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

17, 1996, pursuant to the Department's request to exclude new information determined to be filed untimely.

The petitioner and the respondents submitted case briefs on June 3, 1996, and rebuttal briefs on June 10, 1996. On June 11, 1996, the Department requested that MRD revise its case brief to exclude untimely new factual information. MRD submitted revised briefs on June 13, 1996. The Department held a public hearing for this investigation on June 17, 1996.

Facts Available

KBA failed to respond to the Department's questionnaire. Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination. Because KBA failed to respond to the Department's questionnaire, we must use facts otherwise available with regard to KBA.

Section 776(b) provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also Statement of Administrative Action (''SAA''), at 870. KBA's failure to reply to the Department's questionnaire demonstrates that KBA has failed to cooperate to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available to KBA, an adverse inference is warranted. As facts otherwise available, we are assigning to KBA the margin stated in the notice of initiation, 46.40 percent.

Section 776(c) provides that when the Department relies on secondary information (such as the petition) in using the facts otherwise available it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. When analyzing the petition, the Department reviewed all of the data the petitioner relied upon in calculating the estimated dumping margin. This estimated dumping margin was based on a comparison of the bid price for a sale of a LNPP system made by MRD to an unrelated U.S. customer and the constructed value (''CV'') of that LNPP system. As a result of that analysis, the Department modified the CV methodology that the petitioner relied upon in calculating the estimated margin. On the basis of those modifications, the Department recalculated the estimated dumping margin and found it to be 46.40 percent. The Department corroborated all of the secondary information from which the margin was calculated during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose at that time. For purposes of the preliminary determination, the Department re-examined the price information provided in the petition in light of information developed during the investigation, and found that it continued to be of probative value. For purposes of the final determination, we compared the petition price information against verified data, and again found that it continued to be of probative value. *See Comment 1* of the ''Company-Specific'' subsection of the ''Interested Party Comments'' section of this notice.

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 largenewspaper 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

The petitioner and the respondents in this investigation and the concurrent investigation of LNPPs from Japan submitted comments in their case and rebuttal briefs on several scope-related issues. These scope issues pertain to: (1) the treatment of elements (parts or subcomponents) of LNPPs; (2) the use of the ''to fulfill a contract'' language; (3) the inclusion of HTSUS subheading 8524 which encompasses magnetic tapes; and (4) the treatment of imported merchandise of U.S. origin. Although certain issues were raised by the parties within the context of either the German or Japanese investigation, we have consolidated them for purposes of the final determinations because the resolution of these issues impacts the scope of both investigations. Each of these issues, the interested parties' comments and the Department's position are summarized below. For the complete discussion and analysis, see the July 15, 1996 Memorandum to Barbara Stafford from The Team Re: Scope Issues in the Final Determinations.

1. Elements of LNPPs

As stated in the ''Scope of Investigation'' section above, the scope of the LNPPs investigations covers LNPP systems, additions and the five major press system components, whether assembled or unassembled, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. Because of their large size, LNPPs are typically imported into the United States in either partially assembled or disassembled form, in multiple shipments over an extended period of time, and may require the addition and integration of non-subject elements prior to or during the installation process in the United States. Consequently, we stated in our notice of initiation that ''any of the five components, or collection of components, the use of which is to fulfill a contract for an LNPP system, addition, or component, regardless of degree of disassembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of [these] investigation[s].'' The interpretation of the intent of this language in the scope resulted in significant controversy among the interested parties in these investigations. Generally, the petitioner has interpreted it to mean that incomplete components and their constituent elements from a subject country are covered within the scope. The respondents have generally interpreted our initiation scope language to include only complete components, arguing that the inclusion of incomplete merchandise in the scope would necessarily precipitate the inclusion of elements which would conflict with the Department's industry support determination.

To clarify the issue, in our preliminary determinations, we stated that we interpreted the current scope to ''include those elements or collection of elements imported from a subject country insofar as they constitute any one of the five covered components which are, in turn, used to fulfill a contract for a LNPP press system, press addition or press component.'' We also stated that ''individual parts *per se* are not covered by the scope of these investigations unless taken as a whole they constitute a subject component used to fulfill an LNPP contract.'' This interpretation, however, raised the question: at what point do the elements imported from a subject country rise to the level of a LNPP component, addition or system subject to the scope of these investigations? This question was particularly difficult to answer in light of the complex nature of the importation of LNPPs—*i.e.*, the high degree of disassembly and/or incompleteness and the multiple shipments of parts and subcomponents in various combinations over an extended period of time. Therefore, we had to decide on a reasonable and practical approach in determining what constitutes a subject LNPP component, addition or system, and in so doing, establish the basis on which we will include elements in the scope.

We considered primarily two alternative approaches for analyzing what governs the inclusion of parts or subcomponents within the scope of these investigations (other than spare or replacement parts which are expressly excluded from the scope if they are separately identified and valued in a LNPP contract), and solicited comments from interested parties on the merits of these approaches. One approach considers, on a case-by-case basis, whether the imported parts or subcomponents when taken together are essentially a LNPP system, addition or component. This so-called ''essence'' approach focuses on the question of which parts are most critical to the operation of the subject merchandise so that when taken together they constitute an essentially complete LNPP component, addition or system. A second approach considers the value of the imported parts or subcomponents relative to the total value of the finished LNPP component, addition or system in the United States. That is, we would determine that the imported parts or subcomponents would be within the scope if they comprised a certain minimum percentage of the value of the parts or subcomponents of a finished LNPP system, addition or component. This value would be measured in terms of the cost of manufacture, rather than price, because (1) we are primarily concerned with where the actual manufacturing is occurring and not the market value, and (2) the imported elements are not normally priced separately from the LNPP which they comprise in the ordinary course of business.

In general, the interested party comments received on this issue reflect widely diverging views. The basis of the controversy among the parties centers on the interpretation of the following excerpts from the current scope language: (1) ''regardless of degree of disassembly and/or degree of combination with non-subject elements before or after importation;'' and (2) ''individual elements when taken as a whole constitute a subject component.'' The petitioner views this language as necessarily referring to both complete and incomplete components given the nature of the imported merchandise, and proposes that the Department clarify the scope to include incomplete merchandise from a subject country insofar as it includes any one of 16 key elements, which it defines to be critical to the functioning of a LNPP. KBA and the respondents in the Japan investigation, Mitsubishi Heavy Industries, Ltd. (''MHI'') and Tokyo Kikai Seisakusho, Ltd. (''TKS''), view the scope language as referring to complete merchandise. Alternatively, KBA argues for a value test whereby imported elements would be covered if their value exceeded at least 60 percent of the value (or 50 percent of the cost) of the finished system (or at least 90 percent of the value of any individual LNPP component), while MHI advances arguments for an essence approach that would be predicated upon the importation of all elements which it defines to be critical to the functioning of a LNPP. MRD generally supports an essence approach assessed on a case-by-case basis but favors maintaining flexibility on the issue, while TKS offers no option, arguing that both approaches would result in the unlawful expansion of the scope to include parts and subcomponents.

We agree with the petitioner that incomplete merchandise by necessity must be included in the scope of these investigations. Given the very large size of LNPPs and the complex importation process, complicated by the further manufacturing and/or installation activities performed in the United States by the respondents, it was the Department's intent to use the language at issue to avoid creating loopholes for circumvention, including those arising from differing degrees of completeness of the imported merchandise. The Department is concerned that, because of the great number of parts involved, there is the potential that a party may attempt to exclude its merchandise from the scope of these investigations on the basis of a lack of completion. From the Department's standpoint, it is not (and never has been) the individual elements per se that are the issue, but the combination of these elements that would rise to the level of covered merchandise whether by essence or by value (*i.e.*, the sum of importations pursuant to a LNPP contract, not the individual importations or parts themselves). Given the significant controversy that has been generated over the scope of these investigations, we believe that clarification of the scope is warranted in this case. We note that the Department has the authority to clarify the scope language at any time during an investigation. See *Final Determination of Sales at Less Than Fair Value: Small Diameter Seamless Carbon and Alloy Standard, Line and Pressure Pipe from Italy,* 60 FR 31981, 31984, 31987 (June 19, 1995); *Minebea Co., Ltd.* v. *United States,* 782 F. Supp. 117, 120 (CIT 1992); and *Kern-Liebers USA* v. *United States,* 881 F. Supp. 618 (CIT 1995).

The parties' diverging views on the approach the Department should pursue in resolving the issue attests to the fact that there is no perfect solution to the problem. The selection of one or the other approach for purposes of the final determinations, however, is unavoidable if our scope is to have reasonable clarity and administrability, given the complexity of the importation of the subject merchandise and the potential for circumvention. The pursuit of either approach necessitates clarification of the scope to include explicitly incomplete Japanese- or German-origin LNPPs. Given that the minimum level of scope coverage is any of the five LNPP components, both the essence and value approaches must be examined on a component-specific basis.

The essence approach has superficial appeal because it seeks, in principle, to capture what a particular subject LNPP component actually is—*i.e.*, the ''heart'' of it. However, the information obtained from the interested parties and other sources make it difficult, if not impossible, to state that a particular element is the ''essence'' of a LNPP component. In past cases in which the number of parts and subcomponents comprising the subject merchandise was limited, we have identified specific elements, or groups of elements, as constituting the ''whole'' or ''essence'' of the subject merchandise. See e.g., *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996); *Final Determination of Sales at Less Than Fair Value: Professional Electric Cutting Tools and Professional Electric Sanding/Grinding Tools from Japan,* 58 FR 30144 (May 26, 1993); and *Final Determination of Sales at Less Than Fair Value: Gene Amplification Thermal Cyclers and Subassemblies Thereof, from the United Kingdom,* 56 FR 32172 (July 15, 1991). In this case, however, given the large number of parts and subcomponents which are combined to produce a subject LNPP component, we believe that it is impossible to conclude, for example, that a side frame or a blanket cylinder is the ''essence'' of a printing unit, as suggested by the petitioner.

Added to the difficulty of accepting the petitioner's ''essence'' proposition in general is the fact that many of the critical elements identified by the petitioner individually represent an insignificant portion of the total value of the LNPP component of which they are part, and the identification of named elements may require modification over time due to technological advances. Furthermore, there is the unresolved question of whether a critical element would constitute the ''essence'' of a subject component if it itself were incomplete in some minor way. In other words, the problem faced in this case is qualitatively unlike the problems faced in the other cases, cited above, where it was possible to reduce the ''essence'' definition to a single, non-contradictory definition.

Therefore, if no single element can be identified as the ''essence'' of a particular LNPP component, and if requiring that all of the ''essential'' elements listed by the petitioner or other parties be of subject country origin would unacceptably limit the intended scope of these investigations, then the ''essence'' approach is unworkable.

We believe that the value approach is consistent, predictable, and administrable. According to this approach, imported elements are covered if they constitute a certain minimum percentage of the value, *based on the cost of manufacture,* of the particular component of which they are a part. We acknowledge, however, that in order to perform the value test, we will have to wait until after all of the elements comprising the LNPP component are imported and the LNPP component is produced, and that we will suspend liquidation on all imported elements in the meantime. In addition, the argument has been made that the value approach is more uncertain with respect to duty assessment, as all shipments would need to be completed before the value test on a finished product basis would be assessed. However, we note that this would also be true if we took the ''essence'' approach, in that the identification of critical elements could only take place after all importations have been made.

Furthermore, we have instituted the concept of a value test in the past where the nature of the merchandise and its importation lent itself to circumvention. *See Final Determination at Sales at Less Than Fair Value: Cellular Mobile Telephones and Subassemblies from Japan,* 50 FR 45447, 45448 (October 31, 1985); and *Mitsubishi Elec. Corp.* v. *United States*, 898 F.2d. 1577, 1582 (Fed. Cir. 1990).

In this case, exercising our discretion to develop an administrable scope, we determine that if the sum of the value of elements imported to fulfill a LNPP contract is at least 50 percent of the value, measured in terms of the cost of manufacture, of any of the five named components covered by the scope into which they are incorporated, then the imported elements are covered by the scope. An individual component is covered by the scope if the imported elements comprising it represent at least 50 percent of the value of the component, even if the contract pursuant to which the elements are imported is for an entire LNPP system and the remaining components are not within the scope.

We believe that this 50 percent threshold is a workable standard and is sufficiently significant to capture certain critical elements as well. We also believe that pursuing the value test on the basis of cost of manufacture, rather than price, is less susceptible to manipulation and more readily traceable to company records because the imported elements are normally not priced separately from the LNPP which they comprise in the ordinary course of business.

In addition, given our rejection of the essence approach for the purpose of the scope, we believe that including any references to specific subcomponents of covered components (*i.e.*, printing-unit cylinder) in the definition of the five covered components would be improper. Therefore, we have excluded them from the scope.

Based on the foregoing analysis, we have clarified the scope to include incomplete LNPP systems, additions or components. For the reasons explained above, we note that this does not constitute an ''expansion'' of the scope, as the respondents allege, but merely a necessary clarification.

For purposes of these investigations, incomplete LNPPs will be defined as any element or group of elements of a LNPP system, addition or component that are imported from a subject country lacking one or more elements needed to fulfill a contract for a LNPP system, addition or component. Such elements would be covered by the scope of these investigations if they represent at least 50 percent of the value, measured in terms of the cost of manufacture, of the finished component of which they are a part. Therefore, as stipulated in the ''Continuation of Suspension of Liquidation'' section of this notice, we are instructing the Customs Service to suspend liquidation on all entries of elements of LNPP components imported to fulfill a contract for a LNPP system, addition or component, in order to assess the cost of manufacture of these imports relative to the cost of manufacture of the finished component of which they are part. The 50 percent value test will be administered by the Department after all entries of such merchandise have been made and the component of which they are part is produced.

To facilitate the Department's performance of the value test, all foreign producers/exporters and U.S. importers in the LNPP industry shall be required to provide clearly the following information on the documentation accompanying each entry from Germany and 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, (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 cost of manufacture of the LNPP component of which they are part.

2. ''To Fulfill A Contract'' Language in the Scope

The current scope of these investigations ties subject merchandise to a contract for the sale of a LNPP system, addition or component, and the issue has been raised by one respondent as to whether such provision is lawful. Specifically, MHI argues that the ''to fulfill a contract'' provision in the scope definition incorrectly applies the antidumping law and the assessment of antidumping duties to contracts instead of products, creates an unacceptable uncertainty as to the scope of products covered by these investigations, and risks being overinclusive. The petitioner argues that the Department has not applied the antidumping law to contracts. It asserts that the language at issue does not mean that the contract itself is the subject of the investigation, although it is an indispensable consideration in the investigation because it determines the price.

