The All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 776 of the Act. As Inchon's rate has been determined to be zero, and Taihan's rate has been determined under section 776 of the Act (determinations on the basis of the facts available), for this final determination, the all-others rate is simply the calculated rate for POSCO.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from the Republic of Korea, except for Inchon, that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Pohang Iron & Steel Co., Ltd. ..	12.12
Inchon Iron & Steel Co., Ltd.	0.00
Taihan Electric Wire Co., Ltd. ..	58.79
All Others	12.12

Since the final weighted average margin percentage for Inchon is zero, Inchon is excluded from an antidumping order on stainless steel sheet and strip in coils from the Republic of Korea as a result of this investigation.

ITC Notification

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

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

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13770 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–818]

Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From the United Kingdom

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

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Rast at (202) 482–1324 or Nancy Decker at (202) 482–0196, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations

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

Final Determination

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

Case History

We published in the **Federal Register** the preliminary determination in this investigation on January 4, 1999. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Stainless Steel Sheet and Strip in Coils From the United Kingdom, 64 FR 85 (January 4, 1999) (Preliminary Determination). Since the publication of the Preliminary Determination, the following events have occurred:

On February 23, 1999, the Department published a correction to the preliminary determination, incorporating corrected scope language. See Notice of Correction: Preliminary Determinations of Sales at Less than Fair Value, Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Mexico, South Korea, and United Kingdom; and Amended Preliminary Determination of Sales at Less Than Fair Value, Stainless Steel Sheet and Strip from Taiwan, 64 FR 8799 (February 23, 1999).

The Department verified the responses of the respondent, Avesta Sheffield Ltd. and Avesta Sheffield NAD, Inc. (collectively ''Avesta''), as follows: sections A (General Information), B (Home Market Sales), and C (U.S. Sales) of Avesta's responses from January 18–31, 1999, in Sheffield, Stocksbridge, and Oldbury, U.K., and from February 10–12, 1999, in Schaumberg, Illinois; and section D (Cost of Production) questionnaire responses from February 15–22, 1999, in Sheffield, U.K. See Memorandum For the Files; ''Sales Verification of Sections A–C Questionnaire Responses Submitted By Avesta,'' April 1, 1999 (Home Market Sales Verification Report); Memorandum For the Files; ''U.S. Sales Verification of Sections A & C Questionnaire Responses Submitted By Avesta,'' March 23, 1999 (U.S. Sales Verification Report); Memorandum to Richard Weible, Director, Office Eight, Enforcement Group Three; ''Verification Report on the Cost of Production and Constructed Value Data,'' April 2, 1999 (Cost Verification Report). Public versions of these, and all other Departmental memoranda referred to herein, are on file in room B–099 of the main Commerce building.

On January 29, 1999, Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville

Armco Independent Organization, Inc. (petitioners), requested a public hearing in this case. On February 4, 1999, Avesta also requested a hearing. However, on April 13, 1999, and on April 16, 1999, Avesta and petitioners, respectively, withdrew their requests for a hearing; therefore, none was held. On April 9, 1999, petitioners and Avesta filed case briefs in this matter; we received rebuttal briefs from petitioners and Avesta on April 16, 1999.

Scope of the Investigation

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

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

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

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

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

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

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

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

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

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

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

currently available under proprietary trade names such as ''Gilphy 36.'' [2]

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

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

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

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

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

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

Period of Investigation

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

Fair Value Comparisons

To determine whether sales of SSSS from the United Kingdom to the United States were made at less than fair value, we compared export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Tariff Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

Transactions Investigated

For its home market and U.S. sales, Avesta reported the date of invoice as the date of sale, given the Department's stated preference for using the invoice date as the date of sale. As explained in response to Comment 2, below, for this final determination we have continued to rely upon Avesta's invoice dates in the home and U.S. markets as the date of sale. However, should this investigation result in an antidumping duty order, we intend to scrutinize further this issue in any subsequent segment of this proceeding involving Avesta.

We have excluded from our analysis all of Avesta Sheffield Inc.'s (ASI) U.S. resales of rejected merchandise. See Comment 6 below.

Avesta has asserted that hot-rolled merchandise, which is sold only in the home market, should be considered a product of Sweden, and, as such, it should be excluded from the Department's analysis. Avesta has also asserted that a small amount of merchandise reported in the United States and/or home market databases is: (1) hot-rolled and cold-rolled in Sweden, and then further cold-rolled, annealed, and finally processed in the United Kingdom (affecting U.S. and home markets); and (2) hot-rolled and cold-rolled in Sweden and then further processed in the United Kingdom (affecting the home market). We have excluded from our analysis (1) Avesta's hot-rolled sales, and (2) those sales of merchandise that are first cold-rolled in Sweden. See Comment 13 below.

Product Comparisons

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

Level of Trade

In our preliminary determination, we found that one level of trade (LOT) existed for Avesta in the home market. Furthermore, we found that Avesta had two LOTs in the United States, one for EP sales and one for CEP sales, and we found that a CEP offset was appropriate in accordance with section 773(a)(7)(B) of the Tariff Act. As explained in Comment 4, below, and the preliminary determination, we find that (1) one LOT existed for Avesta in the home market; (2) two separate LOTs existed for Avesta in the United States; and (3) a CEP offset is appropriate.

Export Price and Constructed Export Price

We calculated EP, in accordance with section 772(a) of the Tariff Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter outside the United States, and where CEP methodology was not otherwise warranted, based on the facts of the record. For further discussion on the classification of EP sales, see Comment 1 below.

We calculated CEP, in accordance with section 772(b) of the Tariff Act, for those sales made by ASI, an affiliated U.S. sales company, to unaffiliated purchasers in the United States.

We calculated EP and CEP based on the same methodology employed in the preliminary determination, except as noted below in ''Comments'' and in the Final Sales Analysis Memorandum from Charles Rast and Nancy Decker to The File, dated May 19, 1999 (Final Analysis Memorandum).

Normal Value

Home Market Viability

As discussed in the Preliminary Determination, in order to determine whether the home market was viable for purposes of calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Tariff Act. As Avesta's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared, on a model-specific basis, the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, we excluded them from our LTFV analysis. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil, 63 FR 59509 (Nov. 8, 1998), citing to Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production Analysis

In accordance with section 773(b)(3) of the Tariff Act, we calculated the weighted-average cost of production (COP) based on the sum of Avesta's cost of materials, fabrication, general expenses, and packing costs. In addition, on a transaction specific basis, we added to COP tolling costs for slitting work done by an unaffiliated party. We relied on Avesta's submitted COP, except in the following specific instances where the submitted costs were not appropriately quantified or valued:

We revised Avesta's financial expense ratio using British Steel PLC's consolidated financial statements. See Comment 18 below.

We adjusted the calculation of Avesta's general and administrative expense (G&A) ratio to use unconsolidated cost of goods sold of the producing entities. See Final Analysis Memorandum.

We compared the weighted-average COP for Avesta to home market sales prices of the foreign like product, as required under section 773(b) of the Tariff Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (i) in substantial quantities within an extended period of time, and (ii) at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, billing adjustments, and discounts and rebates.

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

Our cost test for Avesta revealed that, for certain products, less than twenty percent of Avesta's home market sales of those products were at prices below Avesta's COP. We retained all sales of those products in our analysis. For other products, more than twenty percent of Avesta's sales of those products were at prices below COP. In such cases, we disregarded the below-cost sales, while retaining the above-cost sales for our analysis. See Final Analysis Memorandum.

Price-to-Price Comparisons

For those product comparisons for which there were sales at home market prices at or above the COP, we based NV on Avesta's sales to unaffiliated home market customers or prices to affiliated customers that we determined to be at arm's-length prices. We made adjustments for billing adjustments and discounts and rebates. We made deductions, where appropriate, for foreign inland freight, warehousing, and inland insurance, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Tariff Act. We continued to make circumstance-of-sale (COS) adjustments in accordance with section 773(a)(6)(C)(iii) of the Tariff Act.

Price-to-Constructed Value Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on constructed value (CV) if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the sum of Avesta's costs of materials, fabrication, SG&A expenses, profit, and U.S. packing expenses. See section 773(e) of the Tariff Act. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the United Kingdom. We calculated the cost of materials, fabrication, and general expenses based upon the methodology described in the ''Cost of Production Analysis'' section, above. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of

the Tariff Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. When we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Tariff Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Analysis of Interested Party Comments

Issues Relating to Sales

Comment 1: EP versus CEP sales

Petitioners argue that the Department should reclassify Avesta's reported EP sales as CEP sales based on the evaluation of the activities of ASI, Avesta's U.S. affiliate. Petitioners, also assert that, in fact, the mere existence of the respondent's affiliate in the United States demonstrates that the respondent's sale should be classified as CEP sales.

Petitioners claim that, when sales are made prior to importation, it is the Department's practice to evaluate the following: whether the merchandise is shipped directly to the unaffiliated buyer without being introduced into the physical inventory of the selling agent; whether direct shipment to the unaffiliated buyer is the customer channel for sales of the subject merchandise between the parties involved; and whether the selling agent in the United States acts only as a processor of the sales-related documentation and a communication link with the unaffiliated U.S. buyer. Referencing the last criterion, petitioners argue that the Department has amplified its policy on evaluating the level of involvement of U.S. subsidiaries by determining that such sales are appropriately classified as CEP sales in the following instances: the U.S. subsidiary was the importer of record and took title to the merchandise; the U.S. subsidiary financed the relevant sales transactions; the U.S. subsidiary arranged and paid for further processing; and the U.S. subsidiary assumed the seller's risk.

Petitioners assert that there is ample precedent for re-classifying sales as CEP, where the Department determines that a U.S. affiliate's involvement in a sale is significant, but where the merchandise is not entered into a U.S. affiliate's inventory. Citing Extruded Rubber Thread from Malaysia: Final Results of Antidumping Duty Administrative Review, 63 FR 12752 (March 16, 1998) (Extruded Rubber Thread), petitioners argue that the Department determined sales to be CEP sales in circumstances where the U.S. sales force contacted the U.S. customer, negotiated sales terms, arranged for production and shipment, and issued final invoices and collected payment. In other instances, according to petitioners, the Department has re-classified the respondents' U.S. sales as CEP because the U.S. companies performed significant selling functions in the United States.

According to petitioners, ASI satisfies the criteria established in Extruded Rubber Thread for reclassifying ASI's EP sales as CEP sales. Petitioners argue that, as in that case, ASI is responsible for all paperwork, invoicing, and transportation. Furthermore, petitioners contend, ASI is responsible for providing quotations to the customer in the U.S. and confirming prices with the U.K. mill. They cite the Department's U.S. Sales Verification Report, noting that ASI arranges shipment logistics for clearance through Customs and shipment to the customer, performs customer credit checks, extends credit, collects payment, maintains accounts receivables, holds inventory, issues order confirmations, inputs orders, sends mill certificates and packing lists, and issues the final invoice. Furthermore, according to petitioners, the Department's pre-selected sales described in the U.S. Sales Verification Report support reclassifying ASI's EP sales as CEP sales.

Petitioners state it is evident from information collected by the Department at verification that ASI is not merely a ''paper processor'', and that although merchandise is customarily shipped directly to customers from the United Kingdom, ASI handles almost every significant aspect of making U.S. sales. Because ASI must, in general, retain employees to sell the subject merchandise, handle all the paperwork, arrange entry and transportation, administer customer accounts, and deal with late payments, its activities were not limited to that of a ''processor of sales-related documentation'' and ''communication link'' with the unaffiliated buyers.

Petitioners assert that the mere existence of ASI demonstrates its involvement in the U.S. sales process, and that its large staff comprising of an active sales force, billing and accounting staff, indicate that its activity must be ''significant''. According to petitioners, in the absence of ASI, the respondent would simply conduct operations from its home market. A true ''paper processing'' subsidiary, they state, would have an inexpensive office and small clerical staff with little more than telephone and facsimile equipment to communicate with the home office, and that an adjustment (for indirect selling expenses) to the starting price, while necessary, would be small. On the other hand, according to petitioners, a more extensive export market operation, such as ASI's, would result in a commensurately larger adjustment. Petitioners argue that, given ASI's extensive involvement in the selling process, the Department should deduct the indirect selling and operating costs of ASI from the starting price for all U.S. sales involving ASI.

Avesta argues that the Department correctly classified the U.S. sales referenced by petitioners as EP sales. Avesta contends that petitioners' claim that ASI is responsible for providing quotations to the customer in the United States and confirming prices with the U.K. mill is deceptive. Avesta points to verified evidence demonstrating that the U.K. mill sets the price for EP sales because ASI has much less familiarity with the market price for such specialized products. Also, Avesta asserts that the Department reviewed sales documentation at verification, showing that ASI requested price guidance from the mill, and that the mill quoted prices to ASI for each of the EP customers during the POI. Avesta claims that the fact that ASI does not negotiate the terms of sales distinguishes ASI's role in the sales process from that of the affiliated U.S. sales agents in the cases cited by petitioners. In all of those instances, according to Avesta, the Department's decision to reclassify U.S. sales as CEP transactions was based, at least in part, on a finding that the U.S. sales agent was involved in the negotiation of the sales.

Avesta indicates that record evidence shows that ASI's role in the sales process for certain sales of merchandise meets the Department's requirements for EP sales. According to Avesta, ASI's role for these sales is most similar to that of the U.S. affiliate in Stainless Wire Rod from Korea, in which the Department determined that the extent of the U.S. affiliate's involvement in the sales process was indicative of the involvement normally provided by a processor of sales-related documentation and a communications link. (See Stainless Wire Rod from Korea: Final Determination of Sales at Less Than Fair Value, 63 FR 40404, 40419 (July 29, 1998) (Stainless Wire Rod from Korea). Avesta states that, similarly, the Department has

previously found that a U.S. affiliate whose functions include receiving orders, preparing and executing order confirmation, invoices, packing lists, and other sales-related documentation, as well as receiving and processing payments from customers, was not so substantial to conclude that it was more than a processor of documents or communications link.

