Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 1995, the Court issued an order remanding to the Department the final determination and amended final determination on ferrosilicon from Brazil. See *Aimcor et al.* v. *United States et al.*, Slip Op. 95–130 (CIT July 20, 1995) (*AIMCOR I*).

In its decision in *Timken Co.,* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision.

In AIMCOR I, the Court ordered the Department to do the following: (1) Determine if the amount of the ''spread'' (the difference between the interest rate and the inflation rate) is sufficiently quantified and, if so, account for this amount in the home market price, or, if not, grant Companhia Ferroligas Minas Gerais (Minasligas) an opportunity to provide such data; (2) reconsider the profit calculation in constructed value and explain the rationale for whatever methodology the Department chooses to apply; (3) apply a U.S. dollar-denominated interest rate in calculating Minasligas' imputed U.S. credit expenses; (4) request from Minasligas data on the appropriate monetary correction for loans, and if that data is inadequate or not provided, to reconsider our selection of best information available, and also to reconsider whether the Department's interest expense adjustment and the selection, if any, of an adjustment for monetary correction for loans understate Minasligas' interest expenses included in cost of production and constructed value; and (5) determine whether Minasligas' value-added taxes on the inputs at issue were fully recovered prior to exportation of the subject merchandise.

These remand instructions constitute a decision not in harmony with the Department's final determination and amended final determination. This notice fulfills the publication requirements of *Timken*.

Absent an appeal, or, if appealed, upon a ''conclusive'' court decision affirming the Court's opinion, the Department will amend the amended final determination of the investigation on ferrosilicon from Brazil to reflect as follows the amended margins in the Department's redetermination on remand: Minasligas 19.73 percent; Companhia Brasileira Carbureto de Calcio 17.93 percent; and All Others 42.17 percent. Liquidation of such entries is suspended pending final and conclusive affirmance of these remand results.

Dated: July 10, 1996.

Jeffrey P. Bialos,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–18672 Filed 7–22–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–837]

Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan

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

EFFECTIVE DATE: July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Bill Crow or Dennis McClure, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; Telephone: (202) 482–0116 or (202) 482–3530, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (''URAA'').

Final Determination

We determine that large newspaper printing presses and components thereof (''LNPPs'') from Japan are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act.

Case History

Since the preliminary determination on February 23, 1996 (60 FR 8029, March 1, 1995), the following events have occurred:

On February 26 and 27, 1996, the respondents, Mitsubishi Heavy Industries Ltd. (''MHI'') and its U.S. affiliate Mitsubishi Lithographic Printing (''MLP''); Tokyo Kikai Seisakusho Ltd. (''TKS'') and its U.S. affiliate TKS USA; and the petitioner, Rockwell Graphics Systems Inc. and its parent company, Rockwell International Corporation, requested disclosure of the Department's calculation methodologies used in the preliminary determination. On March 4, 1996, the petitioner alleged that the Department made two ministerial errors in its calculation with respect to constructed value (''CV'') and further manufacturing costs. The Department determined that neither of the allegations constituted ministerial errors. (See Memorandum from the Team to Richard W. Moreland, March 11, 1996.)

On February 27, 1996, the Department issued supplemental sales questionnaire to MHI and TKS. On March 7, 1996, the respondents submitted their responses to the supplemental sales questionnaire. On March 5, 1996, the Department issued a supplemental cost questionnaire to TKS and on March 8, 1996, TKS submitted its response.

In March and April 1996, we conducted verification of the sales and cost questionnaire responses of the respondents in Japan and the United States.

On May 8, 1996, the Department received comments it solicited from interested parties in its preliminary determination regarding scope issues. On May 31, 1996, respondents submitted new sales and cost databases which incorporated factual corrections noted during verification.

The respondents and the petitioner submitted case briefs on June 3, 1996 and rebuttal briefs on June 10, 1996. The Department held a public hearing for this investigation on June 17, 1996. On June 19, 1996, MHI protested that certain elements of the petitioner's rebuttal brief contained new factual information. On June 20, 1996, the petitioner objected to MHI's complaint. On June 26, 1996, the Department returned the rebuttal brief to the petitioner, and notified the petitioner that the new material to which MHI had objected should be removed from the record of the investigation. The petitioner submitted a revised rebuttal brief on June 27, 1996.

Scope of Investigation

Note: The following scope language reflects certain modifications from the notice of the preliminary determination. As specified below, we have clarified the scope to include incomplete LNPP systems, additions and components. We have also clarified the scope to include ''elements'' (otherwise referred to as ''parts'' or ''subcomponents'') of a LNPP system, addition or component, which taken altogether constitute at least 50 percent of the cost of manufacture of the LNPP component of which they are a part. We have also excluded from the definition of the five subject LNPP components any reference to specific subcomponents (i.e., the reference to a printing-unit cylinder in the definition of a LNPP printing unit). In addition, we have excluded the following Harmonized Tariff System of the United States (''HTSUS'') subheadings from the scope: 8524.51.30, 8524.52.20, 8524.53.20, 8524.91.00, and 8524.99.00. See ''Scope Comments'' section of this notice and the July 15, 1996 Decision Memorandum to Barbara Stafford from The Team Re: Scope Issues in the Final Determinations.

Scope: The products covered by these investigations are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of these investigations includes the five press system components. They are:

(1) A printing unit, which is any component that prints in monocolor, spot color and/or process (full) color;

(2) A reel tension paster (''RTP''), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit;

(3) A folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format;

(4) Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and

(5) A computerized control system, which is any computer equipment and/or software *designed specifically* to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this investigation. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of this investigation, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the HTSUS: the term ''unassembled'' means fully or partially unassembled or disassembled; and (2) the term ''incomplete'' means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this investigation. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Further, this investigation covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this investigation are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Scope Comments

We have included scope issues for this investigation and the concurrent investigation of LNPP from Germany in the *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany* (''*LNPP from Germany*''). The issues are voluminous and the resolution of these issues affects both investigations equally, as reflected in the universal comment period in the public hearing on LNPP scope. We have therefore utilized the German FR Notice as the vehicle to publish the scope comments from all interested parties in both investigations.

Period of Investigation

The POI for MHI is July 1, 1991 through June 30, 1995, and July 1, 1992 through June 30, 1995 for TKS. See: *Preliminary Determination of Sales at LTFV: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan,* 60 FR 8029 (March 1, 1995) (''*LNPPs from Japan Preliminary Determination*'').

Product Comparisons

Although the home market was viable, in accordance with section 773 of the Act, we based normal value (''NV'') on constructed value (''CV'') because we determined that the particular market situation, which requires that the subject merchandise be built to each customer's specifications, does not permit proper price-to-price comparisons. See: *Preliminary Determination: LNPPs from Japan.*

Fair Value Comparisons

To determine whether MHI's and TKS's sales of LNPPs to the United States were made at less than fair value, we compared Constructed Export Price (''CEP'') to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(ii), we calculated transaction-specific CEPs (which in this case were synonymous with model-specific CEPs) for comparison to transaction-specific NVs.

Constructed Export Price (''CEP'') and Further Manufacturing (''FM'')

TKS

TKS reported its sales as CEP and CEP/FM sales. Because we have classified installation expenses as further manufacturing, we have treated all TKS sales as CEP/FM sales. We calculated CEP, in accordance with subsections 772(b) and (d) of the Act, for (1) Those sales to the first unaffiliated purchaser that took place after importation by a seller affiliated with the producer/exporter, and (2) those sales involving further manufacturing in the United States.

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

(1) We deducted those indirect selling expenses that were associated with economic activity in the United States, whether incurred in the United States or in Japan, and irrespective of where recorded. We revised the reported indirect selling expense ratio to include all Japanese indirect selling expenses in the numerator and allocated this amount over the total value of TKS sales to be applied to U.S. sales value, not transfer prices; TKS had previously excluded branch sales office expenses from the numerator and included some transfer prices in the denominator. We also calculated these indirect selling expenses in accordance with the methodology explained in the *DOC Position* to *Comment 1* of the ''Common Issues'' subsection of the ''Interested Party Comments'' section of the final notice of the companion investigation of LNPP from Germany.

(2) We recalculated TKS's reported indirect selling expenses incurred in the United States using the total expenses and total revenue for TKS USA during the fiscal years 1991 through 1995, in order to remove distortions in TKS USA's financial statements caused by auditors' modifications to revenue recognized during the POI. Our revision included additional selling expenses and excluded common G&A, as detailed in our July 15, 1996, calculation memorandum.

(3) We recalculated the U.S. insurance premiums expenses for both marine insurance and for U.S. inland insurance, increasing the amounts reported to match the acceptable loss/premium ratio established by Yasuda Fire and Marine Insurance in its official correspondence.

MHI

Although MHI reported its sales as EP sales, we reclassified all MHI sales as CEP/FM sales because MHI's affiliated U.S. sales agent acted as more than a processor of sales-related documentation and a communication link with the unaffiliated U.S. customers. The U.S. affiliate engaged in a broad range of activities including purchasing parts, warranty, technical services, and the coordination of installation, which we have classified as further manufacturing. We calculated CEP, in accordance with subsections 772 (b) and (d) of the Act, for these sales because they involved further manufacturing in the United States.

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

(1) We treated post-sale warehousing in Japan as a movement charge and not as a direct selling expense;

(2) We deducted the unpaid portion of the total contract price from the gross price of the Guard sale as a discount. The proprietary details of this adjustment do not allow further elaboration; the July 15, 1996, MHI calculation memo records the methodology.

(3) We deducted those indirect selling expenses that were associated with economic activity in the United States, whether incurred in the United States or in Japan, and irrespective of where recorded. We also calculated these indirect selling expenses in accordance with the methodology explained in the *DOC Position* to *Comment 1* of the ''Common Issues'' subsection of the ''Interested Party Comments'' section of the final notice of the companion investigation of LNPP from Germany.

(4) We modified the calculation of MLP's reported indirect selling expenses to no longer include an allocation of common G&A expenses, since total G&A applicable to LNPP is accounted for in the calculation of further manufacturing costs.

(5) We have modified the calculation of MHI's indirect selling expenses incurred in the United States but recorded in Japan to remove the salary expenses for an MLP employee where those expenses were already accounted for in the calculation of the MLP indirect selling expenses.

(6) We excluded from the calculation of the Guard commission those additional revenues remitted to MLP by Sumitomo Corporation (''SC'') from the total interest income earned while SC collected and held payment from Guard.

(7) We increased the amount of the spare parts adjustment to the Piedmont gross price in order to account for the value of materials supplied by MHI for the Piedmont sale in excess of the contracted value of spare parts.

Normal Value/Constructed Value

For the reasons outlined in the ''Product Comparisons'' section of this notice, we based NV on CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's materials and fabrication costs plus amounts for selling, general and administrative (''SG&A'') expenses, U.S. packing costs. We based CV on the same methodology used in the preliminary determination, with the following exceptions:

TKS

(1) We adjusted TKS USA's SG&A and indirect overhead costs in accordance with the submitted reclassification of rent, workmen's compensation and employee insurance.

(2) We recalculated CEP profit to include packing, transportation and installation costs.

(3) We modified our calculation of TKS USA's further manufacturing G&A rate by excluding the inputs acquired from TKS.

MHI

(1) We recalculated MLP's G&A rate using the cost of goods sold (''CGS'') incurred in the United States and applied that rate to further manufacturing costs for each U.S. sale.

(2) We recalculated home market profit to reflect the deduction of freight costs.

(3) We recalculated CEP profit to reflect the deduction of home market packing costs.

(4) We reallocated MHI's R&D costs to all LNPP contracts based on the relative manufacturing costs incurred for each contract.

(5) We adjusted NV to include the loss on sale of obsolete LNPP inventory.

Price to CV Comparisons

For CEP to CV comparisons, we deducted from CV the weighted-average home market direct selling expenses, pursuant to section 773(a)(8) of the Act.

Verification

As provided in section 782(i) of the Act, we conducted verification of the information submitted by the respondent. We used standard verification procedures, including examination of relevant accounting and sales records and original source documents provided by the respondent.

Currency Conversion

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement. In this case, although MHI reported that forward currency exchange contracts applied to certain U.S. sales, we verified that these contracts were linked to certain payments, not to the particular dates of sale of the contracts (and thereby to calculation exchange rates) in question. See May 14, 1996, MHI Verification Report at 9. Therefore, for the purpose of the final determination, we made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' For this final determination, we have determined that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determined that a fluctuation existed, we substituted the benchmark for the daily rate. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see *Policy Bulletin 96–1: Currency Conversions*, 61 FR 9434, March 8, 1996.) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the yen did not undergo a sustained movement of appreciation against the U.S. dollar affecting any date of sale during the POI.

Interested Party Comments

Common Issues in the German and Japanese LNPP Investigations

We have included all issues which are common to both this investigation and the concurrent investigation of *LNPP from Germany*, and which were commented on by parties in both proceedings, in the *Final Determination of Sales at LTFV: LNPP from Germany*, which is being published concurrently with this notice.

Common Issues for LNPP From Japan

Sales Issue

Comment 1 CEP Offset: As noted in the *Common Issues* section of the German notice, MHI argues that its sales should be treated as EP sales and not as CEP sales. Further, MHI argues that if a CEP analysis is applied, then the Department must consider a CEP offset to MHI's NV. MHI claims that the Department will not look to the initial sales price for CEP sales, but will instead look to the price as calculated after CEP adjustments are made to make level-of-trade (''LOT'') comparisons. MHI explains the statute recognizes that, in certain cases, while sales may have been made at different levels of trade, the data may not exist to make an LOT adjustment. According to MHI, comparing CEP to an unadjusted NV would not result in the ''fair comparison'' mandated by the statute. Thus, MHI states that in order to make a fair comparison, the statute allows for a deduction of indirect selling expenses from the NV by an amount not more than the amount of U.S. indirect selling expenses.

MHI states that, if the Department continues to use CEP analysis for purposes of the final determination, an LOT adjustment would be warranted because of the activities that would be removed from the CEP. According to MHI's interpretations, because a CEP analysis implies that MLP's economic activities are significant, removing the expenses incurred for such activities would likely change the level of trade at which CEP is calculated. Furthermore, MHI maintains that a CEP analysis would remove from U.S. price all of MHI's U.S. economic activity as well, further necessitating an LOT adjustment, since the starting price for MHI's U.S. sales and home market sales is at the same level of trade, *i.e.*, direct to the end-user. MHI maintains that since there is no data on the record to make an actual LOT adjustment, the Department should make a CEP offset adjustment to NV instead.

TKS maintains that the Department should grant to it a CEP offset pursuant to section 773(a)(7)(B) of the Act because: (1) TKS's home market sales are all at a single level of trade which is identical to that of TKS's unadjusted CEP sales; (2) the adjustments made to CEP place it at a different level of trade than its home market sales; and (3) no level of trade adjustment can be quantified. TKS claims that section 773(a)(7)(B) of the Act, which authorizes application of the CEP offset, applies to all of TKS's CV-to-CEP sales comparisons used in this investigation. TKS maintains that TKS's home market LNPP sales involve only one type of customer—newspaper publishing companies, and only one channel of distribution—direct sales to those publishing companies. According to TKS, the sales and distribution process for all these sales is straightforward, as TKS's own specialized sales force initiates and maintains customer relations.

According to TKS, all of its U.S. sales involve a single type of customer—newspaper publishers, and a single channel of distribution—customer-direct sales. TKS states that it is undisputed that TKS's U.S. sales are CEP sales due to the numerous critical activities performed by its subsidiary, TKS USA. According to TKS, it is the CEP adjusted for the various expenses related to such activities which determines the level of trade of a CEP sale.

TKS states that after the adjustments mandated by section 772(d) are completed, the level of trade of its CEP sales is nearer to the factory gate than the level of TKS's customer-direct home market sales, because the Act requires the deduction of all the direct and indirect selling expenses included in the CEP sale. Maintaining that the level of trade for the NV calculation is a CV that includes both direct and indirect selling expenses, TKS contends that its home market sales, in comparison with adjusted CEP sales, are at a more remote stage of distribution. Thus, TKS argues, it is entitled to a CEP offset.

In complete disagreement with the respondents, the petitioner maintains that no CEP offset is warranted in this investigation. It argues that MHI and TKS have failed to establish that NV and CEP were at different levels of trade. The petitioner points out that MHI had maintained up until verification that no LOT adjustment was required, and that TKS had only asserted in a footnote to one of its responses that it was entitled to a CEP offset. Given that neither respondent substantiated the necessity for an LOT adjustment which underpins a CEP offset, the petitioner maintains that no CEP offset is warranted. The petitioner's primary objection to MHI's contention that it is entitled to a CEP offset simply because the Department made CEP adjustments as required by the statute, rests on the observation that the Department appears to have flatly rejected such a position in its proposed antidumping regulations:

> It would not be appropriate to assume that the CEP is at a different level of trade than the prices used as the basis of normal value or that any such differences in the level of trade affect price comparability.

See Antidumping Duties; Countervailing Duties (Notice of Proposed Rulemaking and Request for Public Comments), 61 FR 7308, 7348 (February 27, 1996). Although MHI has three different channels of distribution in the home market, the Department cannot ascertain which selling functions are performed by MHI and which are provided by trading companies or other entities for each type of home market sale. The petitioner argues that the lack of a factual foundation for evaluating levels of trade means that a LOT adjustment under section 773(a)(7)(A) cannot be made and, further, that a CEP offset under section 773(a)(7)(B) is not authorized.

The petitioner also takes issues with the respondents' argument that an LOT adjustment is warranted because of the activities that would be removed from the CEP starting price. The petitioner's interpretation is that such a position runs counter to the preamble to the CEP provision in the proposed regulations. The petitioner further argues that, should the Department follow the methodology of the *Preliminary Results of Administrative Review: Armid Fiber from the Netherlands*, 61 FR 15766, 15768 (April 9, 1996) (''*Armid Fiber*''), then it would still contest the notion that for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act. According to the petitioner, stripping away the actual selling functions reflected in the CEP price before comparison for level of trade purposes amounts to an artificial reconfiguration of the CEP level of trade. The petitioner argues that this has the effect of creating the appearance of different levels of trade when in the commercial market the levels are the same. Thus, the argument is set forth that if the Department adjusts the CEP for U.S. selling expenses and artificially views the CEP sale as not including the selling functions represented by those expenses, then it will be positing a difference in level of trade that does not exist. According to the petitioner, if the Department were to allow a CEP offset, then the Department must deduct all of the indirect selling expenses from the U.S. price.