We disagree with the respondent. A contract is neither the object of our investigations, nor the object of the assessment of tariffs. Instead, a contract is a documentary instrument for facilitating the identification of the subject merchandise for the assessment of duties arising from an antidumping order. As such, a contract is similar to customs entry forms and company invoices commonly used in the process of liquidating foreign products entering the customs territory of the United States. Therefore, we disagree with MHI's contention that the Department would be replacing products with contracts as the object of the investigation.

Given the complex nature of the importation of the product (*i.e.*, a high degree of disassembly/incompleteness, and multiple shipments of innumerable parts and subcomponents over an extended period of time), the reference to a LNPP contract in this context is the only administrable means of identifying the subject merchandise. Therefore, we have continued using the ''to fulfill a contract'' language in the scope and in our continuation of suspension of liquidation instructions to the Customs Service.

3. HTSUS Subheading 8524

MHI maintains that the Department should amend the scope of these investigations to exclude those tariff categories that encompass magnetic tape—*i.e.*, HTSUS numbers 8524.51.30, 8524.52.20. 8524.53.20, 8524.91.00 and 8524.99.00—because the subject merchandise does not include magnetic tape. According to MHI, the only component covered by the scope that could possibly include such a product, the computerized control system, instead includes hard and floppy disks. MHI contends that if the Department includes the HTSUS classifications for either magnetic tape or other generic computer components, it will inappropriately interfere with the liquidation of a multitude of computer-related products that are not relevant to the LNPP investigations.

HTSUS 8524 covers ''records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and meters for the production of records,'' but excluding photographic or cinematographic goods. The above-specified HTSUS numbers currently included in the scope refer to ''other magnetic tapes,'' ''other video tape recordings'' and ''other recorded media for reproducing phenomena other than sound or image.'' HTSUS 8524 was included in the scope at the initiation stage of these investigations, pursuant to a conversation with the National Import Specialist who, at that time, advised the Department that the LNPP computerized control system may enter the U.S. Customs territory under the HTSUS subheading 8524. *See* July 20, 1995, Memorandum to the File Re: Scope Definition-Discussion with National Import Specialist; and the February 15, 1996, Memorandum to the File Re: HTSUS Subheadings.

Pursuant to further conversations with the National Import Specialist for the merchandise at issue, we learned that imported software or media regardless of application is separately identified in the HTSUS for Customs valuation purposes, and that records, tapes and other recorded media of heading 8524 remain classified under that heading, whether or not they are entered with the apparatus for which they are intended. Therefore, theoretically, computer subcomponents such as the software destined for use in a LNPP could be classified as ''other recorded media'' under HTSUS 8524. However, in practice, this classification may not necessarily apply to LNPPs. We note that there is no evidence on the record of these proceedings at the present time indicating that the software of computerized control systems imported to fulfill LNPP contracts is entered under the HTSUS subheading at issue.

Our practice in crafting the scope of any investigation is to include language that states that ''[a]lthough the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope . . . is dispositive.'' This language means that it is the description of the merchandise, and not its Customs classification, that is controlling for the assessment of antidumping duties. Therefore, notwithstanding the HTSUS numbers under which the software of a LNPP computerized control system is imported from Germany or Japan, it would be covered if it met the criteria set forth in Scope Comment 1 above.

In this case, however, because we have no evidence on the record to indicate that computer control subcomponents are imported under the category at issue, we see no need to continue to include the above-specified HTSUS numbers in the scope of these investigations.

Therefore, we have excluded them from the scope of these investigations for purposes of the final determinations.

4. U.S.-Origin Goods Returned

KBA requests clarification that U.S.-origin elements and components would not be subject to antidumping duties if any are reimported, in accordance with the HTSUS which provides that such ''U.S. goods returned'' are not subject to any duties.

HTSUS 9801 generally provides that articles produced in and exported from the United States and subsequently returned to the United States, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad, are exempt from duties. HTSUS 9802 generally provides that articles returned to the United States, after having been exported to be advanced in value or improved in condition by any process of manufacture or other means, are dutiable on the value of the processing conducted outside of the United States. Articles returned to the United States that have not lost their physical identity and have not undergone such advancement in value or improvement in condition abroad, except assembly and operations incidental to that assembly, would be subject to duties on the value of the imported article less the cost or the value of the U.S. content.

Therefore, under HTSUS 9801, the respondent's proposition is valid if the U.S.-origin elements are returned to the United States in the same manner as they were exported from the United States. Under HTSUS 9802, the issue is less clear for antidumping purposes. While U.S. Customs law provides for a partial exemption of duty for U.S.-articles sent abroad for processing or assembly and returned to the United States, the Department has concluded in the past that the general rule applicable to ordinary customs duties is not controlling with respect to antidumping duties, and that the United States Customs Service American Goods Returned (''AGR'') program, pursuant to HTSUS 9802, is subject to the collection of antidumping duties on the full value of the merchandise, including the U.S. portion. The Department has stated that any interpretation which sought to limit the application of antidumping duties on AGR goods to the foreign content would be inconsistent with the Department's statutory mandate to assess antidumping duties on the extent to which the normal value (''NV'') (previously referred to as ''foreign market value'') exceeds the export price (previously referred to as ''United States price''). Application of antidumping duties only on the foreign processing or content portion of the import might mean that the margin of dumping would not be fully offset. *See Final Determination of Sales at Less Than Fair Value: Certain Corrosion-Resistant Carbon Steel Products from Canada* (58 FR 37099, July 9, 1993), as affirmed by the Binational Panel under the United States-Canada Free Trade Agreement (*In the Matter of: Certain Corrosion-Resistant Carbon Steel Products from Canada;* USA–93–1904–03 (October 31, 1994)).

In other words, if the U.S.-origin elements were combined with other elements prior to reimportation into the United States to produce a subject LNPP in accordance with the criteria set forth in Scope Comment 1 above, antidumping duties would be assessed on the full value of the import, inclusive of the U.S. content. Therefore, based on the foregoing analysis, we have not clarified the scope in the manner suggested by KBA.

Period of Investigation

The POI for MRD is July 1, 1993 through June 30, 1995. *See Preliminary Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany,* 61 FR 8035, March 1, 1996) (''*LNPPs Preliminary Determination*'').

Product Comparisons

Although the home market was viable, in accordance with section 773 of the Act, we based NV on 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 LNPPs Preliminary Determination.*

Fair Value Comparisons

To determine whether MRD's sales of LNPPs to the United States were made at LTFV, 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. *See LNPPs Preliminary Determination.*

Constructed Export Price

MRD reported its sales as either CEP or EP. We classified all of MRD's sales as CEP sales because its 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; and the U.S. affiliate engaged in a broad range of activities including installation support, which we have classified as further manufacturing. See *Comment 2* and *Comment 3* of the ''Common Issues'' subsection of the

''Interested Party Comments'' section of this notice. We calculated CEP, in accordance with subsections 772 (b) and (d) of the Act, for those sales to the first unaffiliated purchaser by a seller affiliated with the producer/exporter that took place before importation and involved further manufacturing in the United States.

We excluded MRD's sale to The Charlotte Observer (''Charlotte'') from our final analysis because it involved the importation of parts and subcomponents, the sum of the cost of manufacture of which was less than 50 percent of the cost of manufacture of the LNPP component of which they are a part. See ''Scope of Investigation'' and ''Scope Comments'' sections of this notice. See also *Comment 2* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

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

(1) Where appropriate, we revised/updated the respondent's data in accordance with verification findings. See May 14, 1996 Memoranda for David L. Binder from V. Irene Darzenta Re: the Verification of the Questionnaire Responses of MAN Roland Druckmaschinen AG and MAN Roland Inc. (''MRD and MRU Sales Verification Reports.'').

(2) We excluded all post-POI price amendments. See *Comment 3* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

(3) We deducted from CEP those indirect selling expenses that were associated with economic activity in the United States, whether incurred in the United States or in Germany, and irrespective of where recorded, after making certain adjustments. We recalculated those indirect selling expenses incurred by MRD in Germany 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 this notice. We recalculated those indirect selling expenses incurred by MRU in the United States using the verified indirect selling expense rate for the POI based on sales revenues. See *Comment 5* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

(4) For the Rochester and Wilkes Barre sales, we recalculated warranty expenses using the verified warranty expense factor applicable to MRD's historical experience in the home market for all LNPP products based on the respondent's representations at verification that MRD would be primarily responsible for any warranty servicing necessary for these two sales. For Fargo and Global, warranty expenses were recalculated based on the warranty expense factor reflecting MRU's historical experience, revised to reflect verification findings, given the respondent's representations that MRU is primarily responsible for any warranty servicing necessary for these two sales. See *Comment 6* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

(5) We added warehousing income accrued on one sale.

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 the respondent's materials and fabrication costs, plus amounts for selling, general and administrative (''SG&A'') expenses and U.S. packing costs. We based our CV calculation on the same methodology used in the preliminary determination, revised to reflect verification findings, where appropriate, with the following exceptions:

(1) As facts available, we calculated the cost of manufacturing for the sales to Rochester and Wilkes Barre based on the respondent's submitted cost estimates, adjusted for the variance between estimated and actual costs for a completed sale of a similar Geoman press. See *Comment 9* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

(2) In calculating MRU's further manufacturing general and administrative (''G&A'') rate, we divided POI G&A expenses by cost of sales recognized during the POI, excluding the cost for parts purchased from MRD. See *Comment 14* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

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 attempted to verify 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 MRD reported that forward currency exchange contracts applied to certain U.S. sales, we could not verify that these contracts were directly linked to the particular sales in question. See May 14, 1996 MRD Sales Verification Report at 37. 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 rate is defined as the rolling average of rates for the past 40 business days. When we determined 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 deutschemark did not undergo a sustained movement, nor were there any currency fluctuations during the POI.

Interested Party Comments

Common Issues in the German and Japanese LNPP Investigations

The petitioner and the respondents in this investigation and the concurrent investigation of LNPPs from Japan raised certain common issues in their case and rebuttal briefs. Therefore, for purposes of these final determinations, we have consolidated the common issues in this notice in order to respond to them.

Comment 1 Deduction of U.S. Indirect Selling Expenses from CEP: The petitioner maintains that the Department failed to deduct most of the U.S. indirect selling expenses because they were recorded in the accounts of the foreign LNPP manufacturers. 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. The petitioner interprets section 351.402(b) of the proposed regulations (*Notice of Proposed Rulemaking and Request of Public Comments,* 61 FR 7308, 7381 (February 27, 1996)) which states that ''the Secretary will make adjustments to CEP under section 772(d) of the Act for expenses associated with commercial activities in the United States, no matter where incurred'' to mean that the actual physical location of those commercial activities is not a qualifying criterion. The petitioner maintains that much of the pre-contract sales activity is handled by the foreign manufacturer of LNPP and that the expenses incurred for such activity should be deducted from CEP. The petitioner states that if the Department deducts U.S. indirect selling expenses from CEP based on the geographic location in which they were incurred or booked, it would create an enormous loophole through which expenses directly associated with U.S. sales could simply disappear.

According to the petitioner, respondents in antidumping cases with CEP could increase net U.S. prices by merely shifting selling expenses from the books of their U.S. affiliates to those of the foreign parent companies.

The petitioner states further that, at a minimum, the Department should deduct from CEP all expenses included in the foreign manufacturer's accounts that relate to U.S. economic activity. These costs include: (1) All direct and indirect costs incurred for installation, warranty and technical servicing and training, regardless of where such expenses are originally incurred; (2) all indirect costs associated with pre-contract design, bid preparation, cost estimation, and negotiations for U.S. sales, regardless of where such expenses are originally incurred; and (3) all direct and indirect selling expenses which were originally incurred in the United States by either the U.S. affiliate or the foreign manufacturer, and have been recorded in the accounts of the foreign manufacturer. To the extent that a respondent has not specifically identified which portions of its U.S. indirect selling expenses booked by the foreign manufacturer are related to U.S. economic activity, the Department should deduct all such expenses from CEP.

MRD disagrees. MRD argues that neither the statute nor the proposed regulations support the petitioner's proposition. MRD states that in accordance with section 772(d) of the Act and the Department's proposed regulations, the deduction for indirect selling expenses is limited to expenses incurred in the United States for economic activities in the United States. MRD adds that its sales section in Germany responsible for U.S. sales activities performs these activities in Germany, and that the costs for these activities cannot be deducted from U.S. price under section 772(d).

MRD argues, however, that if the Department decides to deduct indirect selling expenses incurred outside the United States from U.S. price, then it should recalculate the amounts reported for U.S. sales. The respondent explains that to calculate the reported expenses, it first divided the actual MRD indirect selling expenses by the total value of sales recorded by MRD, and applied the resulting expense rate to the gross contract price for each U.S. sale. However, the MRD sales figures used to derive the expense rate include only the amounts for the sales from MRD to MRU and not the value added in the United States, whereas the gross contract price for each sale to which the expense rate was applied does reflects the total value of the presses delivered to the customer inclusive of the value added by MRU. Therefore, to make a consistent calculation, MRD argues that the Department should either recalculate the MRD indirect selling expense rate using figures that correspond to the gross contract prices, or it should use the existing rate but apply it only to the transfer price between MRD and MRU for each sale.

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. According to TKS, the Department has determined that the language of the SAA which refers to ''economic activity occurring in the United States'' is to be interpreted as activities of the respondent which physically occur in the United States. TKS cites to the *Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 30326 (June 14, 1996) (''*Pasta Final Determination*'') and the *Preliminary Results of Administrative Review: Certain Steel Wire Rod from France,* 61 FR 8915, 8917 (March 6, 1996) to support its contention that the petitioner's stance is inconsistent not only with the instructions of the SAA but with recent Department precedents.

MHI argues that the Department properly excluded from U.S. indirect selling expenses those costs incurred for non-U.S. economic activity. MHI argues that the methodology adopted by the Department was consistent with the SAA, section 772(d), and the Department's proposed regulations. Finally, MHI cites the *Pasta Final Determination* (at Comment 2), explaining that the Act requires the Department to make deductions to CEP only for those expenses associated with economic activity in the United States. MHI further argues that if the Department continues to treat MHI's U.S. sales as CEP sales, then it should continue to deduct only the indirect selling expenses incurred on behalf of economic activities occurring in the United States.