Avesta argues that petitioners' assertion that the mere existence of a U.S. affiliate constitutes evidence that the respondent's U.S. sales should be characterized as CEP sales is without basis in law or Departmental practice. Avesta contends that, in Stainless Wire Rod from Korea, where sales are made prior to importation through a U.S.-based affiliate to an unaffiliated customer in the United States, the Department has recently explained that it examines several factors to determine whether the sales warrant classification as EP sales. Avesta notes that it is not the mere existence of an affiliated U.S. sales agent that determines EP versus CEP treatment of U.S. sales, but the Department's analysis of the factors enunciated in its EP/CEP test.

Avesta states that petitioners' arguments seem to ignore the fact that Avesta has reported only a small number of U.S. sales as EP sales, and that Avesta is not holding the position that all, or even a large number of U.S. sales, should be classified as EP sales. Avesta claims that, because this small quantity of sales clearly involved sales and negotiation by the U.K. mill for certain products, they were correctly classified by the Department as EP sales. Avesta asserts that this small quantity of EP sales, relative to total U.S. sales, demonstrates the inaccuracy of petitioners' characterization of the size and level of ASI, and that the activity of ASI's U.S. sales force must be significant. Avesta argues that petitioners' characterization of ASI's staff as ''large'' is not supported by record evidence and that petitioners give no indication of why the Department must assume that the activities of ASI's staff are focused on EP sales, which make up only a small percentage of total U.S. sales by ASI.

Department's Position: We disagree with petitioners that Avesta's U.S. sales should be treated as CEP sales, and have continued to treat Avesta's EP-classified U.S. sales as EP sales in the final determination. Specifically, we disagree with petitioners' contention that ASI acts as more than a communications link and processor of sales-related documentation for sales classified by Avesta as EP during the POI.

The statute defines EP price as the price at which the subject merchandise is first sold (or offered for sale) to an unaffiliated purchaser before the date of import by the exporter outside the United States. In contrast, CEP is the price at which the subject merchandise is first sold (or offered for sale), before or after the date of import, in the United States by or for the account of the exporter or by a seller affiliated with the exporter to an unaffiliated purchaser. Thus, sales made prior to import can be either EP or CEP, with the former being sold by the exporter or producer outside the United States and the latter being sold by someone in the United States who is selling for the account of the exporter or is affiliated with the exporter. In cases in which both the exporter and a U.S. affiliate, or a party in the United States acting on the exporter's behalf, are involved in the sales transaction, a case-by-case determination must be made, based on the facts associated with the transactions at issue, to determine whether such sales are properly characterized as EP or CEP sales. Normally, when a party in the United States is involved in the sale to the first unaffiliated customer, the sales are properly treated as CEP sales. However, the Department has a long history of recognizing so-called ''indirect EP sales,'' which are sales made by an exporter, with the party in the United States performing only certain ancillary functions that support the sales process. To determine whether sales are properly classified as EP in such cases the Department examines three criteria: whether (1) the merchandise is not inventoried by the importer, (2) the sale is made through a customary commercial channel for sales of this merchandise, and (3) the affiliated importer acts only as a processor of sales-related documents and as a communications link with the exporter. *See, e.g., Du Pont* v. *United States,* 841 F. Supp.1248–50 (CIT 1993); *AK Steel* v. *United States,* Court No. 97–05–00865, 1998 WL 846764 at *6 (CIT 1998) (AK Steel). Only when all three criteria are met does the Department treat the sales as EP sales. As the Court explained in AK Steel, this test is simply a means to determine whether a sale at issue is in essence between the exporter and the unaffiliated buyer, in which case the EP rules apply, or whether the role of the affiliate has sufficient substance that the CEP rules apply. *Id.*

In the instant investigation, the sales in question were made prior to importation through Avesta's affiliated U.S. sales company, ASI, to an unaffiliated customer in the United States. With respect to the first prong of the indirect EP test, the record in this case indicates that the subject merchandise was shipped directly from the U.K. mill to the unaffiliated U.S. customers. Although, as we found at verification, a small amount of ASI's mill direct sales may be delayed at the customer's request and held by ASI, record evidence during the POI does not support petitioners' contention that ASI therefore ''holds inventory.'' In fact, our sales verification report specifically states that, with respect to ASI's maintaining of inventory, ''none is maintained for EP sales.'' See U.K. Sales Verification Report. With respect to the second prong, we verified that this pattern of direct shipment is a customary commercial channel between the parties involved, and there is no indication that the sales between the parties involved any departure from this pattern.

As for the third prong, whether ASI's role in the sales process was limited to that of a ''processor of sales-related documentation'' and a ''communications link,'' we found at verification that EP and CEP-classified sales differ at the inquiry stage. Specifically, for EP-classified sales, ASI is not involved in the negotiation of sales but merely contacts the U.K. mill, which sets a price for the sales. The mill quotes the price from the mill to ASI. ASI then adds amounts for duty, brokerage, freight and handling, and a set markup to derive the price charged to the customer. We examined documentation between the U.K. mill and ASI, including price quotes and other customer-related issues. See U.S. Sales Verification Report. As with Avesta's CEP sales, ASI arranges for shipment from the port to the customer, arranges for Customs clearance, invoices the customer, and collects payment.

The facts discussed above show that the extent of ASI's involvement in the sales process, regarding certain customers whose sales were classified as EP, indicates that ASI plays an ancillary role normally played by a ''processor of sales-related documentation'' and a ''communications link.'' While ASI is involved in document-processing and other secondary activities related to the sales of subject merchandise to the U.S. customer (*e.g.*, clearing Customs, arranging for U.S. transportation, issuing invoices, and collecting payment), ASI had no substantial involvement in the sales process regarding certain customers whose sales were classified as EP, such as sales negotiation. For these EP-classified

sales, the record evidence demonstrates that ASI receives pricing information from the U.K. mill to which ASI adds a set mark-up and standard amounts to cover movement expenses. Therefore, ASI does not negotiate sales terms with U.S. customers for EP-classified sales, but rather relays pricing information between the U.K. mill and the U.S. customer.

We disagree with petitioners that the mere existence of ASI demonstrates its significant involvement in the U.S. sales process. As affirmed by the Court in AK Steel, in determining whether sales should be classified as CEP sales, the Department's analysis focuses on the three requirements under the test, discussed above, all of which must be met in order to classify sales as CEP. If the petitioners' argument held true, the basis or need for such a test would not exist. Moreover, we note that the majority of Avesta's U.S. sales were reported and properly classified as CEP sales. ASI's main role is not for EP sales but rather for CEP sales. The U.S. Sales Verification Report indicates that ASI maintained a sales office for CEP sales, but that the work concerning EP sales, which would include only document processing, was done by the in-place staff.

We disagree with petitioners' argument that ASI satisfies the criteria established in Extruded Rubber Thread for reclassifying ASI's EP sales as CEP. In that case, the Department's decision to reclassify certain U.S. sales as CEP was based, in part, on determining that the U.S. sales agent was involved in the negotiation of sales. The fact that ASI is not involved in the negotiation of the terms of these sales distinguishes ASI's role in the sales process from Extruded Rubber Thread. As noted above, while ASI is involved in document-processing and other secondary activities related to the sales of subject merchandise to the U.S. customer, ASI had no substantial involvement in the sales process, such as sales negotiation, regarding certain customers whose sales were classified as EP.

The nature of the U.K. mill's involvement in the sales process for EP-classified sales, and ASI's ancillary role in the sales process for these sales, lead us to conclude that the EP-classified sales took place before the date of importation by the producer of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States. Therefore, for the final determination, we have continued to treat Avesta's EP-classified sales as EP.

Comment 2: Date of Sale

Petitioners argue that order date is the proper date for establishing the date of sale for all sales. They note that, while the Department used the invoice date as the date of sale for both home market and U.S. sales in the preliminary determination, it indicated that it would fully examine the issue at verification and incorporate its findings, as appropriate, in its analysis for the final determination. Petitioners note that the Department stated that, if order confirmation was found to be the appropriate date of sale, it may resort to facts available for the final determination, to the extent the information has not been reported.

Petitioners contend that, although Avesta claims invoice date should be used to establish the date of sale because the regulations state that the Department will ''normally'' use the date of invoice as the date of sale, Avesta's reliance on certain sections of the regulations and certain cases is selective and misrepresentative. According to petitioners, even in cases where the invoice has been used to establish the date of sale, invoice date is conditionally or provisionally accepted as the date of sale, ''* * * unless the record evidence demonstrates that the material terms of sale, i.e., price and quantity are established on a different date.'' (See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Administrative Review, 63 FR 55578, 55587–55588 (October 16, 1998) (Pipe and Tubes from Thailand).)

Petitioners indicate that record evidence in this case demonstrates that order date is the proper date for all U.S. and home market sales. They contend that the Department considers date of sale to be a factual issue, decided on a case-by-case basis. According to petitioners, in the Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Administrative Review, 63 FR 32833, 32835 (June 16, 1998) (Circular Pipe from Korea), the Department ruled that the facts of the case indicated a specific sales pattern that justified invoice date as the date of sale, even though the circumstances were not specifically noted as an exception in the regulations. Despite Avesta's attempts to downplay the importance of manufacturing to order, petitioners argue that it is clear from the U.S. and home market sales verification reports and exhibits that the company does manufacture to order, and that the evidence indicates that price and quantity are set on the order date. Petitioners also argue that there is significant evidence of a long lag time across all U.S. sales (except resales and consignment sales), and that in the rare instances where changes in the material terms of sales are made, Avesta issues a revised order acknowledgment.

Petitioners argue that the standard tolerance for the steel industry (including Avesta) is plus or minus ten percent from the quantity specified. (See Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review, 64 FR 11829 (March 10, 1999) (Cold-Rolled Steel from the Netherlands). They contend that Avesta did not provide the Department at verification any documentation in support of its alternative percentage for quantity tolerance. As a result, for the final determination, the petitioners urge the Department to accept the industry standard definition and determine that changes to order quantities of ten percent do not constitute a change in the order. Petitioners argue that the Department's review of Avesta's sales-related documentation presented at verification indicates that, in every instance where Avesta supplied sufficient information, the material terms of sale were set on the order date (or change order date) and did not change prior to shipment and invoice. They contend that this evidence refutes Avesta's claim that price and quantity are not known until invoice date, which, for U.S. sales, is often many months after the order date.

Petitioners also argue that Avesta demonstrated at verification that the prices set to customers in the United States are normally determined many months prior to invoicing, on the order or change order date, while prices set for home market customers are normally determined on the order date several weeks prior to invoicing. As a result, petitioners contend that Avesta's argument that price-setting in the two markets is defined by invoice date is commercially incompatible. Instead, petitioners assert, the degree to which a party sells at less than fair value should be determined by comparing the pricing activity when U.S. sales terms are confirmed and home market sales terms are confirmed. According to petitioners, the Department's regulations state that a date other than invoice date may be used where a different date better reflects the date upon which the material terms of sale were established by the exporter or producer. They note that the nature of Avesta's sales process and its documentation satisfy the Department's policy outlined in the preamble of the new regulations that

''* * * the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale.'' (See Antidumping Duties: Countervailing Duties, 62 FR 27296, 27349 (May 19, 1997). Thus, petitioners request that the Department consider the order date (or change order date, if appropriate) as the date of sale.

Avesta argues that the Department correctly used invoice date as the date of sale in its preliminary determination. It contends that the Department has a regulatory preference for using invoice date as the date of sale in the absence of evidence that a better date reflects the date on which the material terms of sale are established by the exporter or producer. (See Stainless Steel Plate in Coils from South Africa: Final Determination of Sales at Less Than Fair Value, 64 FR 15458, 15463 (March 31, 1999) (citing 19 C.F.R. § 351.401(i)). Avesta asserts that the Department's regulations establish a rebuttable presumption that the invoice date will serve as the date of sale, and that the Department's commentary on the regulations states that this decision reflects the Department's experience with normal business practice. Avesta states that, because petitioners have failed to establish record evidence justifying the use of order date, the Department should confirm in the final determination that invoice date properly establishes Avesta's date of sale.

Avesta contends that its questionnaire responses and verification exhibits demonstrate that the material terms can and often do change between order and invoice date for all the U.K. entities other than Billing, noting that due to the nature of Billing's business, changes between order and invoice date are unlikely. Avesta also argues that the Department should reject petitioners' claim that the standard quantity tolerance in the steel industry is plus/minus 10 percent, and that it has provided several examples on the record in this case of quantity changes made after order date beyond a ten percent tolerance level.

Avesta rejects petitioners' argument that order date is the appropriate date of sale because Avesta's situation is similar to that of the respondent in Circular Pipe from the Korea. Avesta states that in Stainless Steel Plate in Coils from Belgium: Final Determination of Sales at Less Than Fair Value, 64 FR 15476 (March 31, 1999) (Stainless Steel Plate in Coils from Belgium), petitioners similarly argued that the appropriate date of sale for the U.S. market was order date given that there exists a long lag time between order and invoice date across all U.S. sales, and that this lag time is considerably greater, on average, for U.S. sales than for home market sales. In that case, however, the Department distinguished its determination in Circular Pipe from Korea and concluded that the appropriate date of sale was invoice date. Avesta notes that, in Stainless Steel Plate in Coils from Belgium, the Department disagreed with petitioners' reliance on Circular Pipe from Korea to support the argument that the longer lag time between the date of purchase order and the date of invoice for the U.S. market, as compared to the time lag on the home market, justifies the use of order date as the date of sale. First, Avesta notes, in Circular Pipe from Korea, the Department verified that the changes to terms of sale were infrequent and not material in nature. Second, Avesta argues, Circular Pipe from Korea involved an administrative review, where the Department makes monthly (rather than annual) weighted-average comparisons; therefore, the differences in time lags between the markets were significant for comparison purposes. Avesta asserts that, unlike the respondent in Circular Pipe from Korea, Avesta has submitted numerous examples of changes in terms of sale between order date and invoice date.

