of review for all shipments of certain cold-rolled and corrosion-resistant carbon steel flat products from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate will continue to be 14.44 percent (for certain cold-rolled carbon steel flat products) and 17.70 percent (for certain corrosion-resistant carbon steel flat products), which were the ''all others'' rates in the LTFV investigations. *See Flat-Rolled Final* at 37191.

Article VI¶5 of the GATT (cited earlier) provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.'' This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations; Certain Steel Products from Korea* (58 FR 37328—July 9, 1993), which is 0.05 percent *ad valorem,* will be subtracted from the cash deposit rate for deposit purposes.

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: April 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9424 Filed 4–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822 & A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On October 4, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. These reviews cover four manufacturers/exporters of the subject merchandise to the United States and the period August 1, 1994 through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

We determine that sales have been made below normal value (''NV'') by various companies subject to these reviews. Thus, we will instruct U.S. Customs to assess antidumping duties based on the difference between the export price (''EP'') or constructed export price (''CEP'') and the NV.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Bolling (Continuous Colour Coat (''CCC'')), Eric Johnson (Dofasco Inc. and Sorevco Inc. (''Dofasco'')), Greg Weber (Algoma, Inc. (''Algoma'')), N. Gerard Zapiain (Stelco, Inc. (''Stelco'')), or Jean Kemp, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute refer to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On October 4, 1996, the Department published in the **Federal Register** (61 FR 51892) the preliminary results of its administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. We gave interested parties an opportunity to comment on our preliminary results. We received written comments on November 4, 1996 from Algoma, CCC, Dofasco/Sorevco, Stelco and from the petitioners: Bethlehem Steel Corporation, U.S. Steel Group (a Unit of USX Corporation), Inland Steel Industries Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company. We received rebuttal comments on November 12, 1996 from interested parties.

As we noted in the preliminary results of review, on February 28, 1996, the petitioners requested that the Department determine whether antidumping duties had been absorbed by Algoma, Dofasco, and Stelco (for corrosion-resistant only) during the POR, pursuant to section 751(a)(4) of the Act. Section 751(a)(4) provides that the Department, if requested, will determine during an administrative review initiated two years or four years after publication of the order whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Act by the URAA.

For transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, § 351.213(j)(2) of the Department's proposed regulations provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. *See, Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7308, 7366 (February 27, 1996) (''Proposed Regulations''). The commentary to the proposed regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year. *Id.* at 7317. Although these proposed regulations are not yet binding upon the Department, they do constitute a public statement of how the Department expects to proceed in construing section 751(a)(4) of the amended statute. This approach assures that interested parties will have the opportunity to request a duty absorption determination on entries for which the second and fourth years following an order have already passed, prior to the time for sunset review of the order under section 751(c). Because the orders on corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate from Canada have been in effect since 1993, these are transition orders. Therefore, based on the policy stated above, the Department will first consider a request for a duty absorption determination for reviews of these orders initiated in 1996. Because these reviews were initiated in 1995, we have not considered the issue of absorption in these reviews. However, if requested, we will do so in the next reviews.

Under the Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the reviews within the statutory time limit of 365 days. On April 1, 1996, the Department extended the time limits for the preliminary and final results in this case. *See, Extension of Time Limit for Antidumping Duty Administrative Reviews* 61 FR 14291 (1996).

We have now completed the administrative reviews in accordance with section 751 of the Act.

Scope of Reviews

The merchandise under review is certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate. Although the *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

I. Certain Corrosion-Resistant Carbon Steel Flat Products

These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel-or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

II. Certain Cut-to-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X–70 plate.

The period of review (POR) is August 1, 1994, through July 31, 1995.

Analysis of Comments Received

Algoma

Comment 1

Petitioners argue that Algoma's method of reporting costs is distortive and should be rejected because Algoma allocated rolling costs based on the average rolling cost of only one of its two mills that produces subject merchandise. Petitioners argue that the Department has consistently required that respondents report COP and CV based on the actual costs incurred. Petitioners point to the Department's antidumping questionnaire which states that COP and CV figures ''should be calculated based on the actual costs incurred by your company during the period of review * * * as recorded under its normal accounting system.'' Petitioners also cite *IPSCO, Inc. and IPSCO Steel, Inc.* v. *United States,* 687 F. Supp. 633, 639 (CIT 1988) which quotes *F.W. Myers & Co., Inc.* v. *United States,* 376 F. Supp. 860, 873 (CIT 1974) in stating ''value determinations made in antidumping cases 'must be based upon proof of actual costs of prices—not estimates, approximations or averages.' Petitioners argue that Algoma did not weight-average the actual rolling costs of each mill. As the Department's antidumping questionnaire at D–2 states, ''If you produce the merchandise under review at more than one facility, you must report COP and CV based on the weighted-average of costs incurred at all facilities.'' Petitioners cite *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy,* 60 FR 10959, 10962 (February 28, 1995): ''if a respondent produces subject merchandise at more than one facility, the reported COM should be the weighted-average manufacturing costs from all facilities.'' Petitioners claim that Algoma's methodology resulted in the misreporting of COP and CV.

Petitioners also claim that Algoma's methodology causes all comparisons of non-identical merchandise to be erroneous. Petitioners argue that Algoma's failure to report actual costs—whether under or overstated—means that the difference in merchandise tests are invalid. Petitioners claim that the 20-percent test, which the Department uses to determine if a non-identical home market product is sufficiently similar to the U.S. product for a price comparison, will not operate properly due to Algoma's flawed methodology. Therefore, petitioners argue that where non-identical sales are being matched, there is no way to ensure that the comparison is being made with merchandise that is comparable as required by the statute. Thus, petitioners argue that since costs are overstated, the DIFMER adjustment will always be incorrect. Petitioners cite *Certain Pasta from Turkey,* 61 FR 30309, 30311 (June 14, 1996) which states, ''Insofar as DIFMER data is based on cost information {that is flawed}, the effect of these physical differences cannot be determined by the Department.''

Petitioners also argue that Algoma's attempts to justify its allocation system must be rejected. Petitioners specifically point to Algoma's claim that its accounting system does not record costs at a sufficient level of detail that would permit direct calculation of actual costs incurred at the 106″ mill that relate only to the subject merchandise. Petitioners argue that there are few, if any, accounting systems that maintain costs in the normal course of business in a manner that mirrors the Department's reporting requirements. Petitioners point to § 351.308 of the Department's Proposed Regulations which state, ''not all information that needs to be produced during the course of a proceeding is kept in the ordinary course of business (e.g., worksheets), and failure to provide such information may be deemed to violate the 'best of ability' standard.'' Petitioners go on to say that all respondents—including Algoma—are required to construct methodologies for reporting purposes that result in the reasonable allocation of actual costs.

Finally, petitioners argue that Algoma's distortive allocation methodology leaves the Department with no alternative but to reject COP and CV and apply total facts available. Petitioners claim, pursuant to section 776(b) of the statute, that the Department should select the most adverse margin available as the final weighted-average margin for this review. However, petitioners argue, if the Department decides not to apply total adverse facts available, then it should apply facts available with regard to the comparison of non-identical merchandise. In selecting partial facts available, they argue, the Department should follow its own established practice and add an upward DIFMER adjustment equal to 20 percent of TCOMU to normal value for each comparison of non-identical products. Petitioners cite two Department decisions, *Gray Portland Cement and Clinker from Mexico,* Results of Redetermination Pursuant to Court Remand, and *Tapered Roller Bearings, and Certain Components Thereof, from Japan,* 56 FR 26054, 26057 (June 6, 1991), in which the Department added an upward DIFMER adjustment of 20 percent as best information available. Accordingly, petitioners feel the Department should apply the same remedy in this situation.

Algoma argues that although they were unable to report actual rolling costs for the 106″ mill, the Department must examine any cost allocation to determine if it is reasonable. Respondent cites *Floral Trading Council* v. *U.S.*, 822 F. Supp 766, 772 (CIT 1993) and *Welded Stainless Steel Pipe from Malaysia, Final Determination of Sales at Less Than Fair Value,* 59 FR 4023, 4027 (January 28, 1994) in which the Department accepted allocation methods as reasonable. Respondent asserts that the Department should continue to accept Algoma's rolling cost allocation method because it did so in the first review of this case, *Certain Steel Products from Canada: Final Results of Administrative Review,* 61 FR at 13817. In that decision, the Department accepted Algoma's rolling cost calculation methodology stating, ''Algoma's reporting of rolling costs incurred at only one of its manufacturing facilities is reasonable, considering (1) The nature of its cost accounting system, (2) Algoma's verified inability to determine specific rolling costs based upon the gauge of materials being manufactured at either facility, and (3) the conservative methodology adopted by Algoma.'' Respondent contends that same rationale is fully supported by the record in this review and leads to the conclusion that Algoma's method for calculating rolling costs is reasonable.

Additionally, respondent asserts that Algoma explicitly sought the Department's guidance on whether to use the same rolling cost calculation methodology as in the first administrative review and that the Department instructed Algoma to use the same methodology. Respondent argues Algoma does not track rolling costs by width and gauge in the normal course of business. In addition, a very large percentage of the products produced on the 166″ Plate Mill and a very small percentage of the products produced on the 106″ Strip Mill constitute subject merchandise. Respondents contend, in light of those two verified facts, Algoma had only three reasonable alternatives in assigning rolling costs to a particular category of subject merchandise: It could either assign the average Strip Mill rolling costs, assign the average Plate Mill rolling costs, or assign a mixture of the two. Respondents argue that since the 106″ Strip Mill average rolling costs are overwhelmingly determined by non-subject merchandise, using the average 106″ mill rolling cost, or a mixture of costs from both mills, would have caused the rolling cost calculation to be driven by the cost of rolling non-subject merchandise. Therefore, Algoma used the average rolling cost of the 166″ mill—where only products with gauges falling within the definition of subject merchandise are rolled—as a surrogate for the average rolling cost of the 106″ mill. Respondent argues that this is a conservative methodology based on the verified fact that rolling costs on the 166″ mill were higher than rolling costs on the 106″ mill. Based on the facts above, respondents argue that Algoma's rolling cost methodology should again be determined reasonable by the Department.

Concerning petitioners' argument that Algoma's methodology renders the DIFMER adjustment inaccurate, respondent argues that these arguments are based on conclusions that are untrue. Respondent provides calculations for the potentially affected matches, which they argue demonstrate that it would be mathematically impossible for the cost reporting methodology to yield a distortion in the results of the DIFMER test.

Department's Position. We agree with respondent. Consistent with the final results of the first review, *Certain Steel Products from Canada: Final Results of Administrative Review,* 61 FR at 13817, Algoma's cost reporting methodology is reasonable, considering (1) we verified its cost accounting system, (2) Algoma's verified inability to determine specific rolling costs based upon the gauge of the material being manufactured at either facility, (3) the conservative methodology adopted by Algoma and verified by the Department, and (4) respondent's compliance with Department instructions on cost reporting methodology in this review.

Petitioners state that it is the responsibility of any respondent to construct methodologies for reporting purposes that result in the reasonable allocation of costs. The Department determined that Algoma's cost accounting system computes one average rolling cost for all products rolled on the 166″ Plate Mill and one average rolling cost for all products rolled on the 106″ Strip Mill. Moreover, the Department verified that a very large percentage of the products produced on the 166″ mill and a very small percentage of the products produced on the 106″ mill are subject merchandise. Therefore it was a reasonable and non-distortive methodology for Algoma to use the average cost of the 166″ mill as a surrogate for the rolling cost of the 106″ mill. Accepting this methodology is made more reasonable by the fact that the average rolling cost of the 166″ mill is higher than the average rolling cost of the 106″ mill, thus insuring a conservative costing methodology. However, this difference in rolling costs is not so great as to cause significant distortions to the DIFMER.

Regarding petitioners' claim that the Department should reject Algoma's COP and CV data and apply total facts available, respondent has acted to the best of its ability and provided the Department with a reasonable methodology that has been verified. Moreover, the Department provided guidance on Algoma's cost reporting methodology and respondents complied with that guidance. Regarding petitioners' claim that the Department should apply facts available with regard to the comparison of non-identical goods, once again, respondent has provided a reasonable methodology and the DIFMER is, therefore, reliable. Respondent has demonstrated that for the product comparisons in question Algoma's cost methodology would not cause the 20-percent DIFMER test to yield inaccurate results. In addition, while it is possible that the allocation method could change the DIFMER adjustment amount slightly for some product comparisons, the insignificant degree of the possible difference is not enough to render the allocation method unreasonable and invalid. Based on the above arguments, the verified record, and previous Department decisions, we find that Algoma's cost allocation methodology, productivity matrices, exclusion of certain runs, and DIFMER adjustments are accurate and reasonable.

Comment 2

Petitioners argue that the record shows that Algoma sold subject merchandise at two different levels of trade. Petitioners contend that in determining whether customers are at separate levels of trade, the Department reviews the selling activities performed by the seller for each type of customer. Petitioners assert that Algoma stated that it sold subject merchandise to ''two very different types of customers'': steel service centers (SSCs) and end-users. Petitioners state that Algoma specifically stated in its July 11 supplemental response that it performed selling functions for end-users that are not ''routinely performed'' for SSCs. In addition, Algoma stated that it performed some of the selling functions identified by the Department ''mainly for end users.'' Petitioners assert that this is significant because the Department has previously found differences in these types of selling functions to be important in distinguishing separate levels of trade. *See, Antifriction Bearings from France,* 61 FR at 35720.