DOC Position: We disagree with the respondents. In this instant investigation, the respondents failed to provide the Department with the necessary data for the Department to consider an LOT adjustment. Without such data, a LOT adjustment under section 773(a)(7)(A) cannot be made and, further, that a CEP offset under section 773(a)(7)(B) is not authorized. Absent this information, the Department cannot determine whether an LOT adjustment is warranted, nor whether the level of trade in the home market is in fact further removed than the level of trade in the United States. We agree with the petitioner that a respondent is required to affirmatively demonstrate all the requirements which would entitle it to a CEP offset as a surrogate for an LOT adjustment. The petitioner correctly noted that the Department's questionnaire requested from respondents all the relevant information required for an LOT analysis and for the documentation and explanation of any claim for an LOT adjustment. We agree with the petitioner that this information was not provided. We note MHI's claim in its section A response that a ''level of trade adjustment is unnecessary,'' though at the time of the submission, MHI did not know that the Department's analysis would classify its U.S. sales as CEP transactions. Without the possibility of making a proper level of trade analysis, the Department cannot and should not grant a deduction from NV for home market indirect selling expenses.

Further, we disagree with the respondents' most basic representation of their home market sales. Respondents now contend that there is one home market level of trade to which CEP is being compared, but this claim is not well substantiated. The information we have on the record for sales in the home market does not support this conclusion. For TKS, sales were not made only to end-users, *i.e.*, newspaper publishers, but, as discovered during verification, were sometimes made to middle-men, such as leasing companies, in the home market. For MHI, we knew in general that the company made some sales involving trading companies based on one paragraph of explanation in MHI's section D response. We were informed during the ''sales and distribution'' portion of the verification that MHI had three distinct channels of distribution in the home market: (1) direct sales to end-users; (2) sales through trading companies and (3) sales to trading companies. See May 14, 1996, verification report at pp. 4–5. For neither TKS nor MHI can we ascertain which selling functions are performed by them and which are provided by leasing companies, trading companies or other entities for each type of home market sale. Thus, the minimal amount of information provided does not support the conclusions reached by respondents.

We note, however, that we also disagree, in part, with the petitioner. In those cases where an LOT comparison is warranted and possible, then for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act. As stated in *Armid Fiber* ''the level of trade of the U.S. sales is determined by the adjusted CEP rather than the starting price.''

Cost Issue

Comment 2 Collection of Cost Data in Absence of the Initiation of a Cost Investigation: MHI argues that the Department's collection of cost data on all home market sales in the absence of the initiation of a cost investigation not only violates the 1994 GATT Antidumping Agreement (''the Agreement''), but is inconsistent with U.S. law and administrative practice. MHI cites Article 2.2.2 of the Agreement and section 773(e)(2)(A) of the Act to support its contention that the Department should not have solicited contract price and cost data in order to compute SG&A expenses and profit. MHI contends that there is no provision in either the Agreement or U.S. law which provides that a foreign producer automatically shall be subject to a sales-below-cost investigation after CV is determined to be the appropriate basis for NV. Instead, MHI contends that both the Agreement and U.S. law instruct the Department to conduct cost calculations on the basis of records kept by the respondent, provided that such records are in accordance with the generally accepted accounting principles (''GAAP'') of the exporting country and reasonably reflect the costs of production and sale of the product. MHI cites the *Final Results of Administrative Review: Large Power Transformers from Italy*, 52 FR 46,806 (1987) (''*LPTs from Italy*''), *Preliminary Results of Administrative Review: Large Power Transformers from France*, 61 FR 15461, 15462 (April 8, 1996) (''*LPTs from France*''), and *Preliminary Results of Administrative Review and Partial Termination in Part: Mechanical Transfer Presses from Japan*, 61 FR 15034, 15035 (April 4, 1996) (''*MTPs Preliminary Results (1996)*''), in contending that the Department has resorted to CV as the basis for NV for reasons similar to those enunciated in the preliminary determination of this investigation, without automatically subjecting respondents to cost investigations. In those investigations, MHI maintains, the Department was correct to request product-line profit and loss information for its calculations of SG&A expense and profit. MHI states that it complied fully by submitting its internal profit and loss statements for LNPPs. Accordingly, MHI argues that SG&A and profit should be calculated from MHI's internal profit and loss statements in the Department's final calculations.

The petitioner maintains that the Department's request for home market contract price and cost data ''in order to compute SG&A and profit'' for its CV calculations in accordance with section 773(e)(2)(A) of the Act was a reasonable action within its discretion in light of the requirements of the 1994 WTO Antidumping Agreement (''the Agreement'') and U.S. law.

According to the petitioner, the Agreement and the Act which implements the Agreement require the Department to exclude below-cost sales from the calculation of SG&A and profit. The petitioner contests MHI's statement that section 773(f)(1) of the Act forbids the Department to examine transaction-specific data for profit and SG&A because it had a product-line financial statement. According to the petitioner, this position is without merit because nothing in the cited statutory provision in the URAA restricts the Department from requesting transaction-specific data. Petitioner also notes that MHI was capable of providing the information in a timely manner.

The petitioner also objects to MHI's characterization of the collection of transaction-specific information on SG&A and profit as an ''aberrational'' practice. According to the petitioner, at this early stage of implementation of the URAA, any such characterization is not credible, as the Department is entitled to evolve its practice under the new statute. Petitioner also points out that MHI failed to mention that in *LPTs from France,* the preliminary notice makes clear that substantial questions arose regarding profit and SG&A on the eve of the preliminary determination, and that, although the Department calculated profit based upon the LPT respondent's parent company's financial statements, the Department noted for the final determination that it would consider calculating the respondent's profit based only on above-cost data if it had cost data for home market sales.

Based on the record of this investigation, the petitioner maintains that it was clear from the response to section A that companies could report transaction-specific data, and that evidence pointed to below-cost sales. According to the petitioner, given the recent changes in the law and congressional intent to exclude below-cost sales from CV profit in most cases, it was reasonable for the Department to seek transaction-specific data in this investigation in order to analyze whether below-cost sales should be excluded from CV profit, either on a mandatory or discretionary basis.

DOC Position: We disagree with MHI that the Department violated the Agreement and U.S. law in soliciting and collecting cost and sales data for each home market sale. There is nothing in the Agreement or the statute which precludes the Department from requesting sales-specific cost and sales data for home market sales, regardless of whether a sales-below-cost investigation had been initiated. In addition, we disagree with MHI that the collection of project-specific home market sales and cost data was an aberration from the Department's normal practice. In this case, the petitioner provided a timely allegation of sales below cost and our review of the respondents' section A questionnaire responses revealed that transaction-specific cost information was readily available and could be provided by the respondents. This being one of the first cases under the new law, we are still developing our practice for computing profit and SG&A in accordance with the new law.

Comment 3 If the Department Must Formally Initiate a Cost Investigation in Order to Disregard Below-Cost Sales: MHI argues that the Department did not act in accordance with the law when it excluded sales below cost as being outside the ordinary course of trade under sections 771(15) and 773(b)(1) of the Act. MHI contends that sales made below cost can be disregarded but that, as a prerequisite, the Department must have reasonable grounds to believe or suspect that below-cost sales have been made. Thus, the Department must formally initiate a cost investigation in order to disregard the below-cost sales, which it did not do in this instant investigation. MHI states that it would be consistent with the SAA and the proposed regulations to include below-cost sales in the calculation of SG&A and profit. MHI maintains that the facts in this investigation are consistent with the recognition by the SAA of those situations where unprofitable sales will be included in the calculation of the antidumping duty margin because, in this investigation, the Department determined that it was unnecessary to initiate and conduct a sales-below-cost inquiry. Also, MHI cites *Federal-Mogul Corporation* v. *United States,* 20 CIT ____, Slip.Op. 96–37 (February 13, 1996)(''*Federal Mogul*''), to support its claim that no home market sales should be excluded, because the burden of presenting evidence of below-cost sales rests on the petitioner, who failed to do so in this case. Absent a formal investigation of sales-below-cost, MHI argues, there is no showing that MHI's home market sales are not in the ordinary course of trade.

The petitioner asserts that MHI has misread *Federal Mogul* in its arguments. First, the petitioner maintains that *Federal Mogul* is of little relevance since it was decided under the former statute and Congress has effectively revised this area of agency practice. The petitioner states that the SAA clearly provides that, in most investigations, profit will be calculated using only above-cost sales. Second, the petitioner maintains that even under the old law, *Federal Mogul* does not support MHI's proposition that the petitioner bears the burden of presenting evidence that below-cost sales are outside of the ordinary course of trade. According to the petitioner, the court's ruling actually said that the reviewing court owed substantial deference to the agency and that, on appeal, the petitioner bore the burden of showing that the agency abused its administrative discretion. The petitioner states that the proposition that the Department unlawfully excluded below-cost home market sales is untenable, because no requirement for a formal initiation of a below-cost sale investigation is found in the new statute. Rather, the petitioner contends, the statute at section 773(b)(1) of the Act provides that the Department need only have ''reasonable grounds to believe or suspect'' that the home market sales of the respondent have been made at prices below the cost of production.

DOC Position: We disagree with MHI. While the Department will typically initiate a sales-below-cost investigation before excluding home market sales as being outside the ordinary course of trade for purposes of calculating profit and SG&A for CV, the unique circumstances in this case required that we perform a below-cost analysis even though the Department elected not to formally initiate a sales-below-cost investigation.

Early on in this investigation it was argued by all parties that we should base NV on CV due to the unique and customized nature of LNPPs. The Department determined that the particular market situation of these highly customized and unique products did not permit proper price-to-price comparisons and, accordingly, we based NV on CV. The petitioner subsequently filed a timely and proper cost allegation which alleged that ''Japanese producers have sold the foreign like product at less than the cost of production in the home market.'' We elected not to formally address petitioner's below-cost allegation because we knew that we were going to base NV on CV for all respondents, and the respondents'' questionnaire responses confirmed that transaction-specific cost data was readily available. Moreover, we did not want to burden respondents with having to respond to the very detailed section D questionnaire for home market sales that a formal below-cost investigation would require. Although, arguably, we should have formally addressed the sales-below-cost allegation, at the time of its filing, we did not foresee the implications a formal initiation of a sales-below-cost investigation would have on the CV profit and SG&A calculations.

In past cases, under the old law, with similar types of products (i.e., large customized products that are manufactured over an extended period of time) in which we automatically based foreign market value (now NV) on CV, the Department relied on the statutory minimum of eight percent for profit. See, *e.g., Preliminary Results of Administrative Review: LPTs from Japan,* 57 FR 23,204 (June 2, 1992); and *Final Determination of Sales at LTFV: MTPs from Japan,* 55 FR 335 (January 4, 1990) (''*MTPs Final Determination (1990)*''). We realized early in this case that in accordance with the new law, we would have to compute actual profit and SG&A as opposed to simply relying on the statutory minimum of eight percent. Accordingly, we requested sales and cost data for each sale in the home market which fell within the purview of this investigation.

Section 773(e)(2)(A) of the Act specifies that SG&A and profit for CV be computed using only those sales of the foreign like product that were made in the ordinary course of trade. We analyzed the contract-specific price and cost information we received from respondents. This information indicated that there were below-cost sales made in the home market, in substantial quantities, and over an extended period of time. Although we did not *formally* initiate a cost investigation under section 773(b) of the Act (despite the fact that a timely allegation had been made by the petitioner based on the respondent's data), the unique cost reporting aspects of this case were such that, in effect, the Department conducted a cost investigation and our analysis revealed evidence that there were home market sales of merchandise within the purview of this investigation which were below cost. Section 771(15) provides that sales and transactions considered outside of the ordinary course of trade include ''among others'' below-cost sales disregarded under section 773(b)(1). The Department interprets this provision to apply to the exclusion of below-cost sales, even if such sales were not formally disregarded pursuant to section 773(b)(1) of the Act.

Comment 4 Each Home Market Sale of a LNPP, Addition, or Component Constitutes a Distinct Model for Purposes of Performing the Cost Test: MHI argues that even if the Department's exclusion of home market sales below cost from its SG&A and profit calculations was permissible, it should not treat the home market sales as distinct models for purposes of performing the cost test. Respondent refers to section 773(b)(1) of the Act that says the Department is required to exclude home market sales below cost if (1) they are made in substantial quantities, (2) over an extended period of time, and (3) at prices which do not permit recovery of costs in a reasonable period of time. MHI also cites section 773(b)(2)(C) of the Act, which states that substantial quantities must represent 20 percent or more of the volume of sales. In undertaking its preliminary analysis, MHI claims that the Department ignored this statutory definition of substantial quantities and automatically applied its model-specific cost test. Moreover, according to MHI, the Department's normal model-specific cost test loses relevancy when NV is based on CV. MHI refers to Policy Bulletin, No. 94.3, ''Disregarding Sales Below Cost-Extended Period of Time'' (March 25, 1994) to explain that the rationale for this test is to ensure that NV is not calculated for a particular pricing comparison by reference to sales made exclusively below cost.

According to TKS, the Department's model-specific COP analysis and its consequential exclusion of below-cost sales from normal value calculations are not in accordance with subsection 773(b), the SAA, and the Department's own interpretation of the statute. TKS argues that the methodology employed by the Department ''practically read the ''substantial quantities'' and cost recovery requirements out of the law.'' Yet TKS also concedes that the inherent physical diversity among LNPPs is such that ''it would be equally improper'' if the Department were to change the definition of model to encompass all home market sales during the POI. TKS maintains that, with a class of products consisting of highly-valued, uniquely customized machines, model-specific analysis is not possible. TKS argues that disregarding sales made at below-cost prices is discretionary because the wording in section 773(b)(1) is that the Department ''may'' disregard sales. TKS concludes that because, in its view, the COP test cannot be conducted on a model-specific basis in this case, the Department should exercise its discretion and not disregard home market sales for normal value.

The petitioner maintains that even if the Department decides that the statute does not require exclusion of below-cost sales, it plainly permits the Department to do so. Assuming *arguendo* that the Department did not investigate below cost sales pursuant to section 773(b)(1) of the Act, the petitioner maintains that it could nonetheless properly exercise its discretion to exclude such sales from its profit calculations under section 771(15).

Concerning the proper definition of a ''model'' in this investigation, the petitioner agrees with the Department's finding that ''each home market sale of an LNPP, addition, or component, constitutes a distinct model for purposes of performing the cost test'' because of the unique nature of the product under investigation. Accordingly, the petitioner supports the use of individual models to determine which home market sales should be excluded from profit and SG&A calculations because they were sold at less than the cost of production. The petitioner maintains that since the Department's model-specific test was not altered when the statute was amended, the Department properly applied its model-specific test in the preliminary determination. The petitioner disagrees with the respondents'' contention that full cost recovery on each sale is unreasonable in a large capital goods industry. The petitioner asserts that, in setting prices, LNPP producers typically perform cost estimates based on the full cost of production with an allowance for profit so as to cover their production costs on every sale. Thus, the petitioner maintains, a model-specific analysis is appropriate.

DOC Position: We disagree with the respondent that the substantial quantities test must be performed on a basis other than a model-specific basis. In past cases, the Department has routinely performed the cost test on a model-specific basis. See, *e.g., Certain Cut-to-Length Carbon Plate from Sweden,* 61 FR 15,772, 15,775 (April 9, 1996) (Comment 5); *Stainless Steel Angle from Japan,* 60 FR 16,608, 16,616 (1995) (Comment 12). As indicated in the SAA, at page 832, the Department will continue to perform the cost test on no wider than a model-specific basis. In this case, each LNPP sale clearly represents its own unique, customized, model of merchandise.

Comment 5 The Department Should Calculate Profit on the Foreign Like

Product: MHI argues that the Department's preliminary analysis calculated SG&A and profit on both LNPP additions and systems in contravention of section 773(e)(2)(A). MHI notes that additions and systems are not equal in commercial value. Thus, MHI argues that if the Department continues its present methodology then it should only calculate SG&A and profit using home market sales of systems which are MHI's foreign like product.

The petitioner objects to MHI's hypothesis that LNPP systems are a separate like product from LNPP additions. According to the petitioner, the Department has determined that a single like product exists which consists of all LNPP systems, press additions, and press components, regardless of state of completion. The petitioner argues that the Department made home market viability and other determinations required by the statute based on this definition, and that changing the like product definition without cause at this late stage of an investigation would involve reassessment of numerous issues which form the foundation of the Department's proceeding. Thus, the petitioner maintains, MHI's suggestion must fail as an argument unsupported by either the record or administrative precedent.

DOC Position: We disagree with MHI that computing a single profit for both additions and systems is in contravention of section 773(e)(2)(A) of the statute, which merely states that CV shall include, *inter alia,* ''actual amounts'' for profits ''in connection with the production and sale of a foreign like product. * * *'' The SAA makes no mention that the profit calculation should consist of different rates for different pools of products within the foreign like product. From early in the investigation we have determined that a single like product exists, and accordingly have computed profit based on all sales of the foreign like product occurring in the ordinary course of trade.

Comment 6 Home Market LNPP Sales Do Not Constitute a Foreign Like Product: TKS maintains that the Department should base its CV profit calculation on either TKS's average LNPP profit or on the company's financial statement. TKS first argues that section 773(e)(2)(A) of the Act is not applicable to the CV profit calculation because the Department determined that TKS's home market LNPPs do not constitute a foreign like product. According to TKS, because the Department determined that TKS's Japanese sales of LNPP systems, additions and components could not be used as the basis for NV due to the particular market situation, the underlying analysis for that determination compels a conclusion that home market LNPPs are not a foreign like product within the meaning of section 771(16) of the Act (19 U.S.C. section 1677(16)). Accordingly, TKS maintains that section 773(e)(2)A) is not the applicable rule for CV profit calculation. TKS cites the Department's November 9, 1995, CV decision memorandum to support its contention that the Department determined that each LNPP sold by TKS in the United States and in Japan is unique and that the models sold in the two markets are not approximately equal in commercial value. Finally, TKS holds that the Department determined that the LNPPs sold in the United States and in Japan are not ''reasonably comparable'' to each other.

TKS also argues that the correct rule for CV profit calculation in this case is found in section 773(e)(2)(B) of the statute, because the Department found that the particular market situation precluded price-to-price comparisons. According to TKS, the SAA requires that the Department utilize section 773(e)(2)(B) in those instances where the method described in section 773(e)(2)(A) cannot be used, either because there are no home market sale of the foreign like product or because all such sales are at below-cost prices.

TKS also argues that if, assuming *arguendo,* TKS's home market LNPP sales constitute a foreign like product, section 773(e)(2)(B) is still the applicable rule for CV profit calculation in this case because TKS's LNPPs are not sold in the ordinary course of trade. According to TKS, the fact that technical specifications are vastly different within the respective groups of components, additions and systems, LNPPs are, *prima facie,* merchandise produced according to unusual product specifications, which should be excluded from analysis according to section 771(15) of the Act.