Department's Position: We agree with Avesta that invoice date is the correct date of sale for all home market and U.S. sales in this investigation. Under our current practice, as codified in the Department's Final Regulations at section 351.401(i), in identifying the date of sale of the subject merchandise, the Department will normally use the date of invoice, as recorded in the producer's records kept in the ordinary course of business. See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Notice of Final Determination of Sales at Less Than Fair Value, 64 FR 24239 (May 6, 1999) (Steel Products from Japan). In some instances, however, it may not be appropriate to rely on the date of invoice as the date of sale because the evidence may indicate that the material terms of sale were established on some date other than invoice date. See Preamble to the Department's Final Regulations at 62 FR 27296 (1997). Therefore, despite the general presumption that the invoice date constitutes the date of sale, the Department may determine that this is not an appropriate date of sale where evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

In the present case, in response to the Department's original questionnaire, Avesta reported invoice date as the date of sale in both the U.S. and home markets. To determine whether Avesta and ASI accurately reported the date of sale, the Department included in its October 28, 1998, questionnaire a request for additional information regarding changes in the material terms of sale subsequent to order date and asked Avesta to report order date for all U.S. and home market sales. In its November 23, 1998, response, Avesta indicated that invoice date best reflects the date on which the terms of home market sales are established. Avesta also indicated that changes can and do occur in price and quantity between order date and invoice date for a large number of sales, and that the Department's request would be extremely burdensome. Avesta noted that it does not have computerized records across all five reporting U.K. entities that would allow it to obtain order date information. Also, Avesta indicated that invoice date is consistent with its internal accounting practices. Avesta reported order date for the vast majority of its U.S. sales. For purposes of our Preliminary Determination, we accepted the invoice date as the date of sale subject to verification.

At verification, we closely examined Avesta's and ASI's selling practices. We found that each U.K. entity and ASI records sales in its financial records by date of invoice. For the home market, we reviewed several sample sales for which the material terms of sale (price and quantity) changed subsequent to the original order across all the U.K. entities other than Billing (see Home Market Sales Verification Report and Final Analysis Memorandum). Additionally, during our review of sample sales, we noted instances where order information changed for reasons other than changes to price or quantity. For example, we reviewed several sample sales for which the original order was amended because of changes to delivery week and/or delivery address. In these instances, the Avesta entity updated its computer system to reflect the amended order and issued an order re-acknowledgment to the customer noting the change. We found that, because the computer systems differ across all the entities, the effect of these changes on the original order date information maintained in the systems also differs. We observed, for example, that the modified information in the computer systems for several of the entities reflected the date of the latest change,

regardless of the type of change, or number of changes. Because the computer systems and data maintained in these systems regarding order date information (including changes made to orders) differ across all the entities, we found that Avesta could not consistently distinguish between changes made to the material terms of sale from other types of changes. See U.S. Sales Verification Report, Home Market Sales Verification Report, and Final Analysis Memorandum.

Consequently, we disagree with petitioners' claim that the order date (or change order date) is the most appropriate date of sale for Avesta's U.S. and home market sales because the material terms of sale would not change after that date. The fact that terms often changed subsequent to the original order, and even after an initial order confirmation, suggests that these terms remained subject to change (whether or not they did change with respect to individual transactions) until as late as the invoice date. For sales that we reviewed, we found this to be true for material terms of sale such as price and quantity, including quantity changes outside of established tolerances. (See Steel Products from Japan.)

With respect to changes in quantity, we disagree with petitioners' argument that, because Avesta did not provide evidence at verification supporting its alternative percentage quantity tolerance, the Department should accept what petitioners claim to be the industry standard definition and determine that changes to order quantities of up to ten percent do not constitute a change in the order. There is no evidence on the record in this case to suggest that the standard tolerance for the steel industry (including Avesta) is plus or minus ten percent from the quantity specified. We note that the discussion in Cold-Rolled Steel from the Netherlands concerning the industry standard definition, as cited by petitioners, is referenced only in respondent's comments of that determination, not in the Department's positions. Also, Cold-Rolled Steel from the Netherlands involved different merchandise (cold-rolled carbon steel flat products), and not merchandise subject to this investigation. There is no evidence on the record in the present case indicating that the percentage quantity tolerances for both products are the same. In Pipes and Tubes from Thailand, 63 FR at 55578, 55588, the Department indicated that ''while we agree with petitioners that changes consistent with the tolerance level established in the contract may establish a binding agreement on quantity at the contract date, our analysis of the sample contract and corresponding invoices reveals that changes frequently were made beyond the agreed upon tolerance levels. Where such changes occurred frequently after the contract date, we have relied upon a later date.''

We disagree with petitioners' argument that the Department's determination in Circular Pipe from Korea is applicable to this investigation because Avesta manufactures to order, and because there is a long time lag between the order date and invoice date for Avesta's U.S. sales, as compared to the time lag in the home market. The facts in the present case are distinguishable from those in Circular Pipe from Korea for two reasons. First, in Circular Pipe from Korea, the Department verified that changes to terms of sales were infrequent and not material in nature. As noted above, at verification we reviewed a significant number of instances in both the home market and U.S. where the material terms of sale (price and quantity) changed subsequent to the original order. Second, unlike this case, Circular Pipe from Korea involved an administrative review, where the Department makes monthly, rather than annual, weighted-average comparisons, and consequently, the differences in time lags between the markets were significant for comparison purposes. (See Stainless Steel Plate in Coils from Belgium.)

Based on Avesta's representation, and as a result of our examination at verification of sample sales and each entity's selling records kept in the ordinary course of business, we are satisfied that the invoice date should be used as the date of sale because it best reflects the date on which the material terms of sale were established for Avesta's home market and U.S. sales.

Comment 3: Sales for Consumption

Petitioners argue that the Department should apply facts available to the volume of merchandise sold to Avesta Sheffield Distribution, Ltd. (AVSD), one of the U.K. sales entities, for consumption that could not be linked to AVSD's resales. They note that in its November 2, 1998, supplemental questionnaire response, Avesta did not include in its home market sales database home market sales made to its affiliate AVSD given that there was no practical means available to determine which of those sales were made to AVSD for consumption and which were made to AVSD for resale.

Petitioners indicate that, while AVSD reported all of its sales of subject merchandise from Avesta's U.K. mills (with the exception of those sales identified in the home market sales verification report as ''processed sales—supplier id untraceable''), it did not report the coils purchased from the U.K. mills consumed in the production of non-subject merchandise. They note that Avesta reported, on November 23, 1998, in a separate database its home market sales made from Avesta Sheffield, Ltd. (ASL) and Avesta Sheffield Precision Strip, Ltd. (SPS) (U.K. producing mills) to AVSD, and that these sales were not included in the preliminary margin analysis. Petitioners also state that the Department did not address the issue of AVSD's sales for consumption in the home market in the preliminary analysis memorandum or the **Federal Register** notice. They indicate that the preliminary margin analysis did not include the total quantity and value of sales by the mills to AVSD of the subject merchandise because the volume of sales consumed by AVSD to produce non-subject merchandise cannot be linked. Petitioners assert that, for the final determination, the Department should apply adverse facts available to the volume of sales sold by the mills to AVSD for consumption that were not included in AVSD's database. Therefore, the Department should apply the highest reported home market price and lowest reported U.S. price to the volume of sales sold by the mills to AVSD for consumption.

Avesta argues that the Department should reject petitioners' argument and affirm its preliminary decision to exclude from its analysis the sales made by Avesta's mills to AVSD for consumption. Avesta contends that use of facts available is inappropriate because the company, to the best of its ability, fully complied with the Department's reporting requirements. Moreover, despite significant burden, Avesta emphasizes that it reported two home market databases.

Avesta asserts that, none of the situations referenced in section 351.308(a) of Commerce's regulations (19 CFR 351.308(a)) authorizing the Department to use facts available are present in this case. Avesta notes that it explained in its response that it did not have the practical means available to determine which mill sales were made to AVSD for consumption and which mill sales were made to AVSD for resale. Avesta states that the Department's review of the sales process at verification confirmed the accuracy of this claim and the home market sales verification report demonstrates that Avesta correctly reported that AVSD could not link mill sales to its resales.

Department's Position: We agree with Avesta. Based on the verified evidence contained in the record of this proceeding, we disagree with the petitioners that the use of facts available in this instance is warranted. Section 776(a) of the Tariff Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to section 782(d) and (e), facts otherwise available in reaching the applicable determination.

In this case, Avesta reported in its November 23, 1998, supplemental questionnaire response, two home market sales databases: the first database contained sales made by the U.K. entities, while the second one contained all home market sales from ASL and SPS to AVSD (including sales which AVSD consumed for production of non-subject merchandise). We believe that Avesta complied with the Department's reporting requirements for this information to the best of its ability. First, these databases were reported in a timely manner. Second, at verification, Avesta demonstrated, through sample sales traces, as well as during its overview of the sales process, that it cannot reasonably determine which mill sales were made to AVSD for consumption and which mill sales were made to AVSD for resale. As the Department's Home Market Sales Verification Report indicates, no information is provided to mills on material consumed by AVSD. Although the mills know which sales go to AVSD, they do not know which of those sales are further processed by AVSD. We found that, while certain information (i.e., the cast number) can identify the source of the merchandise, it cannot be used to tie back a particular purchase to the mills except by a manual review. Our review of AVSD's computer system and mill sales determined that the company had no practical means of linking incoming merchandise and the processed merchandise sold by AVSD.

In this case, we verified that Avesta is unable to segregate those sales made by the Avesta mills to AVSD for consumption from AVSD's resales of subject merchandise. Therefore, we conclude that the company reported everything that it could reasonably have been expected to report. Rather than ''double-counting'' the downstream sales by using the sales to AVSD and the sales by AVSD of the same merchandise, we have thus decided to continue to exclude from our analysis the sales made by the Avesta mills to AVSD (including sales for consumption) and use Avesta's reported downstream sales.

Comment 4: CEP Offset: Petitioners argue that the Department should disallow Avesta a CEP offset for the final determination. They contend that record evidence does not support the Department's decision in the preliminary determination that Avesta's home market sales are at a more advanced stage of distribution than its CEP sales. According to petitioners, the Department improperly made deductions from the CEP starting price prior to analyzing the LOT for CEP sales. They assert that the Department's decision to analyze the LOT based on adjusted CEP prices, rather than the CEP starting prices, is inconsistent with the Court of International Trade's (CIT) opinion in *Borden Inc. et al.* v. *United States*, Court No. 96–08–01970, Slip Op. 98–36 (March 26, 1998) (Borden), and with the Department's remand in that case. (See Final Remand Results for *Borden, Inc., et al.* v. *United States*, Consol. Court No. 96–08–01970 (August 28, 1998) (Remand Results). Petitioners claim that, should the Department rely on the CEP starting price and the associated selling functions, it would find: (1) that the CEP starting price and home market sales were made at a single LOT, (2) that the home market LOT was not more remote than the U.S. LOT, and (3) that a CEP offset is not warranted.

Petitioners maintain that the Department's home market and U.S. sales verification reports demonstrate that Avesta engages in the same type of selling activities in its dealings with ASI as it does with home market and EP sales. They state that record evidence indicates that technical services and warranties (which petitioners submit are the most significant activities in terms of defining LOT), are handled by Avesta and are included in the constructed export price between Avesta and ASI, demonstrating that Avesta does not provide warranty and after sale services related to its CEP sales. Also, according to petitioners, record evidence indicates that freight services are provided to ASI's CEP sales, demonstrating that the mill performs the same functions at the home market LOT as it does for the CEP LOT.

Avesta counters that the Borden decision is not final or conclusive because the Department is appealing that decision; therefore, the decision is not binding. (See Certain Pasta from Italy: Final Results and Partial Recission of Antidumping Duty Administrative Review, 64 FR 6615, 6618 (February 10, 1999) (Pasta from Italy).) Second, the Department's preliminary findings that the CEP LOT is the level of the constructed sale from the exporter to the importer is consistent with the statute and longstanding administrative practice. Third, record evidence now verified by the Department shows that Avesta had only one CEP LOT in the U.S. market. According to Avesta, this evidence demonstrates that the CEP LOT differed considerably from the LOT in the home market and was at a less advanced stage of distribution than the home market LOT. Avesta argues that petitioners' focus only on the provision of technical and warranty services ignores the other reported and verified selling functions. Avesta asserts that because the data available do not provide an adequate basis for making a LOT adjustment, but the home market LOT is at a more advanced stage of distribution than the CEP sales, a CEP offset remains appropriate for the final determination.

Department's Position: We agree with Avesta. The CIT has recently held that the Department's practice to base the LOT comparisons of CEP sales after CEP deductions is an impermissible interpretation of section 772(d) of the Tariff Act. See Borden, Slip Op. 98–36 at 58; see also *Micron Technology Inc.* v. *United States*, Court No. 96–06–01529, Slip Op. 99–02 (January 28, 1999). The Department believes, however, that its practice is in full compliance with the statue, and that the CIT decision does not contain a persuasive statutory analysis. Because Borden is not a final decision, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) prior to starting a LOT analysis, as articulated in the regulations at section 351.412. Accordingly, consistent with the Preliminary Determination in this case, we will continue to analyze the LOT based on adjusted CEP prices rather than the CEP starting prices. See Pasta from Italy.

In the Preliminary Determination, the Department made a CEP offset adjustment to NV. Because Avesta's home market sales were found to be at a more advanced stage of distribution than its CEP sales, we determined that these sales were at a different LOT. As the data available did not provide an appropriate basis for making a LOT adjustment, but the home market LOT was found to be at a more advanced stage than the LOT of the CEP sales, we determined that a CEP offset was appropriate in accordance with section 773 (a)(7)(B), as claimed by Avesta (see Preliminary Determination).

