cuts and pup coils as secondary merchandise, but did not identify the physical defect or damage associated with each sale of pup coils and side-cuts, as specifically requested by the Department. *See Supplemental Questionnaires* dated October 23, 1998 and December 7, 1998, in which we requested that AST create a separate computer field that would identify the specific reason why each sale was designated non-prime merchandise. AST submitted its offering list of

secondary merchandise (*see* Exhibit 18, November 12, 1998 response); however, the defects of the merchandise were not identified for many of the coils on this list. At verification, we examined AST USA's invoices to its unaffiliated U.S. customers for sales of pup coils and side-cuts, and noted that there was no indication that the merchandise listed on the invoice was damaged or defective. *See Verification Report of AST USA*, Exhibit 20.

With respect to respondent's argument that side cuts and pup coils are not produced to order and do not otherwise meet customers' specifications, such as finish, width and/or weight specifications, we believe that respondent is confusing the issue. Specifically, as respondent has noted, side cuts and pup coils are not produced to order, and are sold from inventory. Therefore, the customers that respondent is referring to are, in fact, the purchasers of side cuts and pup coils from inventory. Record evidence taken from verification reveals that certain information such as the dimensions of the product, is provided to these customers for the merchandise sold from inventory. *See Verification Report of AST USA*, at pg. 7, and Exhibit 20. There is no evidence on the record which would support a finding that these specifications, *i.e.*, those provided in the inventory list, are inaccurate or otherwise do not meet the specifications of these customers.

Regarding respondent's assertion that it has submitted record evidence demonstrating that the U.S. steel industry, including petitioners, markets and sells side cuts and pup coils as non-prime merchandise, whether side cuts and pup coils are sold in the ''seconds market'' is in no way dispositive with regard to the Department's ultimate classification of this merchandise. We note that for example, the same exhibit offered by AST is in support of its claim that side cuts and pup coils are secondary merchandise, also shows that ''excess prime'' is sold by that particular company as a ''secondary product.'' *See* AST's November 12, 1998 submission, Exhibit 10. In this regard, the Department has clearly stated its position that excess prime also known as prime overruns is treated by the Department as prime merchandise. This is precisely because this merchandise contains no defects. (*See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products From Australia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 14049–01 (March 29, 1996)). Therefore, we determine that side-cuts and pup coils be considered prime merchandise for the final determination.

Comment 9: Floor Plate

Respondent argues that floor plate should be excluded from the scope of this investigation. Respondent maintains that, to the best of its knowledge, the U.S. industry does not manufacture this product (and has not done so for at least two years), and furthermore, this product does not compete with any product manufactured in the United States.

Petitioners argue that the Department should reject respondent's request to exclude floor plate from the scope of this investigation. First, petitioners argue that respondent's ''apparent belief'' that the domestic industry must be currently producing a particular type of product in order for that product to remain within the scope of the case is wrong. Petitioners point out that one possible reason for opposing an exclusion request is that a domestic producer previously manufactured the product and may have ceased production due to the competitive impact of unfairly traded imports, or a domestic producer may be interested in producing the product but is unable to enter the market due to the low prices of the unfairly traded imports. Petitioners argue that one domestic producer was producing floor plate until recently, and assert that another is considering manufacturing floor plate in the future.

Department's Position: We uphold our preliminary determination to include floor plate as part of the scope of subject merchandise. Despite AST's arguments, the plain language of the petition's scope covers merchandise described as floor plate if it is less than 4.75 mm in thickness. The scope specifically describes the subject merchandise as a ''flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness.'' We also note that the Department's model match criteria place significant emphasis on both the rolling process (hot-versus cold-rolled) and surface finish (including ''patterns in relief,'' such as the diamond pattern characteristic of floor plate). *See* page 8 of the *Memorandum to Joseph A. Spetrini from Robert James regarding the Antidumping Duty Investigations on Stainless Steel Sheet and Strip in Coils from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom; Scope Issues*, dated December 14, 1998.

In a similar case where a respondent requested an exclusion for a particular type of SSWR from the scope, the Department determined not exclude this merchandise because petitioners did not agree to the exclusion. *See Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Canada*, 63 FR 9182 (February 24, 1998). In the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan*, 63 FR 40434–01 (July 29, 1998), the respondent asserted that a particular grade of SSWR should be excluded from the scope because it had not been sold it in the United States during the POI or at any other time, and that this grade of SSWR allegedly was not, and could not be, manufactured in the United States. The Department determined that the fact that a specific grade of SSWR is not currently produced in the United States does not constitute grounds for exclusion from the scope of the investigation, and therefore did not exclude it from the scope. Therefore, consistent with the Department's current practice, we will continue to include floor plate in the scope of this investigation for purposes of the final determination.