DOC Position: We agree with the petitioner in general. The SAA (at 823) states that: ''[U]nder new section 772(d), constructed export price will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of expenses (and profit) associated with economic activities occurring in the United States,'' including, *inter alia,* ''any 'indirect selling expenses' '' (emphasis added). In the *Pasta Final Determination,* the Department determined that it was proper to deduct indirect selling expenses incurred in the home market in support of U.S. sales because such expenses were ''specifically related to U.S. commercial activity.'' *See Pasta Final Determination* at 30352. The indirect selling expenses reported by the respondents in these investigations are of the same class and nature as those determined to be associated with U.S. economic activity in the *Pasta Final Determination, i.e.,* they are general selling expenses incurred and booked by the parent company in the home market to support export sales, including those for the

United States. This approach is in conformity with the SAA at page 824, which directs that section 772(d)(1)(D) provides for the deduction of indirect selling expenses from CEP where those expenses ''* * * would be incurred by the seller regardless of whether the particular sales in question are made, but reasonably may be attributed (at least in part) to such sales.'' We have therefore deducted indirect selling expenses incurred in the home market on U.S. sales from CEP, after making certain necessary adjustments.

While we agree with the petitioner that all indirect selling expenses directly associated with U.S. economic activity, irrespective of the location where they were incurred, should be deducted from CEP, we do not believe that it is correct to use an indirect selling expense factor which is derived from a pool of expenses and sales revenue which covers both U.S. and non-U.S. sales. The indirect selling expense ratio reported by MHI for activities recorded at MHI's Japanese headquarters and factory sales offices consists of a numerator inclusive of common selling expenses as well as specific selling expenses supporting U.S. exports and other exports sales, divided by a denominator consisting of all export sales. Similarly, the indirect selling expense ratio reported by MRD for activities recorded at MRD's Augsburg facilities consists of data related to both the U.S. and other export markets. The indirect selling expense ratio reported by TKS for activities recorded at TKS's Tokyo headquarters consists of a numerator inclusive of common selling expenses as well as specific selling expenses supporting U.S. exports, other exports sales, and domestic sales, divided by a denominator consisting of world-wide sales. These allocations resulted in each company's reported indirect selling expense rate.

Each respondent's indirect selling expenses incurred in the home market were reported as including expenses generally associated with U.S. exports, although the respondents maintained that such expenses did not relate to ''U.S. economic activity.'' At verification, we were able to confirm that certain of the indirect selling expenses were associated with U.S. economic activity. We were unable, however, to quantify the portion of the total indirect selling expenses which were associated with the U.S. sales. Therefore, for these final determinations, we have deducted, as non-adverse facts available, only a portion of the total indirect selling expenses recorded in the home market using the following methodology. First, we calculated total indirect selling expenses by multiplying the reported rate referred to above by each CEP price. We then subtracted that amount from each CEP price. Next, we calculated a factor which is the proportion of all those adjustments to CEP made under section 772(d) of the Act divided by the contract price net of the total indirect selling expenses calculated previously. The resulting factor was then applied to the indirect selling expense amount. We then deducted the resulting value from CEP. This methodology applies the indirect selling expenses only to the portion of CEP price which differentiates CEP from export price (''EP'').

Comment 2 EP or CEP Sales—U.S. Subsidiaries' Activities: MHI contests the Department's preliminary conclusion that the U.S. LNPP transactions under investigation should be classified as CEP sales. MHI argues that MHI's U.S. sales should not have been treated as CEP sales because (1) the Department mischaracterized the extent of the U.S. economic activities of its U.S. subsidiary MLP (USA) Inc. (''MLP''), and (2) the Department should not have treated installation as further manufacturing.

MHI claims that MLP's sales activities were not as broad as characterized by the Department. According to MHI, MHI's sales clearly qualify as EP sales under Section 772(a) of the Act. MHI states that the Department generally has three criteria for determining if a sale is to be based on EP. MHI states that the third criterion, where an affiliated U.S. agent ''acted as more than a processor of sales-related documentation and a communications link with the unaffiliated United States customers * * *.'' was applied to MLP and was the main reason for applying CEP to MHI's sales. MHI claims that MLP's sales-related activities were limited. According to MHI, subcontractors were responsible for installation, and MLP only sent engineers to supervise. According to MHI, the primary role of MLP is to act as an interface between the MHI sales team in Tokyo and MHI's U.S. customers. MHI argues that MLP did nothing more than implement purchasing instructions from MHI for a certain limited number of parts.

MHI cites the *Final Results of the Administrative Review of Certain Corrosion-Resistant Carbon Steel Flat Products from Korea* (61 FR 18547, 18562, April 26, 1996) (''*Flat Products from Korea*'') to support its contention that in setting up MLP's sales activities, MHI merely transferred these routine selling functions to its related selling agent in the United States and the substance of the transaction was unchanged. In *Flat Products from Korea,* the Department treated the respondent's sales as EP sales (formerly referred to as ''purchase price'') even though the U.S. affiliate had engaged in activity in the United States. The Department found that not all of the respondent's sales were delivered directly to the customer. However, the selling functions were normally undertaken by the exporter. According to MHI, the Department's analysis in *Flat Products from Korea* centered on what activities were conducted for the transaction as a whole and not on where the transaction took place. MHI explains that MLP's limited installation activities, limited sales activities, and limited parts procurement activities only represent a transfer of routine sales-related activities to the United States.

MRD maintains that the Department should analyze the Rochester and Wilkes-Barre sales as EP sales, rather than CEP transactions. This respondent states that the Department's preliminary decision to treat these sales as CEP sales was based on a misapplication of the standards used to distinguish EP from CEP sales. MRD maintains that the standard for such differentiation is whether the performance of functions by the U.S. subsidiary changes the substance of the transaction or the functions themselves. According to MRD, MRU's role in the Rochester and Wilkes-Barre sales does not transform the sales from EP to CEP sales, as it was not essential. MRD asserts that the functions performed by MRU for these sales—document processing, arranging for local sourcing of certain materials and services, communicating and coordinating with the customer—are the same functions that MRD routinely performs from Germany for third country sales. By contrast, the sales to Charlotte, Fargo and Global did require MRU's participation and are properly characterized as CEP sales, as they were either produced almost entirely at MRU's facilities in the United States or underwent substantial further processing there.

Furthermore, MRD argues that, because the Rochester and Wilkes-Barre sales were made prior to importation and were not sold from the U.S. affiliate's inventory or subject to further manufacturing in the United States, they must be treated as EP sales under the Department's established practice. Also, MRD contends that the minor warehousing required for these sales as a result of the logistical problems inherent in shipments of large capital equipment, and the addition of non-

German parts during the installation process, does not transform these sales into CEP sales. Additionally, MRD notes that the Department's reliance on *New Minivans from Japan* (57 FR 21937, May 26, 1992) (''*Minivans*'') and *Certain Internal-Combustion Forklift Trucks from Japan* (''*Forklifts*'') (53 FR 12552, April 15, 1988) in the preliminary determination to treat the sales at issue as CEP sales is misplaced. MRD states that, in *Minivans,* the Department concluded that the U.S. subsidiaries of the Japanese automobile manufacturers played such a significant role in the U.S. sales and distribution structure for their imported automobiles that the sales had to be classified as CEP sales. The types of efforts performed by these U.S. subsidiaries required a U.S. presence similar to that required for a sale from the U.S. subsidiary's own inventory. In contrast, none of the functions performed by MRU for the Rochester and Wilkes-Barre sales require a presence in the United States. MRD explains that, in *Forklifts,* the Department's reasoning for classifying sales made through an affiliated sales agent to an unaffiliated purchaser as EP sales hinged in part on the fact that the functions performed by the affiliated seller did not change the substance of the transaction, and in part on the fact that the sales were made prior to importation. Therefore, MRD asserts that, in accordance with the reasoning outlined in *Forklifts,* the sales to Rochester and Wilkes-Barre should be treated as EP sales.

The petitioner maintains that under the language of the statute, all U.S. sales made by all respondents in these investigations must be treated as CEP transactions. The petitioner argues that the export price definition contained in the statute does not apply to sales made by a U.S. selling affiliate of a foreign manufacturer or exporter. The petitioner states that, despite the apparent clarity of the statutory language, the Department's practice has been to consider a sale by an affiliate as an ''indirect'' export price transaction where the merchandise is shipped directly to the buyer without any inclusion in the selling affiliate's inventory, and where the U.S. sales affiliate acts only as a processor of documentation and as a communications link with the unaffiliated buyer. It maintains that the indirect export price definition in the respondents' case cannot be applied because the U.S. sales subsidiaries functioned as more than a mere processor of sales-related correspondence. The petitioner cites to the *Flat Products from Korea* and *Polyethylene Terephthalate Film, Sheet and Strip from Japan* (60 FR 32133, 32135, June 20, 1995) to support its contention that just as the lack of additional expenses such as technical services, advertising and warranties by an U.S. affiliate indicate the use of export price, so, conversely, where the U.S. affiliate performs additional functions such as technical support, training, and warranty servicing, the Department will treat the sale as a CEP transaction. The petitioner enumerates the various functions performed by the U.S. affiliates of MHI, TKS and MRD—marketing, sales promotion, training, warehousing and installation support, where applicable—and asserts that these activities constitute more than mere processing of sales documentation.

Furthermore, the petitioner notes that TKS recognized that the selling activities of its selling agent far exceeded the Department's minimal threshold for indirect export price sales and reported its U.S. sales as CEP and further-manufactured sales. The petitioner states that although MHI reported its sales as EP transactions, the Department correctly classified its U.S. sales as CEP-further-manufactured sales at the preliminary determination. According to the petitioner, this preliminary determination was confirmed during verification, where the Department reviewed the documentation of MLP's procurement of auxiliary parts and its sales servicing activities, both of which go well beyond the narrow confines established by the Department for indirect export sales.The petitioner disagrees with MRD's claim that the Department classifies a sale as EP unless the functions performed by the U.S. affiliate could not have been performed by the foreign producer/ exporter without the U.S. affiliate. The petitioner asserts that it is the significance of the activities performed by the U.S. affiliate and not their transportability that counts in the CEP versus EP analysis. The petitioner also refutes MRD's analysis of the Department's decisions in *Minivans* and *Forklifts,* claiming that in both cases the Department focused on the functions performed by the U.S. sales affiliate. In addition, the petitioner states that the only exception to the rule that warehousing necessitates CEP treatment is when the producer provides warehousing at the customer's demand, which is not the case for the Rochester and Wilkes-Barre sales.

Finally, the petitioner maintains that CEP treatment is required because the installation activities of respondents' U.S. affiliates constitute further manufacturing, which by definition means that these affiliates were more than documentation processors and communication links. According to the petitioner, maintaining U.S. operations to oversee further manufacturing of LNPPs necessarily entails salaries for engineers and supervisors, and the general and administrative expenses to support them. Under such circumstances, the petitioner argues that characterization of a further manufactured sale as a standard export price transaction would ignore these substantial U.S. expenses related to the sale of subject merchandise, and would not result in a fair comparison. For all of these reasons, the petitioner argues that the substantial U.S. economic activities require the Department to treat the U.S. sales as CEP transactions.

DOC Position: We agree with the petitioner and have treated all of the respondents' U.S. sales as CEP sales. In past cases such as *Forklifts,* where the Department has ruled that sales such as those at issue (*i.e.,* sales made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation) are EP sales (formerly purchase price), it has examined several criteria, including: (1) Whether or not the sales were shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether or not the sales follow customary commercial channels between the parties involved; and (3) whether or not the function of the U.S. selling agent is beyond that of a ''processor of sales-related documentation'' and a ''communications link'' with the unrelated U.S. buyer. Where all three criteria are met (*i.e.,* sales are not inventoried, the commercial channel is customary and the function of the U.S. selling agent is not substantively more than a ''processor of sales-related documentation'' and a ''communications link''), the Department has regarded the routine selling functions of the exporter as ''merely having been relocated geographically from the country of exportation to the United States,'' and has determined the sales to be EP sales. In other words, where the functions are performed ''does not change the substance of the transactions or the functions themselves.'' See *Forklifts* at 12553. There are numerous cases where the Department has relied on the above-specified criteria to characterize sales as EP (formerly purchase price) or CEP (formerly exporter's sales price), including: *Minivans; Flat Products from Korea;* and *Final Determination of Sales at Less Than Fair Value: Stainless Steel*

Wire Rod from France (58 FR 68865, 68868–9, December 29, 1993).

With respect to MHI, we believe that the various activities of MHI's subsidiary MLP were substantially more than ''routine selling functions.'' Rather, MLP was significantly involved with the sale of LNPP in the following areas: selling agency, after-sales servicing, sourcing of non-subject parts, and supervision of installation. As MHI's principal sales agent in the United States, MLP was directly responsible for identification of Piedmont as a buyer, and cooperated with Sumitomo in the delegation of oversight for the Guard sale. With respect to after-sales servicing, MLP incurred warranty expenses for both sales. Also, for both sales, MLP supervised installation through the work of its engineers, and procured parts which were substantial in quantity, value and functional importance. For the Piedmont sale, MLP provided direct technical assistance, and for both the Guard and Piedmont sales MLP was responsible for direct oversight of installation performed by subcontractors, including payment of services rendered.

With respect to MRD, we also believe that the third EP criterion is not satisfied in the case of MRU. MRU's role with respect to the sales at issue is beyond that of a mere ''processor of sales documentation'' and ''communications link.'' MRU played a major role in the negotiations between MRD and the U.S. customer for the Rochester and Wilkes-Barre sales, from the bidding stage through to the final contracts and subsequent amendments to the final contracts, and incurred significant SG&A expenses in the process. The contractual documentation and sales-related correspondence viewed at verification attests to this fact. Furthermore, we verified that MRU supports MRD's activities in the shipment and installation process relevant to these sales. This is evidenced by the fact that MRU is responsible for the post-sale warehousing of the merchandise shipped from Germany (which, while performed to meet the customer''s timing needs, was not considered by the respondent to be a routine service performed under the terms of the original sales contract), as well as the contracting of rigging companies and the sourcing of auxiliary parts essential to the installation process in the United States. Given its parts procurement role, it is possible that MRU may engage in warranty servicing support activities for the Rochester and Wilkes-Barre sales in the post-installation and start-up period.