We disagree with petitioners' argument that, based on record evidence of Avesta's handling of technical services, warranties, and freight, Avesta engages in the same type of selling activities in its dealings with ASI as it does with home market and EP sales. While we agree with petitioners that Avesta performed these services for CEP sales and that these activities are important, based on our review at verification of all Avesta's selling functions in the United States and home market, we found that Avesta also performed other selling functions (*i.e.*, other than technical services and warranties) related to its home market and EP sales that we believe include important selling activities. For example, services such as sales and marketing support functions, negotiating prices, and maintaining inventory were also provided. (See U.S. Sales Verification Report and Home Market Sales Verification Report.)

Therefore, we believe that record evidence supports our findings in the Preliminary Determination that Avesta had only one CEP LOT in the U.S. market, and this CEP LOT differed from the LOT in the home market. Because the data available do not provide an appropriate basis for making a LOT adjustment, but the home market LOT is at a more advanced stage of distribution than the CEP sales, a CEP offset remains appropriate.

Comment 5: Sales of Proprietary Grade Used To Produce Specialty Steels

Both petitioners and Avesta comment in their case briefs and rebuttal briefs on the Department's inclusion of a proprietary grade of steel used in certain industrial blades and surgical and medical instruments. Petitioners argue that the Department should include sales of this grade in the final margin analysis. They note that Avesta stated in its November 2, 1998, questionnaire response that British Steel provided one of the U.K. mills reporting under this investigation mainly with this grade to produce two specialty steels. While petitioners agree with Avesta that one of these steel products has been excluded from the investigation, they disagree with Avesta's assertion that the second product is also not subject to this investigation. Petitioners state that they agreed to exclude from the scope of these investigations two proprietary grades of stainless steel sheet and strip in coils produced by Hitachi Metals, Ltd. and Hitachi Metals America, Ltd., GIN5 and GIN6. (See Letter from Paul C. Rosenthal to the Secretary of Commerce, September 29, 1998.) Petitioners contend that Avesta never requested an exclusion for its proprietary grade. They maintain that, in agreeing to the exclusion for Hitachi, they in no way agreed to exclude Avesta's proprietary grade.

Petitioners disagree with Avesta's assertion that record evidence demonstrates that this merchandise meets the specifications for the excluded product, as defined by petitioners and the Department. They state that this material is not identical to the specifications outlined by petitioners or the Department. For example, according to petitioners, there are differences in the minimum carbon contents for Avesta's product and the product excluded by the Department. Petitioners state that, although they have no information regarding the correct carbide density (an issue raised by Avesta, see below) of GIN5, Hitachi Metals, Ltd. and Hitachi Metals America, Ltd. identified its carbide density in several letters to the Department. (See Sonnenschein, Nath and Rosenthal Letters to the Department, dated July 29, 1998, September 8, 1998, September 11, 1998, and September 21, 1998.) Petitioners urge the Department to confirm the average density with Hitachi Metals, Ltd. and Hitachi Metals, Ltd. They state, however, that regardless of whether the correct carbide density is an average of 100 carbide particles per square micron or an average of 100 carbide particles per 100 square microns, the Department should continue to include the carbide density in its definition and not expand the range as suggested by Avesta.

Avesta argues that, to the extent the proprietary grade referred to by petitioners meets the definition of the specialty steels used in blades and surgical instruments that are excluded from the scope of the investigation, the Department should eliminate sales of this proprietary grade from its final antidumping analysis. Avesta contends that, in the preliminary determination, the Department identified three speciality steels typically used in certain industrial blades and surgical instruments which are excluded from the scope of the investigation. According to Avesta, the second of these products, an example of which is GIN5 steel, is defined both in terms of chemical content and in terms of average carbide density. However, due to the difficulties in measuring carbide density of a given shipment of scalpel steel, Avesta contends that the Department should amend its definition of this excluded product to eliminate the reference to carbide density. Alternatively, should the Department retain a carbide density measure, Avesta recommends that the Department amend the scope language to refer to a carbide density that is metallurgically feasible.

Avesta contends that, unlike chemical content, the carbide density of scalpel steel may be tested infrequently because it is time-consuming, posing a burden on foreign producers/exporters, and customers do not need to know the carbide density of particular shipment. Also, carbide density cannot be measured on an absolute scale because different magnifications of the steel will result in different measures of carbide density. Therefore, according to Avesta, the Department should amend the scope language to omit the reference to carbide density. Alternatively, should the Department retain the reference, it should at least change the specified density to one which producers may plausibly achieve. Avesta asserts that the Department's current description of the excluded GIN5-like product as having an average of 100 carbide particles per square micron is incorrect, and not feasible from a metallurgical standpoint. Avesta argues that, should the Department retain a carbide density measure, it should amend the scope to refer to particles per 100 square microns.

Also, Avesta contends that, because the carbide density of a particular product varies depending on the magnification level at which it is measured, the Department should refer to a magnification level of 9,000, which is commonly used in the industry. Avesta also urges the Department to replace the current language describing the excluded product which specifies an average carbon density, without indicating how wide or narrow is the acceptable range of carbide density. Avesta argues that the Department should replace the current language of the scope defining the excluded GIN5-like product as having a carbide density on average of 100 carbide particles per square micron with the following: ''This steel has a carbide density in the range of 50–100 carbide particles per 100 square microns when measured at a magnification level of × 9,000.''

Avesta claims that the reference in the Department's preliminary determination to GIN5 as ''an example'' of the excluded product confirms that the exclusion is not limited to Hitachi's proprietary grade, and that such a limitation would result in discriminatory treatment by the Department of similarly situated respondents producing products with the same characteristics but with different brand names. Avesta also argues that petitioners' contention that

the proprietary grade referenced does not meet the specified minimum carbon content is incorrect. It asserts that Avesta routinely produces the grade at higher carbon levels than the specified minimum level, and despite petitioners' assertions, Avesta submitted evidence of this minimum carbon content, as well as all specifications for the grade as a home market sales verification exhibit. Avesta states that the specification sheet contained in Home Market Sales Verification Exhibit 15B and sales trace documentation verified by the Department show that the grade meets all the chemical content requirements for the excluded product as defined by the Department.

Department's Position: We agree with petitioners that sales of the referenced Avesta proprietary grade should be included in our final analysis, and that carbide density should remain in the definition of the noted excluded product. First, we note that Avesta's request to include magnification levels in the excluded product description is irrelevant because petitioners have not recognized this requirement as a necessary aspect of its exclusion request. Therefore, magnification is not included as a requirement/characteristic of this excluded merchandise.

Second, while we agree with Avesta that GIN 5 is merely an example of the excluded product and that the exclusion is not limited to Hitachi's proprietary grade, the evidence on the record demonstrates that Avesta's proprietary grade material only meets the chemical requirements of the excluded product. At verification, Avesta noted that, in its opinion, Avesta's proprietary grade fits within the GIN 5 definition that had been excluded from the scope. The company provided a description of its proprietary grade in several supplemental responses and in a verification exhibit (see Home Market Sales Verification Report at 29). In addition, we reviewed documentation for a sale of this merchandise. None of this information on the record provides any information regarding carbide density. Therefore, we are including Avesta's proprietary grade product in our final analysis. Should Avesta adequately demonstrate in the future that its proprietary grade complies with all the requirements of the excluded product, then Avesta's proprietary grade products would not be covered in the scope of this case.

We agree with Avesta that the measure of carbide density referenced in the Preliminary Determination is incorrect. We have revised the scope for the carbide density of the second excluded product to read: ''This steel has a carbide density on average of 100 carbide particles per 100 square microns.''

Comment 6: Resales of Rejected Merchandise

Both petitioners and Avesta comment in their case briefs and rebuttal briefs upon the Department's exclusion of U.S. resales of rejected merchandise in the preliminary determination. Petitioners argue that the Department should include in its final determination all U.S. sales, including resales of stainless sheet and strip which had been cut to length prior to resale. They disagree with Avesta's claim that U.S. resales of rejected products were not representative of Avesta's sales during the POI and constituted a negligible quantity of its overall U.S. sales. Petitioners note that, while the Department included resales of stainless sheet and strip in coils in the United States in the preliminary determination, it excluded resales of stainless sheet and strip which had been cut to length prior to resale. Petitioners argue that, for the final margin analysis, the Department should include all resales, regardless of whether the merchandise was resold in coil form or cut-to-length form, because all merchandise resold in the United States originated from subject merchandise.

Petitioners disagree with Avesta's claim that its resales in the United States are not representative. They contend that the concept of sales outside the ordinary course of trade does not pertain to U.S. sales. They state that the resales originated from sheet and strip in coils from the United Kingdom—the merchandise under investigation. Petitioners argue that ASI's resales are subject to this investigation regardless of the volume of sales they represent, and furthermore, they are on the record and have been verified by the Department.

Petitioners argue that the Department's normal practice is to include all U.S. sales in its margin calculations. They state that, prior to the URAA changes to the Tariff Act of 1930, the Department considered exclusion requests of insignificant ''outlier'' sales that make up less than five percent of the U.S. sales database based on whether the respondent established need (*i.e.*, whether the burden of collecting this data outweighed the need for the data) for the exclusion. Petitioners note that the exclusion of such ''outlier'' sales acknowledged the following: that the Department considered a six-month POI, and it calculated transaction-specific margins for each U.S. sale. Petitioners state that the Department's post-URAA current practice is to investigates a 12-month POI to capture a full snapshot of a respondent's year-long selling practices in each relevant market, and that the Department calculates a weighted-average U.S. selling price for each product, rather than for each sale. Petitioners state that this ''significantly reduces'' the likelihood that a few sales will drive margin calculations. Petitioners argue that, given this background, the Department should reconsider its policy of excluding bona fide sales of subject merchandise in the United States, and reject Avesta's assertion that these sales are not representative of its U.S. sales.

Petitioners also pose a corollary argument that, if Avesta had resold merchandise in the home market during the POI, and as a result received substantially lower prices, the Department should likewise exclude such sales because they are not representative of the 12-month POI. Petitioners contend that the Department will not exclude those resales because they will be weight-averaged with other sales, and presumably Avesta will continue to resell merchandise after the POI, so the sales are not unrepresentative. According to petitioners, Avesta has no incentive to argue for the exclusion of low-priced home market resales, or low-priced home market sales made for any reason, because such sales tend to lower dumping margins. Petitioners contend that Avesta presumably continues to resell merchandise in the United States, and that nothing about this is unrepresentative about such sales, other than the fact that these are lower-priced U.S. sales.

Avesta argues that the Department properly excluded U.S. resales of rejected merchandise from the preliminary determination. It notes that, in the preliminary determination, the Department concluded that ''if the Department determines based on verification that Avesta's claims about the nature of the resales are correct, they will not be used in the final antidumping margin calculations.'' (See Memorandum from Linda Ludwig to Joseph A. Spetrini, Limited Reporting of U.S. Sales (October 26, 1998) (Limited Reporting Memorandum).) Avesta contends that, because the Department successfully verified the information provided by ASI concerning the U.S. resales, these resales should not be included in the final margin calculations. According to Avesta, the Department examined the unusual nature of the U.S. resales, including the process for handling resales of rejected

merchandise and documentation for three U.S. resales. In each of the resales reviewed, notes Avesta, the Department verified that the customer rejected the merchandise for a variety of reasons, including mechanical properties, scratches, material problems, acid marks, dirt, pits, etc. Also, Avesta states that for two of these resales, the Department verified that the rejected merchandise had been cut to length prior to resale. Accordingly, the Department properly excluded from the preliminary analysis those U.S. resales of rejected merchandise that were cut-to-length by ASI's customers before being returned, as these were not sales of merchandise under investigation. However, Avesta contends, because of the unusual circumstances surrounding ASI's resales, the Department should disregard all U.S. resales in the final determination.

Avesta also argues that the Department should exercise its discretion to exclude resales of rejected merchandise because these resales represent a very small percentage of ASI's U.S. sales during the POI. Avesta notes that, in the Limited Reporting Memorandum regarding limiting reporting of U.S. sales, the Department acknowledged that it may exclude certain U.S. sales in its less than fair value calculations where those sales have an insignificant effect on the margin, or where they are not representative of the respondent's selling practices in the United States. Avesta states that the Department also recognized that it normally considers exclusion requests pertaining to less than five percent of total U.S. sales, and that ASI's resales of rejected merchandise during the POI meet this criteria.

Avesta asserts that the resales are not representative of ASI's sales during the POI. Because ASI orders only prime quality stainless sheet and strip in coils from the United Kingdom, Avesta argues that all merchandise exported from the U.K. mills to ASI is believed to be prime when it comes off the production line. It is only when the U.S. customer receives and uncoils the merchandise, that occasionally, defects in the material may be discovered for the first time. Avesta states that, as recognized by the Department, the nature of these resales is different from typical sales of secondary merchandise, where the producer considers the merchandise to be defective and initially sells it as ''seconds.'' According to Avesta, these resales are not part of ASI's business plan, and that they differ from normal U.S. sales in that resales possess different physical characteristics from prime merchandise (*i.e.*, defects) and the rejected merchandise is resold to a different class of customers than ASI's normal, prime merchandise (*i.e.*, secondary dealers). Thus, because the small volume of ASI's imports of secondary merchandise is unintentional and the resales of this merchandise are unlike the U.S. sales of prime merchandise, these resales cannot be considered representative of ASI's normal U.S. sales activity. Additionally, Avesta argues that petitioners' position that the Department should include in its analysis resales of cut-to-length merchandise is unsupportable, given that petitioners excluded cut-to-length stainless steel sheet and strip from the scope of imported merchandise covered in their petition.

Department's Position: We agree with Avesta. On October 26, 1998, the Department issued a decision memorandum indicating that if it determines, based on verification, that Avesta's claims about the nature of its U.S. resales of rejected merchandise are correct, these sales will not be used in the final antidumping margin calculations. In this memorandum, the Department stated that it may, on occasion, exclude certain U.S. sales in LTFV comparisons, if the sales have an insignificant effect on the margin. See *Bowe Passat Reinigungs* v. *United States*, 926 F. Supp. 1138 (CIT 1996), citing *Ipsco Inc.* v. *United States*, 687 F. Supp. 633 (CIT 1988). (For a detailed analysis of this issue, see Limited Reporting Memorandum.) Based on our findings at verification, we believe that Avesta's claims regarding the volume and nature of these sales is supported by record evidence. At the U.S. verification, we found that these resales indeed represent a small share of total U.S. sales. As we noted in the U.S. Sales Verification Report at 10, these sales constitute a small part of ASI's business. Moreover, although the merchandise purchased from the U.K. mills is assumed to be prime, occasionally, defects can occur, which may not be discovered until the customer uses the merchandise.

