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.

[FR Doc. 99–13675 Filed 6–7–99; 8:45 am]

BILLING CODE 3510–DS–P

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

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: Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 92 (Preliminary Determination). Since the December 18, 1998 disclosure of the Preliminary Determination the following events have occurred:

On December 28, 1998, KTN timely submitted an allegation of significant ministerial errors with respect to the preliminary determination. Petitioners (Allegheney Ludlum Corp., Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corp., United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization) also alleged a single significant ministerial error on December 29, 1998. Both interested parties requested that we correct the errors and publish a notice of amended preliminary determination in the **Federal Register**. See 19 CFR 351.224(e). After reviewing both parties' allegations we determined that the errors, considered collectively, were not significant, as defined at 19 CFR 351.224(g) of the Department's regulations. See Memorandum For the File; ''Antidumping Duty Investigation of Stainless Steel Sheet and Strip in Coils From Germany; Analysis of Ministerial Error Allegations,'' January 15, 1999 (Ministerial Errors Memorandum), on file in room B–099 of the main Commerce building. We have addressed the specific errors under ''Facts Available'' and Comment 31, below.

KTN submitted supplemental questionnaire responses on January 6, 1999 (sections B and C), January 15, 1999 (section E), January 22, 1999 (section E), and February 17, 1999 (section C).

The Department verified sections A (General Information), B (Home Market Sales) and C (U.S. Sales) of KTN's response January 18 through 22, 1999 at KTN's headquarters in Bochum, Germany. See Memorandum for the File; ''Home Market Sales Verification of Krupp Thyssen Nirosta, GmbH (KTN)'', March 1, 1999 (KTN Sales Verification Report). Between January 25 and January 29, 1999, we verified KTN's section D (Cost of Production) questionnaire response; see Memorandum to Neal Halper, Acting Director, Office of Accounting; ''Verification of the Cost of Production and Constructed Value Submissions of Krupp Thyssen Nirosta GmbH,'' March 15, 1999 (KTN 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.

We also conducted verification of KTN's Section C response at the offices of its wholly-owned U.S. affiliate, Krupp Hoesch Steel Products, Inc. (KHSP) in Atlanta, Georgia from February 8 through 11, 1999. See Memorandum to the File; ''U.S. Verification of Krupp Thyssen Nirosta (KTN),'' March 5, 1999 (KHSP Verification Report). Finally, we verified the Section C and Section E (Further Manufacturing) information submitted by KTN's affiliated U.S. processor and reseller. As the firm's identity and location have been afforded business proprietary status by the Department, we refer to this entity herein as ''U.S. Reseller.'' See Memorandum to the File; ''Verification of the Information Submitted by * * * (Reseller),'' March 15, 1999 (Reseller Sales Verification Report), and Memorandum to Neal Halper; ''Verification of the Cost of Further Manufacturing performed by [U.S. Reseller],'' March 18, 1999 (Reseller Cost Verification Report).

On March 23, 1999, the Department requested historical data on KTN's monthly shipments of subject stainless sheet in coil into the United States to assist in rendering our final determination of critical circumstances (see below). KTN submitted the requested information on April 2, 1999.

KTN and petitioners both requested a public hearing in this case (on January 22, 1999, and February 3, 1999, respectively). On March 23, 1999, petitioners and KTN filed their case briefs in this matter; both parties filed rebuttal briefs on March 30, 1999. The Department conducted a public hearing on April 9, 1999, a transcript of which is on file in the Central Records Unit.

Scope of the Investigation

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

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

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

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

See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

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

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

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

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

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

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

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

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

Period of Investigation

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

Critical Circumstances

Section 733(e)(1) of the Tariff Act provides that if a petitioner alleges critical circumstances, the Department will determine, on the basis of the information available to it at the time, whether there is a reasonable basis to believe or suspect that (i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at

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

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

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

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

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

less than its fair value and that there would be material injury by reason of such sales (see 733(e)(1)(A)(i) and (ii), and there have been massive imports of the subject merchandise over a relatively short period (733(e)(1)(B)).