Furthermore, this reasoning is consistent with our decision to treat installation expenses as part of further manufacturing under section 772(d). See *DOC Position* to *Comment 3,* below. Maintaining U.S. operations to oversee further manufacturing of LNPPs necessarily entails significant expenses including salaries for engineers and supervisors, and the general and administrative expenses to support them. Under such circumstances, the characterization of a further manufactured sale as an export price transaction would ignore these substantial U.S. expenses related to the sale of subject merchandise and would result in an unfair comparison in the dumping analysis. We believe that the presence of a subsidiary's participation in further-manufacturing activities particularly bolsters the use of CEP analysis. We note that the Department has always analyzed further manufacturing in the context of CEP (formerly exporter's sales price) methodology. In the *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada,* 59 FR 18791, 18794 (April 20, 1994), the Department considered the possibility of performing EP (formerly purchase price) analysis on certain sales which involved further processing by an unaffiliated subcontractor. The Department excluded the sales in question from its analysis because the removal of value added by the unaffiliated purchaser from the purchase price would have resulted in further manufactured purchase price sales, and thus would have been completely inconsistent with section 772 of the Act.

TKS reported all of its sales as CEP sales, so that the general issue of CEP analysis is moot. TKS maintains, however, that its Dow Jones sale is CEP but not a further-manufactured sale. For discussion of this issue, see TKS *Comment 5* in the companion Federal Register notice for LNPPs from Japan.

Comment 3 The Treatment of Installation Expenses: MHI argues that the Department should not treat installation expenses as further manufacturing. MHI refers to U.S. law and case precedent to support its claim that installation does not constitute further manufacturing. The respondent cites to the Senate Committee On Finance, et al., *Uruguay Round Agreements Act,* S. Rep. No. 412, 103d Cong., 2d Sess. 66 (1994), to support its contention that an adjustment for further manufacturing is appropriate for an increase in value based on a process of manufacture or assembly of the imported merchandise after importation and before the sale to an unaffiliated purchaser. MHI believes that these criteria form a temporal restriction whereby value must be added at a point after importation but prior to the date of sale of the subject merchandise. MHI therefore contends that the installation MHI provides on its U.S. sales cannot qualify for a further-manufacturing adjustment because it was provided after, and not prior to, sale and delivery to the customer's specified destination sites.

MHI argues that the principles in *Forklifts* and *Certain Small Business Telephone Systems and Subassemblies Thereof from Korea* (54 FR 53141, December 27, 1989) (''*SBTS*'') to which the Department referred at its preliminary determination, do not apply to LNPPs. According to MHI, in *SBTS,* the Department determined that the combination of subject and non-subject merchandise should be treated as further manufacturing activity. MHI contends that the bulk of its LNPP installation and installation supervision expenses do not relate to the combination of subject and non-subject merchandise, but to the reassembly of LNPP components.

MHI claims that in its operations, while auxiliary parts were shipped directly to the site of installation, they could have easily been shipped to Japan and then back to the site of installation. MHI contends that this scenario is substantively different from that in *Forklifts,* where Toyota's U.S. economic activities involved extensive relocation of its Japanese manufacturing activities to the United States. MHI claims that it does not normally ''install'' a LNPP at its Wadaoki assembly facility prior to exportation, nor does it complete final reassembly of the finished components anywhere but at the customer site after shipment and delivery. MHI maintains that it is purely accidental that the Department happened to use the term ''installation'' in discussing the respondent's U.S. economic activity in *Forklifts.*

MHI argues that LNPP installation should be treated as a movement expense, rather than as part of further manufacturing. MHI cites section 772(c)(2)(A) of the Act which states that EP (or CEP) for movement related activity should be reduced by ''the amount, if any, included in such price, attributable to any additional costs, charges, or expenses * * * which are incident to bringing the subject merchandise * * * to the place of delivery in the United States * * *.'' MHI maintains that the Department should follow its practice in the investigation of *Mechanical Transfer Presses from Japan* (55 FR 335, January 4, 1990) (''*MTPs*''), where it determined that installation charges should be treated as movement expenses, because LNPP systems present virtually identical shipment reassembly requirements as MTPs.

MHI disagrees with the Department's preliminary determination that the items added to a LNPP during installation are ''integral'' to the function of the press, whereas those items added to MTPs during installation were not. MHI explains that the Department has not cited any support for determining that additions made to MTPs in the United States were not integral to MTPs. MHI maintains that, even assuming *arguendo,* that certain LNPP auxiliary parts were integral to press operation, the Department gave no reason why the addition of ''integral'' parts, as opposed to ''non-integral'' parts, is a legally meaningful distinction. MHI states its conclusion that such a distinction is irrelevant to a determination on the nature of installation costs.

MHI also disagrees with the Department's preliminary conclusion that LNPP installation is far more complex than the reassembly operations examined in the investigation of *MTPs.* MHI claims that its review of the public record of the *MTPs* investigation revealed no basis to determine that the reassembly and installation of LNPPs is more complex than that of MTPs, since there was no public discussion of any of the attributes of MTP installation which would indicate complexity, such as: the time involved in installation, the number of engineers required to complete installation, the length of time for installation, or the amount of expense (absolute or relative) incurred during installation.

MRD argues that the Department should classify the installation costs for the Rochester and Wilkes-Barre sales as movement costs, rather than installation costs, in accordance with its longstanding practice in cases involving large capital equipment. MRD asserts that the factual pattern in this case is similar to that in *MTPs* and *Large Power Transformers from Japan* (48 FR 26498, 26501, June 8, 1993) (''*LPTs*''), rather than in *SBTS* and *Forklifts,* the cases on which the Department incorrectly relied in the preliminary determination. MRD explains that the installation process in the instant case, similar to that in *MTPs,* is required because of the size of the merchandise involved, and the resultant need for disassembly of the merchandise for exportation and subsequent reassembly at the customer's site. According to MRD, the situations in *SBTS* and *Forklifts* involved the modification of the subject merchandise after importation at the option of the customer not the simple reassembly of the merchandise as a result of the shipment process. In addition, MRD asserts that the fact that LNPPs often are not fully assembled before shipment (otherwise known as ''staging''), or that some additional non-German items are incorporated into the press system during installation, does not change the nature of the installation process.

The petitioner states that the Department properly classified installation charges in its preliminary determination as part of U.S. further manufacturing under section 772(d)(2) because the U.S. installation process involves extensive technical activities on the part of engineers and installation supervisors and the integration of subject and integral, non-subject merchandise necessary for the operation of LNPPs. The petitioner maintains that the Department has never applied a blanket rule on installation expenses, treating them as assembly, a circumstance of sale adjustment, or shipment expenses, depending on the particular circumstances involved. Where those circumstances include incorporation of integral, non-subject components during installation or complex installation operations that are more than mere reassembly, the precedent clearly supports treatment of installation expenses as further manufacturing. The petitioner contrasts the level of complexity in this investigation to that in *MTPs* to support its contention that, in addition to the integration of non-subject parts, the very complexity of the installation and the extent of entirely new assembly also affects the Department's treatment of the expenses. The petitioner asserts that in *MTPs,* installation costs were treated as shipment expenses because installation primarily involved simple ''reassembly'' of parts originally disassembled at the foreign producer's export facilities. The petitioner maintains that the Department's determination in *MTPs* is not applicable to LNPPs because none of the U.S. LNPP sales involved the mere reassembly of subject merchandise. Also, the petitioner contends that the subject merchandise in this investigation was never fully assembled and tested before shipment, but instead was fully constructed for the first time at the customer's site, involving many hours of engineering, installation and testing, and the integration and installation of the subject merchandise into the physical and electrical plant of each customer's facility. In addition, the petitioner disagrees with MRD's analysis of *Forklifts* and *SBTS,* stating that in both cases the Department treated the addition of integral components, or integration of subject and non-subject subassemblies, during installation as further manufacturing.

DOC Position: We agree with the petitioner. We believe that the Department correctly classified installation charges as part of further manufacturing because the U.S. installation process involves extensive technical activities on the part of engineers and installation supervisors and the integration of subject and non-subject merchandise necessary for the operation of LNPPs. As the parties have stated, the Department has not applied a blanket rule on the treatment of installation expenses, sometimes treating them as assembly costs, a circumstance of sale adjustment or shipment expenses, depending on the particular circumstances involved. See *Forklifts,* 53 FR 12552, 12565 (April 15, 1988); *SBTS,* 54 FR 53141, 53151 (December 27, 1989) and *MTPs,* 55 FR 335, 339 (January 4, 1990). Where those circumstances include the incorporation of integral, non-subject components during installation or complex installation operations that are more than mere reassembly, the precedent clearly supports treatment of installation expenses as further manufacturing. See *SBTS.* In this case, the respondents' U.S. subsidiaries' roles in the sale, installation and servicing of LNPPs, and their supervision of the incorporation of integral, non-subject components during installation, constitute a process that is more than mere reassembly.

The integration of integral non-subject merchandise and the technical complexity of LNPP installation distinguishes the instant processes from that of *MTPs,* which was a ''mere reassembly of subject parts.'' Unlike the equipment covered in *MTPs,* the respondents' LNPPs were never fully assembled and fully tested in the country of production, since the integral parts incorporated at the plant sites in the U.S. were required for the press to actually run to print a newspaper. Finally, the installation of these LNPPs involves integration of the merchandise into the physical and electrical plant of the customer's installation site and often requires modification of LNPP components or the site itself for successful completion of the LNPP.

With respect to MHI, for both the Piedmont and Guard sales, the purchase of integral parts for installation was not limited, as suggested by the respondent, but was significant. The role played by MLP in installation activities is evidenced by its purchasing of auxiliary parts, installation supervision and other oversight responsibilities. The Department's treatment of MLP's oversight, control and payment of third-party installation as further manufacturing is completely consistent with the *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea,* 58 FR 15467, 15476 (March 23, 1993), wherein the Department determined that fees paid for processing by an unaffiliated subcontractor were further manufacturing expenses. Contrary to MHI's characterizations, the Department believes that the extent of such activities performed on these sales was significant, as measured by the value of such services to the total contract price of the sales.

Further, with respect to MHI's arguments, we note also that there is no ''temporal restriction'' to the definition of further manufacturing. The Department stated in *SBTS* (at Comment 9):

> Because non-subject merchandise is added to the subject subassemblies, the portion of installation expenses attributable to the addition of the non-subject merchandise cannot reasonably be treated as a circumstance of sale adjustment. It is, rather, part of the value added in conjunction with the non-subject merchandise. *Whether this value is added before or after the sale is irrelevant because, for this product, EIS's customers expect the installed system to have the characteristics added by the non-subject merchandise.* (Emphasis added.)

This fundamental customer expectation of the characteristics of the final, installed and functional equipment holds true for LNPP as well.

Comment 4 Treatment of Sales With ''Abnormally High Profits'': If the Department continues to undertake a review of individual home market sales in its final calculation, MHI contends that the Department should also exclude sales with abnormally high profits. MHI argues that sales with abnormally high profit also fall within the definition of sales occurring outside the ordinary course of trade. MHI asserts that two of its home market sales have abnormally high profits and therefore should be excluded.

MRD argues that the Department should include profit on ''after-sale'' sales in calculating home market profit. However, since MRD's normal records do not segregate ''after-sale'' profits by market or product line, MRD asserts that the Department should use the overall average profit of its Web Press Division. If the Department calculates profit on a transaction-specific basis, MRD contends that home market sales with abnormally high profits should be excluded from the CV profit calculation.

The petitioner maintains that the Department should use the same CV profit methodology applied in the preliminary determination (*i.e.*, calculate profit on a model-specific basis). With respect to MHI, the petitioner asserts that there was nothing in the record which suggests that profits on any sales were ''abnormally'' high. The petitioner argues that the sales were at arm's length so the profit level should be normal. Moreover, the petitioner asserts that there are too few sales to establish a pattern of normal versus abnormal profit. In addition, the petitioner maintains that the profit rates suggested by MHI as being abnormally high do not distort the average profit.

With respect to MRD, the petitioner asserts that even the highest profit calculated on MRD's home market sales is not abnormal because it falls with the variability range for all home market sales and, thus, should not be excluded. With respect to ''after-sale'' sales, the petitioner argues that the profit on ''after-sale'' services is not part of the foreign like product. Moreover, the petitioner could not segregate these ''after-sale'' profits by product-line.

DOC Position: We disagree with respondents that simply because certain home market sales had profits higher than those of numerous other sales, the profits are automatically abnormally high and outside the ordinary course of trade for purposes of computing CV profit. In order to determine that profits are abnormally high, there must be certain unique or unusual characteristics related to the sales in question. However, the respondents have provided no credible information other than the numerical profit amounts to support their contention that certain home market sales had abnormally high profits. Accordingly, we excluded no home market sales from the CV profit calculation due to abnormally high profits.

We agree with the petitioner that ''after-sale'' sales are not part of the foreign like product. Thus, MRD's argument that the Department should include profits from these ''after sale'' sales is misplaced.

Company-Specific Issues in the German LNPP Investigation

Comment 1 KBA's Final Margin: KBA believes that its final margin should be based on the data relevant to the MRD sale in the petition, adjusted based on the verified information on the record. Alternatively, KBA believes that it should be assigned the ''all others'' rate.

For purposes of the final determination, KBA argues that the Department cannot legally assign KBA the 46.40 percent margin based on the adjusted petition rate in the notice of initiation, as it did in the preliminary determination, because the record evidence shows that the petition data are incorrect and cannot be corroborated. In addition to the pre-initiation modifications made to the data in the petition, KBA asserts that the Department must further corroborate that information based on the accurate, verified information on the record and assign the resultant revised amount to KBA. KBA states that the SAA cautions that secondary information, such as petition information, used as facts otherwise available, may not be reliable because it is based on unverified allegations. Therefore, to the extent practicable, it must be corroborated from independent sources that are reasonably available to the Department. KBA points out that the SAA (and the Department's proposed regulations) also states that independent sources include information obtained from interested parties during the investigation. Because the revised petition rate is based solely on data for one of MRD's sales and MRD has fully participated in the investigation, KBA argues that the verified information on the record with respect to this sale can and should be used to corroborate and, if necessary, to revise petitioner's information further.