During our review of three sample resales of this rejected merchandise, Avesta provided documentation demonstrating, in each case, that the resold merchandise had been returned by the original customer due to a number of reasons, including mechanical properties, scratches, material problems, acid marks, dirt, pits, etc. See U.S. Sales Verification Report. The resold merchandise was subsequently purchased by secondary dealers in the United States. For two of these resales, the rejected merchandise was cut to length prior to resale. Based on our findings at verification, Avesta's previous claims concerning the nature of its U.S. resales of rejected merchandise appear to be accurate.

Excluding these sales will have an insignificant effect on the margin. The sales process for these sales is highly complex, involving an initial sale, the customer's rejection of the merchandise, the subsequent resale, as well as the linking of the resale to the initial sale. These sales also involve difficult model match and programming issues. Rather than fully undertake this time-consuming and burdensome analysis, for a small number of sales which will have an insignificant effect on the margin, we are excluding all of these resales from our analysis in the final determination.

Comment 7: Sales Submitted by SPS and Billing

Petitioners argue that the Department should apply partial facts available to sales made by SPS and Billing. They indicate that Avesta presented at verification, as minor corrections, certain quantities of stainless sheet and strip in coils sold by Billing and by SPS, which should have been included in the home market database, but were omitted until verification.

Petitioners contend that it has been the Department's consistent practice, in cases where sales data are offered for the first time at verification, to accept for the record only enough documentation to establish the actual magnitude of the omission. (See, e.g., Certain Helical Spring Lock Washers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 58 FR 48833, 48835 (September 20, 1993) (Lockwashers).) Petitioners note that, in the case of Lockwashers, the Department returned the sales trace documentation pertaining to the unreported sales that the respondent submitted during verification. Petitioners reference the Department's verification outline in arguing that verification is not the appropriate time to submit new information; rather, the sole purpose of verification is to check the accuracy of questionnaire responses. They also question what facts made Avesta ''recognize'' the under-reported data during verification preparation, and argue that the company deliberately withheld it until verification. Petitioners state that, as facts available, the Department should apply the highest home market price and lowest U.S. price to the percentage of sales unreported prior to verification.

Avesta argues that the Department should include the reported data for sales by SPS and Billing in the final margin analysis, and that petitioners' suggestion that the Department apply facts available to these sales is unreasonable. Avesta notes that the sales in question are home market sales only and not U.S. sales, which are fully reported. Avesta contends that all six of the Department's conditions used to define clerical errors are met in this case. Avesta notes that these criteria are: (1) The error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgment, or a substantive error; (2) the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict any information previously determined to be accurate at verification. (See Cold-Rolled Steel from the Netherlands, 64 FR at 11829.) Avesta argues that the omissions resulted from clerical errors, as explained in U.K. Sales Verification Exhibit 1. According to Avesta, the omission of SPS sales resulted from dimensional differences between the suggested definition of excluded flat wire product (the industry standard) and the flat wire definition adopted by the Department in the Preliminary Determination. Avesta notes that, at the time it submitted its home market sales file, it reasonably assumed that merchandise meeting the standards for flat wire, as defined by the industry and as endorsed by the petitioners, was excluded from the scope of the investigation. As a result, the computer program used to compile SPS'' sales file was programmed to identify sales of merchandise with a width greater than 12.7 mm (rather than 9.5 mm).

With respect to the omission of Billing sales, Avesta argues that the source of the merchandise sold was not recorded in the company's computer system, and therefore, these sales were not identified as sales of U.K. merchandise. Moreover, Avesta contends that, in the Department's review at verification of documentation concerning the omitted sales, and as part of its completeness tests, the Department was satisfied that the corrective documentation is reliable. Avesta states that petitioners' contention that the omitted sales were deliberately withheld until verification is false. According to Avesta, as soon as it discovered the omissions, it compiled as much data on the sales as possible, given the time constraints, and reported the missing transactions to the Department at the beginning of the U.K. verification. Avesta also contends that its identification of the clerical errors and submission of corrective documentation was timely as all of this information was submitted to the Department at the beginning of verification, two months prior to the due date for case briefs. Avesta argues that inclusion of the previously omitted sales does not entail a substantial revision of the response, and they represent small percentages of total home market sales during the POI. Furthermore, assuming the Department accepts the minor correction for field EDGEH for Billing's sales as presented at verification, all sales made by Billing during the POI will likely drop out of the Department's analysis for matching purposes. Lastly, Avesta asserts that the corrective documentation concerning the SPS and Billing sales does not contradict information previously determined to be accurate since it was reviewed and verified by the Department.

Department's Position: We agree with Avesta. To ensure accurate determinations, the Department's practice allows respondents to submit information at the beginning of verification to correct errors found during the course of preparing for verification. See Preamble to the Proposed Rules, 61 FR 7308, 7323 (February 27, 1996). In this case, at the outset of the verification, Avesta promptly informed the Department verifiers that it mistakenly omitted a small quantity of sales made by SPS and Billing. The company explained that it did not report these sales because of its initial confusion about the scope language with respect to SPS' sales, and because of Billing's delay to provide its sales information for a small number of sales to be included in the home market database. Given that these corrections were insignificant when compared to Avesta's total home market sales (see Final Analysis Memorandum) and that we found Avesta's explanation for these omissions reasonable, we have accepted and verified these sales in accordance with our practice of allowing respondents to correct minor errors while preparing for verification. Accordingly, we have included SPS' and Billing's sales in our final determination.

Comment 8: U.S. Warehousing

Petitioners argue that the Department should apply facts available to ASI's reported warehousing expense in the final determination. They state that the Department found at verification a discrepancy in the way that ASI recorded storage charges, as well as related charges for movement in and out of storage in its normal course of business. Petitioners contend that, in some instances, all three charges were recorded in the warehouse account, and in other instances, only storage costs were recorded in warehousing expenses. They note that, for one sale, the Department found that ASI reported only trucking charges as freight expenses, and handling in/out charges were not reported. Petitioners argue that, as facts available, the Department should apply the highest reported warehousing expense in the U.S. database to all U.S. sales.

Avesta argues that petitioners' proposed application of facts available to Avesta's warehousing expenses should be rejected and that the inadvertent omission of handling in/out charges from some U.S. sales is simply a clerical error. Avesta contends that, because these omitted charges are so small on a per pound basis, the effect of any adjustment is immaterial. Avesta indicates that the Department found discrepancies in the reported warehousing expense for only five of the 20 sales traces reviewed at verification. It contends that the Department should reject petitioners' suggestion to apply the highest reported warehousing expense to all U.S. sales. Instead, should the Department decide not to accept ASI's warehousing expenses as reported, it should only apply the highest reported value to those sales transactions for which warehousing expenses were actually incurred.

Department's Position: We disagree with petitioners that we should apply facts available to warehousing expenses and determine to accept warehousing expenses as reported. Avesta chose to employ a methodology corresponding to what it believed was its normal recording of these expenses. Six of the 20 sales examined at the U.S. verification involved marine freight invoices featuring handling in and out of storage, freight, and warehousing, while other sales either did not involve marine freight invoices or involved marine freight invoices for freight alone. For sales with marine freight invoices for handling, freight, and storage, Avesta

decided to report freight as inland freight, and it presumed that handling and storage expenses would be encompassed in the warehousing account. Based on the stated methodology, of these six sales examined, two involved incorrect recording of handling, and one involved incorrect recording of warehousing, in the company's normal course of business. While freight was correctly reported to the Department for each sale, the company ''incorrectly'' recorded, in its normal course of business, freight for four of the sales. In fact, for two of the sales, freight was recorded in the warehousing account: one in the POI and one before the POI. This results in freight being considered in effect twice for one of the sales—once as freight and another time as part of average warehousing reported. Therefore, while some sales may have been under-reported, other sales were, in essence, over-reported.

Avesta reported an average per unit warehousing amount for sales warehoused during the POI. We found at verification that this calculation involved all storage expenses during the POI, including non-merchandise related records storage. While three of the six sales examined had handling and storage recorded in the warehousing account before the POI, it is reasonable to presume that in their place the warehousing account included handling and storage expenses for sales that occurred after the POI. Because, on average, the effect of any mis-recordings should be minimal, we determine to accept Avesta's warehousing expenses as reported.

Comment 9: Inland Freight Expenses

According to petitioners, the Department should apply facts available to Billing's reported inland freight expenses, plant/warehouse to customer. They note that company officials explained to the Department at verification that it would take a large manual effort to tie all invoices to the actual freight invoices, which was the reason why Avesta chose one month at random and calculated an average freight amount by customer using all invoices in that month. Petitioners contend that this methodology is not reasonable because one month is not a representative period of time. In addition, petitioners assert that this methodology fails to reflect freight charges incurred by Billing during the POI. According to petitioners, mere burden is not an excuse for failing to respond fully and accurately to the Department's questionnaire. As partial facts available, petitioners urge the Department to apply the lowest reported freight charge to Billing's home market sales.

Avesta argues that the methodology used by Billing to report inland freight from plant/warehouse to the customer is reasonable and representative of freight charges incurred by the company during the POI, and that it should be accepted by the Department. Avesta notes that the Department recently confirmed that although it prefers actual freight costs, a reasonable allocation methodology that most closely reflects actual costs is acceptable. See Final Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods From Mexico, 64 FR 13962, 13969 (March 23, 1999) (OCTG from Mexico). Avesta contends that Billing was unable to report its actual freight charges because it does not have a freight system that is able to allocate these expenses directly to customer orders. (Avesta cites its September 29, 1998, and November 23, 1998, Section B Questionnaire Responses and the Home Market Verification Report.) Because of the limitations of this system, Billing's methodology used to calculate an average freight amount by customer, based on shipments during a representative month, was reasonable. Avesta also argues that the Department verified evidence presented by Billing that demonstrated that the overall freight charge for all customers during the POI was in line with the average of freight charges for the year.

Department's Position: We agree with Avesta. While the Department prefers to have actual freight costs, a reasonable allocation that most closely reflects actual costs is acceptable. See OCTG from Mexico, 64 FR at 13969. The Department verified that Billing was unable to report its actual freight charges absent a manual search because its accounting system does not directly link transport charges to customer orders. See Home Market Sales Verification Report. While Billing did choose a month ''at random,'' we found that its methodology nonetheless avoided unrepresentative months. Billing also analyzed the amounts calculated for that month for unusually high values to ensure reasonableness. The Department verified information regarding freight rates, payments for freight, and that the overall freight charge for all customers during the POI was in line with the average freight charges for the total year. Based on our findings at verification, we therefore conclude that Avesta's methodology is reasonable, and have accepted it for the final determination.

Comment 10: Ocean Freight, Inland Freight, and Brokerage Charges

Petitioners argue that the Department should apply facts available to Avesta's reported ocean freight, inland freight, and brokerage charges. They contend that Avesta improperly calculated these expenses using gross tons, rather than net tons, which was the unit of measure of the reported sales quantity. Petitioners state that, at verification, Avesta provided sample calculations of the expenses in a verification exhibit. Petitioners recommend that the Department apply the highest reported expenses for ocean freight, inland freight, and brokerage and handling charges.

Avesta argues that the Department should reject petitioners' proposed application of facts available to ocean freight, inland freight, and brokerage charges. Avesta disagrees with petitioners that it reported these charges on gross tons, rather than net tons, for all Avesta entities. Avesta claims that, contrary to petitioners' claims, only the Sheffield Business Unit calculated its charges using this methodology. Avesta contends that petitioners fail to provide support for their assertion that Sheffield's charges for inland freight, ocean freight, and brokerage and handling should have been divided by net tons. Avesta asserts that the Department's questionnaire does not specify a preference for calculations based on either gross or net tons, and that Sheffield's calculations based on gross tons was reasonable, given that the shipping company applies its per-unit charge to gross weight when determining ocean freight charges to Sheffield. Avesta argues that, should the Department determine Sheffield's methodology is improper, a reasonable alternative to petitioners' suggestion is to apply a multiplier to the values reported for these variables for all Sheffield sales to the United States, in order to approximate a per-unit expense calculated on a net weight basis. Avesta notes that the difference in calculating these expenses using gross weight versus net-weight has a minimal impact.

Department's Position: We agree, in part, with both petitioners and Avesta. Petitioners are correct in noting that, for certain sales reviewed at verification, we found that Avesta calculated the values reported for ocean freight, inland freight, and brokerage and handling expenses in gross tons, rather than net tons. Also, we acknowledge that Avesta provided an exhibit demonstrating this methodology at verification. Our review of this exhibit, however, resulted in a finding that this methodology applies

only to sales by the Sheffield Business Unit. We did not find evidence of this methodology used by the other U.K. entities in calculating ocean freight, inland freight, and brokerage and handling charges. While we agree with Avesta that the Department's questionnaire does not specifically state a preference for the calculations to be based on gross or net weight, sales and expenses should be reported on a similar basis to ensure fair comparisons in the Department's LTFV analysis. For the final determination, we have applied a multiplier to the expenses in question for all Sheffield Business Unit sales to the United States, in order to arrive at an approximation of the expenses on a net weight basis. See Final Analysis Memorandum.

Comment 11: Verification Changes

Petitioners state that many changes (affecting movement expenses, payment date, physical characteristics) were presented to the Department's verifiers at the U.S. verification, home market verification, and the cost verification, and that all of these changes (with the exception of those resulting from new factual information) should be implemented for the final margin analysis. Avesta did not comment on this issue.