In the Preliminary Determination we found that both criteria, i.e., knowledge of dumping and material injury and massive imports of subject merchandise, had been met by KTN and preliminarily found that critical circumstances exist. We have reconsidered our determination of critical circumstances as set forth in the Preliminary Determination, however. While we still find reasonable grounds to impute knowledge of less-than-fair-value sales to the importer, we have amended our calculation of massive imports from that applied for the Preliminary Determination. As explained in detail below, for purposes of this final determination we are no longer relying upon the publicly-available data on imports of subject merchandise from Germany as a whole supplied by the Census Bureau. Rather, we have relied upon the company-specific shipment data supplied by respondent KTN. Based on this information we find that there were not massive imports and, therefore, that critical circumstances do not exist. See our response to Comment 4, below.

Affiliation

As explained in the Preliminary Determination and immediately below, we find that for purposes of this investigation KTN is affiliated with Thyssen Stahl and Thyssen AG (Thyssen) and, through them, their affiliated sellers and steel service centers in Germany and the United States. The Tariff Act defines ''affiliated persons'' at section 771(33). Included within that definition are family members, any organization and its officers or directors, partners, and employer and employee. See section 771(33)(A) through (D). The statute also considers as affiliated persons—

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such person.

Id.

''Control'' is defined as one person being ''legally or operationally in a position to exercise restraint or direction over the other person.'' The Statement of Administrative Action (SAA) which accompanied the Uruguay Round Agreements Act (see H. Doc. 316, Vol. 1, 103d Cong., 2d Sess. (1994)) explained that including control in an analysis of affiliated parties ''permit[s] a more sophisticated analysis which better reflects the realities of the market place.'' The SAA continues, ''[t]he traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm 'operationally in a position to exercise restraint or direction' over another even in the absence of an equity relationship.'' Id. at 838.

Finally, as the Department noted in its ''Explanation to the Final Rules'' (*i.e.*, its regulations), ''section 771(33), which refers to a person being 'in a position to exercise restraint or direction,' properly focuses the Department *on the ability to exercise 'control' rather than the actuality of control* over specific decisions.'' *Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27295, 27348* (May 19, 1997) *(Final Rule)* (emphasis added). Thus, the statute does not require that we find the actual exercise of control by one person over the other in order to find the parties affiliated; rather, the potential to exercise control is sufficient for such a finding.

In this final determination we continue to find that KTN is affiliated with Thyssen Stahl and Thyssen because Thyssen Stahl indirectly owns and controls, through Krupp Thyssen Stahl (KTS), forty percent of KTN's outstanding stock (the remaining sixty percent are controlled by Thyssen's joint-venture partner, Fried. Krupp. AG Krupp-Hoesch (Fried. Krupp)). Thyssen, which wholly owns Thyssen Stahl, likewise indirectly owns and controls forty percent of KTN. See Preliminary Determination, 64 FR at 95 and Memorandum to the File; ''Affiliated Party Sales,'' October 28, 1998 (Affiliation Memorandum).

In addition, we continue to find that KTN is affiliated with Thyssen's home market and U.S. sales affiliates because the nature and quality of corporate contact establish this affiliation by virtue of Thyssen's common control of its affiliates and of KTS. The record demonstrates that Thyssen, as the majority equity holder in, and ultimate parent of, its various affiliates, is in a position to exercise direction and restraint over the affiliates' production and pricing. As we stated in the Preliminary Determination, ''Thyssen's substantial equity ownership in KTN and Thyssen's other affiliates, in conjunction with the 'totality of other evidence of control' requires a finding that these companies are under the common control of Thyssen.'' Id. For a full discussion of KTN's affiliations see Comment 2, below, the Affiliation Memorandum, and Memorandum For the File; ''Antidumping Duty Investigation on Stainless Steel Sheet and Strip in Coils from Germany—Final Determination Analysis for Krupp Thyssen Nirosta, GmbH,'' May, 19, 1999 (Final Analysis Memorandum).