Comment 10: REBATE2H

Petitioners state that the adjustments reported in field REBATE2H should be rejected because the expenses included in this field do not qualify as rebates. Petitioners assert that the verification results demonstrate that the Department should disallow AST's claim for REBATE2H for several reasons. First, petitioners state that respondent has used an inappropriate period for calculating REBATE2H, since the period begins two months after the start of the POI and finishes two months after the POI. Second, petitioners state that this field includes credit notes granted for sales of non-subject merchandise and for sales that were outside the POI. Third, petitioners argue that when AST stated that its claimed REBATE2H amounts included expenses for returns and for technical claims for defective merchandise, it did not explain whether these claims involved double counting of its claimed home market warranty expenses or home market technical service expenses as it should have. Fourth, petitioners contend that certain price adjustments, including alloy surcharges, were accounted for in AST's home market sales listing, and therefore, should not be accounted for as part of AST's rebates. Finally, petitioners argue that AST included all credit notes in its calculation of the REBATE2H amounts, and did not evaluate the credit notes to determine whether the credit notes applied to sales during the POI or to sales of SSSS. Therefore, petitioners

claim that AST overstated the rebates that may have been provided for sales of SSSS during the POI instead of excluding credit notes that were not related to such sales. In conclusion, petitioners argue that the Department should, therefore, not allow AST's claimed REBATE2H for its final analysis.

Respondent argues that as explained in AST's Section B Response, the expenses reported in REBATE2H represent post-sale price adjustments other than claims reported in other fields. Although AST states that the expenses reported in REBATE2H may alternatively be classified as billing adjustments rather than rebates, the expenses are appropriately deducted from the home market price.

Citing Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada (''Carbon Steel Flat Products and Carbon Steel Plate from Canada''), 61 FR 13815, 13822, (March 28, 1996), respondent states that the Department recognizes that adjustments such as those included in REBATE2H are not always granted on an invoice-specific basis, and accepts such adjustments if they are tied to a specific group of invoices. AST claims that REBATE2H was calculated on a customer-specific basis, and as such, was calculated and reported on the specific group of invoices associated with AST's stainless steel sheet and strip customers. AST contends that therefore AST properly calculated REBATE2H in accordance with Departmental policy.

Respondent asserts that petitioners' argument that AST double counted technical and warranty claims is factually inaccurate because AST provided the Department with revised REBATE2H calculations at verification (*see Verification Report of AST* at 1–2) which eliminated any potential double counting. Respondent states that exhibit 16 of the verification report was an exhaustive list of different types of credit notes issued by AST, not the credit notes included in the calculation of REBATE2H; therefore, there is no basis for petitioners' argument that credit notes were double counted in the calculation of REBATE2H.

Respondent argues that the Department must reject petitioners' claim that the calculation of REBATE2H was based on an incorrect time period. Respondent maintains that, as explained to the Department at verification, there is a lag period of two months between shipments and the issuance of credit notes. Respondent contends that it was necessary to shift the period forward by two months to ensure that credit notes associated with sales during the POI were captured.

Respondent asserts that for all of the reasons mentioned above, the Department should reaffirm its preliminary determination with respect to REBATE2H and subtract this amount in the calculation of normal value.

Department's Position: We agree with respondents that REBATE2H is more properly considered as price adjustments rather than rebates, and that the expenses are appropriately deducted from the home market price. At verification, we reviewed substantial information to conclude that REBATE2H consisted of after-sale price adjustments. *See Verification Report of AST* pp. 1,2 & 24. Furthermore, we determine that AST's methodology for reporting credit notes for the period beginning two months after the start of the POI, and ending two months after the end of the POI is reasonable, as there is no evidence on the record which contradicts AST's claim regarding a two-month lag period, and there is no reason to believe that respondent's methodology is in any way distortive. The information gathered in Exhibit 39 of the *Verification Report of AST* confirmed the reasonableness of using the two-month period. Furthermore, we determine that AST's reporting methodology by customer groupings is also reasonable. While the Department prefers that discounts, rebates and other price adjustments be reported on a transaction-specific basis, the Department has long recognized that some price adjustments are not granted on that basis. This case is similar to situations in which the Department has permitted as direct adjustments, rebates granted on a customer-specific basis. *See Carbon Steel Flat Products and Carbon Steel Plate from Canada*, 61 FR 13815, 13822. We reviewed the revised calculations at verification and noted no discrepancies. *See Verification Report of AST* at 24. Therefore, for the final determination, we have deducted REBATE2H from the home market price.

Comment 11: Home Market Freight

Petitioners argue that the Department should make corrections for AST's overstatement of freight costs for its sales in Italy. Petitioners state that at verification, the Department compared the freight charges that AST reported in its questionnaire response to the freight charges in AST's freight contracts and discovered that the freight costs in the questionnaire response were higher than the freight rates shown in the freight contracts, and that AST claimed that the costs were higher because of the accruals that AST made at the end of the year. Petitioners maintain that because AST was given the opportunity to prove this claim at verification, and failed to do so, the Department should correct AST's overstatement of its freight costs by reducing the freight costs reported by AST for its home market sales by an amount verified by the Department at verification.