Petitioners argue that the Department accepted Algoma's claim that all sales are at one level of trade based on the Department's ''examin{ation} and verif{ication} of the selling functions'' identified by Algoma. Petitioners note, however, that Algoma did not report its selling functions on the record until two months after verification. Therefore, Petitioners contend, there is no possible way for the Department to have ''examined and verified'' Algoma's selling functions. Even if the Department were to rely on Algoma's unverified descriptions of selling functions, Petitioners argue that the Department must still find that Algoma sold to two levels of trade. Petitioners assert that such a conclusion is mandated because the functions undertaken by Algoma for its end-user customers are significantly different from those engaged in for the SSC customers.

Therefore, Petitioners argue that the Department must make a level of trade adjustment. Petitioners contend that the statute requires that ''to the extent practicable,'' U.S. sales should be compared to home market sales at the same level of trade, 19 U.S.C. section 1677b (a)(1)(B). When a U.S. sale is compared to a home market sale at a different level of trade, however, the Department is required to determine if a level of trade adjustment should be made, 19 U.S.C. section 1677b(a)(7)(A). Petitioners argue that an adjustment must be made under the statute where the difference in level of trade affects price comparability. Petitioners claim that the Department set forth its methodology for making this determination in *Antifriction Bearings from France,* 61 FR at 35719. Petitioners argue that the difference in level of trade between sales to SSCs and end-users does affect price comparability. Petitioners present a number of calculations that they contend demonstrate a pattern of consistent price difference between the different levels of trade in the home market based on both the number of models and the quantity of sales. Accordingly, petitioners argue that a level of trade adjustment is warranted.

Respondent contends that the Department correctly concluded in the preliminary results that Algoma sells plate products at one level of trade.

Respondent asserts that conclusion is fully supported by the verified record in this review, and the Department should reach the same conclusion in the final results of review. Respondent points to the Department's preliminary analysis memorandum, which states that the Department ''examined and verified the selling functions'' performed by Algoma for its two customer classes: end-users and steel service centers (SSCs). Based on the verified information, the Department concluded in its analysis memorandum that ''Algoma's selling activities were substantially similar for both classes of customers for sales of subject merchandise and warrant one level of trade.'' Respondent states that Algoma determined that it sold plate products at only one level of trade, by comparing the services performed for plate customers to those performed for purchasers of sheet products, its largest product line. For sheet products, Algoma engages in very different levels and types of selling functions for service centers and fabricators. Respondent states for plate products, however, those services are rarely performed. Respondent also asserts that on those rare occasions when services like just-in-time delivery are performed for plate customers, they are mainly performed for end-users. Respondent points to Algoma's July 11 supplemental questionnaire response which states that ''(w)hile Algoma does perform some selling functions for end-users in plate trade that are not routinely performed for SSCs, in Algoma's view the activity is not so significant as to cause plate end-users to be a level of trade different from SSCs.

Respondent also asserts that the Department's preliminary decision that Algoma sells plate products to only one level of trade is consistent with other recent decisions. Respondent points to the final determination in *Certain Pasta from Italy*, 61 FR 30326, 30337–39, and 30342–43 (June 14, 1996) (quoting Proposed Regulations), which states that ''small differences in the functions of the seller will not alter the level of trade.'' Respondent claims Algoma has demonstrated that the selling functions performed for various customer classes of the subject merchandise are ''sufficiently similar'' to justify a finding of one level of trade, as was the case for many of the respondents in that case. In addition, respondent asserts that the Department should disregard petitioners'' calculations that suggest that a price discrepancy exists between levels of trade. Respondent claims that petitioners'' calculations hardly constitute the ''significant correlation between prices and selling expenses on one hand, and levels of trade on the other,'' required to make a level of trade adjustment. *See, Steel Plate from Sweden*, 61 FR 15772, 15776 (April 9, 1996) (Final Review). Based on the above comments and previous Department decisions, respondent contends that the Department is correct in finding that Algoma sold plate products at one level of trade and, thus, there is no need for the Department to make a level of trade adjustment.

Department's Position. The Department agrees with respondent that Algoma sold plate products at one level of trade and, thus, no level of trade adjustment is warranted.

In order to determine whether sales in the comparison market are made at more than one level of trade, the Department must find that sales have been made at different stages in the marketing process, or the equivalent. We make this determination on the basis of a review of the distribution system, including selling functions, class of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade. While customer categories such as ''distributor'' and ''wholesaler'' may be useful in identifying different levels of trade, they are insufficient in themselves to establish that there is a difference in the level of trade. *See, Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from France, et al: Final Results of Antidumping Administrative Reviews*, 62 FR 2081, 2105 (January 15, 1997).

An examination of Algoma's selling activities—the selling functions and the level of selling expenses—for Algoma's two customer classes indicates that while Algoma occasionally may perform some services for end-users that it does not perform for SSCs, these differences in terms of selling functions and level of selling expenses are not great enough to warrant a finding of different levels of trade. As respondent noted in *Certain Pasta from Italy*, 61 FR 30326, 30337–39, and 30342–43 (June 14, 1996), small differences in selling functions do not warrant a different level of trade. Petitioners' arguments on price comparability are moot because the Department has determined that only one level of trade exists.

Finally, the Department disagrees with petitioners'' contention that the Department did not review Algoma's selling activities at verification because Algoma submitted some of its selling activity information after verification. Prior to verification, there was enough information on the record concerning Algoma's selling activities for the Department to determine whether these activities were ''substantially similar'' for Algoma's two customer classes: end-users and steel service centers (SSCs). Moreover, prior to verification, petitioners notified the Department of their concerns and requested that the Department carefully analyze and test all of Algoma's selling functions and differences in these selling functions between end-users and SSCs. At verification, the Department examined the differences in selling activities between end-users and SSCs. Algoma's supplemental response concerning level of trade, requested by the Department and submitted after verification, presented no evidence to contradict this determination and does not invalidate the information which was verified.

Comment 3

Petitioners claim that Algoma's failure to provide plate qualities for certain sales warrants the application of adverse facts available. For the preliminary results, respondent identified plate quality as ''structural'', ''pressure vessel'', or ''other.'' Algoma reported ''other'' as the plate quality for a number of its prime home market sales and for some of its prime U.S. market sales as well. Petitioners argue that Algoma's incomplete reporting of plate quality has undermined the Department's model match program. For this reason, petitioners assert the Department should apply facts available to all U.S. sales where plate quality has been identified as ''other.''

Petitioners state that Algoma attempted to justify its reporting method by claiming that its method was consistent with industry standards and practices. According to Algoma, any plate not falling into either the structural or pressure vessel quality categories, is appropriately considered ''other.'' Petitioners claim, however, that there are, in fact, other plate quality categories recognized in the steel industry. Petitioners point to the Iron and Steel Society's authoritative *Steel Products Manual* which mentions four other ''quality descriptions'' for steel plate.

Petitioners contend that the Court of International Trade (CIT) has specifically stated that respondents must provide complete information regarding the physical characteristics of subject merchandise. In *Timken Co.* v. *United States*, 630 F. Supp. 1327, 1338 (CIT 1986), the CIT stated, ''It is of particular importance that the administering agency itself make the required determination of what constitutes most similar merchandise, rather than delegating that responsibility to an interested party.'' In the same case, the CIT states that ''accepting a foreign manufacturer's assertions as to what constitutes most similar merchandise without obtaining the complete data needed to determine the appropriateness of those assertions'', would ''violate the spirit of the statutory requirement.''

Petitioners contend that because of Algoma's incomplete reporting, the Department should apply adverse facts available because of the Department's repeated requests and Algoma's repeated refusals to provide this information. Petitioners assert that the Department should apply the most adverse margin to all United States sales where plate quality has been reported as ''other.''

Respondent claims that Petitioners' arguments are misplaced because Algoma has properly reported, and the Department has verified and accepted, the three categories of plate quality reported by Algoma in this review. In response to the Department's first supplemental questionnaire, Algoma explained that it:

> ''followed the Department's instructions in separating subject merchandise into the categories of 'structural,' 'pressure vessel' or 'other' in the PLQUALH/U fields. Consistent with industry standards and practices, the only 'quality' types recognized for plate products are structural and pressure vessel. Any plate not falling into one of the two categories is appropriately considered 'other,' and therefore was included by Algoma in the 'other' category. The types of plate that may not meet the structural or pressure vessel qualities, and therefore are appropriately considered 'other,' include floor plate, chemical grades, and non-prime plate.

Respondent also asserts that at verification, the Department verified the plate qualities reported by Algoma.

In response to petitioners' cite to the Iron and Steel Society publication, respondent contends that the additional plate qualities mentioned by the publication are both out of date and not applicable to Algoma. Respondent also asserts that the very same publication supports Algoma's understanding by listing as typical, in ''Typical Standard Specifications,'' only structural and pressure vessel qualities.

Respondent argues that based on the facts above and the verified record, the Department should not change its decision regarding plate quality categories in making its final determination.

Department's Position. We agree with respondent. Algoma classified all plate that did not fall within the structural or pressure vessel qualities, as ''other.'' The Department fully verified the plate qualities reported by Algoma during the period of review. The Department agrees this practice is consistent with industry standards. In addition, this classification does not undermine the Department's model match program. Petitioners' cite to *Timken Co.* v. *United States* is not relevant to this issue because the Department has accepted and verified Algoma's reporting of qualities; therefore Algoma's response cannot be considered incomplete. In addition, petitioners' mention of the Iron and Steel Society's *Steel Products Manual* is also irrelevant. That publication quotes additional plate qualities that are not relevant to this review and that in no way would affect model matches. Furthermore, since Algoma properly reported all plate qualities, there is no need to consider petitioners' argument for the use of adverse facts available. Based on the verified record and industry standards, the Department fully accepts Algoma's reporting of plate qualities.

Comment 4

Petitioners argue that the Department erred in accepting as a movement charge deductible from normal value under section 773(a)(6)(B)(ii) of the statute Algoma's reported freight expenses, which Algoma incurred in transporting merchandise to a further processor. Petitioners argue that the Department has consistently treated such expenses as a cost of manufacturing, and not a movement charge. Therefore, the Department should disallow Algoma's claim for a freight adjustment for all further processed sales.

Petitioners state that the Department requires respondents to establish that they are entitled to favorable adjustments to normal value. Petitioners cite *The Timken Company* v. *United States*, 673 F. Supp. 495, 513, (CIT 1987), in which the Court ''plac(es) the burden of establishing adjustments on a respondent that seeks the adjustments and that has access to the necessary information.'' Petitioners contend that Algoma has failed to establish that it is entitled to a favorable adjustment to normal value. Petitioners assert that Algoma defends its reporting by claiming that its freight expenses were incurred ''post-sale'' and hence should be classified as movement charges. However, petitioners claim that the freight expenses in question were incurred in transporting unfinished merchandise for further processing, and thus, they are properly classified as cost of manufacturing, and not a movement charge. Therefore, petitioners argue, whether the freight expenses were incurred pre-sale or post-sale is irrelevant. Petitioners cite *Certain Carbon Steel Flat Products from Canada*, 58 FR 37099, 37118 (comment 61) (July 9, 1993), which states ''pre-sale freight charges for unfinished merchandise should not be considered a movement charge.'' The Department decision goes on to say, ''(f)reight between a factory and the further processor of a work in progress is not a deductible adjustment . . .'' Similarly, petitioners argue, the Department has consistently treated the freight from the U.S. port to a further manufacturing plant as a cost of further manufacturing, and not a freight expense. *See, Gray Portland Cement and Clinker from Japan*, 60 FR 43761, 43768 (Aug. 23, 1995).

Therefore, based on the reasons above petitioners argue that the Department should disallow Algoma's claim for a freight adjustment for all further processed sales.

Respondent claims that petitioners' arguments are based on the incorrect assumption that these freight expenses are pre-sale freight expenses. Respondent contends that under the recently amended antidumping law, all freight expense incurred from the producer to the processor and from the processor to the customer, should be deducted from normal value. Section 773 (a)(6)(B)(ii) states that an adjustment to normal value is appropriate for ''the amount, if any, included in the price . . . attributable to any additional costs, charges, and expenses incident to bringing the foreign like product from the original place of shipment to the place of delivery to the purchaser.'' Respondent cites the Statement of Administrative Action (SAA) at 827, which also explains that under that new section movement charges are to be deducted from normal value. According to respondent, Algoma's movement charges from the plant to the processor and then to the customer fall within that statutory provision and thus are properly deducted from normal value. Respondent also claims that petitioners' citations to the decisions by the Department under the old law are irrelevant to this review in light of the change in the law and the Department's practice.