Facts Available

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, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), the facts otherwise available in reaching the applicable determination. See, e.g., Roller Chain, Other Than Bicycle Chain, From Japan, 63 FR 63671, 63673 (November 16, 1998). In this investigation the Department has determined, for the reasons stated in detail below, that KTN or its affiliates failed to provide necessary information and, in some instances, that the submitted information could not be verified. Therefore, pursuant to section 776(a) of the Tariff Act, we have determined that the use of the facts otherwise available is necessary in these instances.

However, the statute requires that certain conditions be met before the Department may resort properly to the facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Tariff Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by [the Department]'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department

can use the information without undue difficulties, the statute requires it to do so.

Finally, in selecting from among the facts otherwise available, section 776(b) of the Tariff Act permits the use of an adverse inference if the Department also finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' SAA at 870. Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' Final Rule, 62 FR at 27340. The statute continues by noting that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

In accordance with section 776(a) of the Tariff Act, we have continued to use partial facts available in instances where KTN failed to provide the Department with requested sales information concerning certain affiliated resellers in the home market. See Preliminary Determination, 64 FR at 95 and 96. Further, pursuant to section 776(b) we find that KTN failed to cooperate to the best of its ability because it did not supply missing sales data, as demonstrated by its selective submission of Thyssen affiliates' data. Therefore, as adverse facts available for this final determination, as in the Preliminary Determination, we based normal value upon the highest reported gross unit price for each product sold to the affiliated parties, in lieu of the missing prices on downstream sales from the affiliated resellers to unaffiliated customers. We calculated the highest normal value (NV) reported by control number (CONNUM) in KTN's home market database and applied it to KTN's sales to its affiliates for which KTN did not report home market downstream sales. See Memorandum For the File; ''KTN Preliminary Analysis Memorandum,'' December 17, 1998 (Preliminary Analysis Memorandum).

With respect to sales in the United States, we have determined that in accordance with section 776(b) of the Tariff Act the use of adverse facts available is appropriate for five previously unreported U.S. sales KTN disclosed to the Department during the verification of KHSP (see Comment 10, below). As adverse facts available we assigned the highest non-aberrational margin (as explained immediately below) to these transactions.

In addition, as explained in response to Comments 19 and 20, we have determined that we must resort to the facts available with respect to the sales and further-manufacturing data submitted by U.S. Reseller. At verification we discovered numerous and systemic errors, some of which cannot be corrected, in the data used by U.S. Reseller to report its costs of further manufacturing of subject merchandise. These errors included, inter alia, the failure to match properly input coils and output finished products, the allocation of processing costs to sales which had undergone no further processing whatever, and cases where the quantities of output goods exceeded the inputs. The vast majority of the subject merchandise sold through U.S. Reseller was first further processed by this company; therefore, the deficiencies in its data affect a corresponding percentage of U.S. Reseller's submitted sales data. Furthermore, the mis-allocations not only affected U.S. Reseller's reported sales which had been subject to further processing, but through the allocation of processing costs to the non-further-processed sales tainted this portion of its database as well. In addition, U.S. Reseller failed to identify the producer of a significant portion of its sales in the United States, and failed to report physical criteria vital to our model matching for certain other transactions. As the breadth and depth of the discrepancies leave us with no confidence in the underlying further-processing data submitted by the U.S. Reseller, we have determined that these data cannot serve adequately as a basis for calculating KTN's overall weighted-average margin. Further, the information required to correct the flaws in U.S. Reseller's data is not on the record of this proceeding; therefore, the use of total facts available is necessary (see section 782(e)). Finally, the record indicates that U.S. Reseller could readily have discovered and corrected the majority of these errors prior to submitting its data to the Department and, at the latest, prior to verification.