Department's Position: We agree with petitioners that numerous changes were presented to the Department at the sales and cost verifications. For the final determination, we have made changes, where appropriate, to Avesta's submitted cost and sales data as discussed in our Final Analysis Memorandum.

Comment 12: Freight Revenue

Petitioners argue that the Department should deduct freight revenue from the calculation of movement expenses in the home market. They contend that the Department's preliminary margin program incorrectly failed to deduct freight charged to the customer in the home market (FREICUSH) from total movement expenses. According to petitioners, Avesta stated in its supplemental questionnaire response that FREICUSH is not included in the gross price for those AVSD (one of the U.K. sales entities) sales for which FREICUSH is shown as a separate charge; otherwise, FREICUSH is either embedded in the gross unit price or not charged.

Petitioners also contend that the Department incorrectly deducted freight charged to customers in the U.S. market (FREICUSU) from gross price in calculating revenue in the United States (REVENU), which in turn is used to calculate CEP profit. Petitioners note that, as in accordance with Avesta's questionnaire response, FREICUSU is included in the gross price. Petitioners argue that FREICUSU is revenue and should not be deducted from gross unit price in the calculation of revenue in the Department's final margin analysis.

Avesta agrees that the Department should subtract freight charged to the customer from the calculation of movement expenses in the home market but only for sales by AVSD. Avesta notes that AVSD is the only one of the five U.K. entities that reported values in the field FREICUSH without also including the FREICUSH value in gross unit price. Specifically, for Avesta observes that, those sales for which AVSD reported a positive value in field FREICUSH, the freight charged to customer is not included in gross unit price. For those sales for which AVSD reported a zero, Avesta notes that, the freight charged to customer is included in gross unit price.

Department's Position: We agree with respondent that we should subtract FREICUSH from the calculation of movement expenses only for sales by AVSD. Comparison of sales documentation obtained at the home market verification and the home market database reveals that, in reporting AVSD's sales to the Department, freight charged to the customer was not added to price of the merchandise, and the gross unit price in the home market database contains only the price of the merchandise. For other U.K. selling entities examined, we found that the gross unit price in the home market database was reported as the sum of the price charged to the customer for the merchandise, plus the price charged to the customer for freight. In order to remove all movement-related charges from the foreign prices, we subtracted movement expenses reported from gross unit price. Reported movement expenses reflect the total cost charged to Avesta for movement of the merchandise. The net movement cost incurred by Avesta would be reported movement expenses less freight revenue received from the customer. When freight charged to the customer is included in reported gross unit price, subtracting only reported movement expenses from gross unit price results in the deduction of net movement costs incurred by the respondent, leaving the price of the merchandise alone. When freight charged to the customer is not included in reported gross unit price, however, and reported movement expenses are subtracted from gross unit price, failure to also subtract freight charged to the customer from movement expenses (the same effect as adding it to gross unit price) results in the deduction from gross unit price of more than the net movement costs incurred by the respondent. Therefore, as a result of our verification findings and our clearer understanding of FREICUSH and reported gross unit price for each of the U.K. reporting entities, we have changed the methodology from our Preliminary Determination to subtract FREICUSH from movement expenses for sales made by AVSD.

We agree with petitioners that FREICUSU should not be deducted from gross unit price in calculating REVENU. We found at verification that reported gross unit price in the United States includes freight charged to customer. Therefore, as discussed above, deducting FREICUSU from REVENU results in more than the net movement costs incurred by the respondent being deducted from gross unit price in the calculation of CEP profit. Therefore, we have changed the methodology from our Preliminary Determination to remove FREICUSU from the calculation of REVENU.

As noted above, reported gross unit price in the United States includes freight charged to the customer. Therefore, when freight charged to the customer is included in reported gross unit price, subtracting only reported movement expenses from gross unit price results in the deduction of net movement costs incurred by the respondent, leaving the price of the merchandise alone. In the Preliminary Determination, we deducted both reported movement expenses and reported FREICUSU from gross unit price in calculating net U.S. price. In this final determination, we are removing FREICUSU from the calculation of net U.S. price. This methodology ensures that the treatment of freight charged to customers on U.S. sales and home market sales is consistent.

Comment 13: Hot-Rolled, Annealed and Pickled Merchandise

Avesta argues that, in the Preliminary Determination, the Department correctly determined that Avesta's sales of hot-rolled annealed and pickled SSSS should be excluded from its analysis, as this merchandise is produced in Sweden and not in the United Kingdom. Avesta explains that it hot-rolls this merchandise in Sweden and not in the United Kingdom.

Avesta maintains that annealing and pickling do not substantially transform the product, in that neither process changes the chemical composition of

the merchandise. Avesta states that it cited in its questionnaire response several rulings by the U.S. Customs Service, which hold that the annealing and pickling in the United Kingdom is not a substantial transformation which confers country of origin. Avesta declares that the Customs decisions address issues of concern to the Department in rendering scope decisions, and as such, they must be given substantial weight in the Department's analysis. Avesta also holds that Stainless Steel Plate from Sweden is a comparable case also involving Avesta Sheffield. Avesta argues that, in that case, the Department rejected arguments that annealing and pickling in addition to hot-rolling is necessary to bring hot band within the definition of stainless steel plate. Avesta cites to Memorandum from Richard Weible to Joseph Spetrini re: Affirmative Scope Ruling—Stainless Steel Plate from Sweden (A–401–040), December 22, 1997 (Stainless Steel Plate from Sweden Scope Memorandum).

Petitioners did not comment on this issue.

Department's Position: We agree with Avesta that its hot-rolled sales during the POI should be excluded from our analysis as this merchandise is produced in Sweden and not in the United Kingdom. In the Stainless Steel Plate from Sweden Scope Memorandum (the public version of which is attached to the Preliminary Determination Analysis Memorandum for this case, dated December 17, 1998), we determined that hot bands rolled in Sweden from British slab are within the scope of that antidumping finding. In that case we explained that, in determining whether substantial transformation has occurred, the Department looks to whether a ''new and different article'' results from the production process. In addition to whether the production process results in a ''new and different article,'' the Department has considered value-added and process-cost in other cases involving substantial transformation. See Stainless Steel Plate from Sweden Scope Memorandum.

The instant case also involves British slabs that are hot-rolled in Sweden on the same equipment as that analyzed in the Stainless Steel Plate from Sweden Scope Memorandum. As we found in the Stainless Steel Plate from Sweden Scope Memorandum, based upon physical changes that the conversion of slab into hot band produces on the product, we conclude that the rolling of slabs into hot bands results in the production of a ''new and different article'' and constitutes a substantial transformation within the meaning of the antidumping law. See Certain Carbon Steel Butt-Weld Pipe Fittings from India: Notice of Final Determination of Sales at Less Than Fair Value, 60 FR 10545, 10546 (February 27, 1995). The processing of slabs into hot bands dramatically changes the physical characteristics of the product, drastically reducing the thickness, extending its length, changing the microstructure and significantly increasing its strength characteristics. Therefore, we find that U.K. slabs hot rolled in Sweden do not fall within the scope of this investigation. Accordingly, we are continuing to exclude hot-rolled sales in our final analysis.

Comment 14: Class or Kind

Avesta argues that, in the Preliminary Determination, the Department erred in determining that hot-rolled, annealed and pickled sheet and strip (HRAP SSSS) and cold-rolled sheet and strip (CR SSSS) are the same subject merchandise or class or kind. Avesta contends that the Department has both the authority and the obligation to modify the petition's description of class or kind when it finds that the petition has described more than one class or kind. Avesta asserts that the Department is not bound by the like product determination of the International Trade Commission (ITC), and that the Department and the ITC have separate statutory authority to make class or kind and like product determinations and may make distinct determinations.

Avesta comments that the Department considers class or kind of merchandise to establish the scope of a proceeding. Questions of class or kind most commonly arise, according to Avesta, when the Department is to determine whether particular foreign merchandise falls within the scope of an antidumping investigation.

Avesta asserts that, in determining whether products constitute one or more classes or kinds of merchandise, the Department normally considers several factors, with no single factor being dispositive. According to Avesta, these factors are: (1) Physical characteristics of the merchandise; (2) end uses; (3) interchangeability of products; (4) channels of distribution in which the merchandise moves; (5) the production process; and (6) price. (Avesta refers to High Information Content Flat Panel Displays and Display Glass Therefor From Japan, 56 FR 32376, 32381 (July 16, 1991), in which the Department applied basically the same criteria for class or kind product analysis, and to Diversified Products Corporation v. United States, 572 F. Supp. 883, 889 (CIT 1983) (Diversified Products), in which the following criteria were used: physical characteristics, end use, expectations of customers, channels of trade, and cost.) Avesta contends that analysis of these factors demonstrates that there is more than one category of merchandise under investigation. Avesta analyzed each of the factors as described below.

Regarding physical characteristics, Avesta argues that irrespective of thickness, CR SSSS are distinguished from HRAP SSSS by increased uniformity of surface and smoothness and by closer dimensional tolerances. Avesta asserts that the relative smoothness of the surface layer of the material cross-section differs between HRAP and CR by a factor of 10. Avesta further claims that the enhanced surface characteristics typically available in a cold-rolled product allow for dramatic differences in material performance pertaining to issues such as bacteria retention and ability to perform downstream metal finishing operations to achieve sanitary or aesthetic properties associated with cold-rolled stainless steels. In addition, Avesta states that CR SSSS have a tighter thickness tolerance than HRAP SSSS. Avesta holds that the differences in physical characteristics between HRAP and CR SSSS are reflected in their classification under different headings in the HTSUS and in the codes assigned by the AISI.

Regarding end uses, Avesta contends that the end uses of HRAP and CR SSSS differ substantially. Avesta notes that HRAP SSSS are used in applications that do not require the surface finish of CR SSSS or are used as feed stock for CR SSSS. Avesta maintains that HRAP SSSS are consumed by manufacturers of welded pipe, and by manufacturers of specialized equipment requiring corrosion-resistant steel (such as pulp/paper, chemical/petrochemical, etc. equipment). Avesta notes that purchases of hot-rolled material require the corrosion/heat resistance or strength characteristics of stainless steel, and do not require the surface characteristics, finish and dimensional tolerance of CR SSSS, while for purchasers of CR SSSS, surface characteristics, finish, and/or dimensional tolerance are important.

Regarding interchangeability, Avesta argues that HRAP and CR SSSS are not interchangeable. Avesta claims that CR SSSS are generally sold for applications requiring specific surface conditions or dimensional tolerances, and therefore, HRAP SSSS are generally not substitutable for CR SSSS.

Regarding channels of distribution, Avesta notes that these channels overlap for HRAP and CR SSSS overlap. Avesta further notes that, while end users have distinct requirements for these products, distributors often handle sales of both products and the same purchaser may purchase both HRAP and CR products. Nevertheless, Avesta asserts, producers and purchasers perceive the two products as distinct. Avesta maintains that it is common for steel products regarded as separate products to be handled by the same distributors, and to be purchased by the same end users for different applications. Avesta contends that the Department should not focus disproportionately on the channel of distribution portion of the analysis because sharing of a significant portion of the channels of distribution is not dispositive if the balance of the evidence supports a Department finding of two separate classes or kinds of merchandise (Avesta cites to Certain Brake Drums and Certain Brake Rotors From the People's Republic of China, 61 FR 14740 (April 3, 1996)).

Regarding production process, Avesta argues that the process involved in converting HRAP to CR SSSS is significant. Avesta notes that the U.S. Customs Service has found that such a conversion constitutes a substantial transformation of the merchandise. Also Avesta cites Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement; Rules of Origin Applicable to Imported Merchandise, 60 FR 35878, 35880 (July 12, 1995). Avesta declares that CR SSSS must undergo substantial additional processing using production equipment that is not used to produce HRAP SSSS. Avesta asserts that the process of producing CR SSSS involves significant reductions to the hot-rolled material at an ambient temperature on a reversing or tandem rolling mill and often subsequent annealing and descaling of the material, and temper rolling for coil shape and surface enhancement if deemed necessary. Avesta maintains that cold-rolling is performed in a separate mill than hot-rolling and requires separate equipment, which is reflected in Avesta's production process in which slab is hot-rolled at the Steckel mill in Sweden, followed by cold-rolling in separate facilities using separate equipment.

Regarding price, Avesta notes that the price difference between HRAP and CR SSSS is significant. Avesta argues that CR SSSS command a significant premium over HRAP SSSS, and it has attached to its brief a price comparison, by grade, of its home market sales during the POI. Avesta contends that the additional cost of transforming hot-rolled into cold-rolled material is substantial and results in the difference in their respective selling prices.

Petitioners argue that the Department correctly recognized that HRAP and CR SSSS comprise a single class or kind of merchandise. Petitioners assert that, by focusing on minor physical differences, Avesta's analysis of this issue ignores the major physical attributes and similarities of HRAP and CR SSSS. Petitioners hold that Avesta's analysis ignores all of the relevant determinations on this issue, which have uniformly found that stainless steel sheet and strip, as well as stainless steel plate, each comprise a single class or kind of merchandise, regardless of whether they are hot or cold-rolled. Petitioners specifically refer to the Department and ITC decisions, which confirm that HRAP stainless steel plate and CR stainless steel plate as comprising a single class or kind of merchandise (*i.e.*, Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea, 64 FR 15444 (March 31, 1999) and Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan, Inv. Nos. 701–TA–376–379 and 731–TA–788–793 (Prelim.) USITC Pub. No. 3107 (May 1998)). Petitioners go on to assert that, contrary to Avesta's argument, the Department and the ITC have preliminarily determined that HRAP and CR SSSS constitute a single class or kind, and single like product. Petitioners also argue that these cases affirm the Department's findings in the 1980's that HRAP SSSS and CR SSSS comprise a single class or kind of merchandise. Petitioners cite to Final Determinations of Sales at Less Than Fair Value: Certain Stainless Steel Sheet and Strip Products from Federal Republic of Germany; 48 FR 20459, 20460–61 (May 6, 1983)).