Furthermore, KBA maintains that the Department's corroboration procedures for purposes of the preliminary determination were legally insufficient. KBA takes issue with the Department's claim that it re-examined the petition price data and found it continued to have probative value. According to KBA, the test is not to re-examine or determine whether the data have probative value, but to corroborate that data to the extent practicable. KBA does not view the 46.40 percent margin alleged in the notice of initiation, which is based on MRD's data, as evidence of the dumping margin on KBA imports of subject merchandise, because it is significantly higher than the 17.70 percent preliminary margin calculated for MRD. In light of this fact and the evidence on the record, KBA does not believe it is accurate or reasonable to claim that the petition price data has any probative value. In accordance with the statute and the practice set out in the preliminary determination of *Bicycles from the People's Republic of China* (60 FR 56567, November 9, 1995)

(''*Bicycles*''), KBA asserts that wherever data collected from MRD is inconsistent with the data contained in the petition on the MRD sale, the Department should reject the petition data in favor of MRD's actual data for use as facts otherwise available. KBA also asserts that the decision in the preliminary determination of *Certain Pasta from Italy* (61 FR 1344, January 19, 1996) (''*Pasta Preliminary Determination*'') on which the Department relied in making its facts available ruling for KBA in the preliminary determination was inconsistent with the statute to the extent that it did not go beyond its pre-initiation analysis in its efforts to corroborate petition information. In addition, unlike the *Pasta Preliminary Determination*, where the Department used as facts available the median of the range of estimated dumping margins from the notice of initiation, the Department in the instant investigation based KBA's margin on a sole sale of another company and the facts supporting the alleged margin have been proven incorrect during the course of this investigation.

Alternatively, KBA suggests that it be assigned the ''all others'' rate. KBA adds that it withdrew its participation from the investigation because the extensive cost of preparing a response was totally disproportionate to its role in the U.S. market where its past sales of German-made LNPPs were insignificant and no future sales of German-made LNPPs were expected. For this reason, KBA asserts that the Department should consider it a non-shipper in which case it would receive the ''all others'' rate. KBA maintains that the Department should not make adverse inferences against KBA, as KBA's decision not to respond to the Department's questionnaire was driven by financial reasons and not by any other perceived benefit from non-submission of information. At the time KBA made its decision, it had no way of knowing the margin MRD would receive, whether the Department would accept its data, whether the information would be verified and/or whether the Department would use facts available. Additionally, KBA asserts that prior to the 1995 amendment to the antidumping statute, the Department's practice was to issue questionnaires to exporters accounting for the first 60 percent of exports of subject merchandise. Had this rule still been applicable, KBA states that it probably would not have been deemed a mandatory respondent and received a questionnaire in this investigation. Thus, it would have received the ''all others'' rate which, in this case, would have been MRD's rate.

The petitioner maintains that the Department properly assigned KBA the margin contained in the notice of initiation as facts available in the preliminary determination, contending that KBA's refusal to cooperate justifies an adverse inference. According to the petitioner, KBA was properly identified as one of two exporters of subject merchandise to the United States and, therefore, the Department was fully justified in its decision to require it to respond to the antidumping questionnaire. The petitioner also dismisses KBA's claims that its small volume of exports somehow exempts it from responding to the Department's questionnaire. Under the URAA, the Department must establish a separate margin for each exporter, unless the number of transactions or exporters makes such a procedure impractical, which is not the situation in this case. In addition, the petitioner dismisses KBA's reasons for refusing to cooperate as irrelevant since the statute does not condition the use of an adverse inference on the motive of a non-cooperating party. According to the petitioner, applying an adverse inference in KBA's case ensures that a non-cooperating party does not benefit more by its failure to cooperate than to comply with the Department's requirements. Finally, in the petitioner's view, the Department did corroborate the secondary data used as facts otherwise available. According to the petitioner, the statute establishes that the Department satisfies the corroboration requirement if it finds that the information at issue has probative value. In this investigation, the petitioner asserts that the pre-initiation analysis of the petition satisfied this threshold.

DOC Position: We agree with the petitioner. In our preliminary determination, pursuant to section 776 of the Act, we assigned KBA the margin in the notice of initiation as facts otherwise available because it failed to respond to the Department's questionnaire. We stated at that time that, in accordance with section 776(b) of the Act, an adverse inference was warranted with respect to KBA because it failed to cooperate by not acting to the best of its ability to comply with the Department's request for information so that the Department could make a determination with respect to the extent of KBA's dumping or lack thereof. Consistent with our preliminary determination, we believe that an adverse inference is warranted with respect to KBA for purposes of the final determination. See ''Facts Available'' section of this notice.

We disagree with the respondent's claim that the Department should not use facts available or make adverse inferences in its case, but rather should apply the ''all others'' rate . According to section 776(a) of the Act, the Department shall use facts available if an interested party does not provide necessary information or significantly impedes an investigation. The SAA explains that the Department's potential use of facts available provides the ''only incentive to foreign exporters and producers to respond to the Department's questionnaire'' (SAA at 868). Applying an adverse inference to a non-cooperating party ensures that the non-responding party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. The facts available or adverse inference applied need not be proven to be the best alternative information, only that it is reasonable to use under the particular circumstances (SAA at 869). In this case, if KBA were to receive the ''all others'' margin instead of the adverse facts available margin, as KBA suggests, it would receive the exact same treatment as MRD, which responded to the Department's questionnaire. This result would not fulfill the objective of section 776 of the Act. Similarly, we note that it would be inappropriate to assign to KBA, as adverse facts available, the actual margin calculated for the MRD sale in the petition, because this rate is lower than the final overall margin for MRD which cooperated fully in this investigation.

With respect to the respondent's opposition to our corroboration procedures, we note that the SAA (at 870) defines corroboration of secondary information to mean that the Department will satisfy itself that the secondary information to be used as the basis for facts available has ''probative value.'' The determination of ''probative value'' is assessed on a case-by-case basis. We stated in our preliminary notice that, in accordance with section 776(c) of the Act, we corroborated all of the secondary information on which the margin in the petition was based during our pre-initiation analysis of the petition to the extent appropriate information was available for that purpose at that time. For purposes of the preliminary determination, we re-examined the price information provided in the petition in light of information developed during the investigation, and found that it continued to be of probative value. For the final determination, we compared the petition price information with verified data on the record and again found that it continued to be of probative value. Nothing in the statute or the SAA compel us to go beyond these procedures.

Contrary to the respondent's claims, our corroboration procedures in this case are not inconsistent with the preliminary determinations in *Pasta* or *Bicycles*. In *Bicycles*, the Department compared the data in the petition to secondary data which included, but was not limited to, the same type of data used as the basis for the petition and the audited financial reports of two of the largest Indian bicycle producers. These procedures did not seek to replace the secondary information with respondent-specific information, but rather to compare it against that information in order to determine if it had ''probative value.'' In *Pasta,* unlike the instant investigation where KBA did not attempt at all to respond to the Department's questionnaire, the company to which facts available was applied at least attempted to respond to the Department's questionnaire, but the information it submitted was inadequate and unusable. Also, in the *Pasta Final Determination*, we concluded that the petition was the only appropriate information on the record to be used as facts available on the basis of having compared the sizes of the calculated margins for the other respondents to the estimated margins in the petition. In the *Pasta* case, as in the instant case, the other respondents' estimated margins were lower than the petition margins. In addition, in *Pasta* the Department did not go beyond its pre-initiation analysis in its corroboration procedures. See *Pasta Final Determination*, 61 FR 30326, 30329 (June 14, 1996).

Furthermore, KBA's references to the pre-1995 antidumping law with respect to the Department's determination of the appropriate recipients to the Department's questionnaire are irrelevant. Under the URAA, the Department is now required to investigate all known producers/exporters of subject merchandise unless the number of transactions or exporters is administratively burdensome (SAA at 814). Furthermore, despite the fact that there was no dumping allegation in the petition specifically against KBA, the Department is required to conduct its own research as to the universe of producers/exporters of subject merchandise and the appropriate recipients of its questionnaire. Thus, based on information received from the U.S. Embassy in Bonn, we named KBA as a respondent. See August 28, 1995, Memorandum to the File from Irene Darzenta, *et al.*, Re: Questionnaire Recipients. For whatever reason KBA decided to withdraw from the investigation as an active respondent, the Department must now make adverse inferences consistent with the principles outlined above. Therefore, for purposes of the final determination, we have assigned to KBA the amended petition margin in the notice of initiation of 46.40 percent.

Comment 2 Sales Exclusion Requests: MRD argues that the Department should exclude certain sales from its final calculations—namely, Charlotte, Fargo and Global—because they involve imports of parts and subcomponents that are not subject to the scope of the investigation. With respect to the Charlotte sale, the respondent argues that, in the initial phases of the investigation, both the petitioner and MRD agreed that it should be excluded from the Department's analysis because the substantial U.S. content would distort the Department's calculations. MRD states that, while the Department's preliminary determination did not dispute this reasoning, it questioned whether it had the authority to exclude this sale based solely on this fact. Because the Department had not reached a final decision on scope at that time, it decided to preliminarily include the Charlotte sale in its analysis. MRD continues to believe that this sale does not represent subject merchandise and therefore should be excluded. According to MRD, none of the imported parts and subcomponents (taken singly or together) constitutes a LNPP component whether defined by the Department in terms of essence or value.

Moreover, MRD asserts that the Charlotte sale involved an unusual situation and, if included in the Department's analysis, would distort the calculation of the antidumping margin. Specifically, MRD states that MRU experienced significant problems in the design and manufacturing of the press because of ''mismanagement,'' which resulted in significant cost overruns and profit loss. The Department's preliminary determination deducted all of the costs incurred in the United States, including the unexpected cost overruns, from the total sales price to determine CEP, thereby resulting in a very high dumping margin for this sale. MRD points out that the Department has the authority to exclude unusual sales, such as Charlotte, from its analysis if inclusion of those sales would distort the results. Alternatively, if the Department does not exclude the sale to Charlotte, it should calculate CEP for that sale under the ''Special Rule'' of section 772(e) of the Act which provides that the Department may employ alternative methods to determine CEP when the U.S. value added exceeds the value of the imported merchandise. MRD asserts further that the first two alternative methodologies described in section 772(e) would be difficult to apply to the Charlotte sale because there were no sales of identical or other merchandise that could be compared to the NV for the Charlotte sale. Therefore, MRD maintains the Department should use ''another reasonable method'' permitted under the ''Special Rule'' of section 772(e) of the Act. At a minimum, MRD argues that the Department should assign a substantial portion of the loss on the sale to the U.S. operations that caused it.

Furthermore, MRD argues that the sales to Fargo and Global should also be excluded because they do not consist of subject components and therefore fall outside the scope. Also, as explained in its various responses, both sales involved unusual circumstances. In general, the Fargo sale involved the sale of a discontinued printing unit produced partially in Germany and partially in the United States. The Global sale involved a combination of used equipment from MRU's inventory and a new printing unit which was produced partially in Germany and partially in the United States, and sold to a reseller which was responsible for its installation. Even if the Department were to conclude that the parts and subcomponents imported from Germany for these sales were within the scope, MRD urges the Department to exercise its discretion to exclude these sales from its analysis based on the fact that they are small and atypical.

The petitioner states that the Department should include all three sales at issue in its analysis. With respect to Charlotte, the petitioner argues that the cost overruns as a result of ''mismanagement'' experienced by the respondent on this sale are not a valid reason to exclude the sale or apply special methodology within the context of the antidumping statute or the Department's practice. According to the petitioner, if a cost overrun by itself required exclusion of a sale, the cost calculation would become unfairly skewed in favor of low-cost sales. The petitioner also disputes respondent's claim that Rockwell agreed to exclude this sale from the investigation, stating that only in the context of its proposal for a four-year POI did it think that the Department could forego analysis of this sale given its complexity and the reporting burden. However, in the two-year POI adopted by the Department, the petitioner believes it is too significant to omit and the respondent has already met the burden of reporting the data for this sale.

The petitioner argues that the Charlotte sale does not meet the criteria for exclusion of a U.S. sale from the dumping calculation because it is not ''atypical'' within the context of the LNPP industry or so small as to have an insignificant effect on the margin. In addition, the petitioner maintains that MRD's ''alternative methods'' approach is unsubstantiated. According to the petitioner, MRD's proposed alternative of attributing all or some of the loss on the Charlotte sale is unreasonable under section 772(e) of the Act which provides for the exclusion of losses in the adjustment for further manufacturing. Finally, the petitioner asserts that the merchandise sold to Charlotte is subject to the scope because it includes certain parts and subcomponents which are explicitly covered by the scope.

With respect to Fargo and Global, the petitioner contends that these sales also constitute subject merchandise and were not ''atypical.'' The petitioner claims that the imported merchandise for both transactions contained all of the relevant mechanical parts of one of the five LNPP components which would have included certain parts explicitly specified in the scope. The petitioner also maintains that the fact that these sales involved discontinued equipment or were small in terms of value does not make them ''atypical,'' given the limited number and uniqueness of each of the U.S. sales under investigation, and the nature of the LNPP industry where technological advances which result in the discontinuation of previous product lines are common.

DOC Position: We agree generally with the respondent with respect to the Charlotte sale, and with the petitioner with respect to the Fargo and Global sales. The Charlotte sale involved the importation from Germany of less than complete components destined to fulfill a contract for a LNPP system in the United States. Both the Fargo and Global sales involved the importation from Germany of less than complete components for the fulfillment of a contract for LNPP additions. As stated in the ''Scope of Investigation'' section of this notice, we have determined that elements (*i.e.,* parts and subcomponents) imported to fulfill a LNPP contract shall be included in the scope of the investigation if the sum of their cost of manufacture is at least 50 percent of the cost of manufacture of the finished LNPP component of which they are a part. In the case of Charlotte, our analysis of the sum of the manufacturing cost of the elements relative to the manufacturing cost of each of the components of which they are a part is less than 50 percent. Because the imported elements do not meet the 50 percent threshold on a component-specific basis and, therefore, do not constitute subject merchandise, we excluded the Charlotte sale from our final analysis.