Respondent argues that petitioners' argument reflects a misunderstanding of this expense, and explains that in reporting its home market freight expense, AST first calculated the contract freight charge associated with deliveries to various destinations, then adjusted the contractual freight expense to reflect the difference between the contractual per-kilogram freight expense and the actual per-kilogram freight expense. AST states that for shipments less than 28 tons, it incurs the same fixed freight charge as it would for a shipment weighing 28 tons, and for shipments over 28 tons, it is charged the negotiated rate per-kilogram. AST argues that it adjusted AST's contractual freight expense to account for the incremental freight charge associated with shipment weights that are less than the minimum weight called for in the contract.

Department's Position: We agree with petitioners. At verification, we traced the freight expense reported in AST's response to AST's contractual agreements, and found that the two were different. *See Verification Report of AST* at 26. We do not accept AST's claim that it adjusts its contractual freight expense to account for the incremental freight charge associated with shipment weights that are less than the minimum contract weight called for in the contract, because when we gave AST the opportunity to provide the year-end reconciliation of actual and accrued freight expenses at verification, AST failed to do so. *See Verification Report of AST* at 26 and 28. Therefore, the Department considers these additional amounts unverified, and we have, for the final determination, reduced the freight costs reported by AST for its home market sales by an amount examined by the Department at verification (*see Final Analysis Memorandum*).

Comment 12: Technical Service Expenses

Respondent argues that the Department should not deduct technical service expenses incurred in Italy from CEP. Respondent argues that the technical service expenses reported in its response are indirect selling

expenses associated with its Technical Services Department in Italy, and are therefore not an appropriate adjustment to CEP.

Petitioners argue that the Department should treat respondent's technical service expenses in the home market and in the U.S. market in the same manner (*i.e.*, either both as direct, or both as indirect selling expenses), because respondent calculated these expenses in the same manner. Furthermore, petitioners argue that the verification of AST USA shows that economic activity occurred in the U.S. with regard to technical service expenses, and therefore, the costs for the activities should be deducted from the price for respondent's CEP sales.

Department's Position: Contrary to AST's claim that all technical service expenses reported in its response are associated with its Technical Services Department in Italy, we found at the verification of AST USA that a portion of technical service expenses relate to economic activity in the United States and are, in fact, incurred in the United States by AST USA. Specifically, at verification we found that AST USA partially paid for the salary of an AST USA employee who was responsible for providing customers with technical advice. *See Verification Report of AST USA* at 23. However, there is insufficient data to allocate these additional technical expenses because AST failed to provide it. Therefore, for purposes of the final determination, we are continuing to deduct technical service expenses as reported in AST's December 28, 1998 response from AST's CEP sales.

We note that AST's technical service expenses, as reported for both markets, are more appropriately considered to be indirect selling expenses, because they are fixed expenses that are incurred whether or not a particular sale is made. *See* The Department's AD Manual, page 34, 35. For example, we note that a portion of these reported expenses are payroll expenses, which are typically an indirect selling expense. Therefore, for purposes of the final determination, we have allocated AST's technical service expenses over sales of subject merchandise in the home market as indirect selling expenses.

Comment 13: U.S. Warranty

Respondent argues that the Department, in its preliminary determination, incorrectly double-counted warranty expenses for U.S. sales. Respondent asserts that, by treating expenses reported in two separate fields (BILLADJU and WARRU) as direct selling expenses, the Department double-counted warranty by counting both the amount credited to the customer by AST USA and the amount credited to AST USA by AST.

Petitioners reply that information on the record shows that treatment of billing adjustments and warranty expenses as direct selling expenses does not involve double-counting of warranty expenses. Specifically, petitioners argue that respondent's November 12, 1998 submissions indicate that AST had separated its warranty expenses from the amounts reported in the billing adjustment field of its U.S. sales listing. Petitioners also argue that the verification reports do not substantiate respondent's claim that the Department verified that the expenses reported in the U.S. warranty expense field of its U.S. sales listing represent AST's payments to AST USA for claims made by U.S. customers.

Department's Position: We agree with respondent. As stated in AST's original response, U.S. warranties, if incurred, are included in the billing adjustment field (*see* pg. C–37 of AST's Section C Response, dated September 28, 1998). This is confirmed by the fact that, in comparing AST's original and supplemental U.S. sales databases, we note that the BILLADJU field remained the same after AST reported WARRU in the supplemental questionnaire. Therefore, it is clear that (1) AST reported warranty expenses in the BILLADJU field; and (2) AST did not transfer the expense included in BILLADJU for warranties to the WARRU field. At verification we examined the BILLADJU field for each sales trace and, with the exception of one clerical error, we found no discrepancies. *See Verification Report of AST USA*, Exhibits 7–10. Additionally, at verification, we confirmed that AST reimburses AST USA for the credit issued to AST USA's customers for warranties. Specifically, we examined documentation showing that AST USA issues a credit to its customer, and then deducts the claim amount credited to the customer from its payment to AST. *See* Exhibit 6A of the *Verification Report of AST USA*. Therefore, to ensure that we do not double count warranties, we have only deducted BILLADJU from the U.S. price for purposes of the final determination.