Petitioners maintain that a review of Avesta's argument demonstrates Avesta relies on two minor physical differences, surface smoothness and dimensional tolerances, for three of six criteria examined. Petitioners further assert that Avesta's analysis focuses on niche products and minor exceptions. Petitioners analyzed each of the factors also analyzed by Avesta, as summarized below.

Regarding physical characteristics, petitioners note that, while Avesta asserts that surface smoothness and closer dimensional tolerances distinguish CR SSSS from HRAP SSSS, the ITC, in its preliminary determination, found that such physical differences were minimal. Petitioners further argue that Avesta ignores the most salient physical features of SSSS—chemical composition, thickness, and annealed and pickled condition. Petitioners note that the most important physical characteristic identified by the Department in this case is grade. Petitioners assert that every grade of SSSS can be either HRAP or CR, and that there is a substantial overlap in their gauges. Petitioners further note that gauge is a critical physical characteristic and that it separates stainless steel plate in coils from SSSS. Petitioners comment that physical characteristics selected by the Department in its matching hierarchy also overlap between HRAP and CR, such as coating, width, edge, and annealed and pickled condition. The petitioners also note that the ITC confirmed the importance of the overlap in physical characteristics, gauge, and width. While Avesta argues that HTS headings and AISI product codes segregate HRAP and CR products, petitioners maintain that the Department's scope specifically notes HTS headings are not dispositive and that using Avesta's logic would lead to 60 classes or kinds as there are 60 HTS subheadings included in the scope.

Regarding end uses, petitioners argue that, while it is true that the vast majority of HRAP steel is used to produce CR SSSS, this supports a finding of a single class or kind. Petitioners assert that Avesta's only argument for differing end-uses is that manufacturers of welded pipe and specialized equipment relied on HRAP SSSS; however, petitioners note, the ITC found that such end-uses accounted for less than four percent of all SSSS sales. Petitioners assert that the ITC concluded that there is a limited market for HRAP SSSS and the vast majority of HRAP SSSS is produced and captively consumed for CR SSSS production, which supports a single like product (or class or kind) determination. Petitioners contend that Avesta failed to note that the limited number of end uses for HRAP also use CR in the same applications. According to petitioners Avesta's argument is misleading because it does not focus on end uses. Petitioners note that Avesta focuses on intermediate uses for HRAP but on end uses for HR. Finally, petitioners note that the end uses for the vast majority of SSSS are identical because the vast majority of SSSS is CR.

Regarding interchangeability, petitioners assert that while Avesta relies on surface conditions and dimensional tolerance, which are physical characteristics, that argument

ignores the 94 percent of the market where HRAP is dedicated to producing CR SSSS. Petitioners argue that Avesta highlights the limited applications where HRAP is less substitutable for CR, while ignoring that CR is always substitutable for HRAP.

Regarding channels of distributions, petitioners note that Avesta acknowledges that distributors often handle sales of both products and that the same purchaser will purchase both HRAP and CR products. While petitioners agree with Avesta that weakness in one criteria is not dispositive, petitioners note that Avesta's weakness in several criteria here is dispositive.

Regarding production process, petitioners argue that while Avesta cited U.S. Customs Service rulings and NAFTA Rules of Origin, these rulings are not applicable nor controlling in the Department's class or kind inquiries. Petitioners contend that the Department considers the six factors noted with an eye to enforcement of the antidumping and countervailing duty law. Petitioners further assert that Avesta fails to acknowledge the Department's previous class or kind rulings for stainless steel flat products have uniformly concluded HRAP and CR SSSS are a single class or kind. Petitioners argue that it is important to realize that a significant portion of the production process for HRAP and CR are identical, such as melting, refining, casting, hot-rolling, annealing, and pickling. Petitioners maintain that CR SSSS is simply a further processed HRAP product and even then both are followed by similar processes, such as annealing, pickling, recoiling, etc. Petitioners also note that while Avesta states CR is performed in separate mills, this is a consequence of Avesta's operation and not a requirement as some producers make HRAP and CR in the same facility and as companies that produce HRAP also produce CR SSSS.

Regarding price, petitioners argue that while Avesta submitted a comparison of HR and CR prices, this comparison can be misleading and should not be relied on. Petitioners contend that Avesta's pricing analysis is by grade only, ignoring other critical physical characteristics, especially gauge. Also, petitioners note that, Avesta compared prices net of discounts, rebates, billing, and freight. Petitioners contend that, since Avesta claimed and the Department agreed in the Preliminary Determination that some of the HR merchandise is of Swedish origin, inclusion of non-subject merchandise in pricing comparisons is improper, and much of the pricing differences in Avesta's analysis may be caused by freight costs related to shipping merchandise between the United Kingdom and Sweden. Petitioners note that the ITC examined the issue of cost in its like product determinations, and concluded that, on average, cold-rolling represents 38 percent of the cost of finished, cold-rolled SSSS. Petitioners go on to state that the ITC acknowledged that the cost of cold-rolling can vary, depending on the finished product, and noted that a wide range of products with differing specifications are produced. Petitioners further assert that the ITC acknowledged that prices within CR types can vary significantly, yet Avesta has not argued for different classes for different CR products. Finally, petitioners note that while CR clearly adds value which is sometimes significant, the majority of value is added to products through the HRAP stage.

Department's Position: We agree with petitioners. In making class or kind determinations, we analyze the following criteria enunciated in the Diversified Products and Kyowa Gas cases: (1) The general physical characteristics; (2) the end use; (3) the expectations of ultimate customers; (4) the channels of trade; and (5) the manner in which the product is advertised or displayed. Of the criteria mentioned by Avesta, production process, interchangeability of products, and price are not part of this analysis. Indeed, while price is a criterion considered by the ITC in making a like product determination, it is not a factor evaluated by the Department in making its class or kind decisions.

When examining the general physical characteristics of products, the Department does not rely on mere physical differences. There must be a clear dividing line between different product types in order for the Department to find different classes or kinds. See Sulfur Dyes, Including Sulfur Vat Dyes from the United Kingdom: Final Determination of Sales at Less Than Fair Value, 58 FR 7537 (February 8, 1993). Avesta is correct that the cold-rolling will provide SSSS with a product that has closer dimensional tolerances and increased uniformity of surface. In addition, these products have different HTSUS and AISI codes. However, the respondent's focus on the relevance of dimensional tolerances and surface uniformity is misplaced. The most important characteristics of SSSS revolve around the grade of the product, the dimensional characteristics that it possesses, and its resistance to corrosion. These characteristics will dictate the relevant applications of the material. Regarding HRAP and CR SSSS, both products: (1) Are produced in the same stainless steel grades (*i.e.,* specific chemistries such AISI 304 or 316); (2) meet the dimensional characteristics outlined in the scope of this investigation, in many instances overlapping in thicknesses and widths; and (3) provide the same resistance to corrosion if produced to the same grade. The recognition of surface uniformity, close dimensional tolerance, and different classification headings in the HTSUS and AISI alone do not substantiate differences in physical characteristics that merit a separate class or kind. If the Department were to adopt Avesta's logic, there would be multiple classes or kinds of CR SSSS as different products have different levels of surface uniformity, dimensional tolerance, and result in different classification headings in the HTSUS. In addition, numerous other stainless steel orders include cold-finished and hot-finished products within the same class or kind (*e.g.,* stainless steel bar) despite the cold-finished product possessing many of the characteristics Avesta noted for CR SSSS. We did not recognize these products as a separate class or kind precisely for the reasons noted.

Regarding end use, Avesta focuses on the differences between HRAP and CR SSSS on specific applications such as HRAP SSSS being used for welded pipe applications. It also states that CR SSSS uses will be dictated by a demand for improved surface characteristics, finish, and/or dimensional tolerances. Again, Avesta fails to recognize that the relevant uses of SSSS are driven by the need for steel possessing specific dimensional characteristics and providing specific levels of resistance to corrosion. Since both HRAP and CR SSSS are produced in the same grades and overlap in dimensional characteristics, there is overlap in specific uses. Again, if the Department were to determine class or kind distinctions based on products possessing different surface characteristics, finish, or dimensional tolerances, it would be in the untenable position of recognizing hundreds of different grades of CR SSSS as different classes or kinds of merchandise because of the myriad of products produced, each intended for a unique, specific use.

Regarding expectations of customers, both HRAP and CR SSSS will satisfy the same basic requirements/needs of customers. Both products are primarily being sought because they possess the same specific chemical analysis that promote their resistance to the effects of environmental corrosion, and because

they can possess overlapping dimensional characteristics.

Regarding channels of trade, both parties acknowledge that HRAP and CR SSSS are marketed through the same channels of distribution.

Regarding manner in which advertised, neither party addressed this issue in the context of the Diversified Products criteria, and there is insufficient information presented on the record that differentiates the manner in which HRAP and CR SSSS are advertised.

For the reasons stated above, we are continuing to treat HRAP SSSS and CR SSSS as one class or kind.

Comment 15: Flat Wire

Avesta argues that the Department should amend the definition of excluded flat wire to reflect the industry standard. Avesta notes that, in the Notice of Initiation (see Stainless Steel Sheet and Strip in Coils from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom, 63 FR 37521, 37522 (July 13, 1998)), the Department invited comments on product coverage in these investigations. Avesta notes that in responding to this invitation on July 20, 1998, it commented that while ''flat wire'' was excluded from the scope, no definition was provided. Avesta states that it proposed that the Department adopt the industry standard for flat wire, as defined in the AISI Steel Products Manual, which notes a cold-rolled product, with a prepared edge, rectangular in shape, ½ inch or less in width, under ¼ inch in thickness. Avesta asserts that on July 29, 1998, petitioners stated that, with respect to an appropriate definition of the excluded flat wire, they agree with the comments on page 6 of Avesta's July 20 letter.

Avesta complains that despite petitioners' apparent endorsement of the AISI definition of flat wire, the Department rejected that definition in its Preliminary Determination. Avesta argues that, without any apparent discussion or explanation of its decision to adopt a different definition of flat wire than the one used by the industry, the Department amended the language excluding flat wire. Avesta maintains that no evidence appears to exist on the record of these investigations that supports or justifies this departure from the standard industry definition of flat wire. Avesta alleges that, because the Department's alternative flat wire definition is at odds with the product the stainless steel industry normally considers flat wire, it creates the potential for confusion on the part of foreign producers/exporters as to what is properly excluded. To minimize this problem, Avesta urges the Department to modify its flat wire exclusionary language to conform with the industry standard, as set forth in the AISI Steel Products Manual.

Petitioners argue that the Department should not amend the definition of flat wire from the Preliminary Determination. Petitioners emphasize that their July 29, 1998, letter, referenced by Avesta, noted that they agreed with the comments on page 6 of Avesta's July 20 letter, noting in particular, the importance of including in the definition a requirement that the material have a ''prepared edge''. Petitioners, upon further discussion with the U.S. industry, have determined that the Department's scope language for flat wire outlined in the preliminary determination is accurate and should be retained for the final determination. Petitioners cite The Making, Shaping, and Treating of Steel, 10th Edition (page 1012) as containing a definition of flat wire. Petitioners note that this publication states that ''flat wire normally is best produced in sizes up to 9.53 mm (3/8 inch)''. Petitioners urge the Department not to amend the scope language used in the Preliminary Determination, namely, flat wire is cold-rolled sections with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm.

Department's Position: We agree with petitioners. The development of the flat wire exclusion language is reflective of the petitioners' intent with respect to the scope language and a recognized industry publication listing the dimensional characteristics of this product and other stainless steel products. In the original petition, petitioners make no mention of the dimensional or physical characteristics of their flat wire exclusion. The Department carefully reviewed various publications, including The Making, Shaping and Treating of Steel and Design Guidelines for the Selection and Use of Stainless Steel. The latter publication notes in a table on page 19 that the width classification of stainless steel wire, including flat wire, is ''under 3/8″ (9.53 mm).'' We established a maximum width for flat wire that is reflective of these publications' dimensional width limitation. Petitioners have not requested that the Department amend the width limitations of the flat wire exclusion. In fact, they have acknowledged the suitability of this dimensional definition of flat wire, and that this maximum width level of the flat wire exclusion is an accurate reflection of the product for which they are not seeking relief. Therefore, based on these publications, and since petitioners are seeking relief for products in the scope as written in the Preliminary Determination, we are not revising the scope language for flat wire.

Issues Relating to Cost of Production

Comment 16: Major Inputs

Petitioners argue that the Department should apply adverse facts available to Avesta's COP given Avesta's failure to properly respond to the Department's cost questionnaires concerning major inputs. Petitioners assert that respondents did not provide market price data for inputs obtained from affiliated parties.

According to petitioners, the Department must apply the major input rule in calculating the cost of Avesta's major inputs, in accordance with section 773(f)(3) of the Tariff Act, which provides that, where transactions between affiliated parties involve a major input, the Department may value the major input based on the COP if the cost is greater than the amount that would be determined under section 773(f)(2) (*i.e.*, the higher of transfer price or market price). Petitioners contend that the Department is required to review purchases from affiliated parties of major inputs in order to determine that they reasonably reflect a fair market value.

Petitioners assert that Avesta failed to properly respond to the Department's questions concerning its major inputs. According to petitioners, Avesta indicated that, as a consolidated entity, it need not comply with the Department's questionnaire. Instead, petitioners note, Avesta stated that all its production facilities involved in producing subject merchandise are either part of the same legal entity, part of legal entities that will be collapsed and assigned one dumping margin, or units in the same operating division within the Avesta Sheffield Group. According to petitioners, Avesta further stated that, because all of its production facilities are affiliated within the Avesta Sheffield Group (''the Group'') and their accounts are ultimately consolidated with the Group, Avesta reported the actual costs for all facilities involved in the production of the merchandise under investigation.

Petitioners argue that Avesta's contention that the production facilities affiliated with the Group are ''one from an operational standpoint'' is irrelevant because several of the affiliated entities are not engaged in the production of the subject merchandise, but rather,

produce the inputs used to make subject merchandise. Petitioners also state that these production facilities are separate legal entities. Petitioners assert that, in Pasta from Italy, the Department determined that the operational reality of the close association between two entities does not outweigh the legal form of the entities.