Department's Position. We agree with respondent. The freight from Algoma to the further processor is a movement charge deductible pursuant to 773 (a)(6)(B)(ii) because it is not freight incurred in the process of manufacturing subject merchandise but freight incurred in sending subject merchandise for further processing at the customer's request as part of the sale. Algoma performs this further processing on a small percentage of sales as a courtesy to the customer and is not part of its actual production of subject merchandise which is being used for comparison in this review. Moreover, it would be unfair to respondent to compare ex-factory prices in the U.S. market with home market prices that include freight. In order to insure that a proper comparison is made with ex-factory home market products and ex-factory U.S. market products, all ex-factory freight expenses need to be excluded from the price. Based on the information in the record, the Department has determined that the respondent has satisfied its burden of establishing its entitlement to the adjustment under *Timken.* Petitioners' cite to *Certain Carbon Steel Flat Products from Canada* is irrelevant because that case involved the pre-sale transfer of a work-in-process. In addition, petitioners' cite to *Gray Portland Cement and Clinker from Japan* is inappropriate because it deals with the cost of further manufacturing in the United States which is not relevant to this case.

Comment 5

Petitioners argue that Algoma should not be allowed a freight adjustment for sales in which it inadvertently reported actual freight in the accrued freight field. Throughout this review, Algoma has claimed that it had reported an accrued freight expense amount in the INLFACH field of its sales tape. Petitioners state that according to Algoma, the amount reported in this field was not based on the freight expenses actually incurred, rather it was based on the expected freight charge at the time the products were shipped. Petitioners contend that Algoma claimed, for the first time, four months after verification, that for certain sales it had ''inadvertently'' reported the actual amount for inland freight in the accrued freight field (INLFACH) and that the Department had verified this claim.

Petitioners argue that respondent's claims were untimely, unsupported by the record and must be rejected by the Department. Again petitioners point to the *Timken* case which places the burden of establishing adjustments on respondents. Petitioners claim that there is no mention whatsoever in the verification reports of the Department having verified (or even having been notified of) Algoma's claim. Moreover, petitioners assert, there is no mention of Algoma's ''inadvertent'' reporting in the Corrections Memorandum that Algoma submitted at the outset of verification. Therefore, petitioners contend, the Department has no alternative but to deny Algoma's claimed freight adjustment for all sales where freight expenses are reported in the INLFACH field of the sales database.

Respondent argues that the Department's preliminary results correctly concluded that Algoma properly reported actual freight expense. Respondent contends that as Algoma explained to Department officials during verification, due to an oversight, Algoma reported the actual amount for inland freight associated with those transactions in the accrued freight (INLFACH) field. Respondent asserts that this fact does not affect the freight expense calculation and has been fully explained to the Department.

Respondent states that at verification, Algoma demonstrated that the freight expense reported for these sales transactions was fully accounted for and properly included in Algoma's sales tape, but it merely appeared in the wrong field. Respondent claims the Department verified this by examining two of the preselected sales traces. Respondent states that in the sales verification exhibits, Algoma provided the Department with freight invoices and calculations confirming that the freight reported in INLFACH represented the actual freight expense incurred for the shipment to the customer. Respondent claims that Algoma did not identify this issue in its Corrections Memo mentioned by petitioners because no correction was necessary. Respondent asserts that whether the amounts appeared in the actual or accrued expense field had absolutely no affect on the margin calculation. Therefore, respondent argues, the Department should continue to accept Algoma's explanation for the final determination.

Department's Position. We agree with respondent. Whether the actual freight is reported in the actual freight field (INLFTCH) or the accrued freight field (INLFACH) has no effect on the margin calculation. For the preliminary and final determinations, freight expense was calculated by adding the actual freight field and the accrued freight field together. Thus, whether the actual freight expense was in the actual field or the accrued field is not important, since they are combined into one freight expense. This fact renders this argument moot as long as the actual freight amounts were reported and verified in one of the two fields. As stated in the Department's verification reports and documented by verification exhibits, the freight amounts were verified by the Department and found to be accurate.

Comment 6

Petitioners argue that a circumstance-of-sale adjustment for credit expense should not be allowed for sales where Algoma failed to report payment dates. Petitioners assert that throughout this review, Algoma made numerous revisions and corrections to its data tapes. Algoma, however, never updated its sales tape to include the payment dates that were missing from its initial sales tape. Petitioners claim that respondent failed to do this even though the missing information became available to Algoma during the course of this review. Petitioners assert that Algoma's failure to report complete payment date information has made it impossible for the Department to calculate accurately Algoma's credit expenses.

Petitioners argue that Algoma's justification for incomplete reporting must be rejected. Respondent stated that it did not provide the missing payment dates because ''at no time during this review did the Department request that Algoma update its sales tape to include payment date information.'' Petitioners cite the Department's decision in *Brass Sheet and Strip from Canada,* 61 FR 46618, 46620 (September 4, 1996). Petitioners contend, as with the respondent in *Brass Sheet and Strip,* Algoma failed to provide information that had been specifically requested by the Department and which was in respondent's possession. Petitioners argue for the reasons above, the Department must deny respondent's claim for a circumstance of sale adjustment for credit expenses for all sales with missing payment dates.

Respondent contends that Algoma reported all requested payment date information and that information was fully verified by the Department. Respondent states that as Algoma demonstrated during verification, payment dates were not reported on Algoma's sales tape for orders that were unpaid at the time Algoma created the tape. Respondent asserts that this is customary practice and at no time during the review did the Department request that Algoma update its sales tape to include payment date information. Respondent also states that the Department carefully verified and gathered supporting documentation on those transactions which petitioners requested the Department verify as ''bona fide.'' Respondent argues that since Algoma has complied with all the Department's requests for information, the Department should reject petitioners' arguments.

Department's Position. We agree with respondent. The Department never requested the updated payment dates from Algoma. In addition, the alternative methodology Algoma used of substituting in an average number of days outstanding for the unknown date is reasonable and has been verified. Based on these facts, the Department will allow the circumstance-of-sale adjustment for all sales with missing payment dates.

Comment 7

Petitioners claim that Algoma should not be allowed to use the U.S. prime rate in calculating its U.S. credit expense, but instead, Algoma should use a rate more consistent with commercial reality. Petitioners cite the case *La Metalli Industriale* v. *United States,* 912 F.2d 455 (Fed. Cir. 1990), which states the cost of credit ''must be imputed on the basis of usual and reasonable commercial behavior.'' Petitioners argue that since Algoma could not qualify for the Canadian prime rate in any of its home market borrowings, Algoma would not be able to qualify for the U.S. prime rate. Therefore, petitioners claim the U.S. prime rate does not reflect the commercial reality of borrowing in the United States for Algoma. They cite *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 14049, 14054 (March 29, 1996) (Steel from Australia) and *Final Results of Antidumping Duty Administrative Review; Certain Cut-to-Length Carbon Steel Plate from Sweden,* 61 FR 15772, 15780 (April 9, 1996) (*Steel from Sweden*). In *Steel from Australia* and *Steel from Sweden,* the Department stated that, in the absence of U.S. dollar borrowings, a reasonable surrogate for imputing U.S. credit expense must be used. Petitioners argue that the fact that Algoma could not qualify for the Canadian prime rate provides substantial evidence that Algoma could not qualify for the U.S. prime rate.

Therefore, petitioners suggest that the U.S. prime rate be adjusted to reflect this fact, or in the alternative, the Department could use Algoma's adjusted home market interest rate. In Canada, Algoma qualified for loans of .5%, 1.0%, and 1.5% above the Canadian prime rate. Therefore, petitioners state that 1.5% should be added to the U.S. prime rate to reflect Algoma's commercial reality of borrowing in the United States. The alternative is to adjust the home market interest rate to account for currency fluctuations. Petitioners cite *Certain Fresh Cut Flowers from Colombia,* 61 FR 42833, 42848 (August 9, 1996) in which this method was used in the absence of U.S. dollar borrowings.

Respondent argues that the use of the Federal Reserve prime short-term lending rate is consistent with Department practice. Respondent cites two cases, *Canned Pineapple Fruit from Thailand: Final Determination of Sales at Less than Fair Value,* 60 FR 29553, 29558 (June 5, 1995) and *Brass Sheet and Strip from Germany: Final Results of Antidumping Duty Administrative Review,* 60 FR 38542, 38545 (July 27, 1995), in which the U.S. prime rate was used to compute U.S. credit expense in the absence of any borrowing in U.S. dollars. Respondent also cites Section C of the Department's questionnaire which states ''if you have not borrowed in U.S. dollars, use a U.S. published commercial bank prime short-term lending rate.'' Respondent also cites *Steel from Australia* and *Steel from Sweden.* Respondent states that in both cases the Department concluded that the Federal Reserve rate in effect over the POR was a ''reasonable surrogate'' for an actual dollar interest rate. In both cases the Department chose the average short-term lending rate as calculated by the Federal Reserve. Each quarter the Federal Reserve collects data on loans made during the first full week of the mid-month of each quarter by sampling 340 commercial banks of all sizes. The sample data are used to estimate the terms of loans extended during that week to all insured commercial banks. This rate represents a reasonable surrogate for an actual dollar interest rate because it is calculated based on actual loans to a variety of actual customers.

Also, respondent states that the Department itself has recognized that the use of Aexternal ''external'' information, such as the Federal Reserve rate, is preferred over an adjusted home market interest rate in deriving computed credit costs. The Department states in its September 6, 1994 *Memorandum re: Proposed Change In Policy Regarding Interest Rates Used In Credit Calculations* that the Department's preference is to get the interest rate for both currencies concerned, rather than making an adjustment to the home market interest rate to account for exchange rate fluctuations. Therefore, respondent argues that the Federal Reserve commercial bank prime short-term interest rate should be used when calculating Algoma's credit expense.

Department's Position. We agree, in part, with respondent and petitioners that commercial reality can be more accurately reflected by a surrogate U.S. short-term interest rate. Consistent with Department practice in *Steel from Sweden* and *Steel from Australia,* we are selecting the U.S. average short-term lending rate as reported by the Federal Reserve. This ''survey rate'' reflects the average short-term lending rate of 340 U.S. banks given over the quarter. Given the absence of actual short-term borrowing in the United Stated by Algoma during the POR, this average is the best measure of the short-term cost of funds in the United States during the POR.

Comment 8

Respondent claims that the Department's model match program failed to match U.S. products of a certain grade to home market products of the same grade. Also, respondent claims that the Department's margin program incorrectly modified the billing adjustment value for an invoice on which a rounding difference was identified at Algoma's verification.

Department's Position. The Department agrees with respondent in both cases and has made the appropriate corrections for the final results.

CCC

Comment 1

Petitioners state that CCC utilized Stelco's costs of producing steel substrate in its cost of production (COP) and constructed value (CV) data because the Department treated Stelco as an affiliated supplier to CCC in the first review. Petitioners note that CCC's reported transfer prices for Stelco substrate were different than the reported costs. Petitioners, therefore, argue that under the Tariff Act, CCC would have been required to utilize Stelco's transfer prices in reporting COP and CV. Petitioners state that sections 773(f)(2) and (3) of the Act provide that major inputs purchased from affiliated parties must be valued at the higher of market value, transfer price or the affiliate's cost of production. Therefore, petitioners state that the Department must recalculate CCC's COP and CV to account for the difference between Stelco's costs of production and transfer prices for the final results.

Respondent states that the antidumping law does not require the use of the higher of transfer price or cost. It requires the use of cost whenever the prices between related parties cannot be demonstrated to be at arm's length. Respondent notes that it has always reported its cost of steel substrate at the cost of production incurred by Stelco, since the original investigation, and the Department used these costs in the last administrative review. Respondent argues that the Department has interpreted the antidumping law to require the use of cost to value inputs by related parties whenever the transfer prices between them could not be shown to have been made at arm's length. In addition, respondent states that the transfer price whether higher or lower than the cost of production is not relevant if the transfer price could not be shown to have been an arm's length price. Respondent argues that petitioners have not argued that Stelco's prices to CCC are at arm's length. Therefore, respondent states that there is no basis in the law for using's Stelco's prices to CCC to establish the cost of Stelco's substrate to CCC. Additionally, respondents states that the facts of the record do not support use of the transfer prices as the cost of production.

Department's Position. We agree with petitioners. Under section 773 (f)(2) and (3) of the Act, major inputs purchased from affiliated parties may be valued at the higher of market value, transfer price or the affiliate's cost of production. In the *Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom,* 62 FR 2,081, 2,115 (January 15, 1997) the Department found ''that in the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing the major input.'' There is no market price on the record for this input. Therefore, the Department's analysis was focused on transfer prices and cost of production. However, since CCC did not provide the Department with specific information on transfer prices by model (*i.e.*, control number), the Department could not perform the comparison on a model by model basis. Therefore, the Department compared CCC's average transfer price for all models to the average total cost of manufacture for all models. The Department found that CCC's average total cost of manufacture was higher than its average transfer price. Therefore, for the final results, the Department finds that substrate from Stelco will be valued at the cost of production. In addition, we disagree with respondent that the Department has interpreted the antidumping law to require the use of cost to value inputs by related parties only where the transfer price between the parties could not be shown to have been made at arm's length. Even where prices are demonstrated to have been made at arm's length, under section 773(f)(3) of the Act, where such prices are for major inputs and are below the cost of production, the Department may disregard such prices and base the value of the major input on its cost.

Comment 2

Petitioners argue that CCC failed to report its general and administrative (G&A) expense in the manner requested by the Department. Petitioners state that the Department's questionnaire required CCC to reconcile reported costs to the company's audited financial statements for the year that most clearly corresponds to the POR. In addition, petitioners note that CCC's fiscal year data encompasses a full nine months of the POR, and that administrative and sales expenses in CCC's financial statements can be reconciled to its audited financial statements. Petitioners state that CCC used the G&A expenses for the POR. Therefore, petitioners argue that the Department should recalculate G&A expenses using a fiscal year period and not a POR period.