TKS offers a second subsidiary argument, that if, further assuming *arguendo,* its home market LNPP sales both constitute a foreign like product and are sold in the ordinary course of trade, section 773(e)(2)(B) still controls CV profit calculations where, as here, the Department has determined that the ''particular market situation'' affecting home market sales does not render price-to-price comparisons feasible. TKS maintains that the SAA language does not limit the applicability of section 773(e)(2)(B) to situations where there are no home market sales of the foreign like product or situations where all sales are found to be made at below-cost prices. TKS argues that the applicability is, generally, for all situations where the NVs resulting from the application of section 773(e)(2)(A) would be ''irrational'' and ''unrepresentative.'' TKS argues that because profits are a significant element of price, it would be illogical for the Department to utilize, for CV purposes, the profits of those sales which it rejected for price comparison purposes.

The petitioner believes that TKS's position is wrong because the Department has clearly defined the foreign like product to be LNPP systems, additions and components. The petitioner states that the fact that price-to-price comparisons could not be made does not mean that home market sales are outside the ordinary course of trade. The petitioner supports the Department's analysis that matching sales would require cost adjustments tantamount to computing a CV for each sale. The petitioner maintains that TKS's arguments are inconsistent with the precedents in *MTPs Preliminary Results (1996)* and *LPTs from France* (60 FR 62808, December 7, 1995), wherein the Department rejected price-to-price comparisons and instead used CV. According to the petitioner, in those cases the Department continued to use the home market profit data even though it could not perform price-to-price assessments, thereby negating the idea that the lack of price-to-price comparisons indicate that domestic sales are outside of the ordinary course of trade.

DOC Position: We disagree with TKS that there were no sales of the foreign like product in the home market during the POI. TKS is incorrect to suppose that because we did not find home market sales which provided practicable price-to-price matches, no foreign like product existed. The foreign like product as defined by section 771(16) of the Act, (*i.e.,* sales of LNPP in Japan) did exist, as revealed by our examination of LNPP equipment sold in the home market for purposes of the Department's home market viability test (pursuant to section 773(a)(1)(C) of the Act) as stated in our November 9, 1995, decision memorandum regarding the determination of the appropriate basis for NV. However, the degree of unique customization for customers made the difference-in-merchandise adjustment for product price matching potentially so complex that the use of CV provided a more reliable and administrable methodology for establishing NV. As stated in our November 9, 1995, decision memorandum, the Department declined comparison of products within the same class of products which have such prominent physical dissimilarities as to make comparisons and calculations of adjustments for such physical differences impracticable, pursuant to the ''particular market situation'' provision, section 773(a)(1)(C)(iii) of the Act.

Because we have not determined the absence of the foreign like product in Japan, we disagree with TKS's suggestion that section 773(e)(2)(B) should apply in determining CV profit. The correct statutory provision for CV profit calculations in this instance is section 773(e)(2)(A) and, accordingly, the Department's final margin calculations were formulated under its guidelinesse.

Comment 7 The Department Has Discretion Not to Disregard Below-Cost Sales: TKS maintains that the legislative history of the 1974 Trade Act, as reemphasized in the URAA with respect to section 773(b), shows the Congressional intent that certain types of below-cost sales should not be disregarded for foreign market value (now NV) determinations. According to TKS, this legislative history reveals the intent of Congress that the Department exercise discretion under section 773(b) based upon the ''rationality of exporters pricing practices.'' TKS lists three reasons why the Department should consider the characteristics of the LNPP market and the rationality of the pricing practices of market participants such that it should exercise its discretion not to disregard sales made below cost. First, TKS claims that below-cost sales of LNPPs are not systematic, since they are infrequent transactions for unique, customized products. Second, TKS claims that below-cost sales of LNPPs occur for reasons beyond the producer's control. Third, TKS maintains that even though the producer may sustain losses in isolated sales, the producer usually recovers the losses over a period of three to four years. TKS claims that this is an appropriate case for the Department to exercise its discretion by not disregarding below-cost sales, as this instant case is the first antidumping investigation in which the Department considers the application of section 773(e)(2)(A) in the context of job-order cost accounting.

With respect to the enforcement of the statute, the petitioner's approach is diametrically opposed to that of TKS. The petitioner maintains that, even if the Department decides that the statute does not require exclusion of below-cost sales, it plainly permits the Department to do so. The petitioner therefore urges the Department to use that discretion for the express exclusion of those home market sales below the cost of production.

DOC Position: We disagree with TKS. The circumstances in the instant investigation do not call for the Department to exercise its discretionary authority to include sales made below cost, which were determined to be in substantial quantities, over an extended period of time, and prices which do not permit recovery of costs in a reasonable period of time. We agree with the petitioner's earlier comment that, that even if the statute does not require exclusion of below-cost sales, it plainly permits the Department to do so. If a company's market strategy results in below-cost sales of LNPPs, then a willingness to sell below cost is not negated by the relative infrequency of transactions for unique, customized products. First, the Department does not analyze the intent, *per se*, of the respondent in dumping its products, whether above, at or below cost. Second, even if intent were a factor, we believe TKS's arguments regarding job-order costing are incorrect. The procedure of developing each project during the sales negotiating and pricing process gives LNPP manufacturers every opportunity to recognize that they are concluding transactions that will be below the cost of production. Also, TKS's claim that it recovers its losses from a particular sale over time shows that it is necessary to analyze each sale as its own model. If costs cannot be recovered for each sale, which takes several years to conclude in delivery and installation, then that sale should be excluded. If TKS is willing to sell below cost for a particular sale, hoping to recover costs through other projects, whether subsequent sales of press additions and/or through servicing contracts, then it has, in effect, purposely used a transaction as a loss-leader, to the point of selling below cost.

If we examine past circumstances where the Department has exercised its discretionary powers, and investigated the issue, not in terms of intent, but in terms of unique market conditions for particular products, we must still conclude that TKS has no basis to claim that below-cost sales of LNPPs occur for reasons beyond the producer's control. An example of sales where the Department has historically exercised its discretion not to exclude certain sales below cost occurs in the case of perishable agricultural products. *See, e.g., Final Results of Administrative Review: Certain Fresh-Cut Flowers from Mexico,* 56 FR 1794 (January 17, 1991). Flowers, fruits and vegetables are raised and sold en-masse, are subject to various conditions of weather, have a short shelf-life, and are often sold on a consignment basis. Thus, the Department has considered such products subject to forces beyond the producer's control which may cause occasional sales below cost. By comparison, LNPPs are precisely the appropriate case for the Department to exercise its discretion to disregard the below-cost sales in the context of job-order cost accounting, for in the context of this industry, the foreign like product is as removed as possible from the forces affecting perishable products.

Comment 8 Circumstance of Sale adjustment for Credit Expenses: The petitioner argues that the Department should not have deducted credit expenses from MHI's and TKS's CV because CV did not include credit expenses in its original composition. According to its analysis of the preliminary determination calculations, the Department inappropriately failed to include home market credit expenses when calculating CV. Citing *Final Determination of Sales at LTFV: Certain Granite Products from Italy,* 53 FR 27187, 27191 (July 19, 1988), *Final Determination of Sales at LTFV: PET Film, Sheet and Strip from the Republic of Korea,* 56 FR 16305, 16307 (April 22, 1991); *Final Results of Administrative Review: Roller Chain, Other than Bicycle, from Japan,* 55 FR 42602, 42606 (October 22, 1990); and *Preliminary Results of Administrative Review: Certain Fresh Cut Flowers from Colombia,* 60 FR 30270, 30274 (June 8, 1995), the petitioner argues the Department's standard practice requires the addition of imputed credit to CV. The petitioner maintains that in the instant investigation, when the Department made a circumstance of sale adjustment by subtracting home market credit expenses from CV, it removed an expense from a price that did not include that expense in the first place.

MHI argues that the Department properly excluded home market credit expenses in its CV calculations. MHI further argues that the Department has recently changed its practice as found in *Final Determination of Sales at LTFV: Certain Pasta from Italy,* 61FR 30326, at Comment 14 (June 14, 1996) (''*Pasta*''). MHI explains that the Department justified its change in practice by citing sections 773(b)(3)(B) and 773(e)(2)(A) of the Act, which direct the Department to calculate SG&A, including interest expense, based upon actual experience of the company. MHI contends that because the Act defines the calculation of general expenses for COP and CV in the same way, the Department stated that it would be inappropriate to calculate interest expense differently for COP and CV. Furthermore, MHI contends that because the Department computes profit as the ratio of profit earned on home market sales to the cost of production, applying the ratio to a COP inclusive of imputed credit would be mathematically incorrect.

TKS maintains that the petitioner's arguments are moot because they rely solely on the Department's practice prior to the 1994 amendments to the Act. TKS argues that the petitioner's position would only have validity if applied to cases investigated under the old law. According to TKS, the Department'' treatment of imputed credit is correctly based on the current section 773(e) of the Act, which requires that the ''actual general expenses'' be added to CV. Since the current Act now provides that general expenses added to CV be limited to actual expenses, TKS maintains that imputed credit cannot be utilized, as it is not an actual expense, but a measure of opportunity cost. TKS cites to the basic rationale for the calculation of CV outlined in *Pasta,* to support its contention that only actual expenses will be applied to CV.

DOC Position: We agree with respondents. Section 773(e)(2)(A) of the Act requires that the Department include in CV the actual amount of SG&A expenses (including net interest expense) incurred by the exporter or producer. Imputed credit is, by its nature, not an actual expense. Therefore, we did not include imputed credit in the CV calculation for the final determination.

Comment 9: Headcount Methodology vs. CGS Methodology: TKS and MHI offer similar arguments concerning the proper methodology for allocation of general and administrative expenses. Below, Part A summarizes the arguments concerning TKS USA's operations and Part B the arguments concerning MLP's operations.

A. Allocation of TKS USA's Office Administration Expenses

TKS objects to the allocation of TKS USA's office administration expenses on the basis of total CGS. TKS states that these expenses should be allocated on the basis of headcount, which impacts the calculation of both further manufacturing costs and reported selling expenses. TKS maintains that this is required because TKS USA's commercial activities include merchandise other than LNPP, namely (1) Sale of spare parts; (2) the conduct of press audits; (3) the sale and production of control systems; (4) the sale and production of digital ink pumps; and (5) independent maintenance/technical work, which are each conducted by a separate division with specific personnel assigned to each division.

TKS maintains that the Department's allocation of SG&A expenses ignores the diversity of activities at TKS USA and assigns an inordinate share of the expenses to press sales. Although TKS admits that a CGS-based allocation is common Department practice, it claims that such practice is not mandated by either the Act or the Department's regulations. TKS maintains that for the final determination, the Department should exercise its discretion and utilize TKS's proposed headcount methodology to allocate administrative expenses.

TKS maintains that the Department should give consideration to the fact that the headcount methodology is utilized internally by TKS USA in the normal course of business. Thus, TKS argues, to the extent that TKS USA has any historical practice employed previous to the investigation, it involves the headcount methodology.

Finally, TKS cites to the Department's *Final Results of Antidumping Duty Administrative Review: DRAMS of One Megabit or Above from the Republic of Korea* (61 FR 20216, 20217, May 6, 1996), to support its contention that, just as the Department affirms that indirect selling expense allocations are not inflexibly limited to a value-based methodology, the Department should also recognize that G&A expenses should not be limited to a value-based approach.

The petitioner argues that TKS's claim that it allocates G&A expenses based on headcount in the ordinary course of business to each of its separate divisions appears to contradict its submissions. The petitioner cites to TKS's section A response, where it stated that TKS USA ''does not maintain any internal financial statements of profit and loss statements for specific product lines, or specific internal business units.'' The petitioner also notes that TKS seems inconsistent in concluding that allocating TKS USA's G&A costs based on CGS is distortive in light of its position in favor of a value-based allocation of product-specific factory overhead and engineering costs. Finally, the petitioner juxtaposes TKS's reasoning with that of MRD, a respondent in the companion German LNPP investigation, who re-allocated G&A expenses on a value basis while citing to the Department's *Final Determination: Certain Carbon and Alloy Steel Wire Rod from Canada,* 59 FR 18791, 18795 (April 20, 1994) (''*Carbon and Alloy Steel Wire Rod*)'', MRD recognized the ''subjective allocations'' which management often makes in allocating G&A using bases other than CGS.

B. MHI's Indirect Selling and G&A Expense Allocation

MHI argues that the common G&A portion of MLP's indirect selling expenses should be allocated to LNPPs based on the number of employees involved in LNPP operations. MHI states that allocating common G&A by LNPP sales value does not accurately reflect the common G&A expenses incurred for LNPP sales activity. According to MHI, a headcount methodology of allocation reflects the greater importance and number of resources required to support its commercial press sales at MLP. MHI explains that MLP's staff must spend more time attending to issues related to commercial press sales activities than a sales-based allocation would reflect (*e.g.*, personnel in MLP's accounting and purchasing sections spend significantly more time issuing invoices, monitoring sales accounts receivable, purchasing parts, and recording expenses related to commercial press operations than they do to LNPP operations). MLP explains that it provides financing services solely for commercial press sales. MHI claims that while a headcount methodology would still allocate too much common expense to LNPPs, such an allocation would nonetheless be more accurate than allocation by sales value. MHI states that its existing base of commercial press customers is vastly larger than the LNPP base and that the Department's methodology fails to capture the inherent slant of general expenses toward the servicing and maintenance of MLP's existing commercial press sales. MHI states that a sales-based allocation is a reasonable measure of cost when the only activity is selling. MHI also argues that the Department should consider that headcount methods are employed by MHI in the normal course of business, as would be expected, since sales-based allocations of indirect expenses are uncommon in normal commercial systems.

The petitioner argues that the Department's long-standing policy is to allocate U.S. indirect selling expenses on the basis of sales value, citing *Final Determination of Sales at LTFV: Certain Internal-Combustion, Industrial Forklift Trucks From Japan*, 53 FR 12552, 12577 (April 15, 1988) and the Department's questionnaire. The petitioner notes that the Department rejected the headcount allocation method at the preliminary determination and applied the standard allocation methodology. The petitioner argues that MHI's use of headcount to allocate these expenses was created for purposes of this investigation and asserts that the Department has rejected such subjective management allocations of U.S. affiliate G&A expenses in prior cases, even where such methods were used in the normal course of business (citing the German companion case to this investigation). The petitioner takes issue with MHI's suggestion that indirect selling expenses are incurred only as a function of the number of employees directly involved in sales and servicing and states that this assertion ignores the fact that companies expend more common effort (*e.g.*, senior management time, travel expenses, and entertainment) to win large-value sales.

DOC Position: The Department disagrees with TKS's contention that TKS USA's office administration expenses should be allocated to its LNPP operations based on relative headcounts.

Similarly, the Department disagrees with MHI's contention that MLP's common G&A expenses should be allocated to its LNPP and commercial press operations based on relative headcount.

As set forth in *Carbon and Alloy Steel Wire Rod*, our normal methodology for allocating G&A expenses to different operations is based on CGS. Our methodology recognizes the fact that the G&A expense category consists of a wide range of different types of costs which are so unrelated or indirectly related to the immediate production process that any allocation based on a single factor (*e.g.*, headcount) is purely speculative. The Department's normal method for allocating G&A costs based on CGS takes into account all production factors (*i.e.*, materials, labor, and overhead) rather than a single arbitrarily chosen factor. Absent evidence that our normal G&A allocation method unreasonably states G&A costs, we continued to allocate such costs for the final determination based on CGS.

Further, because we have treated the common G&A expenses in question as part of total G&A rather than as part of our calculation of total indirect selling expenses, the allocation methodology issue for the common G&A expenses impacts the calculation of the G&A rate and has no effect on the indirect selling expense calculations.

TKS-Specific Comments

Sales Issues

Comment 1 Deduction of U.S. Indirect Selling Expenses from CEP: As noted in detail in the *Common Issues* section in the companion German notice, the petitioner maintains that the Department failed to deduct many of TKS's U.S. indirect selling expenses because they were recorded in the accounts of the foreign LNPP manufacturer. According to the petitioner, the Department should deduct all indirect selling expenses incurred on behalf of U.S. sales, irrespective of the location at which the expenses are actually incurred or the location of the company in whose books the expenses are recorded.

As noted in the *General Comments* Section, above, TKS maintains that the Department has adopted a new methodology for calculating indirect selling expenses pursuant to the enactment of the URAA which make petitioner's arguments moot. TKS also makes the following arguments specific to its questionnaire response.

TKS disagrees with the assertion that it was unwilling to accurately segregate expenses related to Japanese versus U.S. economic activity. TKS maintains that the record of the investigation demonstrates that it properly reported expenses and that there is no indication of unwillingness to comply with Department instruction to separately report expenses; TKS cites to the verification report to bolster its conclusion that the reported indirect expenses incurred in Japan on behalf of sales, including exports, do not contain U.S. economic activity.

Lastly, TKS argues that if the Department does deduct from CEP indirect selling expenses incurred in Japan on behalf of U.S. sales, then the amount reported by TKS is the correct amount. TKS argues that its methodology, whereby it divided total indirect selling expenses incurred in Japan by the company headquarters, exclusive of branch office expenses, by the total transfer price value of all sales, is methodologically sound. It maintains that the expenses reported are in support of TKS USA and related to intra-company communications. Furthermore, TKS argues that since it is the sales price between TKS Ltd. and TKS USA which is reported in the company's financial statements, TKS should allocate total selling expenses incurred by the Tokyo office over the total sales as shown in the financial statements. TKS maintains that if the DOC does deduct indirect selling expenses associated with U.S. sales but incurred in Japan, then it should apply this ratio to the transfer price of each U.S. sale. TKS maintains that deriving a factor based on total sales revenue and then applying that ratio to each transaction's gross sales value would distort the results for two reasons: (1) The U.S. subsidiary is involved in further manufacturing for some sales, so that there can be a significant difference between transfer price and sales price; and (2) theoretically, the Department's proposed calculation method should not result in significant differences in the final calculated per-unit amount of U.S. selling expenses.

DOC Position: We disagree with respondent's arguments. Since TKS calculated a universal indirect selling expense factor, including therein all expenses incurred in Japan associated with U.S. sales (and even included trade show expenses which were physically incurred in the U.S.), such expenses should be deducted from CEP, in keeping with the Department's definition of U.S. indirect selling expenses in *Final Determination of Sales at LTFV: Certain Pasta from Italy*, 61 FR 303256 (June 14, 1996).

With respect to the numerator of TKS's reported indirect selling expense factor, TKS must report all home market expenses since it is including all home market sales in its denominator. TKS's argument in its submissions that the branch offices have nothing to do with export sales is besides the point—the sales revenues included in the denominator have nothing to do with export sales either. The fact is that TKS has calculated a universal indirect selling expense factor for all sales in all markets, not a factor pertaining exclusively to TKS USA sales, not even exclusively to export sales.