Comment 14: Insurance Revenue

Respondent argues that the Department incorrectly failed to add transaction-specific insurance revenue to U.S. price in its preliminary determination. First, respondent argues that the Department incorrectly characterized insurance claim sales as ''merchandise destined for sale as prime material.'' Respondent claims that, to the contrary, because the merchandise was damaged in transit, the sale reported to the Department was a sale of damaged second quality material. Second, respondent claims that the Department's statement that AST ''still incurred a loss on prime merchandise'' is incorrect, as respondent claims that any loss associated with these sales is a loss associated with sales of second quality merchandise, given that it was damaged in transit. Respondent adds that any question of whether a loss or profit was incurred is in any event irrelevant to the Department's determination of sales at less than normal value.

Respondent maintains that, conversely, transaction-specific insurance proceeds are directly relevant here. Respondent argues that the insurance proceeds reported in the response relate directly to the specific transactions identified as insurance claim sales. Respondent cites the Department's preliminary results of review in *Ferrosilicon from Brazil* (62 FR 54085, upheld in principle in the final) as a case in which the Department ''added the amount of marine insurance revenue which was collected by Minasligas with regard to one U.S. sale'' as support for its argument.

Petitioners assert that the Department correctly treated the costs associated with the damaged sales as indirect selling expenses. Petitioners argue that the expenses incurred for the damaged merchandise were associated with the shipment and sale of prime merchandise, as the Department preliminary determined.

Department's Position: We agree with respondent in part. For the claims that AST reported in its original response, we have added the transaction-specific insurance revenue to AST's U.S. sales' price. At verification, we reviewed the actual final settlement amount for an insurance claim that AST reported as ''pending'' in its responses to the Department. *See Verification Report of AST USA*, pp. 2–3. Since we confirmed this amount, and found no discrepancies, we have used the actual final settlement amount received for this insurance claim to calculate the total insurance revenue applied to these transactions.

Regarding the additional insurance revenue amount that AST presented the Department at the onset of verification, we do not agree with petitioners. We consider this additional insurance revenue to be directly applicable to all sales of subject merchandise, because in the absence of these sales, the claim

would not have been made, and the revenue would not have been received. At verification, we examined the receipts of AST's claim reimbursements and found no discrepancies. We also examined an invoice of subject merchandise for which AST received part of this additional insurance revenue and found no discrepancies. *See Verification Report of AST USA* at 3. Therefore, petitioners' assertion that these insurance proceeds must relate to sales that occurred prior to the POI is unfounded, as there is no record evidence to support this assertion, and the record evidence which does exist supports a different finding. We note that unlike our treatment of insurance revenue as discussed above, we must treat this additional insurance revenue differently based on the verified fact that AST was unable to tie this insurance revenue to specific transactions. Therefore, since this additional claim was received during the POI, and was found to be satisfactory at verification, we determine that it is relevant to use for purposes of calculating total insurance revenue. For purposes of the final determination, we have allocated this additional insurance revenue over all sales of subject merchandise.

Comment 15: Revised Credit Calculations

Petitioners contend that the Department should use the revised shipment dates presented by AST at verification to calculate imputed credit expenses for some of AST's U.S. sales. *Citing Carbon Steel Products from Korea* at 63 FR 13173, petitioners argue that the Department's general practice is that the date of sale should not occur after the date the merchandise was shipped to the customer. Moreover, petitioners state that the Department generally calculates imputed credit expenses based on the period from the date of shipment to the date of payment. Therefore, petitioners maintain that the Department should calculate revised imputed credit expenses for the sales where respondent reported incorrect shipment dates. *See Verification Report of AST USA*, Exhibit 1.

Respondent did not comment on this issue.

Department's Position: As noted in Exhibit 1 of the *Verification Report of AST USA*, AST USA incorrectly reported, as the shipment date, the shipment date from AST USA to its customer, instead of the shipment date from AST to AST USA for certain sales. We reviewed the corrected information for these sales at verification and found it to be accurate. According to Departmental policy, we calculate imputed credit based on the period of date of shipment to the date of payment. *See Policy Bulletin No. 98.2: ''Imputed Credit Expenses and Interest Rate,''* dated February 23, 1998. Therefore, for the final determination, we will use the corrected information to calculate imputed credit for the sales where AST incorrectly reported incorrect shipment dates.

Comment 16: Mill Edge Discount

Petitioners argue that the Department should adjust AST's U.S. sales database to include the mill edge discount that was reviewed at the U.S. sales verification of AST USA.

Respondent did not comment on this issue.

Department's Position: We agree with petitioners, and have used the mill edge discount that was reviewed at the U.S. sales verification of AST USA for purposes of the final determination. *See Final Analysis Memorandum.*

Comment 17: U.S. Packing

Petitioners argue that the Department should make an adjustment for AST's failure to report packing costs on a transaction-specific for its U.S. sales. Noting that for its U.S. sales AST calculated a weighted-average packing cost for all U.S. sales, petitioners claim that the Department's verification findings indicate that AST could have reported the actual packing costs for its U.S. sales on a transaction-specific basis as the packing list and the packing code were listed on the confirmation for each U.S. sale. Petitioners state that in its antidumping questionnaire the Department requested that AST provide the unit cost of packing for each packing type and report this unit cost for each U.S. sale. Petitioners claim that because AST maintained this information but failed to report it, the Department should substitute the highest U.S. packing cost reported by AST during verification for the average packing cost reported by AST for its U.S. sales.