Respondent states that the Department should continue to calculate G&A expenses based on the POR financial statement data rather than 1995 fiscal year data. Respondent notes that it believes that using 1995 fiscal year data would be improper for several reasons. First, the Department's past practice has been to use CCC's expenses for the POR to calculate the G&A ratio. Second, the Department requires that fiscal year G&A calculations be end-of-year adjustments which are fully incorporated in the POR costs, which respondent states it has done. Lastly, the respondent notes that all of its monthly financial statements can be reconciled with the appropriate audited financial statements and the audited financial statements are drafted using the monthly financial statements, which would negate petitioners argument that the Department should use fiscal year 1995 costs since they can be reconciled to the audited financial statement. Also, respondent states that it provided a reconciliation of G&A costs to the aggregated monthly financial statements. Therefore, the Department should continue to follow its methodology and calculate G&A costs based on the POR expenses as reported in the POR financial statement.

Department's Position. We agree with petitioners. It is the Department's normal practice to calculate G&A expenses based on full-year G&A and cost of sales figures as reported in the audited financial statement which most closely corresponds to the POR. (*See, Certain Pasta from Italy, Final Determination of Sales at Less than Fair Value,* 61 FR 30326, 30363 (June 14, 1996).) While respondent argues that the Department should continue to calculate G&A expenses based on POR financial statement data, the Department may change its position on a specific issue taken in prior proceedings as long as it provides an explanation for the change (*see, Rust* v. *Sullivan,* 500 U.S. 173, 186–187 (1991).) Although CCC submitted G&A expenses in the last administrative review based on costs from monthly financial statements for the POR, that methodology was not the Department's normal practice for calculating G&A expenses. Furthermore, there is no basis in this record to justify deviating from the Department's normal practice. Consequently, we are following our normal practice in this review, which is to calculate G&A expense based on CCC's 1995 annual audited financial statements. (*See, Furfuryl Alcohol from Thailand, Final Determination of Sales at Less Than Fair Value,* 60 FR 22557, 22560, (May 8, 1995).) However, to avoid double-counting, the Department subtracted indirect selling expenses and movement expenses from the general and administrative expenses (*i.e.*, the numerator) reported in the audited financial statements.

Comment 3

Petitioners argue that CCC incorrectly calculated interest expense and failed to reconcile that value to the amount of interest reported in its audited income statement. Petitioners note that CCC reduced its financial statement interest expense by an unexplained amount when it calculated its interest expense ratio. Petitioners state that the Department only allows an offset to interest expense for short-term interest income that is related to production operations. Moreover, petitioners argue that for the Department to allow the short-term interest income offset it is the respondent's responsibility to prove that interest income was short-term and related to production operations. Therefore, petitioners argue that the Department should recalculate CCC's interest expense using its 1995 audited financial statements.

Respondent states that it reported only the interest expense it paid during the year. Respondent notes that the interest it excluded from total interest expense was not paid during the year. Respondent argues that based on the relationship between the two parties that it is appropriate to exclude this interest expense. Therefore, CCC contends it excluded the interest in accordance with Department practice.

Department's Position. It is the Department's standard practice to calculate interest expense based on audited financial statements which most closely correspond to the POR. (*See, Notice of Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 29553, 29569 (June 5, 1995)) Only short-term interest income directly related to general operations of the company may be used as an offset to interest expense. (*See, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, Final Results of Antidumping Duty Administrative Review,* 56 FR 31734 (July 11, 1991)) The reduction CCC made to its interest expense was not interest income; rather, it was an exclusion of certain interest expenses which it had not paid. The Department calculates the interest expense based on the total interest a company incurs (accrual basis) and not simply the interest it paid (cash basis). Section 773(f)(1)(a) specifies that costs will be calculated based on records kept in accordance with generally accepted accounting principles (GAAP). Financial statements prepared on the accrual basis are GAAP, while financial statements prepared on the cash basis are not GAAP. Therefore, for the final results, we have recalculated interest expense based on CCC's 1995 interest expense from annual audited financial statements which were prepared on the accrual basis and in accordance with GAAP.

Comment 4

Petitioners argue that for one control number (CONNUM) CCC reported inconsistent cost information. Petitioners state that CCC reported its variable and total costs of manufacture differently in its sales and costs listings. Moreover, CCC's cost data was not verified, therefore it is not possible to determine which set of calculations is correct. Therefore, petitioners argue that the Department should utilize the higher of the two values for calculating COP and CV, as facts available.

Respondent states that the cost data for the one U.S. sale falling within this particular CONNUM should be corrected. Respondent states that it originally improperly reported this sale as a temper rolled product. However, during the course of verification, CCC states it discovered that this sale was a non-temper rolled product. Additionally, respondent states that it corrected the final sales database for this CONNUM, but inadvertently failed to do so in its cost database because of a computer glitch.

Respondent opposes the petitioners' argument that because the Department did not conduct a full cost verification, it should use an adverse inference and apply the higher costs for all sales falling within this CONIUM in the U.S. and home markets. Respondent notes that this would be unfair. Respondent argues that the Department reviewed two CONNUMs during verification and verified its VCOM and TCOM calculations of these two CONNUMs with no discrepancies. Respondent argues that facts available are used where the requested information is missing or cannot be used because it has not been provided, was provided late, or the Department could not verify the information. Respondent states that it provided the information in a timely manner and was able to verify the costs. Therefore, no basis exists to substitute the higher temper rolled costs for the non-temper rolled costs.

Department's Position. We agree with the respondent. At verification, the Department discovered that the control number for this sale was incorrectly reported. The Department then allowed the respondent the opportunity to correct its database (*See,* Verification Report, Pre-Selected U.S. Sale EP1 Exhibit 10). While respondent corrected the sales information for this control number, it failed to correct its cost information. In addition, the Department verified CCC's methodology for calculating the variable cost of manufacturing (VCOM) and the total cost of manufacturing (TCOM) and found that its methodology was reasonable (*see,* Verification Report, CONNUM Cost Traces). Therefore, for the final results, the Department has corrected CCC's cost information (*i.e.,* VCOM and TCOM) in the U.S. database for this CONNUM in the model match program.

Comment 5

Petitioners state that section 772(c) of the Act provides that in calculating EP or CEP, a deduction must be made to account for duties, including antidumping duties, paid by the respondent or its related party, as supported by *C.J. Tower & Sons* v. *United States,* 71 f.2d 438, 445 (C.C.P.A. 1934). Thus, conclude petitioners, the statute requires that the Department must deduct antidumping duties paid by the respondent on U.S. sales.

Petitioners state that in *Federal-Mogul Corp.* v. *United States,* the plaintiff challenged the Department's decision not to deduct estimated antidumping duty deposits under the predecessor provision to section 772(c)(2)(A). Petitioners contend that the Department argued that this provision applied only to deduction of ''normal'' import duties. Petitioners also state that, the Department argued in the alternative, not deducting estimated antidumping duties (as opposed to duties actually to be assessed) had been its longstanding practice. The CIT affirmed the Department's refusal to deduct estimated AD duties, but did not adopt the Department's reasoning that section 772 applied only to ''normal'' import duties, and that antidumping duties were not normal import duties within the meaning of the statute (813 F. Supp. 872). Thus, petitioners maintain that section 772 requires the Department to deduct any import duties (including antidumping duties) that can be accurately determined at the time the Department calculates dumping margins.

Petitioners state that the legislative history to the URAA does not suggest that Congress rejected the construction of section 772(c)(2)(A) urged by petitioners. Petitioners continue that the Senate Finance Committee recognized that the Court of International Trade was considering this issue, and directed the Department to abide by the outcome of that litigation (*see,* S. Rep. No. 412, 103d Cong., 2d Sess. 64 (1994)). Therefore, state petitioners, Congress did not intend to ratify the Department's not having treated duties as a cost in the URAA, but recognized that the issue would be resolved through the judicial process.

Petitioners state that the difference calculated between normal value and EP or CEP on each sale by the Department's margin program is equal to the AD duties to be paid by the importer. Once this difference is calculated, they argue, it should then be deducted from EP or CEP for use in calculating final margins.

Respondent asserts that the Department should once again reject petitioners' argument to deduct AD duties in its margin calculation and that the Department did not deduct AD duties from EP and CEP sales in the first administrative review. Respondents contend that petitioners failed to offer any argument as to why the Department should reach a different conclusion in this review. Respondent continues that in numerous determinations over many years, the Department has consistently refused to deduct AD duties from EP and CEP sales and should continue to do so. Respondent contends that while petitioners'' argue that section 772(c)(2)(A) requires the Department to deduct AD duties from EP and CEP sales, there are no U.S. rulings in direct support of their interpretation. Respondent states that the Department has consistently rejected petitioners'' argument and that the most succinct rationale for the Department's policy is contained in *Carbon Steel Flat Products from the Netherlands*, 61 FR 48465 (September 13, 1996)). It states, in part, ''it is the Department's longstanding position that antidumping and countervailing duties are not a cost within the meaning of 19 U.S.C. section 1677(a)(d). . . . Unlike normal duties, which are an assessment against value, antidumping duties derive from the margin of dumping or the rate of subsidization found. Logically, antidumping and countervailing duties cannot be part of the very calculation from which they are derived.''

Respondent concludes that the Department's practice is clear, and that the CIT has consistently affirmed the decision not to deduct AD duty deposits from EP and CEP sales. Additionally, respondent states that the URAA House Ways and Means Committee Report and the SAA explicitly state that the new duty absorption provision is not intended to provide for the treatment of antidumping duties as a cost. Thus, states respondent, the Department should continue to refuse to deduct AD duties from Stelco's EP and CEP sales.

Department's Position. We disagree with petitioners. As we stated in the final results of the first administrative review of this order. The Department does not deduct antidumping duties from the U.S. price, because they do not qualify for deduction as ''normal import duties, under section 772 and because such a deduction would double-count the dumping margin. *See, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Review*, 61 FR 13815 (March 28, 1996) (Comment 23): note that the applicable provision of the statute, 1677a(d)(2)(A), in that review was recodified under the URAA as 1677a(c)(2)(A). Nothing in the SAA or in the legislative history of the URAA compels the Department to reconsider that decision. Furthermore, there have been no intervening judicial interpretations suggesting that the Department reconsider its interpretation of the statute as it applies to this case.

Dofasco

Comment 1

Petitioners argue that Dofasco failed to use its normal cost accounting system to prepare the response as required by the questionnaire. Petitioners maintain that the system which Dofasco, Inc. chose to use, the PaYs system (a management system), is not audited and therefore cannot be used to report costs. Petitioners also state that the Department's questionnaire requires respondent to contact the official in charge *before* submitting the response to Section D of the questionnaire in the event that respondent does not intend to use its normal cost accounting system and cost allocation methods to compute COP and CV for the merchandise under review. The Department, therefore, should use adverse facts available.

Dofasco asserts that it submitted actual, fully-absorbed product costs. According to Dofasco, it relied on its normal cost accounting system for the POR costs, and the PaYs system was used only to calculate product costs. Dofasco further notes that the PaYs system, as an allocative system, does not require an audit opinion.

Department's Position. The Department's Questionnaire states that the ''COP and CV figures that you report in the response (to Section D of the Questionnaire) should be calculated based on the actual costs incurred by your company during the period of review as recorded under its normal accounting system.'' *See, Department's Second Administrative Review Antidumping Questionnaire* (September 14, 1995), page D–1. The Questionnaire further states that these figures must reconcile to the actual cost reported in the company's costs accounting system and to accounting records used by the company to prepare its financial statements.

Significantly, the Department verified that the COP and CV figures reported in Dofasco's response were in fact based on the actual costs incurred by Dofasco during the period of review. Furthermore, we reconciled these actual costs to Dofasco's accounting records used by the company to prepare its financial statements. Therefore, we determined that the actual costs from Dofasco's process cost accounting system formed the basis of Dofasco's response. The overriding concern, then, becomes the allocation methodologies employed by respondents.

Dofasco utilized a management cost system to perform the allocations of its actual costs. Petitioners question the integrity of such an allocation system, citing *Certain Hot-Rolled Carbon Steel Flat Products from Korea*. Specifically, petitioners note that the Department stated in that case that reliance on ''a management cost system which has not been audited and is not used for the preparation of the financial statements or for any purposed outside internal deliberations of the company does not assure the Department that such costs have been stated in accordance with generally accepted accounting principles, or that all costs have been appropriately captured by the system.'' *See, Certain Hot-Rolled Carbon Steel Flat Products from Korea*, 58 FR 37176, 37186 (July 9, 1993).

However, we note that the circumstances surrounding the Department's decision in *Hot Rolled Steel from Korea* and this case are significantly different. First, in *Hot-Rolled Steel from Korea*, the Department found at verification that respondent was unable to reconcile its reported per unit costs to company documents maintained and used in the ordinary course of business. In contrast, at verification, Dofasco reconciled its actual costs to documents maintained and used in the ordinary course of business, such as the grade code cost table (Cost Verification Report, page 4) the corporate order history database (Cost Verification Report, pp. 4–5), and therefore the PaYs system.