With respect to the denominator, TKS is mixing apples and oranges in its calculations. The portion of its denominator for home market and third-country revenue represents gross sales values; it is only the U.S. sales value which represents TKS Ltd.'s sales to a subsidiary. As TKS reported, and the Department verified, TKS Ltd. sold direct to end-users and, on occasion, direct to unaffiliated middlemen such as leasing companies in the home market. In fact, it is this absence of a Japanese sales subsidiary which is part of TKS's arguments for a CEP offset based on a claimed single level of trade in Japan different from that in the United States. The indirect selling expenses which are incurred for all sales should be allocated over the sales value of all sales, not over a mix of domestic sales value, third-country sales value and U.S. transfer prices.

It is because TKS's original calculations are such a hybrid that the correction to total revenue in the denominator slightly decreases the indirect selling expense ratio, whereas the proper application to gross sales value increase what TKS called the ''per-unit'' amount. TKS, arithmetically speaking, was slightly overstating the size of the expense factor, but in applying that factor to non-arm's-length transfer prices, was significantly understating the per-press sales expenses. Even if all of the denominator were comprised of transfer price values, it would not necessarily be allowable as an allocation basis. TKS points out that the transfer-prices and sales prices differ greatly, which only underscores why the Department is reluctant to utilize in margin calculations prices that, by definition, were not set at arm's length. There may be specific, compelling circumstances whereby the Department exercises its discretion to rely on transfer prices to a limited degree. For example, for MAN Roland Druckmaschinen AG, a respondent in the companion investigation of LNPPs from Germany, the Department applied the indirect selling expense factor to the transfer price for certain sales which consisted only of parts and subcomponents which had no separate contract value. See *Comment 1* of the ''Common Issues'' section of the Federal Register notice for LNPPs from Germany.

We have recalculated the universal indirect selling expense accordingly and applied it to the gross sales value of U.S. sales.

Comment 2 Reporting of All Selling Expenses Related to U.S. Economic Activity: Petitioner maintains that the Department discovered during its Japan verification that TKS incurred selling expenses related to U.S. economic activity, but failed to include the expenses in its reported U.S. indirect selling expenses. The petitioner points to the verification report stating that TKS splits the annual U.S. trade show expenses between TKS USA and TKS Ltd. Japan. Because the trade show is economic activity occurring in the United States, the petitioners argue that TKS should have reported the entire trade show expense as a U.S. selling expense rather than including a substantial portion of the expenses as part of general indirect selling expenses incurred in Japan. Further, the petitioner states that the practice of charging back expenses for U.S. economic activity occurred for numerous other expenses, including testing and training costs. The petitioner points out that since the indirect selling expenses of TKS Ltd. Japan were not subtracted from the U.S. price in the preliminary determination, TKS's charge-back procedures had the effect of overstating the U.S. price in the margin calculations. The petitioner argues that, even if the Department rejects the general argument that all indirect selling expenses supporting U.S. sales, including those incurred as well as recorded in Japan, be deducted from CEP, the Department should at a minimum deduct the Japan indirect selling expenses reported by TKS because of the inclusion of definite elements of U.S. economic activity.

DOC Position: We agree in general with petitioner's argument. We have revised our general treatment of indirect selling expenses incurred on behalf of U.S. sales and recorded by the parent company in this final determination. As detailed in Common Issues comment 1, the Department is deducting from CEP indirect selling expenses associated with U.S. economic activity. We thus capture the expenses which pertain to economic activity in the United States which had not been deducted from CEP in the preliminary determination.

Comment 3 Purchase of Insurance from an Affiliate: Petitioner posits that the information collected at verification supports its conclusion that the insurance relationship between TKS and Yasuda Fire and Marine Insurance Ltd. (''Yasuda)'', is not at arm's length. Petitioner points to the fact that the loss/premium ratio for covering TKS Ltd., even before the Spokane Spokesman Review accidents, had been significantly higher than the ratio which Yasuda normally establishes in creating a policy. These accidents, petitioner states, increased the loss premium ratio even more. Accordingly, the petitioner advocates that the Department increase TKS's reported insurance costs by the factor resulting from the division of the actual loss/premium ratio by the expected loss/premium ratio. The petitioner also asks the Department to re-examine whether any costs related to trucking accidents in the U.S. not covered by insurance should be considered as part of the constructed value of the Spokane Spokesman Review sale.

TKS rejects the petitioner's argument that the Yasuda premiums are not at arm's length and offers the following in support of its position. According to TKS, it requested Yasuda to provide documentation with which the Department could compare TKS premiums to those paid by unaffiliated insurance customers but that Yasuda refused. Since the interest ownership is by Yasuda in TKS, and not vice versa, TKS explains that it had no means of compelling Yasuda to provide the information. TKS cites Article 16 of the Japanese law concerning the Regulation of Insurance offerings which ''* * * generally prohibits extension of preferential treatment for specific clients,'' to support the contention that, legally, Yasuda must set premiums at arm's-length levels.

With respect to the petitioner's request that the Department increase reported insurance costs based on a comparison of Yasuda's preferred premium/loss ratio to that arising out of its actual experience with TKS, the respondent offers several challenges. First, TKS maintains that Yasuda has only identified a ''preferred'' ratio for return on its business efforts, and that there is no evidence on the record that the ratio is anything other than that. According to TKS, absent any information showing how often this ratio is actually achieved in actual business practice, the petitioner cannot draw conclusions about what occurs among unaffiliated customers of Yasuda. Second, TKS argues that the ratio is only a snapshot in time, immediately after a major loss and before the next premium renewal period. Third, TKS argues that petitioner's allegation that the loss premium ratio excludes the Spokane Spokesman Review loss is not supported by evidence, as Yasuda's letter clearly states that the reported loss/premium ratio covers TKS's exported cargos for the period from April 1990 through January 1996. TKS states that petitioner has not provided evidence that the loss amounts factored in the loss/premium ratio are based on claims rather than on insurance-adjuster estimated loss amounts.

Lastly, TKS maintains that, although it believes that the issue of the extent to which TKS's insurance actually covered the costs resulting from transit accidents is moot by virtue of the extraordinary nature of the costs, it must point out that petitioner is factually incorrect in arguing that the actual insurance settlement received in March 1996 did not fully cover the costs incurred in producing and transporting the replacement equipment.

DOC Position: We agree with the petitioner, in part. We agree that TKS was unable to provide sufficient evidence that the Yasuda insurance expenses reported were at arm's length. We disagree with petitioner regarding the relationship between insurance coverage and the treatment of any extraordinary expenses incurred due to in-transit accidents for the Spokane Spokesman Review sale; whether or not such expenses were covered by Yasuda is not germane.

We disagree with TKS's contention that the existence of article 16 of Japanese law automatically means that Yasuda has complied with it. The only benchmark which TKS and Yasuda provided was Yasuda's statement of its expected loss/premium ratio, which was significantly less than that which Yasuda experienced with TKS. This benchmark shows that the historical experience of Yasuda with TKS in terms of the relationship between the losses claimed by, and premiums paid by, TKS, has been significantly different from the loss/premium guidelines Yasuda claims to adhere to in its normal business practices. We also disagree with TKS that the policy ratio in Yasuda's letter reflects the claims paid on the Spokane accidents; our examination of the values involved show this to be arithmetically unsupportable, as detailed in the TKS July 15, 1996, calculation memorandum. Nevertheless, we have not increased that ratio to include the petitioner's adjustment which imputes an additional claim amount for the Spokane accidents, as the potential effect of those accidents may (and to the degree there is any even partial objective nature to the Yasuda-TKS relationship *should*) increase future premiums. Since the expenses we are using in our calculations are those for the historical premiums paid during the POI, the ratio we used is based on loss/premium ratio for the period covering TKS sales as noted in the documentation reviewed at verification. We have therefore increased TKS's reported insurance costs by the factor resulting from the division of the actual loss/premium ratio by the expected loss/premium ratio as shown in the Yasuda documentation. With respect to question of how the insurance coverage of expenses incurred due to accidents which befell the trucking of LNPP components for the Spokane Spokesman Review sale should or should not affect the final production expenses, see TKS Comment 8.

Comment 4 TKS's Request for Exclusion of a Dallas Morning News Sale: TKS argues that the Department should exclude one of the sales made to the Dallas Morning News (''DMN)'' from its margin calculations. TKS argues that, while the Department is correct to state that the statutory reference to the exclusions of sales outside the ordinary course of trade from the dumping margin calculation does not, *per se*, pertain to U.S. sales, the Department may exercise its discretion to do so if the exclusion of a particular U.S. sale would prevent ''unfair results.'' TKS then reviews the history of the manufacturing of the sale in question, which was comprised of parts sourced from model LNPP units exhibited in 1989, 1990, 1991 and 1993. TKS maintains that it offered a greatly reduced price for this unit due to its belief that the machine had significantly lost its value from the repeated cannibalization of parts and frequent trade show presentations.

TKS argues that the Department should exercise its discretion to exclude sales from the dumping analysis if the sales are not representative of the foreign producer's selling practices in the U.S. market. TKS cites the *Final Results of Administrative Review: Fresh Cut Roses from Columbia*, (60 FR 6980, 7004, February 6, 1995) (''*Roses from Colombia*'') to support its contention that the Department can and has excluded U.S. sales when they ''are clearly atypical and not part of the respondent's ordinary business practices, *e.g.*, sample sales.'' TKS then cites to *IPSCO, Inc. et al.* v. *United States*, 687 F. Supp. 633,642 (CIT 1988) where the court asked the Department to clarify the circumstances under which it would consider exclusion of U.S. sales. According to TKS, on remand, the Department stated that it could exclude certain U.S. sales from the margin analysis where such sales (1) are not representative of the seller's behavior, and (2) are so small that they would have an insignificant effect on the margin. TKS maintains the DMN sale in question is unlike any of the other sales reported, as no other product was produced from trade show models over an eight-year period of intermittent production processes and multiple episodes of intercontinental transportation. TKS buttresses its argument based on the percentage, by value, of total U.S. sales which this particular DMN sale represents (which number is proprietary). TKS states that this value is so small that exclusion of the sale from the dumping margin analysis would not impede the Department's calculations. TKS cites to *American Permac, Inc.* v. *United States*, 783 F. Supp. 1421 1424 (1992) wherein the CIT stated that ''whether sales are in or out of the ordinary course of trade is not the determinative factor on the U.S. sales side of the equation. Fairness, distortion, representativeness are the issues to be examined.'' Finally, TKS disagrees with the Department's preliminary conclusion that the pricing of this DMN sale represented a concessionary price set as an inducement for other sales to the same customer, since TKS had one sale to the DMN prior to the transaction in question.

The petitioner maintains that the Department fully reviewed this issue at the preliminary determination and that TKS has presented no new factual information or argument since the preliminary determination which would change the Department's conclusion. The petitioner maintains that TKS is incorrect in characterizing the DMN sale in question as being the only sale involving a press which was displayed at a trade show, as a later DMN sale also involved a press shown at such an event. The petitioner also maintains that TKS routinely uses parts from inventory in the construction of presses, so that the fact that TKS used inventoried parts for this sale is not indicative of its alleged ''special'' nature. The petitioner characterizes this sale as a loss leader sale, stating that this DMN sale ''was at a very low price because TKS knew that the DMN would soon be in the market for more press additions.''

DOC Position: We disagree with TKS. While the Department has the discretion to exclude some types of U.S. sales when made in insignificant quantities, we do not believe that it would be appropriate to exclude this particular sale. In cases such as *Roses from Colombia* we excluded sample sales and in the *Final Determination of Sales at LTFV: Coated Groundwood Paper from Finland*, 56 FR 56363 (November 4, 1991), (''*Groundwood Paper*'') we excluded U.S. trial sales and sales of damaged merchandise, where such sales were made in small quantities. In those cases, the transactions involved stood by themselves; that is, they were of commodity products which were not directly related to other sales. For example, in the case of *Groundwood Paper*, a printer would never be bound to a paper supplier just because it tried a free roll of normal quality paper, nor would a producer gain any leverage because it found a buyer with a unique application for damaged rolls of paper. Sales of LNPP, however, are of expensive, customized capital equipment which actually change the nature of the printer's operations. In this specific case, in light of the duration of relations between TKS and the DMN, one can reasonably interpret this sale as part of an over-arching marketing strategy vis-a-vis a long-term business relationship with the DMN, i.e., as a loss leader sale.

In this investigation we are reviewing a very small number of large-value contracts whose fulfilment as transactions spans several years. The Department's discretion to exclude sales must take into account the fact that there is such a small pool of sales which are available for analysis. Because the Department is not convinced that the DMN sale in question was so unusual that it should be disregarded, we are including this sale in our final analysis, and are using the actual costs which were reported in the CV exhibits of TKS's January 18, 1996, supplemental submission, inclusive of any modifications arising from verification. The parts which were sourced from units existing in TKS's inventory were not used parts and should be included in those actual costs.

Comment 5 U.S. Direct Expenses for the Dow Jones Sale: TKS maintains that the terms of sale for the Dow Jones sale were such that the customer, and not TKS, was responsible for transporting the merchandise from the U.S. port to the customer sites, and that the customer independently arranged for the installation of the press additions. TKS objects to the Department's preliminary determination that the number of hours spent on testing and training by TKS personnel warranted the classification of these expenses as further manufacturing costs. TKS maintains that the quantity of time spent on testing and training is not the proper measure to determine such a classification, and instead proposes that the terms of sale and nature of the work performed by TKS should govern. TKS states that at the initial stages of the investigation, both the petitioner and the Department appeared to consider installation and testing and training as selling or movement expenses. TKS states that it ''does not necessarily agree'' with the Department's preliminary analysis that the size of the machinery and complexity of the work compel a classification of installation as further manufacturing. Nevertheless, even assuming that this conclusion was valid, TKS argues that the Department's reasoning does not apply to the specific services performed by TKS for the Dow Jones sale because all manufacturing covered under the contract was completed prior to the importation of the merchandise. Accordingly, TKS describes the services as being the type of work which fits the definition of post-production technical services expenses. TKS points to its accounting records, whose nomenclature assigns the title ''warranty jobs'' in order to support its contention that any technical modifications required during installation do not represent further manufacturing and assembly. While TKS does not deny that the testing operations were complicated since LNPP equipment is itself complex, it does not believe this is sufficient grounds for characterizing the testing and training expenses reported as further-manufacturing costs. TKS states that such activity clearly did not involve an extension of factory work, but only the routine post-delivery technical service required by high-priced, highly-engineered machinery.

The petitioner maintains that TKS's argument is incorrect because the issue of when title transfers is not relevant to the expense classification issue. According to the petitioner, all those expenses which are correctly treated as further manufacturing—installation supervision as well as testing and training, occur after title is transferred. The petitioner also maintains that since TKS classified the Dow Jones sale as a further-manufactured transaction, all of the expenses, (including testing and training if treated as direct selling expenses), and the associated CEP profit would be deducted from the U.S. price.

DOC Position: We disagree with TKS. TKS's argument is incorrect because the issue of when title transfers is not relevant to the expense classification issue. The Department must examine whether or not a party incurs costs and the nature of those costs. Whether a manufacturer delivers goods CIF duty paid U.S. port, delivered, FOB factory gate, or any other delivery designation only designates which movement charges the manufacturer is responsible for. As noted in the Department's general comment section, LNPP installation is not being treated as a movement expense. All those expenses incurred by TKS which we have treated as further manufacturing, *i.e.*, installation supervision as well as the combined testing and training expenses, occur after title transferred. The Department does not have, as TKS implies, a policy whereby direct selling expenses are defined as being incurred after title passes. For example in *Preliminary Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom*, 60 FR 22045 (May 4, 1995), we treated pre-sale warehousing expenses as direct selling expenses because the producer had a general agreement with its U.S. customer to store subject merchandise; in that case we treated the warehousing as a direct selling expense even though the expenses was incurred before title passed to the customer. .We note here that we would not have treated training as part of total installation activities, but since TKS could not report testing separately from training expenses, we treated the combined value of the two as part of total further-manufacturing.

Comment 6 Exchange Rate for the Spokesman Review Sale: TKS maintains that the Department incorrectly utilized the daily rate as published by the Federal Reserve Board in converting values from yen to dollar amounts for the Spokesman Review sale. According to TKS, the daily rate fluctuated from the benchmark rate by more than 2.25 percent, so that, in accordance with section 773A(a) of the Act, the benchmark rate should be used for this transaction.

DOC Position: We agree with TKS. At the preliminary determination, the Department inadvertently utilized the daily exchange rate for the Spokesman Review sale, whereas, due to the degree of fluctuation experienced on that day, the benchmark rate is the correct exchange rate. We have utilized the benchmark rate for purposes of the final determination.

Comment 7 TKS's May 31, 1996, Submission of Corrected Sales, CV and FM data: The petitioner maintains that there are a series of corrections which TKS failed to include in its May 31, 1996, submission of revised sales, CV, and FM databases. According to the petitioner, TKS failed to make numerous corrections based on the Department's preliminary determination. Further, petitioner disagrees with the argument filed by TKS on May 31, 1996, that if the Department uses a five-year average TKS USA indirect selling expenses ratio, then the Department cannot allocate G&A expenses based on the cost of sales without overstating indirect selling expenses.

TKS contends that its May 31, 1996, submission was filed in direct response to the Department's May 22, 1996, letter instructing it to ''incorporate all corrections of factual information which result from the verification procedure, both those which TKS identified prior to the commencement of verification and those noted during verification.'' TKS maintains that it was not instructed to make the changes which the Department made at the preliminary determination, as these involve methodological issues which TKS has not conceded for purposes of the final determination. As to the calculation of TKS USA indirect selling expenses, TKS argues that its submission was timely and that the arguments rested on data provided in verification exhibit 27 to the U.S. sales verification report.

DOC Position: We agree with petitioner that not all methodological corrections necessary for the final margin calculation are reflected in the data submitted on May 31, 1996, by TKS. We have made, therefore, all necessary corrections and methodological adjustments to the data reported on May 31, 1996, to reflect the policies set forth in this final determination of sales at less than fair value. With respect to the issue concerning TKS USA indirect selling expenses and G&A allocation, we have modified the calculation of the G&A allocation to further manufacturing thereby eliminating any possible double-counting with respect to the calculation of TKS USA indirect selling expenses. Accordingly, we are applying the corrected ratio established in the TKS USA verification report.

Cost Issues

Comment 8 Treatment of Costs Due to Delivery Accidents: The petitioner maintains that the Department was incorrect in not including in the CV of the Spokane Spokesman Review sale the additional incidental expenses which were incurred because of accidents damaging portions of LNPP towers en route to the customer site, if those costs were not covered by insurance. The petitioner does not agree with the Department's application of the provision of the SAA which supports the exclusion of costs incurred due to unforeseen events. In its preliminary determination, the Department concluded that TKS had general knowledge of the possibility of accidents, but that any specific accident was an unforeseen event. The petitioner argues that a respondent, in its decisions on how to pack and ship LNPPs, its selection of vendors, routes, timetables and insurers, knowingly increases or decreases risks for the particular transactions affected. According to petitioner's reasoning, if certain costs are incurred which are not covered by insurance, this situation arises from multiple factors which resulted from the respondent's business practices. Thus, petitioner argues, the resulting costs are not truly ''unforseen'' and should be included in CV. Petitioner presents several hypothetical situations in which costs increase due to events for which a producer cannot have perfect foreknowledge, but which traditionally have been included as CV.