Respondent argues that it properly reported a weighted-average packing cost for its U.S. sales. Respondent maintains that the section of the AST U.S. sales verification report cited by petitioners in their case brief does not support petitioners' claim that AST could have reported actual packing costs for U.S. sales. Respondent notes that in its U.S. sales listing it reported the invoiced transaction between AST USA and the customer and that the order confirmation between AST USA and the customer does not contain a packing material code. Respondent contends that the fact that the order confirmation between AST and AST USA contains a transaction-specific packing material code does not *ipso facto* mean that it can track packing expenses related to U.S. sales on a transaction-specific basis. On the contrary, respondent asserts that it cannot track this information.

Respondent claims that U.S. sales made from warehouses may consist of either multiple or partial shipments from AST to AST USA and are not linked to specific order confirmations sent from AST when the material was originally imported. Similarly, respondent contends that its consignment sales in the United States consist of multiple shipments from AST, thereby reflecting multiple order confirmations, and that back-to-back sales in the United States may be dispatched to multiple customers, but are listed on a single confirmation sheet issued by AST to AST USA. Thus, respondent argues that the fact that packing type is specified on the order confirmation issued by AST to AST USA has no bearing on AST USA's ability to report a packing type on a transaction-specific basis. Respondent claims that upon loading the coils for shipments to the United States, coil types are often mixed, which limits its ability to relate individual shipments with the original order confirmation.

Respondent also maintains that the petitioners' argument ignores the fact that in an investigation the Department is required to base U.S. price on average rather than transaction-specific prices, which limits the need for transaction-specific adjustments. Finally, citing *Ferro Union* Slip Op. 99–27 (CIT March 23, 1999), respondent holds that the supplemental information relied upon as facts available must have probative value. In this case, respondent argues that the facts available adjustment proposed by petitioners fails to meet this standard as the proposed packing expense is based on a packing type used by less than three percent of export shipments and must therefore be rejected.

Department's Position: We agree with respondent. At verification, we reviewed AST's calculation methodology and found no discrepancies with what it reported to the Department. *See Verification Report of AST USA* at 3–4. Although we found that AST was able to identify the packing materials code on the confirmation that AST sent back to AST USA for each proposed sale, evidence we gathered at verification does not support a finding that the packing material code appears on the invoice from AST USA to the customer, or that

AST can reasonably track and report the information. Therefore, for purposes of the final determination, we accept AST's reported packing cost for its U.S. sales.

Comment 18: International Freight

Petitioners contend that the Department should use partial facts available for AST's failure to submit correct amounts for ocean freight charges on U.S. sales. Petitioners argue that AST submitted a table showing a range of shipment-by-shipment ocean freight charges, but only reported one international freight charge in its original U.S. sales listing. Petitioners state that AST attempted to justify its failure to submit the detailed portion-by-portion movement expenses requested in the Department's questionnaire (*i.e.*, an amount for factory to port costs, an amount for port charges, an amount for ocean freight, etc.), by stating that its freight broker charged AST a total movement expense that reflects the costs associated with moving the SSSS from the factory to the port, loading the SSSS onto the ship, shipping the merchandise, and insuring the merchandise. Petitioners contend that although AST stated that the broker charged AST a fixed percentage of the expense incurred as a service fee, AST did not identify the fixed percentage or provide an amount for this service fee. Petitioners argue that in its November 12, 1998 submission, AST stated that it revised its reported freight costs for U.S. sales to reflect transaction specific international freight expenses, however, AST reported only one amount to cover all of the international freight costs for its individual U.S. sales in Italian Lira per pound in the U.S. sales database. Additionally, petitioners argue that during verification, the Department discovered that the transaction-specific freight costs in AST's November 12, 1998 U.S. sales listing misstate the actual freight costs because AST failed to include freight costs for transport from the factory to the port, and AST's freight costs contained other errors.

Petitioners state that there are several problems with AST's attempt to resubmit the freight costs reported in AST's initial U.S. sales listing. (1) Because AST failed to provide the detailed freight cost information requested by the Department's antidumping questionnaire (*i.e.*, cost for shipment from factory to port, cost for port charges and handling fees, costs for ocean freight, etc.), it is unclear whether the freight costs reported in AST's September 28, 1998 questionnaire response include costs incurred to transport the SSSS from the factory to the port of export. (2) It is unclear how the cost that AST's freight broker charged AST to transport the SSSS from the factory to the port could have been omitted from its reported freight costs, because AST stated that its freight broker charged AST a total movement expense that reflected all of the movement charges (including freight from the factory to the port), and AST stated that it reported the actual amount charged by the broker to AST.

Citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Belgium (''*SSPC from Belgium*''), 64 FR 15476, 15485 (March 31, 1999), where the Department assigned the highest reported freight costs as partial facts available to calculate international freight expenses for U.S. sales when the respondent failed to provide sufficient information to calculate movement charges for U.S. sales, petitioners claim that the Department should assign the highest non-aberrational freight charge reported by AST as partial facts available to calculate international freight expenses for U.S. sales.