Applying the above-specified value test to the imported elements relevant to the Fargo and Global sales yields the opposite result. That is, the cost of the imported elements is greater than 50 percent of the cost of the component of which they are a part. The Department may exclude U.S. sales from its analysis if these sales are: (1) Not representative of the seller's behavior, or (2) so small that they would have an insignificant impact in the margin. See *IPSCO, Inc.* v. *United States* (714 F. Supp. 1211, 1217 (CIT 1989). In the past, the Department excluded certain ''atypical'' or unrepresentative U.S. sales, where the total pool of U.S. sales was great. *See SBTS,* 54 FR 53141, 53148 (December 27, 1989). In the case of LNPPs, however, where the sales are few and unique, such exclusion would not be appropriate. Given the limited number of U.S. sales in this investigation and the fact that the sales at issue fall within the scope of the investigation, we have no basis on which to exclude these sales from our final analysis. Therefore, we included the sales to Fargo and Global in our final analysis.

Comment 3 Post-Petition Price Amendments: The petitioner contends that the Department should disregard all post-petition price amendments and use instead the contract price as of the date of the filing of the petition as the starting price. The petitioner asserts that such amendments applied to the Rochester, Wilkes-Barre and Charlotte sales. Citing the *Final Determination of Sales at Less Than Fair Value: Cell Site Transceivers from Japan,* 49 FR 43080, 43084 (October 26, 1984) (''*Cell Site Transceivers*''), among other cases, the petitioner states that the Department's practice calls for the rejection of alterations in the prices of subject merchandise after the filing of a petition in order to prevent manipulation of potential dumping margins. According to the petitioner, that rationale is applicable in this investigation, where MRD had every reason to negotiate a new price that would reduce the dumping margin. With respect to Rochester in particular, the petitioner finds suspect the significant profit gained by MRD in the amended portion of the transaction. Moreover, the number of reported amendments indicates that even the latest reported price adjustments might not be the last. Therefore, the petitioner asserts that the Department should rely on the sales prices in effect on the date of the filing of the petition and disregard the effects of any post-POI amendments on prices and cost.

MRD disagrees. First, it argues that it is common for specifications (and therefore price) for large capital equipment like LNPPs to be modified after the initial contract is signed, and the Department has recognized this in past cases. According to the respondent, such changes are not unusual and do not support the conclusion that the seller has manipulated its prices to avoid dumping. Second, with respect to the Rochester price amendment, the Department reviewed the correspondence which showed the amendment had been contemplated before the petition filing. Third, MRD finds the petitioner's analysis of its interests to be questionable, as it is always in MRD's interests to negotiate the highest possible price for its sales notwithstanding the filing of the antidumping case.

DOC Position: We agree with the petitioner. In past cases, the Department has stated that its standard practice is not to accept price adjustments instituted after the filing of a petition. Despite the nature of the merchandise under investigation, we have held that we are cautious in accepting price increases which occur after receipt of a petition so as to discourage potential manipulation of potential dumping margins, and have determined the original contract price which pre-dated the filing of the petition as the proper basis for U.S. price. The transactions and prices under investigation are those in effect as of the filing of the petition. *See Cell Site Transceivers; Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Canada,* 58 FR 37099, 37112 (July 9, 1993); *Final Results of Administrative Review: Stainless Steel Wire Rod from France,* 50 FR 9813, 9814 (March 12, 1995); and *Final Results of Administrative Review: 64K Dynamic Random Access Memory Components from Japan,* 51 FR 15943, 15953 (April 29, 1996). Similarly, at the preliminary determination in this investigation, we stated with respect to the Rochester price amendment that while we did not believe that the contract amendment per se altered the date of sale (given the industry involved and the nature of the construction process for these large, customized machines under investigation, where minor specification changes are routine), we were ''troubled by the fact that the sale price was modified officially after the filing of the petition in this investigation, and that the potential for the respondent to influence purposely the margin calculation may exist.'' *See* February 23, 1996, Memorandum to Richard W. Moreland from The Team Re: Sales Exclusion Issues at 8.

Therefore, based on the foregoing analysis, we have not considered any of the post-POI price amendments relevant to MRD's U.S. sales in our final analysis. In addition, we note that the petitioner's assertion that post-POI price amendments applied to three of MRD's sales is incorrect. While we verified that post-POI price amendments applied to MRD's Rochester and Wilkes Barre sales, we did not observe any such price amendment to apply to the Charlotte sale, as suggested by the petitioner. Notwithstanding this fact, the issue is moot with respect to the Charlotte sale given that we have excluded it from our final analysis. *See DOC Position* to *Comment 2* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

We also note that our final calculation of CEP for the Rochester and Wilkes Barre sales, exclusive of post-POI price amendments, is consistent with our calculation of CV for these sales which is based on the respondent's submitted cost estimates and does not include the costs associated with the post-POI price amendments. *See DOC Position* to *Comment 9* of the ''Company-Specific Issues'' subsection of the ''Interested Party Comments'' section of this notice.

Comment 4 Date of Sale: MRD maintains that the Department should use the letter of intent as the date of sale for its U.S. sales, as this document is the first written evidence that an agreement has been reached on the basic terms of those sales. Citing *LPTs* (48 FR 26498, 26499, June 8, 1993) and *MTPs* (55 FR 335, 341, January 4, 1990), MRD asserts that the Department has consistently used the date of earliest written evidence of agreement as the date of sale in cases involving large made-to-order products and has consistently held that minor changes in technical specifications after the date of initial agreement do not alter the date of sale. MRD states that the basic terms in the final contracts were identical in all material respects to the terms outlined in the letters of intent, as supplemented by the additional terms set forth in the final proposals referenced in the letters of intent. In addition, the fact that MRD begins production after the signing of the letter of intent provides further justification for treating the letter of intent date as the sale date. According to MRD, general contract law (Section 2–201(3)(a) of the Uniform Commercial Code) provides that a valid contract exists when the seller starts production for custom order goods that are not suitable for sale to others in the ordinary course of trade. MRD argues further that the cancellation clauses in the letters of intent for Rochester and Wilkes Barre should not affect the date of sale analysis because the fact remains that at the time of the letter of intent, the parties had reached agreement on all of the basic terms of the sale.

The petitioner argues that in accordance with the Department's long-standing practice, the appropriate date of sale in this investigation is the date of contract. According to the petitioner, the essential terms of sale in the LNPP industry (*i.e.*, specifications, price, payment schedules, warranty terms and installation requirements) are established by the final contract, and not the letter of intent. The petitioner states that the Department verified that MRD's letters of intent for selected U.S. sales did not definitively establish the material terms of sale. Finally, the petitioner asserts that in the cases cited by the respondent to support its argument that the Department's precedent establishes the date of sale earlier in the transaction involving large customized equipment, the date of sale adopted was the contract date or, in the absence of a formal written confirmation of sale, the initial order date. In this case, the petitioner points out that the letters of intent required a formal written confirmation of sale.

DOC Position: We agree with the petitioner. The Department has a longstanding practice, which bases the date of sale on the date when all the essential terms (usually price and quantity) are firmly established and no longer within the control of the parties to alter without penalty. See, *e.g., Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14064, 14067 (March 29, 1996).

In this case, we determined that the appropriate date of sale is the date of contract, and we solicited data from the respondent on this basis. As stated in *MTPs*, the Department's policy regarding the date of sale in the case of large, customized merchandise ''has favored establishing the date of sale at an earlier point in the sale transaction process than at a later point, as it might be the case of fungible-type commodities which are offered for sale in the ordinary course of trade.'' *See MTPs* at 341. The appropriate ''earlier point'' in the sale transaction for date of sale purposes is determined on a case-by-case basis. In this case, we determined that the earliest point in the sale transaction, where the essential terms of sale for the LNPP industry (*i.e.*, specifications, price, payment schedules, warranty terms and installation requirements) would be established definitively, is the sale contract date, given the volume of sales correspondence generated in the sales process and the potential minor specification changes that may be made to the merchandise during the production process and after delivery. Furthermore, at verification, we observed that the terms of sale stipulated in the letters of intent did not definitively establish the material terms of sale, as they were subject to change and to a definitive agreement of sale (*i.e.*, a sale contract). See MRD Sales Verification Report at 11–12.

Therefore, for purposes of the final determination, we have determined the date of contract to be the appropriate date of sale. Our determination of the date of sale in this case is distinguishable from that in the case of MHI's Guard sale in the companion investigation of LNPPs from Japan. In MRD's case, the date of sale issue involves identifying the producer's earliest written documentation establishing the essential terms of sale, whereas in MHI's case the issue involves identifying the appropriate parties to the sale for date of sale purposes. See MHI *Comment 4* in the Federal Register notice of LNPPs from Japan.

Comment 5 U.S. Indirect Selling Expense Cap: The petitioner argues that the Department should not cap U.S. indirect selling expenses allocated to particular sales at the amount incurred during the POI because the allocation cap ignores the expenses incurred on sales of subject merchandise outside of the POI. According to the petitioner, the Department's allocation methodology employed in the preliminary determination rests on the assumption that POI sales could not have incurred selling expenses outside of the POI. But in cases such as the instant one, when sales efforts last for years and yield only a limited number of large sales at irregular intervals, it is logical to find that the amount spent to negotiate a given group of sales was greater than the total selling expenses incurred in the limited period in which the sales were made. Furthermore, the Department's cap is inconsistent with section

772(d)(1) of the Act which requires the deduction from CEP of any expenses generally incurred in selling the subject merchandise. According to the petitioner, whether the respondent incurred indirect selling expenses during the POI is irrelevant to this requirement. In addition, the Department's cap ignores the pattern of MRD's sales, where the POI sales are few but selling expenses are incurred on a regular basis before, during and after the POI to account for activities ranging from the development of bids to amendments to signed contracts. The petitioner argues further that the Department should reject MRD's proposals to cap U.S. indirect selling expenses up to the amount of total expenses incurred during the POI on newspaper sales, as this would amount to allocating POI indirect selling expenses over POI sales orders, which is contrary to the Department's normal calculation methodology.

If the Department is concerned about the magnitude of the verified POI selling expenses and their potential overstatement relative to total POI sales, the petitioner suggests that the Department follow past practice and use verified data relevant to a three-year period. The petitioner asserts that the Department should not use the respondent's four-year data because, among other reasons, they were not reconciled to audited financial statements and included expenses incurred in 1991–1992 by a facility which is no longer in operation and, therefore, are unrepresentative of current experience.

Furthermore, the petitioner argues that the Department should remove the data pertaining to Canadian transactions from the calculation of indirect selling expenses. According to the petitioner, section 772(d)(1) of the Act allows adjustments to CEP only to reflect costs of selling the subject merchandise. Since purchases by Canadian customers are not subject to this investigation, the petitioner maintains that they cannot be used in the allocation of indirect selling expenses. Furthermore, MRD provided no information illustrating that the selling expenses incurred on Canadian sales are representative of those incurred on U.S. sales.

MRD maintains that the Department should allocate U.S. indirect selling expenses incurred during the POI over the value of orders received during that period, which would avoid the need to apply a ''cap'' on such expenses as was done in the preliminary determination. Alternatively, the Department should revise the ''cap'' on U.S. indirect selling expenses to avoid assigning the selling expenses for commercial presses to newspaper presses.

Furthermore, MRD finds the petitioner's proposals unacceptable. The respondent believes the petitioner's arguments are based on the incorrect assumption that indirect selling expenses can be matched to specific sales. To the contrary, MRD explains indirect selling expenses are fixed expenses that do not vary with sales, and thus they should be allocated over the value of orders received during the POI. MRD reasons that in this case, because the Department is applying the indirect selling expense rate to sales made during the POI (*i.e.*, sales for which orders were received during the POI), it must calculate the rate on the basis of the total value of orders received. MRD attempts to refute the petitioner's assertions that a particular period or calculation would capture the expenses that properly relate to the sales under investigation, stating that the expenses can only relate generally to all of MRD's sales efforts. With respect to the three-year analysis advanced by the petitioner, MRD states that in the petition, Rockwell argued for a four-year POI because the three-year period from July 1992 to June 1995 was a period of sales depression that did not adequately capture the LNPP business cycle. If the Department were to accept the proposition that indirect selling expenses must be allocated over sales recognized for accounting purposes, then MRD maintains that it should use a period that encompasses the entire LNPP industry cycle, *i.e.*, a four-year period.

With respect to the petitioner's argument that the Department should remove the Canadian sales data from the calculation, MRD disagrees. It explains that MRU sales personnel who are responsible for sales in the United States are also responsible for sales in Canada and Latin America, and that the expenses for these salesmen cannot be tied to specific sales or markets. Accordingly, the only possible allocation method is to divide the total expenses of MRU's sales personnel by the total value of the sales generated by those personnel.

DOC Position: We agree in part with both the petitioner and MRD. The Department normally calculates indirect selling expenses as a percentage of POI cost of goods sold or POI sales revenue recognized. *See Final Determination of Sales at Less Than Fair Value: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Mexico*, 58 FR 37192, 37198 (July 9, 1993). In this case, the respondent has argued since the preliminary determination that the Department should calculate the POI selling expense rate based on sales orders, rather than sales recognized, so as not to overstate selling expenses on POI sales in years where sales revenue recognized is unusually low relative to actual selling expenses incurred. Conversely, the petitioner has maintained that such a calculation would grossly understate expenses for POI sales because it would disregard the substantial expenses incurred before and after the investigation period for POI sales.

In the preliminary determination, because application of the POI indirect selling expense rate reported by MRD to U.S. sales prices resulted in transaction-specific selling expenses which exceeded the total indirect selling expenses incurred by MRU during the POI, we capped the amount of indirect selling expenses deducted from CEP by the total indirect selling expenses actually incurred by MRU during the POI. While this is not our normal practice, we applied a ''cap'' on U.S. indirect selling expenses in the preliminary determination because the figures reported by the respondent appeared inaccurate and we did not have sufficient information to make any other adjustment. The petitioner claims that this ''cap'' ignores the fact that, in cases such as LNPPs when sales efforts last for years and yield only large sales at irregular intervals, the amount spent to negotiate a given group of sales may be greater than the total selling expenses incurred in the limited period in which the sales were made. Likewise, we note that significant sales efforts may be made and significant selling expenses may be incurred in a given period in the pursuit of a given sale without resulting in the consummation of that sale. Contrary to the petitioner's claim, indirect selling expenses are period expenses which cannot be associated directly with specific sales and, therefore, no direct correlation is possible despite the particular period chosen for analysis.