TKS maintains that petitioner is wrong to claim that specific accidents, one of which resulted in a truck driver's death, were foreseeable and ordinary in nature. According to TKS, the Department's preliminary determination was correct in that it followed a two-part test for determining if costs are sufficiently extraordinary to merit exclusion from the margin calculations. TKS states that under the test used in the remand following the CIT's decision in *Floral Trade Council of Davis California* v. *U.S.*, Slip Op. 92–213, 16 C.I.T. 1014 (December 1, 1992), an extraordinary expense must be: (1) Infrequent in occurrence and (2) unusual in nature. According to TKS, the Department applied this test in the *Final Determination of Sales at LTFV: Fresh Cut Roses from Ecuador*, 60 FR 7019, (February 6, 1995), where the Department rejected a petitioner's arguments that certain losses due to windstorms were foreseeable. After reviewing all incidents of accidents in TKS's history of trucking presses, wherein less than one in three hundred U.S. shipments involved an accident, TKS maintains that the accidents which befell delivery of the Spokane Spokesman Review press additions were similar to phenomena like windstorms, and other events which the Department has previously classified as unforeseeable, infrequent, and hence extraordinary events.

DOC Position: As in the preliminary determination, the Department maintains that the additional expenses stemming from the accidents constitute, in the words of the SAA at page 162 ''an unforeseen disruption in production that occurs which is beyond the management's control.'' See Memorandum from the Team regarding Exclusion of Two Sales, February 23, 1996. As such, when an unforeseen disruption in production occurs which is beyond the management's control, the Department will continue its current practice of using the original costs incurred for production prior to the unforeseen event. Therefore, for purposes of the final determination, we did not include any of the additional expenses incurred as a result of the accidents, irrespective of insurance coverage, in the CV for this sale.

Comment 9 COMAR/Front Page Installation's Reported Costs: The petitioner alleges that TKS understated the costs incurred by its affiliate COMAR/Front Page Installations (''COMAR)''. The petitioner maintains that TKS reported costs for the installation of one of the DMN sales using an indirect overhead rate, inclusive of G&A, which was significantly lower than that contained in COMAR's financial statements. The petitioner objects to TKS's failure to reconcile the reported indirect overhead expenses with those recorded in COMAR's financial statements, despite instructions from the Department to do so. Furthermore, the petitioner questions COMAR's offset to actual production costs for interest revenue, which the petitioner claims is contrary to the Department's long-standing practice. For purposes of the final determination, the petitioner maintains that the Department should revise COMAR's submitted indirect overhead costs based on the rate reflected in its financial statements, and that the Department should disregard COMAR's negative interest expenses.

TKS argues that the reported indirect overhead costs are based on the overhead expenses incurred in the months in which production took place and that documentation reviewed at verification both supports TKS's allocation methodology and reconciles to the company's financial statements. TKS concludes that petitioner's argument is without basis, and that it is unnecessary and unwarranted to adjust the reported costs, particularly given the relative insignificance of the costs to the total price.

TKS also rejects the petitioner's argument to exclude the reported adjustment for interest income from the reported COMAR costs. TKS maintains that the petitioner not only failed to cite any basis for its position, but also ignored the facts in this case warranting the adjustment. TKS argues that while it is true that COMAR does not incur any interest expense, it is not true that there are no interest expenses added to the further-manufacturing costs. According to TKS, the reported further manufacturing costs include interest expense computed as the sum of the TKS consolidated interest rate factor and the total further manufacturing costs, which include those incurred by COMAR.

DOC Position: We agree with TKS in part. Contrary to petitioner's assertions, the Department was able to verify that TKS's submitted indirect overhead costs reconcile to those reported in COMAR's financial statements. COMAR does not ordinarily assign indirect overhead costs to each of its jobs. In order to submit a fully absorbed cost of production to the Department, TKS developed what it characterized as an indirect overhead allocation rate. TKS allocated indirect overhead costs to each job on the basis of the ratio of indirect costs to direct costs during those months production occurred. The Department considers TKS's method of allocating indirect costs as a percentage of direct cost reasonable. Accordingly, no adjustment is deemed necessary.

We disagree, however, that COMAR should be allowed to reduce production costs by the excess of interest income over interest expense. The Department allows interest expense to be offset by short term interest income, but only to the extent the company has interest expense. Not tying interest income in this manner would allow companies to arbitrarily subsidize a product by realizing financial activities not necessarily related to the production of the merchandise in question. Accordingly, we disallowed COMAR's reported reduction in production costs for the excess of short-term interest income over interest expense.

Comment 10 TKS Indirect Overhead Cost Allocations: The petitioner argues that the Department should reject TKS's indirect overhead cost allocations. According to the petitioner, TKS employed an allocation methodology which was far more general than either the other Japanese respondent or the respondent in the companion investigation of LNPPs from Germany. These other respondents generally calculated separate overhead rates for each major manufacturing process and applied the rates only to those products which undergo the specific processing. According to the petitioner, TKS failed to provide any source documents, or additional detail, for its overhead allocation methodology, or to otherwise support the factory overhead amounts provided in its responses. The petitioner objects to TKS's pooling of LNPP R&D expenses into company-wide overhead costs which were then allocated over total production, thus understating costs. The petitioner objects that TKS's cost system charges much more engineering cost to overhead accounts, as opposed to specific orders. Thus, petitioner reasons, TKS's treatment of a large portion of engineering costs as a part of common overhead results in a shifting of costs from engineering-intensive press additions to press systems, and thus from U.S. market sales to home market sales. Finally, the petitioner maintains that the fact that TKS's normal cost accounting system goes no further to accurately assign costs to particular sales does not absolve TKS from reporting reliable, actual costs to produce the subject merchandise. Petitioner cites precedents where the Department required respondents to report data in a more specific format than that created in the normal course of business. The petitioner thus requests that the Department utilize Rockwell's information as facts available for the final determination.

TKS maintains that its indirect overhead allocation methodology is used in the normal course of business, is in accordance with Japanese GAAP and was thoroughly verified by the Department. Respondent notes that it complied fully with all requests for information made by the Department. TKS argues that a comparison of its allocation method to other companies is not the measure applied by the Department in determining the acceptability of an individual respondent's allocation methodology. Therefore, TKS maintains that the Department should accept its methodology as submitted and ignore petitioner's request to apply as facts available petitioner's own unverified overhead rates.

TKS argues that the information provided to the Department during verification indicates that its allocation method is not distortive. TKS notes that during verification it demonstrated to the Department that both subject and non-subject products are treated identically within its system. Additionally, TKS notes that there is no indication in the verification report that the Department believes the methodology distorts costs.

TKS disagrees with petitioner's contention that its allocation method fails to identify R&D costs incurred to specific LNPP projects. TKS maintains that it is unnecessary for the company to keep product-specific R&D data and gives several reasons why LNPP's are charged with the correct proportion of R&D expenses.

DOC Position: We believe that, in the instant proceeding, TKS's method of allocating indirect overhead costs is reasonable and have relied on it for the final determination. The legislative history of section 773(b) of the Act states that ''in determining whether merchandise has been sold at less than cost [the Department] will employ accounting principles generally accepted in the home market of the country of exportation if [the Department] is satisfied that such principles *reasonably reflect* the variable and fixed costs of producing the merchandise.'' H.R. Rep. No. 571, 93d Cong., 1st Sess. 71 (1973) (emphasis added). The CIT has upheld the Department's use of expenses recorded in a company's financial statements, when those statements are prepared in accordance with the home country's GAAP and do not significantly distort the company's actual costs. See, *e.g.*, Laclede Steel Co. v. *United States,* Slip Op. 94–160 at 22 (CIT 1994).

Accordingly, our practice is to adhere to an individual firm's recording of costs, if we are satisfied that such principles reasonably reflect the costs of producing the subject merchandise, and are in accordance with the GAAP of its home country. See, *e.g.*, *Canned Pineapple Fruit from Thailand; Final Determination of Sales at Less Than Fair Value (''Canned Pineapple from Thailand),* 60 FR 29553, 29559 (June 5, 1995); *Certain Stainless Steel Welded Pipe from the Republic of Korea; Final Determination of Sales at Less Than Fair Value,* 57 FR 53693, 53705 (November 12, 1992). See also *Furfuryl Alcohol from South Africa: Final Determination of Sales at Less Than Fair Value,* 60 FR 22550, 22556 (May 8, 1995) (''The Department normally relies on the respondent's books and records prepared in accordance with the home country GAAP unless these accounting principles do not reasonably reflect the COP of the merchandise''). Normal accounting practices provide an objective standard by which to measure costs, while allowing respondents a predictable basis on which to compute those costs. However, in those instances where it is determined that a company's normal accounting practices result in an unreasonable allocation of production costs, the Department will make certain adjustments or may use alternative methodologies that more accurately capture the costs incurred. See, *e.g.*, *New Minivans from Japan; Final Determination of Sales at Less Than Fair Value,* 57 FR 21937, 21952 (May 26, 1992).

In the instant proceeding, therefore, the Department examined whether the respondent's indirect overhead allocation methodology results in costs of producing the *subject merchandise* that reasonably reflect its cost of production. At verification, the Department requested and analyzed in detail source documents related to the allocation of the three indirect cost items making up a significant portion of the total indirect overhead costs. *See* TKS verification exhibits 26, 27 and 28. On a sample basis, we analyzed the significance of LNPP-specific indirect overhead costs versus non-LNPP specific indirect overhead costs. *See* TKS verification exhibit 31. We noted that the respective product line-specific amounts were comparable, supporting the conclusion that TKS's method for allocating indirect overhead costs was reasonable. As a result, we have determined that TKS's method of accounting for indirect overhead is used in the normal course of business, in accordance with Japanese GAAP and reasonably reflects the cost of producing LNPPs.

We also disagree with petitioner that by pooling R&D expenses into company-wide overhead costs, TKS shifted costs away from U.S. press sales to home market sales. Petitioner's assumption that TKS incurs higher R&D costs on press additions compared to that of systems is purely speculative. It should also be clarified that the R&D costs pooled and allocated by TKS in its ordinary course of business do not include engineering costs which relate to specific projects as petitioner implies. These engineering costs are assigned to the projects to which they relate.

Lastly, we agree with petitioner that the Department has in past cases required respondents to report cost data in a more specific format than that created in the normal course of business. We disagree, however, that in this particular instance TKS needed to allocate its indirect overhead cost data in a more specific manner. TKS's primary business activity is the production and sale of LNPPs. Additionally, TKS's non-LNPP production activities utilize production shops and sections that are also used by its LNPP operations. Since production of non-subject merchandise is relatively insignificant and the results of our testing at verification revealed that costs are reasonably allocated, a more detailed cost allocation method is not deemed necessary.

Comment 11 The Reclassification of TKS USA's Rent, Employee Insurance, and Workman's Compensation Expenses: TKS objects to the Department's preliminary determination to disregard TKS USA's reclassification of rent, employee insurance, and workman's compensation expenses from SG&A to indirect overhead. TKS maintains that its total SG&A expenses, as reported on its audited financial statements, encompass three categories: (1) Indirect overhead expenses associated with the different divisions of the company; (2) selling expenses which are incurred in the selling of presses; and (3) office administration expenses which benefit the entire company. TKS explains that in order to be consistent with its current accounting treatment, it reclassified rent, employment insurance, and workman's compensation from office administration to indirect overhead for two fiscal years of the POI.

The petitioner objects to TKS's request and states that the Department appropriately based its preliminary calculations on the expenses as reported in TKS's financial statements. The petitioner states that TKS has not submitted overwhelming evidence which petitioner believes necessary to change classifications of items in audited financial statements. The petitioner disagrees with TKS's contention that the 1995 classification of such expenses requires a change to the prior years' classifications of expenses. The petitioner states that, regardless of whether or not the prior years' results were reclassified, the expenses in question may appropriately be classified differently depending upon the year incurred. According to the petitioner, internal re-organizations to accommodate an expanding product line may change the nature of some expense from being reasonably applicable to the entire company to being more product-line specific.

DOC Position: We agree with TKS that its classification of these costs as indirect overhead is reasonable. We verified that the method TKS used to allocate the prior year workman's compensation, employee insurance and rent costs is in accordance with its current accounting treatment of these costs and we consider it reasonable for these costs to relate to manufacturing operations. Additionally, we noted that each overhead cost item is allocated based on the factor that drives the cost (*e.g.*, square footage for rent). We therefore relied on TKS's submitted reclassification of these indirect overhead costs for the final determination.

Comment 12 Inclusion of General and Administrative Expenses in Imputed Credit: TKS maintains that the Department's preliminary inclusion of general expenses in the imputed credit calculation is contrary to the accounting principle governing the capitalization of interest, is inconsistent with the Department's past practice, and at a minimum results in a double-counting of the expense items that were included in the general expense factor.

TKS cites Financial Accounting Standards Board (''FASB)'' rule 34 as the accounting principle which the Department has relied upon in past cases as the rationale for capitalizing interest in cases involving merchandise with extended production periods. TKS interprets this principle as applying only to interest expenses, not to movement, selling or general expenses, because general expenses are period costs which are not part of the capital expenditures involved in the calculation of the capitalized interest. TKS concludes that by including general expenses in the calculation of imputed credit, and by calculating the net credit expense as the difference between the sum of production costs plus general expenses and various progress payments, the Department contradicts FASB 34, which explicitly provides that the capitalized interest shall be determined as the net of the actual costs and the actual progress payments.

At a minimum, TKS contends that the Department must adjust its calculation methodology to avoid the double-counting of the expenses that are included in the general expense ratio. Specifically, TKS claims that the allocation of movement expenses and direct and indirect selling expenses to U.S. credit without a proportionate reduction of adjustments to CEP made for the same expenses under section 772 of the Act results in a double-counting of the expenses. TKS cites *MTPs Final Determination (1990)* where capitalized interest was categorized as a manufacturing cost instead of a credit expense, and where the Department explicitly allowed the offset of capitalized interest expense against the company's overall interest expense in the calculations. TKS maintains that likewise, the allocated movement, selling, and general expenses included in the credit calculation should be used to offset the amounts reported as a price adjustment or as a general expense for CV purposes.

The petitioner contends that the Department correctly calculated imputed credit expenses using the net balance of costs incurred and progress payments made during the construction period. The petitioner alleges that TKS's characterization of the Department's calculation of imputed credit as a ''capitalized interest'' methodology is incorrect, and that TKS's references to FASB 34 are not relevant. The petitioner maintains that credit expenses are calculated using the sales price of the merchandise sold, which includes not only the manufacturing costs, but also amounts to cover general expenses. Accordingly, petitioner supports the Department's inclusion of general expenses in the costs incurred, stating that this methodology was necessary to keep the calculations internally consistent, (*i.e.*, so that the credit income and offsetting expense would be calculated on a reasonably consistent basis). The petitioner claims that G&A expenses have always been factored into the Department's normal credit expense calculation.

DOC Position: We agree with petitioner that SG&A expenses should be charged with imputed credit costs. As petitioner noted, it is the full cost of production rather than manufacturing costs that should be assessed with imputed credit. Because SG&A, by definition, are included in COP, and because the purpose of the imputed credit adjustment is to reflect the interest cost associated with the production costs incurred and the progress payments received during the production phase of the LNPP, it is appropriate to include SG&A expenses in the imputed credit calculations. Further, as also stated by petitioner, because the revenue side of our calculation captures the entire LNPP price, the cost side of the calculation should capture all production costs.

We disagree with TKS that the Department double counted general expenses through its application of the imputed credit adjustment. We increased the base to which imputed credit expense was computed in order to include all general expenses related to each press sale. We did not, as TKS contends, increase the imputed credit expense by the actual general expense amounts incurred.

Comment 13 Transportation and Installation Charges and the Calculation of CEP Profit: TKS maintains that the home market cost of production used in the preliminary determination did not include the reported transportation and installation costs (''PTI)'', thereby understating the total costs and overstating the CEP profit ratio. TKS requests that the Department adjust its calculations to properly account for all costs associated with home market sales by summing the manufacturing costs and the transportation and installation expenses.

DOC Position: We agree with respondent that the Department mistakenly excluded PTI costs in computing CEP profit for the preliminary determination. For the final determination, we recalculated CEP profit to include the PTI costs.

Comment 14 Direct Selling Expenses and COM for U.S. Sales: According to TKS, if the Department continues to allocate the general expenses of TKS USA based on COM inclusive of inputs acquired from TKS in Japan, then it should exclude home market direct selling expenses from COM. Following TKS's logic, the inclusion of the home market direct selling expenses overstates the cost of producing the merchandise sold to the U.S., and therefore overstates the amount of the allocated general expenses associated with each U.S. sale. According to TKS, home market direct selling expenses have no relevance to sales of U.S. merchandise, and, since all direct selling expenses incurred on U.S. sales have already been assigned a proportionate share of the TKS USA general expenses, it is thus unnecessary and improper to include any home market direct selling expenses when allocating TKS USA general expenses to further manufacturing operations.

The petitioner maintains that TKS's argument that home market direct selling expenses should not be included in the COP is based on a presumption that the Department intended to allocate the expenses to the cost of presses as imported (rather than the COP of the press sold in the home market). Assuming *arguendo* that TKS is correct, it agrees that the direct selling expenses should not be included in the calculation of the cost of the press as imported. However, the petitioner states that TKS neglected to mention that the Department would have to replace the direct selling expenses with the movement cost incurred to ship the presses from Japan to the U.S. port. Thus, if the Department decides to apply the U.S. G&A expense to the cost of presses as imported, the Department should deduct direct selling expenses from the COP of the Japanese press, replace the home market indirect selling expenses with the export indirect selling expenses and add movement costs from Japan to the U.S. port.

DOC Position: Since we recalculated TKS USA's further manufacturing G&A expense rate exclusive of the inputs acquired from TKS, this point is moot.

MHI-Specific Comments

Sales Issues

Comment 1 Removing Certain Sales from the Denominator of MLP's Indirect Selling Expense Calculation: The petitioner argues that the U.S. indirect selling expense factor calculated for MLP is incorrect because of the inclusion in its denominator of certain sales which were negotiated and concluded prior to MLP's existence. Thus, it concludes, MLP could not have incurred indirect selling expenses associated with such sales, and they should be removed from the denominator of the calculation. The parallel is drawn with MHI's treatment of the Guard sale in its calculation of MLP's indirect selling expense ratio.