Respondent argues that contrary to petitioners' claim that the Department ''discovered'' AST's international freight expense was underreported, AST advised the Department that the earlier-reported ocean freight expense had been inadvertently understated and provided a correct weighted-average ocean freight expense at the beginning of verification. Respondent states that AST originally reported a correct weighted-average ocean freight expense to the Department, however, in subsequent submissions, AST inadvertently used an incorrect key to calculate the ocean freight expense.

Respondent claims that petitioners' assertion that AST failed to provide sufficient detail regarding its reported ocean freight expense is unfounded because AST provided individual invoices from its freight forwarder relating to U.S. shipments during the POI, in a supplemental response. In addition, AST states that each bill of lading included in its supplemental response indicated the terms of delivery, which indicates that the prepaid freight expense includes insurance and loading charges associated with the shipped merchandise. AST states that these invoices were the basis for the international freight expenses, and reflect all costs charged by AST's freight forwarder. Therefore, respondent states that petitioners' claim that AST did not ''provide any information on the service fee that AST's freight broker charges AST for arranging shipments to the U.S.'' is meritless.

Department's Position: We agree with respondent. Petitioners' reliance on *SSPC from Belgium* is misplaced. In that case, ALZ (the respondent) withheld information concerning its affiliation with Transaf, a company in charge of various brokerage/handling and international freight services for ALZ's U.S. sales. In addition, ALZ did not provide, in a timely fashion, information regarding the extent of which Transaf handled the brokerage/handling and international freight services. In contrast, AST did not withhold information pertaining to its ocean freight expense. We note that AST originally reported a correct weighted-average ocean freight expense in a timely fashion. *See* Exhibit 5 of AST's Section C Response, dated September 28, 1998. At verification, AST explained that when preparing supplemental responses, it used the wrong key field ''chart number'' instead of ''file number'' to determine international freight incurred on sales of subject merchandise. By using this key, AST inappropriately included shipments destined for third countries as well as for the United States. *See Verification Report of AST* at 2. At verification, we verified the revised weighted-average freight expenses, and found no reason to question the accuracy of AST's revisions. Therefore, for purposes of the final determination, we have used the revised weighted-average freight expenses submitted at verification. *See Analysis Memorandum* for further discussion of this issue, as it contains proprietary information.

Comment 19: Verification Corrections

Respondent asserts that the Department's final determination should reflect corrections made at verification. Other than these items addressed in comments 25 and 27 below, these corrections are to: (1) AST's revised ''other movement'' expenses; and (2) price and quantity data for five U.S. sales. Additionally, respondent argues that the Department should use the actual final settlement amount for an insurance claim in calculating a transaction-specific adjustment for insurance revenue. Finally, respondent argues that the Department should account for an additional amount in insurance revenues associated with merchandise damaged in transit. Respondent suggests that the Department could either allocate these revenues over all other second quality sales reported by AST, or, alternatively, the Department could

treat these proceeds as a reduction to AST's reported selling expenses.

Petitioners argue that the Department should use data examined during verification to calculate costs associated with the two shipments that were damaged in transit to the United States. Because petitioners' argument regarding which data to use involves proprietary data, please see the *Final Analysis Memorandum* for a more complete summary. Furthermore, petitioners argue that the Department should not accept the non-transaction specific insurance proceeds claim that AST presented at verification. Petitioners claim that respondent has claimed these insurance proceeds as non-transaction specific proceeds simply because they related to sales that occurred prior to the period of investigation. Petitioners argue that there is no basis for treating revenues associated with sales outside the POI as an offset to selling expenses incurred for sales during the POI. Furthermore, petitioners claim that respondent failed to submit certain cost information associated with a claim. Finally, petitioners claim that this information was significant new information and a new claim submitted at the beginning of verification. Petitioners argue that the purpose of verification is to confirm information rather than to accept new claims.

Department's Position: Regarding AST's revised other movement expenses, the Department has used the other movement expense factor that was reviewed at verification for the final determination. At verification, we confirmed that AST originally reported the other movement expense factor correctly in its responses to the Department; however, it did not correctly apply this factor to the calculation of the USOTHTRU field in its submissions to the Department. Therefore, we have applied the correct factor to calculate the USOTHTRU field for our final margin calculation.

Regarding the five U.S. sales for which AST presented the Department with revised price and quantity data at verification, the Department has used the corrected information in its calculation of the margin for the final determination.

We have used the actual final settlement amount for the insurance claim reviewed at verification to calculate the total insurance revenue amount. In addition, we have included the other insurance claims that AST presented to us at the onset of verification. Refer to Comment 14 for the discussion of the Department's application of insurance revenue.

Comment 20: Ministerial Error Corrections

Petitioners request that the Department correct the three ministerial errors made in calculating the preliminary dumping margins for AST that Petitioners identified in their December 28, 1998 letter to the Department.

Respondents did not comment on this issue.