Second, while the respondent in *Hot-Rolled Steel from Korea* reconciled (with adjustments) the total costs of production from its management system with the total costs of production used in its financial accounting system and its audited financial statement, respondent could not support the adjustments it made to the financial statement system. Dofasco's reported production costs, in contrast, tied to its financial accounting system and to its audited financial statements (*see, e.g.*, page 3 of the Cost Verification Report), and the Department found no inappropriate adjustments to Dofasco's financial statement system.

Finally, we note that the Department's remedy in *Hot-Rolled Steel from Korea* was to upwardly revise respondent's costs by the difference between the financial accounting system total costs and the submitted management system total costs. However, the Department verified that Dofasco modified PaYs to include all costs (except for the minor discrepancies discussed at Comments 2 and 3 below). *See, e.g.*, the Department's review of Dofasco's reported costs for fixed overhead expense (page 14 of the Cost Verification Report), and for inventory change (page 15 of the Cost Verification Report).

Petitioners have also cited *Certain Carbon Steel Flat Products from Brazil,* 58 FR 37091 (July 9, 1993) and *Erasable Programmable Read Only Panels from Japan,* 51 FR 39680 (October 30, 1986) as further evidence that the Department expects respondent to base its response on its normal cost accounting system. However, because we determined that Dofasco's costs tied to its normal cost accounting system, respondents have fulfilled that expectation.

Petitioners stress that, as an unaudited system, errors in the program will remain uncorrected, and that the costs generated by the system are not necessarily formulated in accordance within generally accepted accounting principles. 19 U.S.C. section 1677b(f) states that ''costs shall normally be calculated based on the costs of the exporter or producer...if such records are kept in keeping with the generally accepted accounting principles of the exporting country.'' In this respect, Dofasco has responded to the Department's request for information in accordance with the statute. The Department found at verification that Dofasco's costs were in fact based on audited costs, and thus were costs based on records kept in accordance with the generally accepted accounting principles of Canada. *See, e.g.,* Cost Verification Report at pp. 7–12, 14–15, 18–19. As respondent has noted in its rebuttal brief, the PaYs system allocates costs from Dofasco's cost accounting system to specific Departmentally-defined products (''control numbers''). Thus, the Department's role at verification with regard to this allocation system was to (1) ensure that the costs forming the basis of the allocation were audited costs; and (2) to examine the parameters on which the allocations were based. As discussed above, the Department verified that the reported costs were actual and audited. Furthermore, at verification we examined several allocations made by the PaYs system (*see,* pages 5 and 9 of the Cost Verification Report) to confirm that these allocations were used in Dofasco's normal course of business, have been used historically by Dofasco, and reasonably reflect and accurately capture all actual costs in producing the product under review, as required by the SAA (at 834–835).

Regarding respondent's obligation to contact the official in charge *before* submitting the response to Section D of the questionnaire in the event that respondent does not intend to use its normal cost accounting system and cost allocation methods to compute COP and CV for the merchandise under review, we note that respondent's reported costs tie to its normal cost accounting system. Furthermore, the PaYs system is a cost accounting system used by Dofasco for management accounting and cost control purposes (*see,* Cost Verification Report, page 4) which reconciles completely with the financial accounting system. Therefore, we do not find that Dofasco was obliged to notify the Department of its methodology prior to submission of its response.

Comment 2

Petitioners maintain that the PaYs system and Dofasco's normal cost accounting system have different yield loss rates, and such a difference affects the accuracy of reported costs. Petitioners also argue that the yield loss calculated for the PaYs system was in part due to the inclusion of impossible yields on certain individual orders.

Dofasco asserts that the difference in yield loss was due to three factors. First, Dofasco states that the yield loss for PaYs was based on home market orders, as requested by the Department, while the yield loss under Dofasco's normal accounting system is based on total shipments since separate inventories are not kept for the home market versus other destinations. Second, Dofasco noted that the yield loss for PaYs is based on production over the period of review, while the yield loss under Dofasco's normal accounting system is based on shipments over the period of review. Finally, Dofasco stated that PaYs tracks weights by operation, thus separating galvalume from galvanized material, while under Dofasco's normal accounting system galvalume and galvanized material are kept in common inventory accounts to the end of cold rolling.

Department's Position. At verification, the Department reviewed Dofasco's narrative explanation of the yield loss. *See,* Cost Verification Report, pg. 20. Petitioners do not contest the rationale offered by Dofasco to explain differences between the yield loss rates and the Department has accepted the rationale as reasonable. However, as petitioners have noted, an examination of the data placed on the record indicates that, in addition to the three reasons put forward by Dofasco explaining the differences in yield loss rates, inaccurate data also affected the yield loss rates generated by PaYs. As petitioners also note, Dofasco did not provide a numerical reconciliation of the difference at verification. Additionally, Dofasco has not offered an explanation of the apparently aberrational data to which petitioners have pointed in their case brief.

Section 776(a)(1) of the Act stipulates that if the necessary information is not available on the record * * * the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Therefore, for the final results of review, the Department has calculated the difference between Dofasco's reported yield loss rate after excluding sales orders which incorporate inaccurate data. As facts otherwise available, the Department considers the error for this group of products to be representative of Dofasco's reporting of all subject merchandise. Because the effect of the error was to over-report produced weight, the corresponding yield loss rate was under-reported by the PaYs system. Thus, we have upwardly adjusted Dofasco's reported cost of manufacture on all models by the percentage difference between the reported yield loss rate and the corrected yield loss rate. *See, Memorandum to the File: Analysis Memorandum for the Final Results of Review—Second Administrative Review of Certain Corrosion-Resistant Carbon Steel Flat Products from Canada (Dofasco),* page 7.

Comment 3

Petitioners maintain that the PaYs system fails to account for changes in work-in-process inventory (''WIP''), and that Dofasco failed to include these costs in its reported costs.

Dofasco responds that, because the costs incorporated into PaYs originate from the normal process cost accounting system, changes in WIP have been included in PaYs. Further, Dofasco asserts that the Department verified that Dofasco adjusted for inventory change, both finished and in process.

Department's Position. We agree with petitioners. Contrary to respondent's assertion with regard to what the Department verified, at verification the Department reconciled WIP to Dofasco's financial statements, and verified Dofasco's reported actual costs for work-in-process and finished inventory. *See,* Cost Verification Report at page 3. There is no discussion in the verification report showing that Dofasco provided a reconciliation of WIP to the costs included in Dofasco's computer submission to the Department.

While there is no evidence that WIP has been included in Dofasco's reported costs through PaYs, the record contains evidence of Dofasco's WIP change for the POR. *See,* Exhibit 7 of the Cost Verification Report. Because inventories for all WIP rose for the POR, the effect is that Dofasco overstated its costs for the period by a small amount. *See,* Analysis Memorandum, pg. 7 and Attachment 2. We have adjusted Dofasco's cost of manufacture accordingly.

Comment 4

According to petitioners, despite the Department's repeated requests, Dofasco failed to provide an inventory cost reconciliation. Petitioners insist that Dofasco should have been able to reconcile its 10 normal cost accounting product groupings to the over-1000 Departmentally-defined ''products.'' Petitioners argue that no company is expected to maintain its costs using the Department's narrow product definition.

Petitioners allege that Dofasco failed to prepare the necessary reconciliation: specifically, multiplying the reported costs by the quantity and reconciling the total to the financial statements. Petitioners state that: (1) While individual costs used by PaYs are derived from the same source documents as the financial statements, nevertheless it does not follow that per unit costs of manufacture (COMs) calculated by PaYs will equal the per unit costs maintained for purposes of the financial statements; and (2) items presented at verification failed to demonstrate that Dofasco had submitted fully-absorbed product costs. Petitioners assert that, barring use of adverse facts available, the Department should request reconciliations again, and verify them.

Dofasco argues that the PaYs system correctly accounts for changes in inventory, and that Dofasco has reconciled its reported costs. Furthermore, the Department verified these costs, by reconciling (1) the financial statements (which include inventory values) to the normal cost accounting system, and (2) the normal cost accounting system to PaYs. In addition, Dofasco claims that for certain ''PRODUCTS'' (Departmentally defined models) selected by the Department, it provided a detailed reconciliation of the normal cost accounting system to PaYs, and a reconciliation of PaYs to PRODUCT costs.

Department's Position. In its original questionnaire and in a supplemental questionnaire, we asked for an inventory cost reconciliation, for selected models. Specifically, we asked Dofasco to perform the reconciliation from the per-unit cost of the product Dofasco records for inventory movements from work-in-process to finished goods inventory to the COM submitted in the COP/CV response. In response to this request, Dofasco provided a thorough explanation in its submission to the Department as to why such a reconciliation was not possible, explaining adequately why its ten normal, internal product categories for corrosion-resistant products do not lend themselves to a reconciliation with specific, Departmentally-defined models.

Nonetheless, at verification, the company reconciled numerous costs from the audited financial statements, to plant operating statements, to Dofasco's Section D response, to the PaYs system, and to submitted COP/CV data. Additionally, at verification, we reviewed the cost build-up for two specific models. *See,* Cost Verification Report, pp. 5–6. Petitioner cites *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Germany,* 56 FR 31692, 31707 (July 11, 1991) and the Department's statement that ''verification depends precisely on tying amounts reported in the responses to the company's internal accounting and financial statements. Failure to demonstrate such a relationship results in a failed verification.'' In this case, the Department upholds this principle. Actual cost expenditures, as reported in Dofasco's Section D response, have been tied to Dofasco's plant operating statements, financial statements, normal accounting records, and, through PaYs, to the submitted COP/CV. *See, e.g.,* the discussion of Dofasco's variable overhead expense in the Cost Verification Report, pp. 11–12. Therefore, the Department determines that costs have been accurately captured and that the cost amounts reported in the response reconcile to the company's financial statements.

Comment 5

Petitioners argue that Dofasco improperly calculated its interest expense factors. Petitioners state that Dofasco did not include certain expenses in the calculation of total interest expense. According to petitioners, Dofasco also improperly included a profit sharing figure in its cost of sales. Finally, petitioners maintain that Dofasco improperly adjusted for trade accounts receivable for the CV interest expense. Petitioners assert that Dofasco should conform the CV interest expense to its COP expense calculation.

Dofasco contends that it did include the proper expenses in its consolidated interest expense calculation, and that it properly included profit sharing in general and administrative expenses only. With regard to an adjustment for trade accounts receivable, Dofasco argues that the Department's policy on this issue was elucidated 3 1/2 months after Dofasco's submission of its Section D response. Therefore, Dofasco maintains that it was not an ''error'' by Dofasco to report the CV interest expense in the manner it did.

Department's Position. The expenses that petitioners maintain have been excluded from the interest expense calculation have in fact been included in respondent's calculation of interest. *See,* Dofasco, Inc.'s response to Section D Supplemental, Exhibit Supp. I.8, ''Calculation of Interest'' for 1995, which shows that the expenses in question have been included in one of the components of Dofasco's calculation.

With regard to the amount for profit sharing, verification exhibit 33, page B3 shows that the cost of sales figure reported on page B1 does not include profit sharing, but does include the cost of sales figure used in Dofasco's calculation shown on page A1. Furthermore, the cost of sales figure reported on page B1 indicates that it is a figure calculated before certain adjustments, including that for profit sharing.

Finally, with regard to the calculation of interest expense for CV, we agree with Dofasco that its response methodology does not constitute an ''error,'' as the Department had not made clear respondents' requirements under the new statute at the time of Dofasco Inc.'s Section D submission. Nevertheless, the Department has stated in *Certain Pasta from Italy* that the statute requires interest expense to be computed in the same way for COP and CV, and that an accounts receivable offset for CV interest expense is not permitted. Therefore, for the purposes of calculating interest expense for the final results of review, we have revised Dofasco's calculation of interest expense for CV to remove the offset for trade accounts receivable.

Comment 6

Petitioners state that Dofasco should treat sales through Dofasco's U.S. subsidiary as constructed export price sales, because Dofasco USA (DUSA) played a significant role in the sales process, incurred expenses connected with its U.S. and further manufacturing activities, and because the circumstances regarding ownership and control of the merchandise sold in the U.S. prior to delivery to customers were such that these sales should be considered CEP sales.

Petitioners argue that, in the event that the Department does not classify all DUSA sales as CEP sales, then it must at least classify those DUSA sales for which there has been further manufacturing as CEP transactions. Petitioners allege that in this same situation, the Department ruled in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea* that such sales should be considered CEP sales.

Petitioners also maintain that, in the event that the Department does not classify all further manufactured sales as CEP sales, it must at least classify those DUSA sales for which the date of sale occurred after importation as CEP sales.

Dofasco states that the Department properly determined that U.S. sales through DUSA were export price transactions. Dofasco notes that the Department and the Court have held that sales through a U.S. affiliate are export price transactions if the merchandise is sold directly to U.S. customers without physically entering the affiliate's inventory. Dofasco goes on to state that the sales constitute a customary commercial channel of trade, and the U.S. affiliate only acted as a paper processor and communications link for those sales. Dofasco argues that the merchandise sold did not enter DUSA's physical inventory for storage awaiting sale to a customer, and that Dofasco negotiated the prices charged and was responsible for marketing and sales development. Dofasco notes that the Department has held (including in the first review of this case) that the circumstances surrounding the further processing of some of the merchandise sold through a U.S. affiliate do not indicate that those sales were CEP transactions. Dofasco also stresses that the further processing was not undertaken on the account of the producer or exporter, or the affiliated party in the United States.