MHI argues that MLP properly included all LNPP sales recognized during the POI in the denominator of its indirect selling expense calculation, because of the activities required beyond the direct expenses incurred for installation and warranty work. Furthermore, MHI argues that for large, custom-built products, such as LNPPs, the end of the negotiation process does not signal the end of the sales process. Therefore, MHI explains that MLP performed sales-related activities during the POI. Moreover, if only sales negotiated during the POI are included, then the amount involved in the Washington Post contract should be included in the denominator for indirect selling expenses. MHI explains that if the petitioner's logic is followed, then the MLP indirect selling expense factor would actually decrease. According to MHI, indirect selling expenses for the Guard were not included in the MLP indirect selling expense allocation because MLP did not recognize the revenue; MLP did recognize the revenue associated with the sales it did make that were negotiated outside of the POI.

DOC Position: We disagree with the petitioner. It is proper to include all sales recognized during the POI in the denominator whether the sale was made before or after the start of the POI since the expenses in the numerator apply to pre-POI sales as well. Even though the pre-POI sales were negotiated and concluded before MLP was founded, the Department calculates indirect selling expenses based on expenses and revenue recorded during the POI. Thus the numerator of the factor calculated utilizes the expenses recognized by MLP in the normal course of business for the period in question and the denominator of that factor utilizes the sales recognized by MLP in the normal course of business for the same period. The Department uncovered no manipulation or distortion which would cause us to reject MLP's normal recording of revenue based on sales recognition. At the preliminary determination the Department made an adjustment to the numerator of the indirect selling expense calculation, basing the allocation of general sales office expenses on sales revenue instead of the head-count methodology submitted by MHI. We have therefore employed an MLP indirect selling expense factor for purposes of this final determination which is exclusive of common G&A expenses. *See* also Japan ''Common Issues'' Comment 9.

Comment 2 Commission Paid to a Possibly Affiliated Trading Company for the Piedmont *Sale:* The petitioner maintains that, in the preliminary determination, the Department incorrectly treated the trading company involved in the sale to the Piedmont Publishing Company as an unaffiliated entity. The petitioner cites many joint ventures by MHI and this trading company as evidence that these are affiliated entities. The petitioner further maintains that the relationships inherent in the membership of MHI and the trading company in the Mitsubishi company group (''Keiretsu)'', including the use of a common corporate name and logo, a tradition of company cooperation, cross-ownership of stock, cross-lending and cross-borrowing, are indicators of affiliation.

According to the petitioner, the affiliation status of the trading company raises a critical issue regarding the commission it received from MHI in connection with the Piedmont sale—namely whether that transaction was at arm's length. The transaction is characterized as not at arm's length by the petitioner, based on the relative size of the commission earned on the Piedmont sale as opposed to that earned by Sumitomo Corporation (''SC'') for the Guard sale. Because MHI did not provide the actual costs incurred by the trading company involved in the

Piedmont sale, the petitioner proposes that the Department apply the effective rate of the SC commission (*i.e.*, the reported SC commission as a percentage of the Guard sales value) to the value of the Piedmont sale.

MHI maintains that its sale to Piedmont is through a company which is not affiliated under the objective statutory criteria. MHI argues that the Department should reject the petitioner's request to adjust upward the reported commission paid by MHI for the Piedmont sale. MHI argues that investments between companies are not covered under the statute, specifically joint ownership of subsidiaries. MHI argues that the antidumping law concentrates on the actual *control* of parties, and that mere joint ownership does not rise to the level of control required to find affiliation because the trading company involved does not exert direct control through its stock holdings. MHI argues that the relationships among ''Mitsubishi companies'' are insufficient to allow MHI to control the trading company in the Piedmont sale, or to allow the trading company to control MHI.

MHI argues that petitioner's assertions that MHI and the trading company are affiliated through: membership in a Keiretsu, common name and a logo, traditional business relationships, significant cross-ownership of stock, and cross lending and borrowing, fail to satisfy the ''control'' test for affiliation. MHI argues that the SAA does not presume that members of family groupings are affiliated and that this is only one factor for consideration. MHI also argues that nowhere does the antidumping law or the SAA suggest that common name, logo, and traditional business relationships establishes control. MHI also argues that affiliation through stock ownership is measured by a five-percent-or-greater threshold and the antidumping law does not deem shareholders as affiliated based on comparative (*i.e.*, cumulative company group) share holdings. Furthermore, MHI argues that MHI and the trading company in the Piedmont sale have no financing arrangements.

MHI further argues that the commission paid for the Piedmont sale is an arm's length transaction requiring no adjustments. MHI explains that the commission for the Guard sale was much greater because the role played by SC was more substantial than played by the other trading company in the Piedmont sale. Enumerating some of the additional functions performed by SC, MHI noted that it prospected for U.S. customers, provided U.S. sales strategy, and negotiated the sale.

DOC Position: The Department disagrees with the petitioner's argument that the sale through the trading company to Piedmont should be treated as an affiliated party transaction for purposes of this final determination. Although MLP is owned jointly by MHI and the trading company, the Department does not view the joint ownership, in this particular situation, as a sufficient indication that MHI's relationship with the trading company is such that either is ''operationally in a position to exercise restraint or direction'' over each other, as opposed to over MLP. We agree that cross-ownership of stock, cross-lending and cross-borrowing, a tradition of company cooperation, and particularly, combinations of significant degrees of such relationships, are possible indicators of affiliation. However, the Department stated in its February 23, 1996, Concurrence Memorandum that the extent of stock ownership in subsidiary organizations greater than five percent between the companies (*i.e.*, their joint ownership of numerous enterprises, particularly LNPP enterprises) is, by itself, an insufficient indication of affiliation. We also maintain that the degree of cross-ownership and the level of joint-financing between MHI and the trading company are not significant enough to be indicators of affiliation.

In its March 8, 1996, submission, MHI provided the proportion of sales made by MHI through the trading company to the number of total sales made by the trading company as well as the proportion of sales made by MHI through the trading company to the total sales made by MHI (*i.e.*, comparative dependence data), basing the trading company's figures on publicly available trade data. MHI also provided additional information on stock ownership in a third party, which was zero. The Department requested MHI to provide the Department with commissions received by the trading company from other parties not affiliated with it, to use in case the Department determined MHI and the trading company to be affiliated and rejected MHI's claim that the commission for the trading company was at arm's length. We also recommended that MHI request the trading company to provide the trading company's selling expenses and G&A for the services provided to MHI in making this transaction. However, MHI stated that it asked the trading company to provide the relevant sales information and that the trading company refused by explaining that it was not affiliated in any way to MHI, and therefore under no obligation to cooperate on MHI's behalf.

The MLP joint venture between MHI and the trading company does not in and of itself constitute control between MHI and the trading company. Moreover, MHI has cooperated and attempted to provide information requested by the Department for its sale through the trading company. Whether the trading's companies lack of full cooperation vis-a-vis reporting its expenses, as an unaffiliated party, should impute any lack of cooperation to MHI is moot in this instance because MHI was able to obtain the comparative dependence data from its own and public sources which was an important factor in our analysis of potential affiliation. Because the information currently on the record allows us to determine that for purposes of this investigation, the trading company is not affiliated with MHI, the data which the trading company did not submit is not required as part of our margin calculations.

For purposes of this final determination, we have decided to treat the Piedmont sale as a sale through an unaffiliated trading company and have used the commission as reported in our final calculation. We note, however, that the Department will continue to develop an analytic framework to take into account all factors which, by themselves, or in combination, may indicate affiliation, such as corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other. In future investigations and administrative reviews, the Department may need to re-analyze the different aspects of the Mitsubishi group first examined here, based on policy developments.

Comment 3 Proposing a Discount on the Guard Sale: The petitioner proposes that the Department treat an unpaid payment reported by MHI as a direct deduction from the gross Guard contract price, in effect labeling the unpaid payment a discount. The payment was not made because of a dispute between Guard and MHI, the nature of which is proprietary, and discussed in greater detail in the July 15, 1996, calculation memorandum.

MHI argues that the unpaid amount reported by MHI should not be treated as a discount. MHI explains that from a purely commercial perspective, it would make no sense to grant a discount because the unpaid amount is significantly greater than the cost of the item in dispute.

DOC Position: We agree with petitioner that the adjustment to the gross price of the Guard sale should be made by treating the unpaid amount as a discount. In the *Final Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cooking Ware From Mexico,* 58 FR 43327 (August 16, 1993), the Department applied BIA (now facts available) to those instances ''where three U.S. customers refused to pay the full amount of [respondent] ITCO's invoice'' even though ''ITCO continued to carry the unpaid amounts as outstanding balances on their accounts and continues to demand payment.'' We drew an adverse inference and reduced reported prices for these ''unauthorized discounts'' because there was ''no indication of reasonable expectation of payment.'' In the instant investigation of the Guard sale, there is again no indication of reasonable expectation of payment. Further proprietary details have been discussed on the record in the Department's July 15, 1996, calculation memorandum.

Comment 4 The Nature of the Guard Sale, Including the Date of Sale: The petitioner maintains that the transaction which the Department classified as a sale by MHI through SC to the Guard Publishing Company should instead by treated as a sale from MHI to the SC, and that this price should be the basis for U.S. price. The petitioner disagrees with MHI's characterization of SC's role as that of a mere commission agent, primarily because MHI was not a signatory party to the contract which established the sale to Guard. Because the only sales contract to which MHI was a party is the purchase contract issued by SC to MHI, the petitioner believes that the Department's trading company rule requires the Department to treat the sale as made between MHI and SC. Citing the *Final Determination: Certain Forged Steel Crankshafts from Japan,* (52 FR 36984, October 2, 1987) (''*Forged Crankshafts*'') and the court ruling *Peer Bearing Co.* v. *United States,* 800 F. Supp. 959, 964 (CIT 1992) (''*Peer Bearing*''), the petitioner states that the trading company rule provides that a sale to a trading company in a foreign market is a sale to the United States if the manufacturer knows that the merchandise is destined for the United States at the time the sale is made.

First, the petitioner maintains that the evidence examined by the Department establishes that MHI sold the Guard LNPP system to SC. The petitioner stresses that the contract for sale from SC to Guard establishes this as fact. Petitioner criticizes the Department's acceptance of several subsidiary documents as evidence of MHI's involvement in the transaction between SC and Guard. According to the petitioner's analysis of relevant documents, SC could not have acted as MHI's sales agent because MHI obviously confirmed that SC was not authorized to bind MHI to the sales agreement between SC and Guard. The petitioner maintains that there is no documentary evidence that MHI participated in the SC/Guard negotiations, especially with respect to the paramount issue of contract price. While recognizing the necessity that SC consult with MHI on technical matters such as press configuration and installation planning, the petitioner emphasizes that there is no evidence on the record indicating MHI's involvement in establishing the price to Guard and the payment schedule from Guard to SC.

Second, the petitioner maintains that SC's actions throughout the course of the Guard transaction establish that it was an independent trading company and not a commission agent of MHI. According to the petitioner, SC acted in the capacity of an independent trading company: it negotiated, established, and subsequently modified, on its own authority and behalf, the terms of sale of the LNPP system to Guard. The petitioner provides its interpretation of the basic documentation underlying the commission paid by MHI to SC, concluding that SC was not merely a commission agent.

The petitioner states that the Department should consider the date of sale to be that for the purchase order placed between SC and MHI and that the Department was incorrect in its preliminary analysis, which concluded that MHI's role was tantamount to that of a seller in the original transaction between SC and Guard, based on (1) MHI's offer to be responsible for SCs obligations to Guard if there were to be a failure of performance by SC, and (2) MHI's commencement of the design and construction of the press prior to a written agreement between MHI and SC. According to petitioner's interpretation, the unilateral offer by MHI to guarantee SC's obligation to provide a conforming press system does not alter the fact that SC sold the subject merchandise to the Guard, but should be interpreted as a warranty by the press manufacturer that it would ultimately produce the goods sold by the independent trading company. The objection is raised that the Department misreads the U.C.C. provision on performance in connection with MHI's initial design and production activities. While the petitioner does not dispute that in certain circumstances partial performance may ratify an unexecuted contract, it maintains that the Department ignores the fact that the only contract to which MHI was a party, and which could thus be ratified, was the purchase order fully consummated later between MHI and SC, and which incorporated in it the terms of the earlier contract between SC and Guard. Because the material terms of sale, particularly price and quantity, were established between MHI and SC at a date later than the contract between SC and Guard, the petitioner maintains that the later date should be used in the antidumping analysis as the correct date of sale. Accordingly, it was only at this point in time that the essential terms were firm so that the parties could no longer unilaterally alter them.

MHI argues that the Department properly analyzed the sale to Guard as a sale between MHI and Guard. MHI disagrees with the petitioner's argument that MHI never had a contractual relationship with Guard. First, MHI argues it played an integral part in making the sale, such as developing cost estimates used to set the price, signing the contract as a witness, and issuing a letter to Guard guaranteeing performance. Second, MHI argues the law of agency provides that when a party holds itself as an agent, it has the ability to bind the principle. Third, MHI asserts that the petitioner's argument that MHI must have produced this LNPP system as a ''subcontractor'' is presented without evidence.

MHI further argues that SC was a commissioned sales agent of MHI, as evidenced by the documentation submitted by it, and agrees with the petitioner when it says the commission agreement did not create a sales contract. MHI maintains that it is a document which establishes the basis for a commission arrangement between a manufacturer and a sales agent and that the amount of SC's commission never involved post-sale negotiation.

MHI also argues that the Department's ''trading company'' rule is not applicable to this sale. More specifically, MHI maintains the petitioner's contention that the Department should treat the purchase orders between MHI and SC as constituting the actual sale is wrong. First, MHI contends that the Department recognized that MHI did not sell a press to SC. Second, MHI contends that the trading company rule allows the Department to capture a respondent's sales which are delivered to the United States, where the respondent knows at the time of sale that the merchandise is destined to the United States. MHI argues that the essential function of the rule is to determine which of a respondent's sales should be included in the dumping calculation, and contends that the trading company rule has been used to establish the proper U.S. price when the trading company acts as an independent reseller of subject merchandise. Accordingly, a different interpretation is given to *Peer Bearing* whereby MHI holds that the ruling does not require the Department to use the price contained on the purchase order, but stands for the proposition that the trading company rule is discretionary, based on the facts of the case. MHI also maintains that the *Forged Crankshafts* does not apply because in that case the trading company was responsible for setting the price and MHI was responsible for establishing the final price in this investigation. Thus, application of the trading company rule under these circumstances would be inappropriate.

With respect to the date of sale debate, MHI argues that the Department correctly determined the proper date of sale. MHI cites *MTPs Final Determination (1990)* which states that, for sales of custom-built merchandise, the Department should establish a date at the earliest date when terms are fixed. MHI explains that there was confusion regarding MHI's sales process in the home market for certain sales because the essential terms of the sale were not fixed until the purchase order to the trading company was issued. MHI maintains that the Guard sale is quite different, because MHI signed the sales contract.

DOC Position: The Department agrees with MHI that the preliminary determination properly treated the sale to Guard as a sale between MHI and Guard. In the Department's February 23, 1996, decision memorandum, we stated that one of the main issues was whether the sales price between MHI and SC or the sale price between SC and Guard is the appropriate price for our dumping analysis. Because MHI originally only reported the price from MHI to Guard, we requested that MHI submit the price of its sale to SC, as well as provide all basic documentation relating to the roles of Guard, SC, and MHI in this transaction. In our preliminary determination, we explained that the sales documentation provided by MHI demonstrated its integral involvement in the Guard transaction. No information placed on the record since that time, nor any information reviewed during verification, contradicts that conclusion. Following the commission agreement between MHI and SC, MHI was kept fully apprised of the negotiations between SC and Guard. Moreover, MHI's role as signatory witness on the contract between SC and Guard is evidence of MHI's direct involvement with the sale of the product in the U.S. market. The nature of this product shows that each sale involves merchandise which must meet the unique specifications of the customer, and the record shows that MHI began to design and construct the merchandise shortly after witnessing the contract for sale arranged by SC on its behalf. Therefore, we determined that the appropriate transaction for use in our antidumping analysis is the price established in the sale of LNPP from MHI through SC to Guard.

The Department disagrees with the petitioner when it states that the date of sale should be that for the purchase order placed between SC and MHI. As stated in the preliminary determination, section 773(a) of the Act mandates the Department to compare the appropriate transaction to the ''normal value'' of the subject merchandise. Neither the statute nor the regulations determine the precise ''date of sale.'' Our proposed regulations provide that the Department will ''normally'' rely on the date of a company's invoice date as the date of sale. Our practice must also allow for specific instances where commercial realities dictate the use of some other instrument to set the date of sale. Our proposed regulation recognized that the invoice date ''may not be appropriate in some circumstances.'' In this instant investigation, where the long-term sales negotiations, design, production, shipment and installation of LNPPs require contractual documentation, the date of sale of the subject merchandise is best established by the date a contract is signed. Consistent with case precedents involving complex merchandise, such as LNPP, which is custom-made, the Department exercised a greater degree of flexibility in finding the existence of a firm agreement. See *MTPs Final Determination (1990).* The Department's determination of the date of sale was supported by its examination of the sales documentation submitted by MHI. We also looked to contract law (see, *e.g., Gray Portland Cement and Clinker from Mexico,* 55 FR 29,249 (1990)) to identify the point in time when the essential elements of the sale are firm, thus demonstrating an intent to be legally bound.

While the date set by the contract signed by SC and Guard clearly identifies the seller (SC) and buyer (Guard) and sets the quantity and price for this transaction, MHI witnessed the sales agreement between SC and Guard and accepted responsibility for providing the merchandise which fulfilled SC's obligations to Guard. Moreover, after MHI signed the contract between SC and Guard as a witness, it began to design an LNPP system to Guard's unique specifications. Thus, it demonstrated its intent to be legally bound to the agreement through written instruments and its own performance on the contract. *See* U.C.C. § 2–201(3)(a). At verification, the Department examined the written evidence and confirmed the actual company performance to support its conclusion for date of sale. Based on this evidence, the Department determined that, by virtue of MHI's participation in the sales process and its performance to fulfill the terms of the contract, MHI was a party to the sales agreement with Guard.

Comment 5 Treatment of Technical Service Expenses: MHI maintains that the Department erred in its treatment of technical service expenses for the following reasons. First, MHI posits that, even assuming arguendo that installation is treated as further manufacturing activity, the technical services MHI provided had nothing to do with further manufacturing as they were incurred after installation and should not be treated as a part of installation. Second, MHI argues that the Department has usually treated technical service expenses as circumstance of sale adjustments, and should do so again.

The petitioner argues that in the Department's preliminary determination it appropriately treated MHI's ''technical service'' expenses as an installation expense, because when the addendum to the contract covering how such expenses are to be incurred is read in conjunction with the original terms of the contract, it is clear that these technical service expenses relate directly to an alternative method of ensuring the customer that MHI would provide trouble-shooting and other services associated with installation.