Department's Position: As recommended in the *Ministerial Error Memorandum to Edward Yang from Lesley Stagliano,* dated January 6, 1999, the Department has corrected these three ministerial errors regarding general and administrative expenses and interest expenses, indirect selling expenses, and the cost of goods sold.

Cost of Production/Constructed Value

Comment 21: Below Cost Sales and Cost Recovery Test

AST argues that in the preliminary determination, the Department found certain of its home market sales were made below cost without considering whether such sales permitted the recovery of costs. As a result, AST alleges that the Department overstated the number of below-cost sales and inflated AST's preliminary determination margin. Before disregarding any of its home market sales as having been made below cost in the final determination, AST asserts that the Department must assess the degree to which AST was able to recover its costs on a product-specific basis.

AST argues that the Department should not disregard its below cost sales. AST states that the language of section 773(b)(2)(D) of the Act was intended to represent only an example of a situation in which below-cost sales would be considered as providing for the recovery of costs within a reasonable period of time. AST states further that Congress intended that below-cost sales be included in normal value in situations where other sales compensated for the losses incurred. AST asserts that the Department should only disregard below-cost sales in situations where the foreign producer incurs an overall loss. AST suggests that the Department compare average prices to average costs to determine, on a product-specific basis, whether costs of the below-cost sales were recovered.

Petitioners argue that the plain language of section 773(b)(2)(D) of the Act does not support AST's argument. Petitioners argue that, had Congress intended that the Department only disregard below-cost sales where the foreign producer experiences an overall loss, it would have implemented that policy in the language of the statute. Instead, petitioners assert that section 773(b)(2)(D) limits including sales below cost in normal value to situations where prices which were below the per-unit cost of production at the time of sale are above the weighted-average per-unit cost of production for the period of investigation. Petitioners argue that AST's position is in conflict with the language of section 773(b)(2)(D) of the Act.

Department's Position: We agree with petitioners. Section 773(b)(2)(D) is explicit in providing that prices shall be considered to provide for recovery of costs within a reasonable period of time if such prices which are below cost at the time of sale are above the weighted-average per-unit cost of production for the period of investigation. Accordingly, as we stated when we issued the proposed antidumping duty regulations to implement the provisions of the Uruguay Round Agreements Act, ''. . . the Department's cost recovery test must consist of an analysis involving individual prices for specific below-cost sales transactions.'' (*See Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* 61 FR 7308, 7337 (February 27, 1996).) The cost recovery test relied on in this case conforms with the statute and with the Department's regulations. For the reasons stated above, AST's proposed cost recovery test does not conform with section 773(b)(2)(D) of the Act.

Comment 22: Asset Depreciable Lives

AST asserts that, in the preliminary determination of the companion countervailing duty (''CVD'') investigation, the Department rejected AST's reported average asset useful life. In the preliminary antidumping determination, respondent notes that the Department made no such finding. AST argues that the failure to apply a consistent average useful life methodology in both the antidumping and the CVD investigations resulted in higher calculated duties for AST in both investigations.

Petitioners assert that the average useful life methodologies for dumping and subsidy analyses are different because they are used for different purposes. In an antidumping proceeding, the Department examines the average useful life of each asset reported by the foreign producer, confirms that the reported useful lives are those used in preparing the financial statements of the companies, and relies on those amounts in its COP calculations. In CVD, the Department's

focus is the determination of the appropriate allocation period for subsidies. These different purposes are responsible for the Department's relying on different methodologies when analyzing average useful lives of assets in antidumping and CVD proceedings.

Department's Position: We agree with the petitioners. Section 773(f)(1)(A) and the SAA provide that if the records kept by an exporter or producer are in accordance with U.S. Generally Accepted Accounting Principles (''GAAP'') of the exporting (or producing) country and reasonably reflect costs, the Department will rely on them for calculating costs (SAA at 834). The SAA also provides that we will consider whether the producer historically used the methods reported to the Department prior to the investigation and in the normal course of its business operation (*Id.*, at 835).

AST's reported depreciation was from the records it used to prepare its financial statements, which were consistent with GAAP. Moreover, those records were consistently used in the course of AST's business and reasonably reflected the company's costs. Therefore, for purposes of the Department's antidumping analysis, relying on AST's records is in conformity with both the Act and the SAA.

Comment 23: Subsidies as a Reduction to Cost

AST argues that the Department should reduce AST's reported COP and CV by the amounts of its grants and subsidies. AST claims that by not reducing its reported costs by the countervailed grants and subsidies, the Department overstates the number of home market sales disregarded as below cost which, in turn, would overstate both the normal value and the dumping margin. AST cites *Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands*, 59 FR 23684, 23689–90 (May 6, 1994) (''*Aramid Fiber*''), as authority for the Department to offset the company's production costs by the amount of grants and other subsidies found to be countervailable.

Petitioners refute AST's reliance on the *Aramid Fiber* determination. That case did not concern companion antidumping and countervailing duty proceedings. The Department only stated that petitioners were free to submit a petition for a CVD investigation alleging that subsidies had been received. The Department stated that it would not self-initiate a CVD investigation.