Department's Position. We agree with respondent. The Department, in the first administrative review of this proceeding, noted that Dofasco's sales through DUSA were purchase price (now referred to as export price) transactions. The Department noted that ''while the Department usually finds further manufacturing of merchandise occurs in the context of ESP (now CEP) sales, and while 19 U.S.C. section 1677a(e)(3), discussing adjustments to ESP, is the only explicit reference to further manufacturing in the statute, it would clearly be a mistake to define the sale as an ESP sale simply *because* there is further manufacturing.'' *See, Memorandum for Roland MacDonald: Administrative Review of Corrosion Resistant Carbon Steel Flat Products from Canada: Categorization of sales of Dofasco, Inc. (''Memorandum for Roland MacDonald''*), page 2 (July 12, 1995) (Public Version). While this decision was made under the pre-URAA governing statute, there are no differences under the post-URAA statute with regard to the statutory basis for this determination.

Thus, in the first administrative review the Department based its decision with regard to the DUSA sales on three factors: (1) While DUSA took title to the steel, it did not take the steel into physical inventory; (2) because DUSA had no facilities in the United States, it was clear that the channel of delivery was directly from Dofasco to the customer, or to an unrelated processor of the customer's choosing; and (3) DUSA was nothing more than a processor of paper and communications link. *See, Memorandum for Roland MacDonald,* page 3 (July 12, 1995) (Public Version).

In the current administrative proceeding, the only change in circumstances is the establishment of a separate DUSA office in the United States. Hence, the Department must review the basis of its earlier decision in light of this changed circumstance. Specifically, we must determine: (1) Whether DUSA takes physical inventory of subject merchandise at the new location; (2) whether the channel of delivery is customary (*i.e.*, still from Dofasco to the customer); and (3) whether the new office performs a role more significant than that of a processor of documents and communications link.

With regard to whether DUSA takes physical inventory of subject merchandise at the new location, Dofasco has stated for the record that neither Dofasco nor DUSA own or lease any U.S. warehousing facilities. *See,* Dofasco's Supplemental Sales Response, pp. 23–24 (January 18, 1996). Petitioners do not dispute this fact. Rather, petitioners argue that the fact that DUSA does not own a warehouse has no legal significance. Instead, petitioners stress that the ''critical fact'' is that the merchandise is in the United States prior to being sent to the ultimate customer, under circumstances which warrant the Department's determination that such sales are CEP sales.

Despite petitioners' assertions, as the Department noted in the first administrative review (*Memorandum for Roland MacDonald,* page 3 (Public Version)), the Department has long required that the merchandise be taken into *physical* inventory, rather than mere *financial* (accounting) inventory. *See, Certain Steel from France,* 58 FR, 37134 (1993) (sale is PP where U.S. subsidiary takes title but does not warehouse merchandise in the ordinary course of business); *Polyethylene Terephthalate (''PET'') Film, Sheet and Strip from Japan,* 56 FR 16300, 16303 (1991) (sale is PP where subsidiary takes financial but not physical inventory). Therefore, we find no reason to reverse our decision based on this criterion.

With regard to whether the channel of delivery is customary, the Department determined in the first administrative review that because DUSA has no facilities in the United States, it is clear that the channel of delivery is directly from Dofasco to the customer, or to an unrelated processor of the customer's choosing. While DUSA now has an office in the United States, the Department has verified for the current review that Dofasco's channels of delivery through DUSA remain the same as for the prior review period. Petitioners suggest that the mere existence of this U.S. office serves to establish that the ''use of DUSA as was done during the POR is not the customary channel of trade.'' *See,* Petitioners' Case Brief at 38. However, petitioners have not shown that the channel of delivery is in any way different from the previous review period. Indeed, there is no record evidence that subject merchandise is now being shipped to the U.S. affiliate (or to a warehouse dictated by the customer) from the subsidiary location in the United States, or that the channel of shipment is otherwise different from the first administrative period. Therefore, there is no reason to reverse our decision in the last administrative review based on this criterion.

With regard to the last criterion, whether DUSA plays a role more significant than that of a processor of documents and communications link, petitioners make several arguments. First, petitioners state that, by virtue of maintaining U.S. operations, DUSA incurred significant expenses in connection with its activities, such as salaries of its personnel and general and administrative expenses to support them. Petitioners argue that deducting such expenses from the U.S. price in CEP situations is one of the statutory requirements intended to ensure fair comparisons in an antidumping analysis. Second, petitioners maintain that the record shows that DUSA was an active participant in the negotiating and selling process, citing letters with customers which are on the record of this review. Finally, petitioners state that certain other support functions performed by DUSA add to the significance of its role as a seller.

Petitioners suggest that the existence of a U.S. operation which incurs ''significant'' expenses requires the Department, by statute, to treat sales through this U.S. affiliate as CEP sales in order to deduct such expenses from the U.S. price. However, we disagree that the level of the expenses, by itself, should be a criterion. Rather, the significant consideration is whether the U.S. affiliate's function is more than acting as a communications link between the unaffiliated customer and the exporter. We have stated this in numerous other cases in which the Department has considered whether there are circumstances in which sales through U.S. affiliates should be treated as export price (or, under the pre-URAA law, purchase price) transactions. *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,* 61 FR 18547; *Stainless Steel Wire Rod from France* 58 FR 68865; and *New Minivans from Japan* 21 FR 21937. The Department's three criteria for determining the treatment of sales through a U.S. affiliate as EP or CEP are appropriate for making this determination.

With regard to petitioners' interpretation of DUSA's role in the negotiating and selling process, the record evidence does not prove that the terms and conditions of a specific contract (see, Attachment I.10 of the January 18, 1996 Supplemental Questionnaire Response, APO Version) were negotiated by DUSA, nor does the evidence contradict Dofasco's explanation regarding the contract's circumstances (*see,* Respondent's Rebuttal Brief (APO Version), pg. 25). Moreover, numerous documents have been placed on the record, including those taken at verification, demonstrating DUSA's role vis-a-vis Dofasco, Inc.'s role in sales negotiations. *See, e.g.,* exhibit 2 of the Sales Verification Report; and Attachments I.6, I.8, and I.9 of Dofasco's Supplemental Questionnaire Response (January 18, 1996). These documents support respondent's claim that Dofasco, Inc. was primarily responsible for conducting sales activities with U.S. clients.

Finally, concerning petitioners' assertion that certain other support functions performed by DUSA add to the significance of its role as a seller, we believe that the affiliate's status with regard to title, its involvement in warehousing and further processing, and the performance of certain selling functions do not warrant rejection of Dofasco's EP classification of these sales. First, with regard to title, these circumstances are no different than in the first review. *See, Memorandum for Roland MacDonald* at page 3. Second, petitioners have not accurately described DUSA's role with regard to warehousing and further processing. Thus, petitioners' cite to *Large Newspaper Printing Presses from Germany* does not provide an applicable precedent. Finally, because the Department verified that DUSA continued to perform the same functions as a sales facilitator as it did during the first administrative review (*see,* Dofasco Sales Verification Report, August 6, 1996, pg. 2), we do not regard the performance of the selling function cited by petitioners (*see,* Page 36 of petitioners' Case Brief) as adding to the significance of DUSA's role.

Comment 7

Petitioners claim that Dofasco failed to report freight charges for numerous U.S. sales, and that by doing so, Dofasco failed to act to the best of its ability in preparing its response. Therefore, petitioners argue that the Department should use the highest freight rate as partial facts available for these sales, citing *PVC and Polystyrene Framing Stock from the United Kingdom,* 61 FR 51411, 51415 (October 2, 1996).

Dofasco asserts that petitioners' contention that it failed to report any freight charges for U.S. sales is wrong, because the freight expense is contained in computer fields other than the ones specifying the maximum freight charge for U.S. transactions.

Department's Position We agree with respondents that, for the large majority of the sales in question, Dofasco has in fact reported freight charges as required by the Department. As noted by Dofasco in its rebuttal brief, in many instances it has reported maximum freight charges in the computer field for freight from Dofasco to the warehouse. Additionally, the Department verified that Dofasco reported actual freight in the computer fields for warehousing, further processing, and freight-out.

However, for several of these transactions, Dofasco failed to report any freight charges. See, Analysis Memorandum at page 4. For these sales, as partial facts available we have assigned the maximum freight value for that destination (consistent with Dofasco's reporting methodology of using the maximum value for each destination), or, in the event there was no maximum freight value for that destination anywhere on the database, we have assigned the highest maximum freight value for any destination.

Comment 8

Petitioners argue that the Department should deduct antidumping duties paid by Dofasco USA which were reimbursed by Dofasco. According to petitioners, the fact that Dofasco USA had more liabilities than assets is evidence that it must have been reimbursed antidumping duties paid on U.S. imports. Petitioners state that this is contrary to the statute.

Dofasco contends that no evidence exists to support petitioners' allegation that Dofasco pays antidumping duties on behalf of Dofasco USA or reimburses Dofasco USA for antidumping duties. Dofasco claims that the language of the reimbursement provision, as well as the Department's interpretation of that regulation, indicates that in order to trigger the regulation, affirmative evidence (''evidence beyond a mere allegation'') must exist. According to Dofasco, because petitioners have failed to establish a link between intracorporate transfers of funds and the reimbursement of antidumping duties, the Department should not rule that reimbursement exists.

Department's Position. We agree with respondents. In this case, petitioners have provided no evidence showing that the Dofasco directly pays antidumping duties or reimburses Dofasco USA specifically for such duties. Even if Dofasco USAs financial records could be construed to show that there has been an intracorporate transfer of funds, such a transfer is likewise insufficient evidence of reimbursement of duties. As the Department stated in *AFBs from France,* ''the antidumping law does not . . . prohibit related parties from transferring money to one another.'' *See, Final Results of Antidumping Administrative Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France,* 57 FR 28360, 28371 (June 24, 1992). The Department clarified this point before the Court of International Trade, in *Torrington Co.* v. *United States* (881 F. Supp. at 629):

Commerce states 19 CFR 353.26 mandates a deduction to USP, not when there is any transfer between related parties, but rather, when there is reimbursement of antidumping duties. Commerce asserts that it has consistently held that absent evidence of reimbursements, it has no authority to make such an adjustment to U.S. price.

Thus, we do not find that reimbursement of antidumping duties exists in this case.

Comment 9

Petitioners argue that the Department must deduct antidumping duties paid by the respondent or related parties, pursuant to section 772(c)(2)(A) of the Act. Specifically, petitioners argue that the phrase ''import'' used in this provision included antidumping and countervailing duties.

Dofasco asserts that the Department has consistently determined not to deduct antidumping duties from US price and should continue to do so for the final results.

Department's Position. We agree with respondents. *See,* CCC comment 5 supra.

Comment 10

Respondents allege certain clerical errors were made in the computer program used to calculate Dofasco's margin. Specifically, Dofasco claims that the Department made errors by: (1) Failing to follow the established product hierarchy in the model match program; (2) improperly calculating the weighted-average home market values where there are two or more most similar products in the home market; (3) failing to combine a customer category for Sorevco, Inc. in the same manner as was done for Dofasco Inc.'s customer categories (petitioners made the same claim); (4) erroneously including customer category in the model match program; (5) erroneously including sales in its model match which were excluded in the margin calculation program; (6) failing to exclude, from the margin calculation program, sales outside the ordinary course of trade, and those outside the window period (petitioners made the same claim); (7) incorrectly calculating entry value for those sales in which Dofasco was unable to provide an entry value figure; (8) including certain repetitive language in the program; (9) not eliminating sales of a given product to affiliated customers when no sales of that same product were made to unaffiliated customers in the pattern of price differences program; (10) performing an incorrect mathematical computation in calculating constructed value profit; (11) erroneously matching sales within the same month at different levels of trade before matching sales at the same level of trade within the 90/60 day window period; and (12) improperly including sales which had failed the arm's-length test in calculating indirect selling expenses and constructed value profit.

Petitioners additionally claimed that the Department made a clerical error by including the minimum freight field for expenses used to calculate cost instead of the maximum freight field.

Department's Position. We agree with all comments made by Dofasco and petitioners, and have corrected our program for the final results.

Stelco Inc.

Comment 1

Because Stelco reported the cost of painting steel coils by its affiliate Baycoat in lieu of reporting the price charged by Baycoat to Stelco, petitioners urge the Department to: (i) Draw an adverse inference based on Stelco's failure to cooperate; (ii) utilize the most adverse facts otherwise available to recalculate COP and CV; and, (iii) use an adverse adjustment to normal value with respect to the comparison of nonidentical merchandise. Petitioners state the Department was fully justified in rejecting Stelco's use of manufacturing costs as the value of painting services provided to Stelco by its affiliate Baycoat.

Petitioners cite section 773 (f)(2) and (3) of the Tariff Act of 1930 (''the Act'), as amended, which states that when valuing inputs supplied to a respondent by affiliated suppliers the value reported for a transaction must be the value of such input (*i.e.,* transfer price) provided such price reflects the price commonly charged in the market. Petitioners state that the cost of producing the input may only be used for a major input where it is greater than the market value. Petitioners assert the facts on the record of this case establish that (1) painting was a major input; (2) the prices charged to Stelco by Baycoat were at market value; and, (3) the transfer prices were higher than the cost of production.