DOC Position: We disagree with the respondent. The Department correctly included technical service expenses as a part of total installation expenses. The sale of an LNPP involves the sale of a functional large newspaper printing press. The processes involved in installing the LNPP equipment include all those steps necessary to bring the equipment to a functional stage. This perspective also underlies our classification of the total installation costs as part of further manufacturing. All expenses, including component assembly, integration of newly sourced auxiliary components, site preparation, installation supervision, technical servicing, equipment testing, which make the LNPP physically functional, are part of an installation process which creates the actual LNPPs which ''are capable of printing or otherwise manipulating a roll of paper more than two pages across'' in the production of newspapers. The Department is treating training expenses, where possible, as a separate category of direct selling expenses, since training involves the development of customers' personnel's operation skills, not the physical preparation and necessary modification of the actual merchandise which produces newspapers.

Comment 6 Inclusion of Indirect Selling Expenses Allocable to Spare Parts: MHI maintains that it reported MLP indirect selling expenses for U.S. sales based on the total contract price of each U.S. sale, inclusive of the value of spare parts. Accordingly, MHI maintains that its calculation of those indirect selling expenses pertained to both LNPP systems and spare parts covered by the contract. Because the sales contracts for MHI's U.S. sales separately identified the value of spare parts, in its preliminary determination, the Department deducted the value of spare parts from the starting price. MHI argues that because it allocated its indirect selling expenses based on the total contract price of the LNPP and spare parts, the Department should exclude an allocable amount for indirect selling expenses incurred on behalf of these spare parts.

The petitioner argues that MHI's argument that the indirect selling rate should be multiplied by the price of an LNPP less spare parts is methodologically inconsistent, since in any rate-based allocation, the transaction-specific value to which the rate is applied should be calculated in the same manner as the denominator used in the rate calculation itself. The petitioner asserts that the denominator used in the calculation of the indirect selling rate includes the value of spare parts. Therefore, the petitioner states that it would be inconsistent to apply the rate to the price of LNPP less spare parts. Furthermore, the petitioner argues that spare parts are not sold but are included free-of-charge in the LNPP sale and are thus a selling expense themselves, and should not carry the burden of an additional selling expense. Accordingly, the Department should continue to allocate total LNPP indirect selling expenses to the total LNPP sales.

DOC Position: The Department disagrees with the respondent's argument that the Department should exclude an allocable amount of indirect selling expenses incurred on behalf of spare parts. We agree with the petitioner that it would be methodologically inconsistent for the Department to multiply the price of LNPP less spare parts when the indirect selling expense ratio includes indirect selling expenses for spare parts in the numerator and spare parts revenue in the denominator.

Comment 7 Interest Rate Used for Calculation of Imputed Credit Expenses: MHI argues that the Department's practice of matching the denomination of the interest rate used in calculating imputed credit to the currency in which the sales are denominated is not applicable in this case. MHI explains that it is inconsistent with the requirement articulated in *LMI-La Metalli Industriale, S.p.A.* v. *United States* 912 F.2d 455, 460 (Fed. Cir. 1990) (''*LMI*'') and interpreted by the CIT in *United Engineering & Forging* v. *United States*, 779 F. Supp. 1375 (CIT 1991), aff'd, 996 F.2d 1236 (Fed. Cir. 1992) that the interest rate used for imputed credit accord with ''commercial reality'' and must be ''on the basis of usual and reasonable commercial behavior.'' MHI argues that the Department's approach used in the preliminary determination is inconsistent with the principles of determining credit expenses based on the lowest available interest rate, and on the lowest rate of the country of manufacture when foreign borrowing is not available to the respondent.

Moreover, MHI contends that the Department ignores the commercial reality for MHI, which is that all of its short-term debt was denominated in yen, so that MHI financed its working capital and accounts receivable for both domestic and export sales with yen-denominated financial instruments. MHI maintains that it would have been irrational, in view of the lower interest rates available in Japan, for it to borrow in dollars. MHI maintains that the use of different interest rates for U.S. and Japanese sales is unreasonable since production costs for LNPPs sold in both markets were incurred in the same factory. MHI explains the circumstance of sale adjustment for differences in credit terms between the U.S. market and comparison market is designed to separate true price discrimination from differences in prices that arise from differences in commercial credit terms in each market.

The petitioner argues that the Department correctly applied a U.S. dollar-denominated interest rate to compute MHI's imputed credit expenses on U.S. sales. The petitioner contends that the Department followed its established policy of basing imputed credit expenses on the interest rate of the currency in which the sales are denominated to correctly reflect the time value of U.S. dollars, the currency of transaction. The petitioner cites the *Final Results of Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Sweden*, 61 FR 15772, 80 (April 9, 1996) and the *Final Results of Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from Australia*, 61 FR 14049, 54 (March 29, 1996) to support its argument that sales are matched to the currency in which the sale is denominated. Furthermore, the petitioner argues that the Department's approach is consistent with *LMI* where the court stated that ''the imputation of credit cost itself is a reflection of the time value of money. * * * ''

DOC Position: We disagree with MHI's argument that the Department's practice of matching the denomination of the interest rate used in calculating imputed credit to the currency in which the sales are denominated is not applicable in this case. As cited in our February 23, 1996, Concurrence Memorandum for the preliminary determination, the Department explained its policy in selecting the interest rate applicable in calculating imputed credit expenses in the *Final Determination of Sales at LTFV: Oil Country Tubular Goods from Austria,* 60 FR 33551, 33555 (June 28, 1995) (''*OCTG from Austria*''):

> A company selling in a given currency (such as sales denominated in dollars) is effectively lending to its purchasers in the currency in which its receivables are denominated (in this case, in dollars) for the period from shipment of its goods until the date it receives payment from its purchaser. Thus, when sales are made in, and future payments are expected in, a given currency, the measure of the company's extension of credit should be based on an interest rate tied to the currency in which its receivables are denominated. Only then does establishing a measure of imputed credit recognize both the time value of money and the effect of currency fluctuations on repatriating revenue.

The Department disagrees with MHI's statement that the interest rate used by the Department is not in accord with ''commercial reality.'' The ''commercial reality'' should be evaluated on the basis of recognizing imputed credit on the time value of money and the effect of currency fluctuations on repatriating revenue. Furthermore, at verification the Department noted that MHI had U.S. short-term borrowing from an affiliated company. Thus, while the Department would not use the actual interest rate of the borrowing from an affiliated institution (as it is of questionable arm's-length nature), its existence indicates the ability and readiness of MLP, in general, to support its LNPP activities which result in U.S. dollar-denominated revenues by borrowing in U.S. dollars. Thus, the Department's approach is consistent both with its practice in *OCTG from Austria* in that the first priority is to match the denomination of the interest factor to the denomination of the receivables in question and with *LMI* in that credit costs are imputed ''on the basis of usual and reasonable commercial behavior.''

Comment 8 U.S. Dollar Short-Term Borrowing from Unaffiliated Lenders: MHI notes that as observed in the MLP sales verification report, MLP had a small amount of U.S. dollar-denominated borrowing from an affiliated company but also maintains that this fact does not warrant any revision to MHI's reported data. Stating that it had no borrowing in U.S. dollar-denominated instruments from any unaffiliated lenders, and that since the Department's normal practice is to exclude borrowings from affiliated lenders in the computation of short-term interest rates for imputed credit, MHI claims that the affiliated borrowing is technically irrelevant to the margin calculations.

DOC Position: The Department agrees with MHI that it is the Department's practice to apply only short-term borrowing which is from unaffiliated parties. Therefore, the Department will not make any adjustments to imputed credit using the short-term interest rate from MHI's affiliated company.

Comment 9 Guard Commission: MHI maintains that the amounts it reported for its commission payments on the Guard sale were verified and contends that the values it reported are correct and accurately reflect the structure of this complicated transaction. If the Department were to modify the amount of commission reported, then MHI argues that the Department should ensure that it makes a comparable adjustment in the imputed credit earned by MHI on the sale.

The petitioner argues that verification confirmed that MHI misreported the total ''commission'' earned by SC on the Guard sale and argues that SC retained a payment and mark-up, plus an additional amount not factored into the commission calculation. In order to argue that the additional amount was interest earned on payments from the Guard to SC which was ''kept by SC in agreement with MHI,'' the petitioner cites directly to the Department's verification report. The petitioner asserts that even though the additional income was used to cover U.S. duties and brokerage, it should be included as commission expense.

DOC Position: We disagree with the petitioner, in part. The direct payment portion of the commission, together with the amount of ''mark-up'' between the contract value at which Guard purchased the LNPP and the invoice price which was owed by SC to MHI, have both been treated as the total commission amount on the sale. As noted in MHI comment 4, above, the Department has determined that the correct sale is from MHI to Guard, and that the correct starting price is the price paid by Guard. We must therefore deduct from the starting price whatever actual *sales* revenue was not received by MHI, that is, the mark-up between the purchase price between MHI and SC and the amount paid by Guard to SC. We disagree, however, with the petitioner's suggestion that the additional amount of *interest* income earned on payments from the Guard to SC and kept by SC in agreement with MHI, be deducted from the reported gross price. The majority of the interest earned on the payments from the Guard to SC was retained by SC. Only a small portion of the interest earned was transferred to MLP and included by MHI as a U.S. price increase. The amount of interest income retained by SC represents the time value of SC holding payments from Guard. Our imputed interest calculations begin measuring credit income/expense from the time payments begin to be made from SC to MHI. Because we verified payments as received and recorded by MHI (SC being an unaffiliated party not subject to verification), we should not use Guard's payment structure to SC as the framework for our imputed interest calculation. Thus we should not include the measure of the time value of holding payments during that same time frame, *i.e.*, as payments flowed from Guard to SC, in determining the extent of the commission. However, as a corollary, we should not, and do not, include the additional payments from SC to MHI which resulted from interest income earned but *not kept* by SC for that same time frame—such amounts, because they exceeded the limits on actual interest income agreed to with MHI, were turned over to MHI by SC.

Comment 10 Cost of Services and Materials Provided to MHI's Customers: MHI disagrees with the conclusion stated in the MHI sales verification report that the net value of free services and materials provided on the Guard sale were not reported in MHI's response. MHI contends that all costs associated with both parts and services were reported to the Department.

DOC Position: The Department agrees that MHI reported the costs associated with the free parts and free services, but would modify its conclusion to state that MHI did not report the net value of the free parts and services as an adjustment to the gross price; this is important because MHI did provide the value of other free materials both in the form of a deduction from gross price and, alternatively, as an addition to total contract costs. Since the Department, in its preliminary determination, deducted similar free options from the total contract price wherever possible, instead of increasing CV by the associated costs, our verification report note was intended to reflect that MHI had not used the same identifiable format for the materials and services in question. Because the costs of free services were subsumed in the total expenses reported to the Department, and used in the current format of the calculations, no modification to the U.S. price for the free services is required. However, because the production cost of free parts is not being included in CV, the total value of free materials reported to the Department for the Guard contract has been increased by the value for the additional free parts observed at verification. The proprietary details are contained in the July 15, 1996, MHI Calculation Memorandum.

Cost Issues

Comment 11 Allocation of Further Manufacturing G&A: The petitioner agrees that the investigation period for MHI provides an adequate time frame to sufficiently alleviate annual fluctuations and provide a representative U.S. G&A rate for MLP. However, the petitioner objects to the methodology employed at the preliminary determination in applying this rate to individual U.S. sales. According to the petitioner, MHI calculated the U.S. G&A rate by dividing MLP's total LNPP G&A expenses by total LNPP sales revenue. Petitioner protests that the Department incorrectly allocated U.S. G&A expenses back to individual U.S. sales in the preliminary determination by multiplying this U.S. G&A rate by the costs associated with U.S. further manufacturing only. According to petitioner, the Department has two remedies available: (1) If the Department continues to accept a U.S. G&A expense ratio based on total LNPP sales revenue, then it must apply that rate to the entire value of each sale, or (2) the Department may recalculate a U.S. G&A rate based on MLP's LNPP cost of sales for the relevant period and multiply this revised rate by the total cost of sales (*i.e.*, the foreign COP plus U.S. further-manufacturing costs) of each transaction.

While the petitioner asserts that the Department under-allocated U.S. G&A expenses, MHI maintains that U.S. G&A expenses were over-allocated. MHI argues that the rate computed was based on an allocation of both G&A and indirect selling expenses over MLP's cost of goods sold and not over sales value, as petitioner claims. MHI asks that the Department utilize the allocation formula presented in its case brief for purposes of the final determination.

DOC Position: We agree with petitioner that in the preliminary determination, a G&A rate which was based on MLP's total LNPP sales was applied to only the costs associated with further manufacturing. For the final determination, we recalculated a G&A rate based on MLP production costs incurred in the U.S. and applied the rate to MLP's further manufacturing costs. This method effectively allocates G&A expenses to the individual U.S. sales on the same basis used to calculate the rate. In our computation of the G&A rate, we excluded the indirect selling expenses that were erroneously included in the submitted MLP G&A rate used in the preliminary determination.

Comment 12 The Application of the Major Inputs Rule: MHI argues the Department misapplied the major inputs rule and maintains that the rule is appropriate only in the context of diversionary dumping. MHI argues that the Department's application of the major input rule cannot be reconciled with the purpose of the rule. MHI states that major input prices can be adjusted only when the Department has received a specific allegation of below-cost sales of major inputs. In this investigation, the Department has not received any request from the petitioner to investigate below-cost sales of major inputs. MHI claims the Department requested COP information from MHI suppliers it deemed affiliated without the ''reasonable grounds'' necessary for such a request.

Furthermore, MHI argues that, if the Department were to argue that its application of the major inputs rule in this case was an application of the ''transactions disregarded'' rule, then such an approach would still be contrary to the Department's administrative practice for investigating and adjusting the input prices for affiliated parties. MHI contends that the methodology employed at the preliminary determination differs radically from that used in other proceedings initiated since enactment of the URAA insofar as the Department has normally defined a ''major'' input as an essential component of the finished merchandise which accounts for a significant percentage of the total cost of materials, the total labor costs, or the overhead costs to produce one unit of the merchandise under review. MHI refers to antidumping questionnaires issued by the Department in recent proceedings to support this definition of a major input. MHI argues that the Department's thresholds of two percent for components and five percent for the system are not representative and that a range of ten to twenty percent is more representative.

Petitioner asserts that MHI has misconstrued the statute. Petitioner states that the statute does not require the Department to have ''reasonable grounds'' to believe or suspect that an input was sold at less than cost of production in order to allow it to investigate affiliated supplier transactions. Petitioner indicates that the statute's requirement is that the Department have such ''reasonable grounds'' in order to permit determination of the value of the major input on the basis of information available regarding such cost of production, citing section 773(f) of the Act.

Petitioner disputes MHI's contention that the Department's thresholds for major inputs of two percent for components and five percent for the system are arbitrarily low. Petitioner claims MHI's position is based on considering only the relative value of an input compared to the total production costs of an LNPP, failing to consider the value of the input in absolute terms, which may be significant even when the relative percentage is not.

DOC Position: We disagree with MHI that the Department inappropriately obtained cost information from MHI suppliers deemed affiliated. MHI incorrectly interprets section 773(f)(3) of the Act to mean that the Department must have reasonable grounds to believe or suspect that a transaction between two affiliated parties occurred at below-cost prices in order to request cost information from the respondent's affiliated suppliers. In *NSK Ltd. et. al.* v. *United States,* Slip Op. 95–178 at 14–45 (CIT November 14, 1995) the CIT ruled that the purpose of section 773(f)(3) of the Act is to permit Commerce to use best evidence available (*i.e.*, the cost of producing the input) when it has reasonable grounds to believe or suspect that below-cost sales occurred. The Court stated that there is no support in the legislative history of section 773(f)(3) of the Act for the claim that the Department must have reasonable grounds to believe or suspect that below-cost sales occurred in order to request COP data from an affiliated supplier.

We disagree with MHI that the Department failed to apply its normal ''significance'' test in determining that an input which represents at least two percent of the total cost of materials, labor, and overhead for any one of the five press components represents a major input in accordance with section 773(f)(3) of the Act. In a typical case in which the subject merchandise only requires a few inputs, we agree that a threshold of two percent for defining a major input appears low. However, in this case, LNPPs require thousands of inputs, with no single input representing a large share of the total LNPP cost. MHI obtained from affiliated suppliers numerous inputs representing over two percent of the total cost of a component (none of which represent more than five percent of the LNPP total production cost), the sum of which represents a significant portion of the total LNPP cost of production. Accordingly, since the inputs we tested represent the most significant inputs used to produce the subject LNPPs, we consider it appropriate in this instance to categorize inputs meeting the two percent threshold as major inputs. Our point is best highlighted by the following hypothetical situation. Suppose 100 percent of the inputs to a press were obtained from affiliated suppliers, with no one supplier providing more than two percent of the total. Under MHI's interpretation, the Department would have no authority to test whether affiliated supplier purchases occurred at above cost prices even though 100 percent of the LNPP inputs were obtained from affiliated suppliers. Even MHI recognizes the unique nature of this case in determining what constitutes a major input. In an August 24, 1995 letter from MHI's counsel, MHI stated that:

> [W]ith respect to suppliers of parts, materials or services incorporated into large newspaper presses, the Department should request ''affiliated party'' information only from suppliers of ''major inputs'' of parts, materials or services * * *. For example, if a major input were defined as any input accounting for one percent of total purchase price * * * 90 percent of the * * * suppliers could be ignored because their sales fall below this figure.

Comment 13 Definition of An Affiliated Supplier: MHI argues that the Department failed to provide an explanation of its selection of affiliated suppliers, thereby acting unreasonably. MHI argues that a statement of reason (*e.g.*, that a party is ''legally or operationally in a position to exercise restraint or direction over {an}other person)'' is required, citing *A. Hirsch* v. *United States*, 729 F. Supp. 1360, 1363 CIT. Instead, the Department's section D questionnaire suggests that the Department defines ''control'' in terms of sales dependence, insofar as the questionnaire requested that MHI ''list the major inputs received from all affiliated suppliers as well as from suppliers that furnish more than 50 percent of their total annual sales to {MHI}.'' MHI claims the Department erred in using what it believes to be a 50 percent threshold of total annual sales to determine affiliation because such a delineation is excessively low, lacks predictive value, and is inconsistent with the stringent statutory criteria for determining affiliation. MHI states that the Department should apply the criteria listed in the statute including formal criteria that indicate an actual, legal ability to exert control: membership in a corporate family; common officers and directors; partnership; employer-employee relationships; and direct or indirect ownership or five percent or more of the outstanding stock of an organization. MHI contends that the Department's greater-than-fifty-percent sales dependence test is clearly inconsistent with these other criteria. Because sales dependence is not an actual, legal means for exerting direction or control, its predictive value is potentially less than that of the other statutory affiliation criteria. MHI suggests that a very high sales-dependence threshold, such as a weighted-average of 80 percent over four years, would make the Department's affiliation test predictive.