Department's Position: AST first raised this issue in its case brief. During the course of the antidumping investigation, the company did not proffer any information concerning the subsidies it received or about how these subsidies were used. The record in this investigation does not support a conclusion that the grants and subsidies received by AST contains no details or facts surrounding the subsidies or grants received by AST, nor do we have quantifyable amounts relating to production activities. Accordingly, no offset to production costs for the claimed grants or subsidies is deemed appropriate.

Comment 24: Income Offset to Financial Expenses

AST notes that in calculating its financial expense rate for the preliminary determination, the Department disallowed AST's reported financial income offset on the grounds that AST failed to establish that the offset was generated from short-term sources. AST argues that the Department has since verified the accuracy of the amount reported as an offset to Fried. Krupp's financial expenses at the cost verification of KTN and that we should use this short-term interest income as an offset to AST's financial expenses.

Petitioners state that the public version of the cost verification report for KTN indicated that Fried. Krupp's short-term interest income offset was verified. Petitioners also note that the cost verification report stated that the Department encountered problems verifying the exchange gains which were claimed as offsets to interest expense. Petitioners urge the Department to use the financial expense ratio as recalculated in the cost verification report for the final determination.

Department's Position: We agree with AST and petitioners. Based on our verification findings, the interest income used as an offset to finance expenses was appropriately classified as short-term. Fried. Krupp's 1997 consolidated financial statements distinguished between interest earned from long-term sources and short-term sources. Accordingly, we included this interest income earned from short-term assets, less the amounts relating to trade-receivables, as an offset to financial expenses. Additionally, based on our verification findings, Fried. Krupp was unable to substantiate its offset to financial expenses for exchange gains. Therefore, we have not allowed the exchange gains as an offset to interest expense.

Comment 25: G&A Expenses

Petitioners note that the Department's cost verification report states that AST excluded from its reported G&A expenses, those expenses it had recorded as ''other operating expenses.'' Petitioners assert that the Department should revise AST's G&A expenses to include these amounts.

AST requests that the Department remove certain indirect expenses and certain technical expenses from its reported G&A because those expenses were reported in other computer fields, resulting in them being double-counted.

Department's Position: We recalculated AST's G&A rate, adding the ''other operating expenses'' to G&A and removing the expenses that AST had reported in the other fields.

Comment 26: Double Counting Packing Expenses

AST asserts that in calculating the dumping margin in its preliminary determination, the Department overstated the number of home market sales below cost by not excluding packing costs from the reported home market manufacturing costs while, simultaneously, subtracting packing costs from the home market price.

Petitioners argue that AST did not provide any information or cite to any information on the record that indicated that its reported manufacturing costs included packing costs.

Department's Position: We agree with AST that the standard costs include packing. At the cost verification, we reviewed the 1997 and 1998 standard costs used in the cost build-ups for three different product control numbers. In each case, the standard cost sheets show that the standard cost included packing. *See AST Cost Verification Report* Exhibit B7, B8 and B9. Thus, we did not include packing in our total cost of production figure for the sales below cost test in the final determination.

Comment 27: Variance

At the beginning of the cost verification, AST submitted a correction to its cost variance. AST also asserts that it had incorrectly applied the variance to factory overhead in its previous submissions to the Department.

Petitioners did not comment on this issue.

Department's Position: We agree with AST and used the revised variance in the COP calculation for the final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing

the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Italy that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the preliminary determination in the Federal Register. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price as shown below. These instructions suspending liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
AST	11.17
All Others	11.17

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation. This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated:May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13676 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From France

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

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong, Marian Wells, or Annika O'Hara, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3853, 482–6309, or 482–3798, respectively.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of stainless steel sheet and strip in coils from France. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

The Petitioners

The petition in this investigation was filed by the Allegheny Ludlum Corporation, Armco Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steel Workers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (collectively referred to hereinafter as ''the petitioners'').

Case History

Since the publication of the preliminary determination (*see Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from France*, 63 FR 63876 (November 17, 1998) (*Preliminary Determination*)), the following events have occurred:

We conducted verification in Belgium and France of the questionnaire responses submitted by the European Commission (EC), the Government of France (GOF), and Usinor (the only respondent company in this investigation) from November 11 through November 24, 1998. On November 24 and December 8, 1998, we received allegations of certain clerical errors in the *Preliminary Determination*. We corrected these errors in a January 20, 1999, memorandum to Laurie Parkhill, Acting Deputy Assistant Secretary (*see* ''Clerical Error Allegations in the Preliminary Determination of Stainless Steel Sheet and Strip in Coils from France'' (''Clerical Errors Memo'') which is on file in the Central Records Unit of the Department). On February 18, 1999, we postponed the final determination of this investigation until May 19, 1999 (*see Countervailing Duty Investigations of Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea: Notice of Extension of Time Limit for Final Determinations*, 64 FR 9476 (February 26, 1999)). The petitioners and Usinor/GOF filed case and rebuttal briefs on March 3 and March 10, 1999. A public hearing was held on March 12, 1999.

Scope of Investigation

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

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at the following subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30,