Since our preliminary determination, we verified that the actual POI indirect selling expense rate was significantly lower than that reported by the respondent, as a result of the correction of clerical errors. See MRU Sales Verification Report at 22–24. Our analysis of the verified actual indirect selling expenses incurred relative to the verified sales revenue recognized for the two fiscal years captured by the POI does not indicate that application of the verified POI rate would distort the calculation of CEP. Consequently, we see no need to cap these expenses for purposes of the final determination. Therefore, we have applied the verified indirect selling expense percentage to U.S. sales contract prices (exclusive of post-POI price amendments) and have deducted the resulting expense amounts from CEP. Given the nature of these expenses, it is not possible to segregate the selling expenses that relate to foreign sales from those that relate to U.S. sales. Therefore, we did not remove the data pertaining to these sales from our calculation of the indirect selling expense rate, as suggested by the petitioner.

Comment 6 General Methodology for Calculating U.S. Warranty Expenses: The petitioner maintains that the two U.S. warranty expense calculations provided by MRD in its questionnaire responses are flawed. The first one (contained in Appendix SC–21–A of the February 1, 1996 submission), which the Department used in its preliminary determination, improperly included foreign sales data; and the second one (contained in Appendix 9 of the March 13, 1996 submission), which was examined by the Department at verification, improperly allocated four years of warranty expenses over more than seven years of sales, thereby understating U.S. warranty costs. The petitioner contends that the Department should recalculate the MRU warranty expense rate to be applied to CEP based on historical data for a four-year period exclusive of data pertaining to foreign sales and inclusive of sales revenues realized only during the period to which the warranty costs pertain. The petitioner explains that past Department decisions recognize that, especially on sales of large capital equipment such as LNPPs, the warranty expense calculation must estimate future expenses based on historical costs, rather than capture current warranty costs, for U.S. sales, because the long time for production and installation may lead to warranty expenses incurred long after the review period.

The petitioner maintains further that the inclusion of sales to foreign customers (*i.e.,* sales to Canadian customers) in the warranty expense rate calculation employed in the preliminary determination is improper. According to the petitioner, section 772(d)(1) of the Act allows adjustments to CEP only to reflect costs of selling the subject merchandise in the United States. Since purchases by Canadian customers are not subject to investigation, the petitioner maintains that they cannot be used in the calculation of warranty expenses. Moreover, MRD provided no evidence that the warranty expenses incurred on Canadian sales are representative of those incurred on U.S. sales.

The petitioner explains further that, at verification, the Department examined a warranty calculation provided by the respondent (in Appendix 9 of the March 13, 1996 submission) that properly segregated U.S. and foreign sales. However, that calculation allocated four years of warranty expenses over contract values that spanned a period of more than seven years, which in the petitioner's opinion results in an understatement of the actual cost. Therefore, the petitioner suggests that the Department subtract from that warranty expense calculation both Canadian sales, and sales revenues realized for the period prior to that for which warranty expenses were reported. The petitioner argues that, unlike MRD's proposed calculations, its proposed calculation is consistent with historical experience.

MRD argues that petitioner's proposition would result in a mismatching of warranty costs and sales, and would massively overstate the actual warranty expenses MRU will incur on sales during the POI. According to MRD, the purpose of the warranty calculation is to determine a reasonable estimate, based on an analysis of historical data, of the warranty costs that will be incurred in the future on the sales under investigation. As such, the petitioner's proposed calculations do not meet that purpose. With respect to the initial warranty expense calculation it reported based on historical experience, MRD contends that the removal of Canadian sales, as requested by the petitioner, would seriously distort the warranty calculations by leaving an unrepresentative sample that would not be sufficient to determine the historical ratio of warranty expenses to sales. MRD points out that in its March 13, 1996 submission, it provided a detailed analysis that shows the actual warranty expenses incurred on sales during the last four years. Based on this review of MRU's actual warranty expense experience on sales for which complete warranty expense information is available, the respondent argues that the U.S. warranty rate resulting from its initial calculation (February 1, 1996 submission) reasonably reflects MRU's actual experience on sales for which the warranty period has been completed. This analysis also demonstrates that petitioner's proposed calculation grossly overestimates MRU's actual warranty experience. MRD notes that throughout this proceeding the petitioner has insisted that, before estimates can be used in this case, they must be supported by ''benchmarks'' based on the actual costs for actual transactions. The respondent asserts that the petitioner's proposed calculation fails that test and accordingly must be rejected.

In addition, MRD argues that the Department should revise its U.S. warranty calculation with respect to the Rochester, Wilkes-Barre and Fargo sales, so as to avoid double counting. MRD asserts that the warranty calculation methodology employed in the preliminary determination for Rochester and Wilkes-Barre was incorrect and unreasonable because it assumed that warranty services would be performed more than once, *i.e.,* full warranty expenses were attributed to both MRD and MRU. According to MRD, whatever warranty services are needed for these presses will be performed only once— either by MRD, by MRU or a combination thereof. Therefore, the Department should either (1) apply only the MRD warranty expense rate to these sales; (2) apply only the MRU warranty expense rate to these sales; or (3) apply an average of the MRD and MRU rates to these sales. With respect to Fargo, MRD argues that the Department's preliminary calculations double-counted warranty expenses by adding the actual warranty expenses already incurred with the total expected warranty expenses. To estimate expected warranty expenses, MRD states that one should use either the actual warranty expenses to date (plus an estimate of the remaining warranty expenses that are expected) or the estimated total warranty expenses based on the value of the product.

DOC Position: We agree with both the petitioner and respondent, in part. The Department's normal practice in computing warranty expenses is to use historical data over a four- or five-year period preceding the filing of the petition to estimate the likely warranty expenses on POI sales. The underlying rationale for this practice is the recognition that, in many industries, warranty costs on sales made during the POI might not occur until long after the POI and, consequently, POI sales cannot be tied to their associated actual warranty expenses for reporting purposes. See *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026, 19041 (April 30, 1996); *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada,* 59 FR 18791, 18795 (April 20, 1994); and *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland,* 56 FR 56363, 56379

(November 4, 1991). Historical costs are especially appropriate in the case of LNPPs because the long time for production and installation of the subject merchandise may lead to warranty expenses being incurred long after the POI. See *Final Results of Administrative Review: Mechanical Transfer Presses from Japan,* 57 FR 12798, 12799 (April 13, 1992).

Therefore, for purposes of the final determination, we have used the warranty expense rate reported by the respondent in its February 1, 1996 submission, revised to reflect the correction of certain clerical errors found at verification. We have applied this rate to the contract price of those U.S. POI sales for which MRU is primarily responsible for providing warranty servicing, and then deducted the resulting amount from CEP.

As for the petitioner's requested removal from the calculation of the data pertaining to non-subject sales, we agree in principle. While we have the information to segregate the warranty costs that relate to these sales from those that relate to U.S. sales in the calculation, we do not have sufficient information to segregate the corresponding sales values from the calculation for two out of the four fiscal years included in the calculation. Therefore, given this problem and the fact that the warranty expense rate inclusive of the foreign sales reasonably reflects MRU's actual experience on sales whose warranty period has been completed, we have not made the adjustment proposed by the petitioner.

With respect to the respondent's argument that the Department should revise its warranty expense calculation regarding Rochester, Wilkes-Barre and Fargo, we agree. In this case, both MRD and MRU provide warranty services. However, whether or not they incur warranty costs on a particular sale depends on their role in the production of the merchandise covered by the sale. In the preliminary determination, we incorrectly deducted from the CEP of the Rochester and Wilkes Barre sales warranty expenses reflecting the historical experience of MRU in addition to that of MRD, based on the assumption that both companies would be playing a role in warranty servicing. Since that time, however, we verified that MRD will be primarily responsible for the warranty servicing on these LNPP systems, given that they were almost entirely produced in Germany by MRD. See MRD Sales Verification Report at 28. Therefore, for the Rochester and Wilkes Barre sales, we have applied the verified warranty expense rate relevant to MRD's historical experience in Germany for all LNPP products. With respect to the Fargo and Global sales, MRD reported and the Department verified that MRU is primarily responsible for the servicing of any warranty claims on these sales. Therefore, for these sales it is more appropriate to use a warranty expense rate based on the historical experience of MRU as described above. Because we have excluded the Charlotte sale from our analysis for the reasons stated in the *DOC Position* to *Comment 2* of the ''Company-Specific Issues'' subsection of this notice, the issue is moot with respect to this sale.

Comment 7 Global Sale: MRD asserts that, if the Department includes the sale to Global in its analysis, it should analyze the total sale, including the used merchandise that was an integral part of the sale. The respondent asserts that this sale was unusual in that it involved both new and used equipment that was purchased by a reseller in the United States for ultimate sale to the end user. MRD argues that the new and used equipment was sold as a package and the customer did not have the option of buying only the used equipment or the new equipment at the respective price stipulated in the sales contract. MRD submits that in past cases, the Department has ruled that, where the contract sets a separate price for non-integral, non-subject equipment, it will rely on the contract price to determine the value to be assigned to that equipment. However, with respect to the Global sale, MRD argues that the used equipment in that sale was clearly integral to the sale. As such, the Department should make an adjustment for that used equipment based on its cost, and should allocate to it a portion of the total profit or loss on the sale.

The petitioner contends that MRD's failure to provide adequate information on the cost of the used equipment requires the exclusion of the used equipment from the Department's final calculations on the basis of the contract price. The petitioner asserts that the cost of this equipment reflected the inventory value which was, in turn, based on the acquisition price plus shipping costs less salvage value. This does not yield the market value which, according to the petitioner, is the correct measure of whether MRU received a reasonable profit on the used merchandise. The petitioner also claims that MRD did not present information at verification to allow the Department to confirm the reported cost.

DOC Position: We disagree with the respondent. For the reasons outlined in *DOC Position* to *Comment 2* of the ''Company-Specific Issues'' subsection of this notice, we have not excluded the Global sale from our final analysis. The Global sale involved the sale of both a used press and new equipment. Used presses are expressly excluded from the scope of our investigation. *See* ''Scope of Investigation'' section of this notice. We also note that the value of the used equipment was identified separately in the contractual documentation governing the sale. Given these facts, we have no basis upon which to include the used equipment portion of the sale in our final analysis as an integral part of the sale. As a result, we deducted from the calculation of CEP the contract price relevant to the used equipment. This is consistent with our treatment with respect to spare and replacement parts, which are also expressly excluded from the scope and therefore excluded from our analysis, where their value is separately outlined in the contractual documentation.

Comment 8 Spare Parts: MRD requests that the Department adjust its calculations to avoid double-counting of the cost of spare parts. MRD assert that if the spare parts price is deducted from the U.S. price, then the cost of the spare parts should be excluded from CV. On the other hand, if the spare parts cost is included in the CV then the spare parts price should not be deducted from U.S. price.

DOC Position: We agree. Consistent with our preliminary determination, where the value of the spare parts was separately identified in the contractual documentation governing the U.S. sale, we deducted the spare parts value from the contract price in the calculation of CEP. In this case, we also excluded the cost of the spare parts from the CV.

Comment 9 Costs for Rochester and Wilkes-Barre Sales: MRD argues that the Department should calculate CV for the Rochester and Wilkes-Barre sales based on costs calculated in accordance with the company's project-specific work plan. MRD contends that these costs are accurate and reliable, and that they are based on a system used by the company in its normal course of business. MRD states that it calculated the cost of each project-specific work plan based on a project-specific bill of materials and production instructions prepared before the initiation of this investigation.

MRD further asserts that it did not mislead the Department regarding the availability of actual cost data for completed press components. MRD states that it was able to compare project-specific work plan costs to the actual costs recorded in its cost accounting system for certain home market sales. MRD also notes that for Rochester and a few home market sales, it was able to compare the project-specific work plan costs for individual parts to the actual costs recorded in its normal accounting system for the same parts.

MRD maintains that if the Department chooses to reject the costs calculated from the project-specific work plan for Rochester and Wilkes-Barre, it should rely on the cost estimates submitted by MRD as facts available rather than on the antidumping rate from the petition. According to MRD, the cost estimating system calculates costs based on an analysis of actual experience for previous projects of the same press model. MRD argues that the petition rate does not contain MRD's actual historical experience regarding materials, labor and production operations which was considered in developing the submitted cost estimates for the Rochester and Wilkes-Barre sales.

The petitioner maintains that the Department should reject the cost figures reported for the Rochester and Wilkes-Barre sales because the basis for these costs deviates from MRD's normal accounting practices and the reported amounts were derived after initiation of the investigation. The petitioner notes that verification revealed that MRD created the project-specific standard work plan costs for these sales solely for the purpose of responding to the Department's antidumping questionnaire. Thus, according to the petitioner, the cost reporting methodology employed by the respondent for the Rochester and Wilkes-Barre sales presents significant potential for manipulation. Even if MRD could not manipulate the actual parts listed in the work plan, the petitioner asserts that it is certainly possible for MRD to have manipulated the cost of those parts.

The petitioner contends that MRD misled the Department about its method of calculating production costs for these unfinished sales. According to the petitioner, in making its decision whether to review the Rochester and Wilkes-Barre sales as part of our investigation, the Department relied on MRD's claims that, as part of verification, project-specific standard costs could be compared to actual costs incurred to date on a component-by-component basis. The petitioner notes, however, that MRD was unable to identify which components had been completed and could not reconcile costs actually incurred to the project-specific work plan costs. In addition, during verification, the Department found that the projects were not completed to the extent claimed by MRD. The petitioner also disagrees with MRD's characterization of its project-specific work plan standard costing system as the type of system routinely accepted by the Department in past cases. The petitioner asserts that the Department only accepts such systems when an adjustment can be made to convert standard costs to actual costs. According to the petitioner, MRD's methodology does not allow any such adjustment.

For these reasons, the petitioner urges the Department to rely on facts available or exclude these sales altogether from its final analysis. As facts available, the petitioner suggests using the CV information in the petition which it argues contains the most probative facts on the record.