Petitioner contends that determination of affiliation may be based on a close supplier relationship. Petitioner quotes the SAA, which states ''A company may be in a position to exercise restraint or direction, for example through corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other''. Petitioner asserts that a company that purchases over 50% of a supplier's sales could extract price and other concessions from the supplier by threatening to purchase the products from another vendor. Because such an action would severely impact the business of the supplier, the purchasing company is in a position to control the related supplier by exerting restraint or direction over the supplier. Thus, petitioner argues that the Department's definition of affiliated suppliers is in accordance with the statute.

DOC Position: The Department agrees with petitioner that determination of affiliation may be based on a close supplier relationship. Section 771(33)(G) of the Act, in addressing affiliated persons, defines such affiliation by the following: ''any person who controls any other person and that other person will be considered affiliated persons.'' Section 771(33) of the Act makes clear that control exists if one person is ''*legally or operationally* in a position to exercise restraint or direction over the other person.'' Further, the SAA, at 168, cites a close supplier relationship as an example of such a situation. The SAA explains that ''the traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm operationally in a position to exercise restraint or direction over another'' and that ''a company may be in a position to exercise restraint or direction, for example through corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.'' These SAA quotations refute MHI's assertion that we should determine affiliation based solely on a person's *legal* ability to exert control over another person.

Early in this investigation, we requested information regarding each supplier identified as providing MHI with a production input representing greater than two percent of the total cost of manufacturing (''COM'') for any one component of an LNPP. From this information, we selected a sample of MHI suppliers based on either a combination of supplier reliance and employee relationships, or on significant supplier relationships over an extended period of time. We requested and were provided with cost information for these suppliers (except that, for one supplier, MHI informed the Department that the supplier could not segregate costs on a product-specific basis, and for two others MHI did not submit cost data because it maintained that the suppliers were not affiliated). Although we requested MHI to list inputs obtained from suppliers that furnished more than 50 percent of their total annual sales to MHI, we never indicated that this constitutes affiliation.

Our treatment of close supplier relationships in this case is not necessarily an indication of our future practice. Since this part of the law is new to the Department, we need to refine our interpretation and application of the close supplier provision over time. We note that the Department will continue to develop an analytic framework to take into account all factors which, by themselves, or in combination, may indicate affiliation, such as corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other. In future investigations and administrative reviews, the Department may need to reanalyze the different aspects of the Mitsubishi group first examined here, based on these developments.

Comment 14 Facts Available for Affiliated Suppliers: MHI argues that, by failing to apply a reasonable affiliated parties methodology, the Department incorrectly relied upon the use of ''facts available'' and thus overstated MHI's estimated preliminary dumping margin. MHI maintains that the Department was incorrect in penalizing MHI for those suppliers that did not report their production costs to the Department. MHI argues that the Department did not give due consideration to the constraints contained in section 782(c)(1) of the Act, which provide that if an interested party promptly notifies the Department that it is unable to submit the requested information, the Department ''shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.'' MHI argues that two of its suppliers were unable to submit the requested information and that it promptly notified the Department. MHI claims that it is affiliated to neither of these suppliers. One supplier stated that it is not in any way affiliated with MHI or subject to MHI's direction or restraint. The other supplier explained that it was a small company and does not maintain cost records by product line. MHI argues that because the company is not affiliated to either of the two suppliers, the Department should not assume that MHI purchased the inputs from these suppliers at below-cost prices. Therefore, MHI claims that the Department should not have adjusted the prices to MHI from these suppliers.

Petitioner claims that MHI's assertion that the Department misapplied facts available is entirely without foundation. Petitioner asserts that by applying a weighted-average affiliated supplier adjustment to the prices of the non-reporting affiliated suppliers, the Department adjusted the non-reporting affiliated suppliers' prices to reflect the differences between the transfer prices and the costs of production for the reporting affiliated suppliers. Petitioner argues that the application of such an actual weighted-average cost-of-production adjustment is a reasonable and accurate method of adjusting the transfer prices for the affiliated suppliers that did not report their cost of production. Further, petitioner asserts that the Department would have been justified in applying adverse facts available by applying the highest cost of production adjustment available on the record.

DOC Position: We disagree with MHI that the Department's affiliated supplier input cost adjustment constituted use of facts available. The Department computed weighted-average loss percentages for inputs acquired from a sample of affiliated suppliers based on the transfer prices and cost of production data submitted by MHI. The use of this sample, we believe, reduced the burden on MHI. We applied the weighted-average loss percentages resulting from our sample to the total of affiliated supplier transfer prices as reported by MHI. MHI submitted no evidence to support their assertion that the amounts reported to the Department as ''Affiliated Purchases'' (which represents the base to which our affiliated party adjustment was applied) includes the company's purchases from either of the two suppliers in question.

Comment 15 Calculation of CV Profit: MHI states that the Department failed to include freight costs in the total costs deducted from contract prices in its home market profit calculation. MHI maintains that by failing to subtract freight costs from home market prices to measure CV profit, the Department overstated the CV profit rate.

MHI also claims that the Department failed to reduce home market prices by the costs incurred to pack the merchandise. MHI contends that under the approach taken by the Department, CEP profit calculations should include a deduction from gross contract prices of the total expenses incurred in selling the foreign like product in Japan, including packing expenses.

The petitioner argues that the Department did subtract packing costs in determining the CEP profit. The petitioner argues that the packing was included in the cost of production. The petitioner suggests that if the Department decides to deduct packing from home market prices, then it should recalculate home market production costs to exclude packing.

DOC Position: We agree with MHI. We recalculated the home market profit rate applied in our CV calculation to reflect the deduction of freight costs from home market sales prices. We also recalculated the CEP profit rate to reflect the deduction of home market packing costs. Although petitioner argues that we included packing costs in the cost of production (''COP)'' in our CEP profit rate calculation, the support petitioner offers in its argument documents our inclusion of packing costs in COP in our home market profit calculation rather than our CEP profit calculation. Petitioner is incorrect in its assertion that we included packing costs in the COP in our preliminary CEP profit rate calculation.

Comment 16 SG&A as Applied to Further Manufacturing for Guard: MHI argues that the Department erroneously included selling expenses in its G&A expense ratio for the sale to Guard. MHI states that MLP did not participate in the sale to Guard and that, since the Department's stated intention was to allocate only MLP's G&A expenses to the cost of auxiliary parts and installation activities, the Department's inclusion of selling expenses is incorrect.

DOC Position: We agree with MHI that the Department inadvertently included selling expenses in its allocation of MLP's G&A expenses to the costs of auxiliary parts and installation activities. In one of MHI's submissions it reported an MLP ''G&A Rate'' which the Department assumed was based solely on G&A expenses and included no selling expenses. At verification, we learned that this rate included indirect selling expenses. For the final determination, we adjusted the MLP G&A rate to exclude those indirect selling expenses.

Comment 17 SG&A as Applied to Further Manufacturing for Piedmont: For the sale to Piedmont, MHI states that the Department double-counted a portion of MLP's SG&A expenses. MHI maintains that since the Department deducted from U.S. price indirect selling expenses which included an allocated amount for common G&A expenses based on sales value, all SG&A expenses attributable to the sale were fully allocated and deducted. Thus, MHI argues, the Department should not allocate MLP SG&A expenses to auxiliary parts and installation, effectively allocating the same portion of MLP's indirect expenses to the Piedmont sale twice.

DOC Position: We agree with MHI that the Department inadvertently included indirect selling expenses in its allocation of MLP's G&A expenses to the costs of auxiliary parts and installation activities. The explanation for the inclusion of the selling expenses in the G&A allocation is addressed in the immediately preceding comment regarding the same issue applied to the Guard sale. MHI is also correct in their assertion that the indirect selling expenses which were deducted from U.S. price included an allocated amount for common G&A expenses. For the final determination, we adjusted the MLP G&A rate to exclude those indirect selling expenses and we excluded G&A expenses from the indirect selling expenses that were deducted from U.S. price.

Comment 18 G&A Expenses as a Portion of Total Further-Manufacturing Costs: According to MHI, the Act states that the starting price used to establish CEP shall be reduced by the amount of any expenses and profit associated with economic activity in the United States. MHI claims that the Department should not include G&A expenses incurred by MHI in Japan in the CEP, as these expenses are not U.S. economic activity, but instead pertain solely to activities of MHI's corporate administrative staff.

The petitioner maintains that section 772(d)(2) of the Act does not state that only costs physically incurred in the United States are deductible from the CEP. The petitioner states that the statute says the Department shall reduce CEP by the cost of any further manufacturing or assembly including additional material and labor. The petitioner contends that ''the Department allocates a proportion of total corporate overhead, including G&A and interest expenses, to U.S. further manufacturing because U.S. activities derive significant benefit from parent corporate operations and oversight.'' Petitioner also observes that MHI's G&A rate was computed based on its consolidated financial statements, which include the further manufacturing costs. Therefore, petitioner concludes that the MHI G&A rate should be applied to the further manufacturing costs.

DOC Position: The Department agrees with petitioner that the MHI G&A rate should be applied to the further manufacturing costs. As indicated by petitioner, MHI's G&A rate was calculated based upon consolidated CGS , which included further manufacturing costs. Therefore, in order to be mathematically consistent, MHI's consolidated G&A rate should be applied to the further manufacturing costs.

Comment 19 U.S. Credit Expenses: MHI argues that the Department double-counted a portion of MHI's interest expenses associated with further-manufacturing activities. MHI maintains that the Department allocated actual interest expense to MHI's further manufacturing expenses and then imputed interest on not only the same further manufacturing expenses but also on the actual interest expense. MHI maintains that if the Department continues to consider installation a further-manufacturing activity and to calculate an imputed credit associated with such further-manufacturing activity, then it should not also allocate an amount for MHI's actual interest expense to these same activities.

The petitioner argues that MHI confuses the actual corporate financing costs associated with LNPP operations with imputed credit costs. The petitioner asserts that imputed credit expenses should be included with the actual financing expenses in the unadjusted CV because any potential double counting is eliminated in the circumstance of sale adjustment for the imputed credit. Further, the petitioner argues that because the Department constructs a value for the product as imported into the U.S., rather than the further manufactured product, the Department correctly deducted all further-manufacturing costs (including financing expenses) in determining the CEP in order to ensure an apples-to-apples comparison.

DOC Position: The Department stresses once again that the regular interest expense allocation and the imputed interest adjustments have different purposes and require independent analyses. *See* Japan ''Common Issues'' comment 8. MHI is incorrect in its assertion that by deducting both interest and imputed credit in our CEP calculation we have double counted the further manufacturing interest expense. The regular interest expense charged to further manufacturing represents a legitimate LNPP production cost. The imputed credit adjustment should be applied to the full production cost of the LNPP, including the regular interest expense. *See* MHI comment number 20. It is appropriate to impute interest on all production costs expected to be recovered upon sale of the LNPP. Therefore, the Department imputed interest on all the further manufacturing costs, including the actual interest expense.

Comment 20 SG&A Applied and U.S. Credit Expenses: MHI claims that the Department should not have allocated SG&A expenses to MHI's U.S. credit expense adjustment. According to MHI, the Department's preliminary determination stated that its intention was to compute credit on MHI's production activity alone, not on SG&A activities. Furthermore, MHI maintains that the Department did not calculate MHI's Japan market credit expense adjustment based on production plus SG&A. According to MHI, SG&A expenses should be excluded because they are not production costs and are recognized in the year in which they were incurred. MHI also argues that since the Department's decision to compute credit expenses based on production costs was based on the requirement in this industry for substantial capital expenditures over an extended period of time, SG&A expenses should not be included, as they are not capital expenditures and are expensed in the year in which they were incurred.

The petitioner argues that the Department should include SG&A in its imputed credit calculation and maintains that the Department applied the same methodology to both U.S. and home market imputed credit costs. The petitioner alleges that MHI is confusing manufacturing costs with production costs. The petitioner concludes that the Department's statement in the preliminary determination that it has calculated imputed credit on production costs is in fact reflected in the methodology evident in the calculations themselves, since the antidumping term ''cost of production'' includes selling, general, and administrative costs. The petitioner maintains that the Department's inclusion of these costs reflects the fact that, just like material, labor, and factory overhead, SG&A expenses are incurred and must be paid over the lengthy period between the receipt of the first installment payments and the receipt of final payment. Accordingly, the petitioner states that, since, on the revenue side of the equation, the imputed credit formula captures the whole price of the press (*i.e.*, total production costs plus profit), the methodology should include all production costs on the expense side of the equation.

DOC Position: We agree with petitioner that SG&A expenses should be charged with imputed credit costs. As petitioner states, it is the total cost of production rather than manufacturing costs that should be assessed with imputed credit. Because SG&A expenses, by definition, are included in COP, and because the purpose of the imputed credit adjustment is to reflect the interest cost associated with the production costs incurred and the progress payments received during the production phase of the LNPP, it is appropriate to include SG&A expenses in the imputed credit calculations. Further, as also stated by petitioner, because the revenue side of our calculation captures the entire LNPP price, the cost side of the calculation should capture all production costs.

MHI is mistaken in its contention that we excluded SG&A expenses from our home market credit calculations. Appendix Q of the proprietary version of our preliminary determination memo of February 23, 1996 clearly indicates that in our imputed interest calculations we adjusted production costs to reflect an adjusted ''total cost'' (which includes SG&A).

Comment 21 Research & Development Costs: MHI argues that no adjustment for its reported research and development (''R&D'') expenses is warranted. MHI maintains that it reported these costs in the same manner in which they are normally calculated in its job cost system. MHI maintains that since its normal business practice is to calculate R&D costs on a product-specific basis and to allocate such costs to specific sales based on sales value, it was correct for MHI to report the costs to the Department as calculated on that same basis.

DOC Position: Although MHI allocated R&D costs using its normal sales-value accounting methodology, the Department considers such an allocation inappropriate in an antidumping proceeding. Where there is an allegation that a product is being exported and sold at unfair prices (as compared to prices in the exporter's home market), we generally consider it inappropriate to allocate costs incurred for manufacturing operations based upon those same prices. Therefore, we reallocated MHI's R&D costs to all LNPP contracts based on the relative manufacturing costs incurred for each contract.

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 LNPPs from Japan, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after March 1, 1996, the date of publication of our preliminary determination in the Federal Register.

Furthermore, we are also directing the U.S. Customs Service to continue to suspend liquidation of all entries of elements (parts or subcomponents) of components imported to fulfill a contract for a LNPP system, addition or component, from Japan, that are entered, or withdrawn from warehouse on or after March 1, 1996. Such suspension of liquidation will remain in effect provided that the sum of such entries represent at least 50 percent of the value, measured in terms of the cost of manufacture, of the subject component of which they are part. This determination will be made by the Department only after all entries of the elements imported pursuant to a LNPP contract are made and the finished product pursuant to the LNPP contract is produced.

For this determination, all foreign producers/exporters and U.S. importers in the LNPP industry be required to provide clearly the following information on the documentation accompanying each entry from Japan of elements pursuant to a LNPP contract: (1) The identification of each of the elements included in the entry, (2) a description of each of the elements, (3) the name of the LNPP component of which each of the elements are part, and (4) the LNPP contract number pursuant to which the elements are imported. The suspension of liquidation will remain in effect until such time as all of the requisite information is presented to U.S. Customs and the Department is able to make a determination as to whether the imported elements are at least 50 percent of the cost of manufacture of the LNPP component of which they are part.

With respect to entries of LNPP spare and replacement parts, and used presses, from Japan, which are expressly excluded from the scope of the investigation, we will instruct the Customs Service to continue not to suspend liquidation of these entries if they are separately identified and valued in the LNPP contract pursuant to which they are imported.

In addition, in order to ensure that our suspension of liquidation instructions are not so broad as to cover merchandise imported for non-subject uses, foreign producers/exporters and U.S. importers in the LNPP industry shall continue to be required to provide certification that the imported merchandise would not be used to fulfill a LNPP contract. As indicated above, we will also continue to request that these parties register with the Customs Service the LNPP contract numbers pursuant to which subject merchandise is imported.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price, as shown below.

The weighted-average dumping margin is as follows:

Exporter/manufacturer	Weighted-average margin percentage
Mitsubishi Heavy Industries, Ltd	62.96
Tokyo Kikai Seisakusho, Ltd	56.28
All Others	58.97

The all others rate applies to all entries of subject merchandise except for entries of merchandise produced by the respondents listed above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. 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 published pursuant to section 735(d) of the Act.

Dated: July 15, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–18541 Filed 7–22–96; 8:45 am]

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[A–428–821]

Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany

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

EFFECTIVE DATE: July 23, 1996.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta or William Crow, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; Telephone: (202) 482–6320 or (202) 482–0116, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (‘‘the Act’’) by the Uruguay Rounds Agreements Act (‘‘URAA’’).

Final Determination

We determine that large newspaper printing presses and components thereof (‘‘LNPPs’’) from Germany are being, or are likely to be, sold in the United States at less than fair value (‘‘LTFV’’), as provided in section 735 of the Act.

Case History

Since the publication of the preliminary determination of sales at LTFV (60 FR 8035, March 1, 1996), the following events have occurred:

On February 27, 1996, the Department disclosed to the petitioner (Rockwell Graphics, Inc.) and the respondents (MAN Roland Druckmaschinen AG (‘‘MRD’’) and Koenig Bauer-Albert AG (‘‘KBA’’)) the calculation methodologies used in the preliminary determination. On March 4 and 5, 1996, the petitioner and MRD, respectively, alleged that the Department made certain ministerial errors in its preliminary calculations. On March 15, 1996, the Department determined that none of the allegations constituted ministerial errors. See March 15, 1996, Memorandum from the Team to Richard W. Moreland Re: Alleged Ministerial Errors in the Calculation of the Preliminary Antidumping Duty Margin for MAN Roland Druckmaschinen AG.

On March 4 and 6, 1996, the Department issued supplemental cost and sales questionnaires to MRD and its U.S. subsidiary MAN Roland Inc. (‘‘MRU’’). MRD submitted responses to these questionnaires on March 13, 1996.

On March 7, 1996, we met with members of the German Ministry of Economics to discuss the status of the proceeding.

On March 14, 1996, the Department returned the updated cost information submitted by MRD in its March 13, 1996, submission which was determined to be untimely.

In March and April 1996, we conducted verification of the cost and sales questionnaire responses of MRD in Germany and the United States. On April 3 and 25, 1996, MRD submitted the corrections to its response that were presented at verification. On May 14 and 16, 1996, the Department issued its reports on verification findings.

On May 8, 1996, the Department received comments it solicited from interested parties in its preliminary determination regarding scope issues. KBA refiled its scope comments on May