Petitioners argue that prior determinations did not bind the Department because of a significant change in the law. Between the time of the first review and the current proceeding sections 773(f) (2) and (3) of the Act were amended and now clearly apply to both cost of production and constructed value, whereas under the old law different rules applied. Petitioners argue that Stelco's acknowledgment in their submissions that prices from Baycoat were market prices establish that the prices were at fair (*i.e.,* market) value.

Petitioners also claim Stelco had more than adequate notice of the change in the law through the new statute, the statement of administrative action, the new questionnaire, and the Department's request for transfer prices in the supplemental questionnaire.

Petitioners cite section 776(b) of the Act, as amended, to support their contention that the Department use an adverse inference. Petitioners state that the fact that transfer prices examined by the Department differed from the reported costs is compelling evidence that Stelco withheld transfer price information and failed to provide information in the form or manner requested. Petitioners argue Department practice is to use an adverse inference where a respondent has not cooperated to the best of its ability. Petitioners cite the *Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy,* 61 FR 51266, 51267 (October 1, 1996) *(Resin from Italy)* and the *Preliminary Results of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan,* 61 FR 28,168, 28,169 (June 4, 1996) *(Roller Chain from Japan)* to support their contention the Department has used the most adverse information when choosing among alternative facts available.

Petitioners reason that applying an adjustment factor to the difference in merchandise data does not constitute an adverse inference either. Petitioners suggest the highest difference in merchandise adjustment that can be added to normal value and still result in comparable merchandise is 20 percent of the total cost of manufacturing. Petitioners cite the *Final Results of Antidumping Administrative Review: Tapered Roller Bearings, Four Inches or Less in Outside Diameter and Certain Components Thereof, from Japan,* 56 FR 26,054, 25,055, 25,058 (June 6, 1991), and *Gray Portland Cement and Clinker from Mexico,* Results of Redetermination Pursuant to Court Remand at 13 (February 1, 1996) (remand determination), *CEMEX, S.A.* v. *United States,* Slip Op. 96–132, LEXIS 147, at 10–11 (CIT, 1996) to support the use of a 20-percent difference in merchandise adjustment.

Respondent states the Department's preliminary results on this issue reverses the methodology that was specifically accepted in the original final determination and first review. Stelco argues the Department's determination is unsupported by any of the usual criteria for changing methodologies established in prior determinations. Stelco asserts there has been no change in the law and no significant mistake in the earlier determination. Stelco cites *Shikoku Chemical Corporation, et al.,* v. *United States,* 795 F.Supp. 417 (CIT 1992) which held that principles of fairness prevented Commerce from changing its methodology where key facts had not changed to justify a new approach and respondents had relied on the old method of calculating the adjustment. Stelco further contends that in this same review the Department preliminarily accepted Dofasco's use of the cost of painting by Baycoat. Stelco argues that the invoiced prices from Baycoat are inappropriate to use because they have not been shown to be indicative of market prices or arm's length prices. Stelco states that Baycoat sells only to its two shareholders, Stelco and Dofasco, and therefore no unaffiliated transactions exist with which to establish the arm's length nature of the transactions. Stelco cites the *Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany,* 54 FR 18,992, Appendix B (May 3, 1989) *(AFB's from Germany)* where the Department stated that lacking arm's length prices for components to compare to transfer prices, for CV purposes, the Department generally used the cost of the components as representative of the value reflected in the market under consideration. Stelco points out that under the shareholder agreement, each partner shares in the profit or loss from Baycoat at year-end. Stelco cites *AFB's from Germany,* to support its claim that when transfer prices from a joint venture company are used, the transfer price must be adjusted by any loss incurred by the joint venture company because the loss of the joint venture must be absorbed by the participants in the joint venture. Lastly, Stelco asserts if the Department considered paint a major input, it failed to provide Stelco with adequate notice and an opportunity to provide transfer price information.

Department's Position. The Department agrees with petitioners that sections 773(f) (2) and (3) of the Act directs Commerce to value inputs supplied by affiliated persons at the transfer price between the entities provided that such a price reflects the price commonly charged in the market and, for major inputs, is not below the cost of producing the input. In the *Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom,* 62 FR 2,081, 2,115 (January 15, 1997) the Department found ''that in the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing the major input.'' Stelco identified painting as a major input in its section D response to the antidumping questionnaire. Therefore, the Department agrees that painting services provided to Stelco by its affiliate, Baycoat, should be valued at the invoice price between the two companies provided that the invoice price represents a price commonly charged in the market. The Department agrees with petitioners that valuing this input at cost would only be appropriate where cost is higher than the transfer price. *See,* section 773(f)(3) of the Act. Our verification established that the transfer price was higher than the cost of painting services for sample transactions. Furthermore, Stelco acknowledged that Baycoat's selling prices were set at prevailing market rates and above cost in their response to the supplemental section D questionnaire response.

Since Stelco did not report transfer prices for each control number as requested, we have increased the reported cost of painting by the average difference between the transfer price from the sampled painting invoices obtained at the verification and the painting cost reported for the final results. Section 776(a) of the Act states in part that a determination may be made on the basis of facts available if necessary information is not available on the record or if any interested party fails to provide such information by the deadlines for submission of the information or in the form and manner requested.

The Department disagrees with petitioners that applying the ratio representing the difference between the cost and transfer price to the painting cost reported as part of the variable cost of manufacture does not appropriately adjust cost for the difference in merchandise calculation. The difference in merchandise calculation will account for the cost difference between paint services valued at cost and at transfer price by taking into account that the transfer price for painting exceeds the cost.

The Department disagrees with respondent's allegation that the Department's preliminary results were unsupported by any of the usual criteria for changing methodologies established in prior determinations such as a change in the law or a significant mistake made in the earlier determination. The Department is not bound by prior determinations because the law changed with the enactment of the Uruguay Round Agreements Act which amended the Act and made affiliated party transactions (*i.e.*, the transactions disregarded and major input rules) apply to both cost of production and constructed value, whereas these rules previously applied only to the calculation of constructed value.

The Department disagrees with Stelco's reference to *AFB's from Germany* which Stelco contends supports the acceptance of transfer prices with an appropriate reduction for profits on inputs transferred from the affiliated party. In *AFB's from Germany* we compared the transfer prices to the cost of production and found that the cost of production of the affiliated inputs was higher than the transfer prices. The Department used cost for the affiliated inputs in that case because the transfer prices were below the cost of production. Mathematically, this was done by adjusting the transfer price upward by the losses at the affiliate. This is consistent with our practice in this case where we compared the transfer price of painting to the cost of painting and found that the transfer price exceeded the cost. The Department used the transfer price because it is higher than the cost of production of the major input. Section 773(f)(3) of the Act allows the Department to use the cost of production of a major input where it is greater than the transfer price.

The Department has determined that Stelco had adequate notice of the change in the law through the new statute, the SAA, and through our request for transfer prices in the original questionnaire and the supplemental cost questionnaire.

Finally, in order to be consistent in our treatment of painting services Baycoat provided for its other owner, Dofasco, for these final results, we have recalculated the input value of Baycoat's painting services based on transfer price. *See,* Dofasco's Analysis Memorandum at page 7.

Comment 2

Petitioners argue Stelco's general and administrative expense (''G&A'') should be recalculated based entirely on the unconsolidated income statement. Petitioners state the Department incorrectly combined selected unconsolidated data with consolidated data (*i.e.,* sundry income and expense) in the preliminary results and consequently calculated an inaccurate G&A expense rate. Petitioners state that Stelco started with the amount of sundry expense reported in its consolidated financial statements and adjusted the consolidated amount for certain items specifically related to other consolidated entities. Petitioners take issue with a consolidating entry reducing unconsolidated sundry expense. Petitioners claim that Stelco provided no reasonable explanation for why this offset to unconsolidated sundry expense should be allowed.

Petitioners state the offset is not supported by any record evidence and must be disallowed.

Stelco responds that petitioners'' argument with regard to lack of record evidence is inconsistent with the Department's preliminary determination and verification report. Stelco asserts the methodology for calculating the sundry expense reported using the consolidated sundry income and expense figure as a starting point was fully documented in its submissions and was not identified as deficient in the Department's verification report. Stelco states the Department verified and traced all the amounts included in Stelco's G&A expense calculation and used these figures in its preliminary determination. Stelco concludes that there is no basis to resort to facts available since they have cooperated fully with the Department's requests for information.

Department's Position. Petitioners state correctly that the Department's normal practice is to use G&A expenses from the unconsolidated income statement. *See,* the *Final Results of Antidumping Administrative Duty Review: Ferrosilicon from Brazil,* 61 FR, 59,407, 59,411 (November 22, 1996) and *Final Determination of Sales at Less Than Fair Value: Certain Hot Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion Resistant Carbon Steel Flat Products from Japan,* 37154, 37166 (July 9, 1993). However, the Department disagrees with petitioners' assertion that the Department randomly combined unconsolidated and consolidated G&A data and consequently computed an incorrect G&A rate. The Department based G&A on Stelco's unconsolidated data. The Department adjusted a component of G&A, the unconsolidated sundry income/expense account, for intercompany transactions which effectively overstated the balance of this account. The Department has determined it would be inappropriate to use the unconsolidated sundry income/ expense account without adjustment because this would double count income/expenses which were subsequently eliminated during consolidation. During consolidation, profits/losses from intercompany transactions are eliminated in order to recognize profits/losses from transactions only with unaffiliated companies. For the final results, the Department has computed a G&A rate based on Stelco's unconsolidated G&A expenses and cost of sales, adjusted as noted above.

Comment 3

Petitioners contend that Stelco USA's slitting expenses must be treated as a further manufacturing cost because slitting costs represent further processing charges incurred in the United States pursuant to section 772 (d)(2) of the Act. Petitioners state that section 772 (d)(2) of the Act requires that adjustments to U.S. price be made for ''the cost of *any* further manufacture or assembly (including additional material and labor), ...''

Department's Position. The Department agrees with petitioners that certain CEP sales which were slit in the United States qualify as further manufacturing as defined section 772(d)(2) of the Act. Therefore, for all sales where the computer variable DIRSELU is greater than zero, we have designated the variable SALETYPE as ''FMG'' and have added DIRSELU to the variable FURMANU for these final results.

Comment 4

Petitioners, citing *Final Results of an Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Japan,* 58 FR 48,826, 48,829 (Comment 8) (September 20, 1993) state that the Department has held and the Court of International Trade has affirmed that freight incurred in moving merchandise from the U.S. port to a further processor should be treated as a further manufacturing cost, and that the Department did not do so in its preliminary results. Petitioners claim that this practice was affirmed in *The Ad Hoc Committee of Southern California Producers of Gray Portland Cement* v. *the United States,* 914 F. Supp. 535, 541. Petitioners conclude that for all sales with SALETYPE ''FMG'', the Department should add USOTREU, INLFTC1U and INLFTC2U to FURMANU.

Department's Position. We agree with petitioners. There is no record information with regard to movement expenses as a condition of sale. Thus, we have made appropriate computer program adjustments for all sales with SALETYPE ''FMG'' to have added USOTREU, (INLFTC1U * EXRATE) and INLFTC2U to FURMANU.

Comment 5

Stelco disagrees with the Department's decision at the preliminary results of review to exclude payments to governments other than income taxes (a component of general and administrative expenses) from their calculation of cost of sales which was used as the denominator in the financing expense ratio. Stelco objects to the assertion that the cost of sales figure it provided was not based on the actual accounting records of the company. Stelco asserts that its cost of sales figure is derived directly from its accounting records albeit in a different format from the published income statement which aggregates general ledger accounts in summary form. Stelco argues that payments to governments other than income taxes and corporate services (components of general and administrative expenses) relate directly to the cost of production and therefore should be included in the cost of sales denominator.

Department's Position. We disagree with Stelco. Stelco argues that the consolidated cost of sales used as the denominator in the financing expense rate should include corporate services and payments to governments other than income taxes. Summarized in the caption corporate services are costs of administration, legal, information system and treasury services. Summarized in the caption payments to governments other than income taxes are non-income-based levied by Canadian federal, provincial, regional and municipal governments such as property taxes, business taxes, and capital taxes. Corporate services and payments to governments other than income taxes are periodic expenses general in nature related to the company as a whole. The Department has determined these expenses are properly classified as general and administrative expense items which should be excluded from cost of sales. As explained in the *Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR, 30,326, 30,349 (June 14, 1996), the financial expense rate should be calculated on a basis consistent with the cost of manufacturing (''COM'') figures to which they are applied. The reported COMs do not include general and administrative expenses so cost of sales should not include any general and administrative expenses. We have therefore recalculated the financing expense rate for the final results excluding corporate services and payments to governments other than income taxes from the denominator, cost of sales.