Petitioners contend that, given the numerous deficiencies and Avesta's ''non-responsiveness'' to the Department's questionnaires and requests, the use of adverse facts available for COP and CV is warranted for the Department's final analysis. They argue that the use of adverse facts available is appropriate because of Avesta's repeated failure to report the necessary market value for the major inputs (a critical element needed to gauge whether home market sales were made in the ordinary course of trade) and its failure to report the COP and CV data in the requested format by the Department (i.e., costs separated for the major inputs). Petitioners recommend the application of the highest COP and CV reported for each control number as the appropriate basis for facts available. Alternatively, according to petitioners, should the Department determine that Avesta's COP and CV response is acceptable for the final margin analysis, at a minimum the Department should apply the higher of the transfer price or cost of production for each grade of the major inputs involved.

Avesta argues that petitioners' argument is factually and legally unsound, and therefore, it should be rejected. Avesta contends that, with respect to market values for the two major inputs, the Department made no inquiries to which it failed to respond. Avesta indicates that its supplemental questionnaire states that it did not purchase either of the major inputs from unaffiliated suppliers, and that the accuracy of this response was reviewed and confirmed by the Department at verification. Avesta asserts that, because it purchased neither input from unaffiliated suppliers, it had no information as to their market values to provide the Department, and that market values can only be considered when such values are available. Avesta claims that it fully complied with the Department's reporting requirements by providing only the COP and transfer prices for each of the major inputs. For these reasons, asserts Avesta, no adverse inferences reasonably can or should be drawn by the Department in its final determination.

Avesta argues that record evidence reflects that Avesta consulted with the Department on the proper format for submitting the COP/CV information, and the result of those discussions was the company's submission of a chart comparing the costs and transfer prices of the two major inputs as a substitute for the initially requested COP/CV format. Avesta notes that the Department requested no further information, and that the accuracy of the reported information was reviewed and confirmed at verification. Avesta contends that no adverse inferences reasonably can or should be drawn by the Department as to the data provided because Avesta responded to the best of its ability to the request for data in a particular format. Also, Avesta argues that petitioners' recommendation that the Department perform its major input analysis on a grade-specific basis should be rejected. Avesta contends that it reasonably applied one methodology for all grades, and petitioners have not provided any evidence that this methodology materially distorts the reported COPs/CVs.

Department's Position: We disagree with petitioners that we should apply adverse facts available to Avesta's COP information. We find that Avesta has provided all necessary information regarding major inputs. Moreover, given that market price information was not available for the inputs in question, in valuing the major inputs, we have relied on the higher of transfer price or the affiliate's cost of production, in accordance with sections 773(f)(2) and (3) of the Tariff Act.

Sections 773(f)(2) and (3) of the Tariff Act specify the treatment of transactions between affiliated parties for purposes of reporting cost data (used in determining both COP and CV) to the Department. Section 773(f)(2) states that the Department may disregard such transactions if the amount representing that element (the transfer price) does not fairly reflect the amount usually reflected (typically the market price) in the market under consideration. Under these circumstances, the Department may rely on the market price to value inputs purchased from affiliated parties. Section 773(f)(3) states that if transactions between affiliated parties involve a major input and the cost of the major input is greater than the amount that would be determined under section 773(f)(2) (*i.e.*, the higher of the transfer or market price), the Department may value the major input on the basis of the information available regarding its COP. Additionally, section 773(f)(3) applies if the Department ''has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the COP of such input.'' The Department generally finds that such ''reasonable grounds'' exist where it has initiated a COP investigation of the subject merchandise (see, *e.g.*, Stainless Steel Plate in Coils From South Africa: Notice of Final Determination of Sales at Less Than Fair Value, 64 FR 15459, 15474 (March 31, 1999); Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Final Results of Antidumping Duty Administrative Review, 63 FR 13217, 13218 (March 18, 1998), and Silicomanganese from Brazil; Final Results of Antidumping Duty Administrative Review, 62 FR 37869, 37871 (July 15, 1997). In addition,19 CFR 351.407(b) further instructs the Department to determine the value of a major input based on the higher of: (1) The price paid to the affiliated party (*i.e.*, transfer price), (2) the market price, or (3) the cost of the affiliated party to produce such input.

We find that Avesta provided to the Department all the necessary and requested information regarding major inputs. On December 18, 1998, we requested in a supplemental questionnaire that Avesta provide, among other items, COP and CV databases with separate fields for each of the major inputs. On January 4, 1999, Avesta responded that it would not be able to provide these databases by the deadline requested. We consented to this delay under the condition that Avesta answer related questions in the supplemental questionnaire, and include a chart comparing transfer price and cost, by grade, for each of the major inputs. In addition, we asked that Avesta provide an alternative proposal on how to apply any major input adjustments, which may be necessary to the submitted cost database, prior to the cost verification (see Memorandum from Charles Rast and Nancy Decker to The File, January 7, 1999). Avesta provided the requested chart and appropriately answered the related questions. Although the company did not provide the alternative proposal, we found, as a result of verification, that no major input adjustments are necessary, and therefore, the alternative proposal is not needed. See Cost Verification Report at 15–16 and Final Analysis Memorandum.

As noted in the Cost Verification Report at 15, Avesta did not purchase major inputs from unaffiliated companies during the POI. Therefore, in applying 19 CFR 351.407(b)(2), we find that there is no market price available. Accordingly, we have relied upon the higher of the affiliated party's cost of production of the major input or the transfer price of that major input. The Department made a similar decision in

the Final Results of Antidumping Duty Administrative Reviews: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom 62 FR 2081, 2115 (January 15, 1997).

Given that Avesta complied with our request for information by providing necessary COP and transfer prices of major inputs, and based on our verification findings confirming the accuracy of this information, we have relied upon the higher of cost of production or transfer price for the final determination, in accordance with section 773(f) of the Tariff Act and section 351.407(b) of the Department's regulations. See Final Analysis Memorandum.

Comment 17: Estimated Versus Actual COPs

Petitioners maintain that Avesta reported estimated COP for several control numbers in the home market. They argue that the Department should apply the highest reported cost to those control numbers that were reported as estimated costs. Petitioners assert that because Avesta did not provide actual costs for all control numbers, as requested in the Department's questionnaire, adverse facts available should be applied. They state that Avesta should not be rewarded for providing an inaccurate cost response. Petitioners indicate that as facts available, the Department should add to the COM the revised interest expense and highest reported G&A expenses.

Avesta disagrees, contending that it did report actual costs for all control numbers in its questionnaire responses. According to Avesta, each control number represented a product as defined by the physical characteristics identified by the Department in its questionnaire. Avesta maintains that, in preparing for its costs responses, it relied upon its normal accounting system. In this system, Avesta claims, which was verified by the Department, the company does not track costs for products at the same level of detail associated with each and every one of the physical characteristics identified by the Department. (See Cost Verification Report at 22.) Avesta indicated that, in calculating actual costs for the purposes of the responses, it calculated actual costs for the products identified from the actual cost information contained in its accounting system. Avesta notes that these costs were not estimates, but were rather actual costs contained in its accounting system calculated to comply with the Department's reporting requirements. Thus, Avesta urges the Department to reject petitioners' argument and rely upon its reported costs for the final determination.

Department's Position: We agree with Avesta. At verification, we examined Avesta's books and records kept in the ordinary course of business. We confirmed that Avesta does not have standard costs for all products at the same level of detail associated with each physical characteristic identified by the Department. In cases where a control number did not have a standard cost because there were no products with identical physical characteristics, Avesta used the standard cost of the product with the closest possible match containing the most similar physical characteristics. (See Cost Verification Report, at 22–23.) This standard was then adjusted for variances and an actual cost of the control number for the POI was calculated. Based on our verification findings in this case, we find that Avesta's methodology for calculating actual costs of a control number that did not have a standard cost in the normal accounting system is reasonable. For the final determination we have thus relied upon Avesta's costs as reported.

Comment 18: Interest Expense

Both petitioners and Avesta comment in their case briefs and rebuttal briefs on whether it may be appropriate to use British Steel PLC's consolidated profit and loss statement for the calculation of interest expense, given that Avesta is a consolidated subsidiary of British Steel PLC. Petitioners argue that the Department should recalculate interest expense based on British Steel's consolidated profit and loss statement, rather than using Avesta Sheffield AB's (AS AB—ASL's parent company) consolidated profit and lost statement, because Avesta is a consolidated subsidiary of British Steel PLC. They state that it is the Department's normal methodology to calculate interest expense at the highest consolidated level. (See Stainless Steel Round Wire From Canada: Final Determination of Sales at Less Than Fair Value, 64 FR 17324, 17334 (April 9, 1999) (Stainless Steel Round Wire).)

Petitioners also argue that the Department should not adjust British Steel's interest expense for ''other interest receivables,'' as Avesta did not provide any supporting documentation demonstrating its position that these receivables were short-term in nature. Petitioners note that Avesta's treatment of these receivables is based on its assumption as to their short-term nature. Because AS AB is 51 percent owned by British Steel PLC, petitioners discount Avesta's position that AS AB did not have access to the confidential accounting records of British Steel PLC, and that the only information it had was that which was contained in published annual accounts. They state that there is no requirement in the law that a respondent must be able to verify public information issued by its parent company. Petitioners note that presumably British Steel's auditors have certified the accuracy of its financial statements.

Avesta contends that, because British Steel's interest rate is not relevant to Avesta, and because Avesta does not have access to the proprietary information necessary to verify the figures reported in British Steel's profit and loss statement, the Department should use AS AB's consolidated income statement as the basis for calculating the interest expense ratio in the final determination. Avesta states that the Department traced the cost of sales, interest expense, and interest income ratio used in this interest expense ratio to AS AB's consolidated income statement. Avesta notes that it recalculated net interest expense, however, based on British Steel PLC's consolidated profit and loss statement pursuant to the Department's supplemental questionnaire. Avesta observes that this recalculation showed a net interest expense of zero for the POI. Avesta reiterates that it has no access to the confidential records of British Steel PLC; therefore, it based its recalculation on the information contained in British Steel PLC's published annual accounts.

Avesta asserts that the use of British Steel PLC's data is incorrect because AS AB has its own borrowings and does not receive financing from British Steel. A second reason this approach is incorrect, according to Avesta, is because it has no means to confirm the accuracy or source of the data British Steel chose to make public. Avesta concludes that the Department's decision that Avesta should base its interest expense ratio on British Steel's data puts the company at a significant disadvantage.

Department's Position: We agree with petitioners that interest expense should be calculated using British Steel PLC's consolidated profit and loss statement. Both before and after the URAA amendments, the Department has consistently used the financing expenses incurred by a parent company on behalf of a consolidated group of companies to determine a particular company's net interest expense. For example, in Final Determination of Sales at Less Than Fair Value: Certain

Carbon Steel Butt-Weld Pipe Fittings From Thailand, 60 FR 10552 (February 27, 1995), the Department followed its long-standing practice and calculated the interest expense component of COP based upon the interest expense of the parent entity of a consolidated group of companies, rather than the individual company responsible for the production of the product at issue. In so ruling, the Department reasoned that capital was fungible and that the parent company's capital was used to fund all of the operations of the consolidated company and could not be segregated. See also Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands: Final Results of Antidumping Administrative Review, 62 FR 38059, 38060 (July 16, 1997). The CIT affirmed various aspects of this long-standing practice. *See E.I. Dupont de Nemours* v. *United States*, Court No. 96–11–02509, Slip Op. 98–7 at 6–8 (CIT January 28, 1998) (affirming the Department's use of the parent's consolidated statements, where evidence cited did not overcome the presumption of corporate control); *Gulf States Tube Div.* v. *United States*, Court No. 95–09–01125, Slip Op. 97–124 at 34–43 (CIT August 29, 1997) (the Department's calculation of interest expense derived from borrowing costs incurred by a consolidated group was reasonable where the parent company's majority ownership was *prima facie* evidence of control over the subsidiary); New Minivans from Japan, 57 FR 21946 (May 26, 1992) (Comment 18); Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, 55 FR 3141, 31418, (August 2, 1990) (Comment 22). In calculating interest expense, therefore, we have used British Steel PLC's consolidated profit and loss statement.

It is the Department's practice to allow a respondent to offset (*i.e.*, reduce) financial expenses with short-term interest income earned from the general operations of the company. See *e.g.*, Timken v. United States, 852 F. Supp. 1040, 1048 (CIT 1994); see also Static Random Access Memory Semiconductors From Taiwan: Final Determination of Sales at Less Than Fair Value, 63 FR 8909, 8933 (February 23, 1998). In calculating a company's cost of financing, we recognize that, in order to maintain its operations and business activities, a company must maintain a working capital reserve to meet its daily cash requirements (*e.g.*, payroll, suppliers, etc.) The Department further recognizes that companies normally maintain this working capital reserve in interest-bearing accounts. The Department, therefore, allows a company to offset its financial expense with the short-term interest income earned on these working capital accounts. Since British Steel PLC's financial statements do not identify the nature of interest income on its profit and loss statement, we have compared, as facts available, British Steel PLC's liquid assets to its total assets and have assumed that the ratio of liquid assets to total assets represents the ratio of short-term interest income to total interest income because liquid assets by their very nature are short-term assets. Therefore, we have used this percentage of total interest income to offset interest expense. See Final Analysis Memorandum.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Tariff Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from the United Kingdom that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999 (the date of publication of the Preliminary Determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
Avesta Sheffield	14.84
All Others	14.84

International Trade Commission Notification

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

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

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany

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

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Ranado, Stephanie Arthur, or Robert James at (202) 482–3518, (202) 482–6312, or (202) 482–5222, respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations

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

Final Determination

We determine that stainless steel sheet and strip in coil (stainless sheet in coil) from Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act. The estimated margins of sales at LTFV are