DOC Position: We agree with the petitioner that we cannot rely on MRD's projected costs calculated from its project-specific work plans as the basis for CV in our final determination. The Department normally requires respondents to report the actual cost of producing the subject product. Since the Rochester and Wilkes-Barre sales were not completed as of the date we issued the Section D questionnaire, MRD could not provide the actual cost of production. However, for these two sales, the respondent urged the Department to rely on its *projected* cost of production, which we normally do not accept, because there were so few sales and there was concern as to whether we would have any sales to investigate. MRD stated that its projected costs would be derived from the company's ''standard costing performed in the normal course of business,'' that substantial actual costs would be incurred by verification, and that such actual costs could be reconciled to the costs of each project-specific work plan. Because MRD urged the Department to depart from its normal method of accepting only actual costs rather than projected costs, it was MRD's responsibility to provide the data necessary to justify the accuracy and reliability of its projected cost methodology.

As part of its CV submissions to the Department, MRD explained its reporting methodology for the Rochester and Wilkes-Barre sales. Specifically, MRD claimed that: ''For those products for which production is not yet complete but for which detailed work-plans are available (such as Rochester and Wilkes-Barre), the actual costs have been used to determine the cost of manufacture to date, and the standard costs calculated from the project-specific work-plans have been used to determine the cost remaining for the project.'' See MRD's December 13, 1995 Section D response at 41. At verification, however, we learned that instead of including actual costs incurred to date for each project, MRD's submitted costs for the Rochester and Wilkes-Barre sales were based entirely on the total standard costs calculated from the project-specific work plans. Moreover, MRD's project-specific standard costing system, which was the basis for its submitted costs, could not be reconciled to MRD's audited financial statements. Absent the control of the respondent's normal audited accounting system, we are unable to determine whether MRD's projected cost data for the Rochester and Wilkes-Barre sales is reliable and accurate.

In addition to the difficulties noted above in reconciling MRD's project-specific standard work plan costs for the Rochester and Wilkes-Barre sales, we also found that the submitted costs for these projects had been derived after the initiation of this antidumping investigation and calculated specifically for the submission. MRD itself noted in its case brief that the company calculated the *detailed standard costing* of Rochester and Wilkes-Barre project-specific work plans after initiation of this antidumping investigation. *See* June 13, 1996 Revised Case Brief at 62. During verification, MRD officials also indicated that these same cost calculations had been prepared solely for the purpose of providing CV information in this case.

For these reasons, we have rejected MRD's cost projections for the Rochester and Wilkes-Barre sales in our final determination, and have relied on facts available to compute the cost of these sales. As facts available, we used MRD's submitted cost estimates for each of the two sales. We adjusted the estimated cost for a cost variance amount which we calculated as the difference between estimated and actual costs for sales of the same press model produced and completed during the POI.

We determined that the cost estimates could be relied upon for several reasons. First, unlike the project-specific standard work plan costs submitted by MRD for the Rochester and Wilkes-Barre sales, MRD prepares a cost estimate for every press in the normal course of business. Second, MRD completed the cost estimates for Rochester and Wilkes-Barre prior to the initiation of this case. Third, MRD relied on its actual production experience for the same model presses (''Geoman'') to develop cost estimates for similar Geoman presses included in the Rochester and Wilkes-Barre contracts. Lastly, MRD provided estimated and actual cost data for the Geoman sales completed during the POI, thus enabling us to adjust estimated costs for the Rochester and Wilkes-Barre sales based on MRD's past experience with the same press model.

Comment 10 Variances: MRD argues that the Department incorrectly used fiscal 1995 overhead variance rates to adjust overhead costs for the 1996 fiscal year. MRD contends that the Department should rely on the company's reported variance figures which were based on actual partial-year variance rates for the first six months of fiscal 1996 and full-year budgeted variance rates for the remainder of that year. MRD maintains that its use of a budgeted variance for fiscal year 1996 was actually conservative considering that the actual variance for the first half of that year was more favorable than the budgeted amount. Lastly, MRD argues that the Department cannot possibly apply the prior year's variance to the current period's costs as it did in the preliminary determination because the variance for each period reflects the utilization for that specific period.

The petitioner argues that the Department should continue to adjust MRD's costs to reflect the full year's actual variance for fiscal 1995. The petitioner asserts that MRD's budgeted variances do not accurately predict full-year results and rely on potentially unrealistic capacity utilization statistics. According to the petitioner, MRD's comparison of budgeted and actual variances do not confirm the reasonableness of either the actual or budgeted variances reported. Moreover, the petitioner maintains that the part-year variances may exclude year-end adjustments reflected in the annual budgeted variance calculation. The petitioner concludes that prior year's actual experience provides a more accurate projection of fiscal 1996 actual costs given the uncertainty about the conflicting plant capacity and utilization rates on the record.

DOC Position: We agree with the petitioner that MRD's budgeted variances do not accurately predict full-year operating results and rely on unrealistic capacity utilization levels. In addition, year-end adjustments or one-time annual costs may not be reflected in the part-year actual variance. Therefore, we rejected MRD's reported part-year actual variance and budgeted fiscal year variance calculation for fiscal 1996. As an alternative, we relied on the prior fiscal year actual variance which is consistent with the methodology applied in our the preliminary determination.

Comment 11 Imputed Credit: MRD contends that the Department's normal practice is to include only differences in selling expenses in the circumstance of sale adjustment. Therefore, MRD argues that the imputed cost of financing production should be excluded from the circumstance of sale credit calculation because the differences in the timing of production costs do not affect price comparability. Additionally, MRD asserts that negotiated payment terms are not affected by the lengthy production period for LNPPs. By linking the payment terms to the production cost schedules, as was done in the preliminary determination, the Department contradicts the basic principle that money is fungible. Thus, MRD argues that progress payments and production costs should not be matched on a customer-specific basis. Also, MRD maintains that imputed interest expenses should not be calculated for SG&A expenses. Moreover, the Department should only apply this circumstance of sale adjustment to NV if the normal imputed credit is included in the CV calculation.

The petitioner asserts that the Department correctly made a circumstance of sale adjustment for imputed credit expense by including both production costs and progress payments in the calculation. In addition, the petitioner argues that SG&A should be included in the imputed credit expense calculation because these costs are part of the total production costs compared to the total price of each press (*i.e.,* total production plus profit). Furthermore, the petitioner agrees with MRD that the Department should deduct home market imputed credit expenses as a circumstance of sale adjustment only if they include imputed credit in CV.

DOC Position: We believe that it is appropriate in this instance to recognize the comprehensive financing arrangement for each sale as a circumstance of sale adjustment. LNPPs require substantial capital expenditures over an extended time period because of their size and lengthy production process (*e.g.,* two to three years including the design phase). Moreover, the projects generally call for the purchaser to provide scheduled progress payments before completion of a project. Our normal imputed credit calculation (*i.e.,* cost of financing receivables between shipment dates and payment dates) does not measure the effect of progress payments made relative to production costs incurred. To adjust sales prices for the effect of the respondent incurring significant capital outlays at the beginning of a project (back loaded payments) or receiving large sums of money up front (front loaded payments), we calculated imputed credit for each home market and U.S. sale by recognizing both financing costs incurred and payments received.

We agree with the petitioner that SG&A should be included as production costs for calculating the imputed credit expense because the total contract price for each press (sum of payments) reflects the total production costs plus profit. We disagree with the petitioner, however, with regard to the issue of including imputed credit expense in CV. Section 773(e)(2)(A) of the Act, requires that the Department include in CV the actual amount of SG&A, including net interest expense, incurred by the exporter or producer. We agree with the respondent's position that imputed credit is not an actual expense. Therefore, we did not include imputed credit in the CV calculation for the final determination.

Comment 12 Imputed Capitalized Interest Costs: MRD claims that the statute and German Generally Accepted Accounting Principles (GAAP) do not allow imputed capitalized interest expenses in the cost of manufacture. Therefore, the Department should include only the actual interest costs incurred rather than both actual financing and imputed capitalized interest expenses. MRD further argues that the Department's normal interest expense calculation already includes all the actual costs of financing production. MRD further argues that the interest cost capitalized should not exceed the total interest cost incurred by the company and the Department should make an appropriate offset to the interest costs included in general expenses.

The petitioner contends that if the Department does not include the timing of production costs as a factor in its credit calculation, it should include capitalized interest expenses in CV to reflect MRD's financing of production incurred prior to payments received.

DOC Position: Since we are calculating imputed interest as a circumstance of sale adjustment and not as a capitalized cost in the cost of manufacture, this issue is moot.

Comment 13 Combining MAN Plamag and MRD Production Costs: In calculating cost of manufacturing, MRD argues that the Department should average the labor and overhead rates of both the MAN Plamag and MRD facilities because LNPPs are produced at both locations. Although MAN Plamag is a separate legal entity from MRD, MRD contends that MAN Plamag meets the five criteria for collapsing companies as used in *Iron Construction Castings from Canada,* 59 FR 25603–04 (May 17, 1994). Moreover, MRD maintains that the Department's policy is to average costs where management has the capability to shift production between multiple facilities. Therefore, the Department should include respondent's ''multiple facilities'' adjustment which modifies the single facility costs to reflect the average of the two facilities.

The petitioner contends that, because the two facilities do not produce the same models, MRD has not met the criteria for cost averaging. Even if MRD had met the criteria for averaging costs, the petitioner argues that MRD's calculation is inconsistent with Department practice. MRD selectively averaged labor and overhead rates, but not SG&A expenses or research and development costs. The petitioner concludes that this selective form of weight averaging distorts costs and should be rejected.

DOC Position: We agree with the petitioner that we should not average costs for MRD and MAD Plamag. MAN Plamag is a separate corporate entity from MRD. Specifically, MAN Plamag is an affiliated party to MRD (not a division or factory within MRD) which supplies MRD with one of the major production inputs (RTPs). In determining the cost of manufacturing, the Department evaluates whether affiliated party transactions for major inputs occur at prices that are arm's length in nature and above the supplier's cost of production. Contrary to MRD's assertion, the Department's normal practice is not to automatically collapse affiliated suppliers and the respondent company. In fact, the five criteria noted by MRD relate to collapsing companies for sales purposes rather than cost.

Comment 14 Further Manufacturing G&A: The petitioner maintains that the Department should calculate an average further manufacturing G&A expense over a multiple-year period based on actual historical data that reasonably represents the costs incurred, and those yet to be incurred, by MRD from its LNPP operations. The petitioner also urges the Department to ensure that the denominator in its further manufacturing G&A expense rate is consistent with the allocation base of each individual transaction to which the rate is applied. Lastly, the petitioner contends that because MRD did not reconcile its submitted fiscal year 1992 and 1993 G&A expenses to its audited financial statements, the Department should reject the G&A expenses reported by MRD for those two years.

MRD argues that the Department should allocate further manufacturing G&A expenses over the cost of sales orders during the POI rather than over the cost of sales actually recognized during that period. If the Department chooses to allocate G&A over sales recognized, then MRD asserts that the amount of G&A expenses should be capped. To calculate this cap, MRD contends that actual G&A expenses should be allocated between commercial and newspaper presses based on cost of goods sold during the POI.

DOC Position: For the final determination, we computed MRD's further manufacturing G&A expense rate based on the ratio of the reported G&A expenses to cost of sales (less the cost of imported German parts recognized during the POI). Consistent with the petitioner's arguments, we applied this G&A expense rate to the U.S. further manufacturing costs of each press. G&A expenses are period costs which relate to activities of the company during the period in which they are incurred. Accordingly, we allocated G&A expenses over costs incurred during the POI rather than the hypothetical cost of orders received during the period. Based on our approach, we concluded capping of G&A was not necessary because the total G&A assigned to all U.S. sales does not exceed the total amount of G&A being allocated.

Comment 15 Loss on Plant Closure and Disposal of Assets: MRD argues that the loss on the closure of the Middlesex and North Stonington facilities should be excluded from the cost calculation because these costs were extraordinary. In support of its position, MRD cites *Certain Welded Stainless Steel Pipe from the Republic of Korea* (57 FR 53693, 53704, November 12, 1992) in which the Department excluded the gain of the sale of a manufacturing plant because the transaction was considered extraordinary rather than a routine disposal of fixed assets.

The petitioner maintains that the costs incurred for the Middlesex plant closure should be included in MRD's further manufacturing G&A expense calculation because this facility was the location of the newspaper press division.

DOC Position: The plant closure costs at issue were incurred prior to the POI. Because we calculated G&A expenses based on POI data, this point is moot.

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 Germany, 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 Germany, that are entered, or withdrawn from warehouse on or after March 1, 1996, with the exception of those entries of elements imported by MRU to fulfill the contract for the sale of a LNPP system to The Charlotte Observer (''Charlotte contract''). 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 Germany 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 Germany, 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. Any securities posted since March 1, 1996, on entries of elements relevant to MRU's Charlotte contract shall be refunded or canceled.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
MAN Roland Druckmaschinen AG	30.80
Koenig Bauer-Albert AG	[1] 46.40
All Others	30.80

[1] Facts Available Rate.

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

International Trade Commission (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. 96–18542 Filed 7–22–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–816]

Certain Welded Stainless Steel Butt-Weld Pipe Fittings from Taiwan, Antidumping Duty Administrative Review; Time Limits

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

ACTION: Notice of extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the preliminary and final results of the second antidumping duty administrative review of stainless steel butt-weld pipe fittings from Taiwan. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period June 1, 1994 through May 31, 1995.

EFFECTIVE DATE: July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Robert M. James at (202) 482–5222 or John Kugelman at (202) 482–5253, Antidumping and Countervailing Duty Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limits for completion of the preliminary results until July 29, 1996. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, July 16, 1996, on file in Room B–099 of the Main Commerce Building. We will issue our final results for this review by January 29, 1997.

These extensions are in accordance with Section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

Dated: July 16, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary, Antidumping and Countervailing Duty Enforcement.

[FR Doc. 96–18675 Filed 7–22–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 071696D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will hold a public meeting.

DATES: The meeting will be held on August 13, 1996, beginning at 10:30 a.m.

ADDRESSES: The meetings will be held at the Council office.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: A Council-appointed ad hoc committee will discuss how to develop a system that allows landing of groundfish in excess of limits, the collection of the funds by an appropriate organization, and the use of the funds for various fishery management and research purposes.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 17, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–18667 Filed 7–22–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF EDUCATION

[CFDA No. 84.133F]

Office of Special Education and Rehabilitative Services; The National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1997

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On July 1, 1996 a notice inviting applications for new awards under certain programs for fiscal year 1997 was published in the Federal Register at 61 FR 34326. This notice corrects the maximum award amount for the Merit Research Fellowships in the July 1, 1996 Federal Register notice.

On page 34326 the table with information about Research Fellowships