Comment 6

Petitioners allege the Department made several errors in the margin program utilized in the preliminary results. Petitioners state the Department omitted the variable SOTHMAT at line 294 of the margin program when calculating TOTCOM. Petitioners argue that the Department included sales which failed the related party arm's length test in the CV profit calculation which is incorrect since these sales are outside the ordinary course of trade. Petitioners urge the Department to exclude such sales in calculating CV profit. Petitioners argue that in line 1131 of the constructed value portion of the program that the Department used an ampersand instead of an asterisk in the formula. Petitioners assert the Department omitted the variable SOTHMAT at line 1140 of the constructed value portion of the program. Petitioners also state the Department added asterisks to lines 1139 and 1143 making these lines inoperable and recommend removing the asterisks. Petitioners note the Department defined Stelco's total cost of manufacture for CV purposes as TOTCOMU whereas in subsequent lines of programming, however, the Department used the term TOTCOM instead. Petitioners advocate replacing TOTCOM with TOTCOMU in lines 1145, 1146, 1148 and 1149 of the final margin program. Petitioners observe that in line 1150 the Department reduced CV by TOTCOM which was incorrect. Petitioners state the Department should correct line 1150 to read CV = TOTCV-DSELCV. Petitioners note that the Department failed to convert inland freight charges listed under "INLFTC1U," which were reported in Canadian currency.

Petitioners also claim that in implementing the CEP offset, the Department failed to cap the offset by the amount of U.S. indirect selling expenses. Petitioners recommend amending the computer program. However, respondent contests petitioners' claim, stating that the Department properly capped this offset. Additionally, respondent contends that petitioners' proposed correcting language attempts to obtain a change in calculation methodology not related to the capping of the CEP offset.

Department's Position. The Department agrees with petitioners in all cases noted in the comment above, except the one pertinent to the CEP offset. The Department has thus made all appropriate corrections to its margin calculations for these final results.

Comment 7

Petitioners argue that because Stelco had neither requested nor established entitlement to a CEP offset, the Department should not have made such an adjustment. To qualify for a CEP offset, state petitioners, referring to section 773(a)(7)(B) of the statute and the Statement of Administrative Action ("SAA") at 830, a respondent must first establish that different levels of trade exist between home market and U.S. sales. Then, if the data do not provide an adequate basis for LOT adjustment and normal value is established at a more advanced stage of distribution than the CEP, the Department is required to reduce normal value by the CEP offset. Petitioners maintain that Stelco did not demonstrate all of the conditions which would entitle it to the CEP offset granted by the Department as a surrogate for a LOT adjustment. Petitioners contend that Stelco has not established that different LOTs exist, it has not claimed an LOT adjustment, nor has it requested a CEP offset. Petitioners conclude that use of a CEP offset was unwarranted and should not be used in the final determination.

Respondent replies that the Department properly fulfilled its statutory mandate in granting Stelco a CEP offset. Respondent agrees that it must submit LOT data to demonstrate that it is entitled to a CEP offset. Once appropriate LOT data is submitted, states respondent, section 773(a)(7)(B) requires that the Department grant a CEP offset as long as two conditions are met: (1) When normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price; and (2) the data available do not provide an appropriate basis to determine a level of trade adjustment. Respondent concludes that if the Department finds that the LOT data submitted by respondent satisfies both statutory criteria, normal value shall be adjusted accordingly.

Respondent also contests petitioners' apparent claim that a respondent must claim a LOT adjustment in order for the Department to conduct an LOT analysis. Respondent states that section 773(a)(7)(A) requires the Department to pursue an LOT analysis in all instances, and that the Department acted properly in doing so.

Respondent maintains that despite petitioners' claims, the record is replete with LOT data submitted by Stelco and that the Department had all the factual information it needed for its LOT analysis, and consequently had all the information to support its use of a CEP offset. Accordingly, respondent argues, the Department should reaffirm its decision to grant Stelco a CEP offset adjustment.

Department's Position. We agree with respondent. Section 773(a)(1)(B) requires that Commerce, to the extent practicable, establish normal value based on home market (or third country) sales at the same level of trade as the constructed export price or the starting price for the export price. If Commerce is able to compare sales at the same level of trade, it will not make any level of trade adjustment or constructed export price offset in lieu of a level of trade adjustment.

When sales in the U.S. and foreign markets cannot be compared at the same level of trade, an adjustment to normal value may be appropriate. Section 773(a)(7)(A) provides that, after making all appropriate adjustments to export price or constructed export price and normal value, Commerce shall adjust normal value to account for any differences in these prices that are demonstrated to be attributable to differences in the level of trade of the comparison sales in each market. This adjustment may either increase or decrease normal value. Commerce will grant such adjustments only where: (1) There is a difference in the level of trade (i.e., there is a difference between the actual functions performed by the sellers at the different levels of trade in the two markets); and (2) the difference affects price comparability.

In order to determine whether Stelco's sales in the comparison market are at a different level of trade than the export price or CEP, we examined whether the comparison sales were at different stages in the marketing process than the export price or CEP. We made this determination on the basis of a review of the distribution system in the comparison market, including selling functions, class of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade. While customer categories such as "distributor" and "wholesaler" may be useful in identifying different levels of trade, they are insufficient in themselves to establish that there is a difference in the level of trade.

Our discussion of the specific selling functions that we examined, as well as our Stelco-specific findings in this regard, are contained in our preliminary results.

The effect on price comparability is measured by examining price differences between goods sold to different levels of trade in the foreign market where normal value is being established. Commerce measures any effect on price comparability by determining if there is a pattern of price differences between sales at the different levels of trade in the foreign market.

Any adjustment under section 773(a)(7)(A) will be calculated as the percentage by which the weighted-average prices at each of the two levels of trade differ in the market used to establish normal value. An effect on price comparability must be identified and measured by observed differences between prices at different levels of trade. The Department will isolate the price effect, if any, attributable to the sale at different levels of trade, and will ensure that expenses previously deducted from normal value are not deducted a second time through a level of trade adjustment.

Only where different functions at different levels of trade are established under section 773(a)(7)(A)(i), but the data available do not form an appropriate basis for determining a level of trade adjustment under section 773(a)(7)(A)(ii), will Commerce make a CEP offset adjustment under section 773(a)(7)(B). In the case of Stelco, there is only one home market level of trade for the subject merchandise and that level of trade is different from the level of trade of the CEP. Therefore, Stelco's home market sales do not provide an appropriate basis for determining a level-of-trade adjustment. Moreover, we have determined that data from Dofasco (the other company in this proceeding with multiple levels of trade) does not form an appropriate basis for determining whether a level of trade adjustment is appropriate because none of Dofasco's home marketlevels of trade are sufficiently similar to Stelco's CEP level of trade. *See*, Stelco Analysis Memorandum at Attachment 1. Therefore, because Stelco's home market sales are at a more advanced stage of distribution than the level of trade of the CEP and the data available do not provide an appropriate basis to determine a level-of-trade adjustment, we have made a CEP offset adjustment. This adjustment is ''capped'' by the amount of indirect expenses deducted in calculating CEP under section 772(d)(1)(D).

Comment 8

Petitioners argue that the Department improperly excluded imputed expense (*i.e.*, credit expenses and inventory carrying costs) from the calculation of total United States expenses for the purpose of determining profit on CEP sales. Petitioners state that credit expenses and inventory carrying costs are deducted under section 772(d)(1) of the Act. Accordingly, conclude petitioners, these amounts must be considered a part of ''total United States expenses'' and must be included in the allocation factor for such expenses.

Department's Position. We agree with petitioners. Section 772(d)(3) requires that we deduct an amount of profit allocated to the expenses described in sections 772(d) (1) and (2). Section 772(d)(1) (B) and (C) state that the price used to establish constructed export price shall also be reduced by expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties; (and) any selling expenses that the seller pays on behalf of the purchaser. We have thus corrected our margin calculation program to include imputed expenses in the calculation of total United States expenses for this purpose. In computing the total CEP profit for allocation, we included any below-cost sales in determining the total revenues earned by Stelco and excluded any sales to affiliated parties that were found to have been made at non-arm's-length prices.

Comment 9

Petitioners state that section 772(c) of the Act provides that in calculating EP or CEP, a deduction must be made to account for duties, including antidumping duties, paid by the respondent or its affiliated party, as supported by *C.J. Tower & Sons* v. *United States*, 71 f.2d 438, 445 (C.C.P.A. 1934). Thus, conclude petitioners, the statute requires that the Department must deduct antidumping duties paid by the respondent on U.S. sales.

Petitioners state that in *Federal-Mogul Corp*. v. *United States*, the plaintiff challenged the Department's decision not to deduct *estimated* antidumping duty deposits under the predecessor provision to section 772(c)(2)(A). Petitioners contend that the Department argued that this provision applied only to deduction of ''normal'' import duties. Alternatively, say petitioners, the Department argued that not deducting *estimated* antidumping duties (as opposed to duties actually to be assessed) had been its longstanding practice. The CIT affirmed the Department's refusal to deduct estimated AD duties, but did not adopt the Department's reasoning that section 772 applied only to ''normal'' import duties, and that antidumping duties were not normal import duties within the meaning of the statute (813 F. Supp. 872). Thus, petitioners maintain that section 772 requires the Department to deduct any import duties (including antidumping duties) that can be accurately determined at the time the Department calculated dumping margins.

Petitioners state that the legislative history to the URAA does not suggest that Congress rejected the construction of section 772(c)(2)(A) urged by petitioners. Petitioners continue that the Senate Finance Committee recognized that the Court of International Trade was considering this issue, and directed the Department to abide by the outcome of that litigation (*see*, S. Rep. No. 412, 103d Cong., 2d Sess. 64 (1994)). Therefore, state petitioners, Congress did not intend to ratify the Department's not having treated duties as a cost in the URAA, but recognized that the issue would be resolved through the judicial process.

Petitioners state that the difference calculated between normal value and EP or CEP on each sale by the Department's margin program is equal to the AD duties to be paid by the importer. Once this difference is calculated, state petitioners, it is then deducted from EP or CEP as a cost for use in calculating final margins.

Respondent asserts that the Department should once again reject petitioners'' argument to deduct AD duties in its margin calculation and that the Department did not deduct AD duties from EP and CEP sales in the first administrative review. Respondent contends that petitioners failed to offer any argument as to why the Department should reach a different conclusion in this review. Respondent continues that in numerous determinations over many years, the Department has consistently refused to deduct AD duties from EP and CEP sales and should continue to do so. Respondent continues that petitioners argument that section 772(c)(2)(A) requires the Department to deduct AD duties from EP and CEP sales notwithstanding, there are no U.S. rulings in direct support of their interpretation. Respondent states that the Department has consistently rejected petitioners argument as supported in *Carbon Steel Flat Products from the Netherlands* (61 FR 48465 (September 13, 1996)). It states, in part, ''it is the Department's longstanding position that antidumping and countervailing duties are not a cost within the meaning of 19 U.S.C. section 1677(a)(d). . . . Unlike normal duties, which are an assessment against value, antidumping duties derive from the margin of dumping or the rate of subsidization found. Logically, antidumping and countervailing duties cannot be part of the very calculation from which they are derived.''

Respondent concludes that the Department's practice is clear, and that the CIT has consistently affirmed the its decision not to deduct AD duty deposits from EP and CEP sales. Also, respondent states that the URAA House Ways and Means Committee Report and the SAA explicitly state that the new duty absorption provision is not intended to provide for the treatment of antidumping duties as a cost. Thus, states respondent, the Department should continue to refuse to deduct AD duties from Stelco's EP and CEP sales.

Department's Position. We agree with respondent. *See,* CCC comment 5, supra.

Final Results of Reviews

As a result of our review of the comments received, we have changed the results from those presented in preliminary results of review. Therefore, we determine that the following margins exist as a result of our review:

Manufacturer/exporter	Time period	Margin (percent)
Corrosion-Resistant Steel:		
Dofasco	8/1/94–7/31/95	0.56
CCC	8/1/94–7/31/95	1.58
Stelco	8/1/94–7/31/95	0.55
Cut-to-Length Plate:		
Algoma	8/1/94–7/31/95	[1] 0.37
Stelco	8/1/94–7/31/95	0

[1] This is a *de minimis* margin.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of this merchandise, entered or withdrawn from warehouse for consumption on or after the publication date, as provided for by section 751(a)1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates for those firms as stated above (except that if the rate for a particular product is *de minimis* i.e., less than 0.5 percent, a cash deposit rate of zero will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the case deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the case deposit rate for all other manufacturers will be the ''all others'' rate made effective by the final results of the 1993–1994 administrative review of these orders (*see, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Steel Plate from Canada; Final Results of Antidumping Administrative Reviews*, 61 FR 13815 (March 28, 1996)). As noted in those final results, these rates are the ''all others'' rates from the relevant LTFV investigations which were 18.71 percent for corrosion-resistant steel products and 61.88 percent for plate (*see, Amended Final Determination*, 60 FR 49582 (September 26, 1995)). These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This administrative review and notice are in accordance with section 751(a)(1) of the Act 19 U.S. C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: April 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9425 Filed 4–14–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–802]

Certain Cut-to-Length Carbon Steel from Finland; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 4, 1996, the Department of Commerce (the Department) published the preliminary results of its 1994–95 administrative review of the antidumping duty order on certain cut-to-length carbon steel from Finland. The review covers one manufacturer/exporter, Rautaruukki Oy (''Rautaruukki''), for the period August 1, 1994 through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have made the changes described in this notice.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Jacqueline Wimbush or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1374 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1996, the Department published in the **Federal Register** (61 FR 51901) the preliminary results of the