Accordingly, as provided in section 776(b) of the Tariff Act, we find that U.S. Reseller has failed to cooperate by not acting to the best of its ability in responding to the Department's requests for information. Therefore, we have drawn an adverse inference for the entirety of the data submitted by U.S. Reseller. As adverse facts available we have assigned the highest non-aberrational margin calculated for this final determination, to the weighted-average unit value for sales reported by U.S. Reseller. To determine the highest non-aberrational margin we examined the frequency distribution of the margins calculated from KTN's reported data. We found that the margins for nearly 10 percent of KTN's transactions fell within a specific range of percentages (see the Final Analysis Memorandum for the exact figures); we selected the highest of these as reflecting the highest non-aberrational margin. We then multiplied the resulting unit margin by the total quantity of resales of subject merchandise by U.S. Reseller. See the Final Analysis Memorandum. This total quantity includes that material affirmatively verified as being of KTN origin, as well as a portion of the merchandise of unidentified origin allocated to KTN. To apportion the unidentified sales among the investigations of stainless sheet in coil from Germany, Italy and Mexico (see Comment 20, below) we have adjusted the quantity for each of the unidentified sales on a pro rata basis, using the verified percentages of U.S. Reseller's merchandise supplied by each of the three respondent mills. We then applied the facts-available margin to these unidentified sales transactions as explained above.

Finally, as we explained in our Ministerial Errors Memorandum, we inadvertently relied upon a home market sales data base which did not include the gross unit prices recalculated as facts available for sales to certain affiliated home market resellers. Thus, the decision to rely on facts available with respect to KTN's home market downstream sales had no effect in the Preliminary Determination. Therefore, we have corrected the programming language to include the gross unit prices adjusted for the application of facts available in our final calculations. See Ministerial Errors Memorandum at 3 and 4.

Fair Value Comparisons

To determine whether KTN's sales from Germany to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the 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

In the Preliminary Determination we relied upon KTN's invoice date as the date of sale in both markets, in keeping with the regulatory preference for using the invoice date as the date of sale and because there were no facts in this investigation that would warrant selection of a different date. See 19 CFR 351.401(i). As explained in response to Comment 1, below, for this final determination we have continued to rely upon KTN's invoice dates as the date of sale in both the home and U.S. markets.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, and as explained in the Preliminary Determination, we determine that one level of trade (LOT) exists in the home market for KTN's sales. We also have determined that KTN's U.S. sales take place at two LOTs, one comprising KTN's factory-direct EP sales, and the other KTN's three channels of distribution for its CEP sales (i.e., ''back-to-back'' sales through KHSP, consignment sales through KHSP, and sales of ''secondary quality'' merchandise, also through KHSP).

In addition, we continue to find that KTN's EP sales and its home market sales were at the same LOT, while KTN's CEP sales were at a different LOT. Because these CEP sales were at a different LOT than KTN's home market sales, we examined whether a LOT adjustment may be appropriate. However, as KTN sold to a single LOT in the home market, we have no basis upon which to determine whether there is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of KTN's sales of other similar products and there is no other record evidence upon which such an analysis could be based. Therefore, we have continued to allow a CEP offset, in accordance with section 773(a)(7)(B) of the Tariff Act. See Preliminary Determination, 64 FR at 97.

Export Price and Constructed Export Price

KTN reported as EP transactions certain sales of subject merchandise sold to unaffiliated U.S. customers prior to importation without the involvement of its affiliated company, KHSP. KTN reported as CEP transactions its sales of subject merchandise sold to KHSP for its own account. KHSP then resold the subject merchandise after importation to unaffiliated customers in the United States.

Also, because KTN was unable to demonstrate for the record that it was not in the position to collect downstream sales information from its U.S. affiliates, based on record evidence we requested that KTN report its downstream sales made in the United States (see Memorandum to Richard Weible, ''Limited Reporting of Home Market and United States Sales,'' November 13, 1998) (Limited Reporting Memorandum).

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 and where CEP methodology was not otherwise warranted based on the facts of record. We based EP on the packed, delivered, tax and duty unpaid price to unaffiliated purchasers in the United States. We made deductions for billing adjustments and movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight and foreign inland insurance.

We calculated CEP, in accordance with subsections 772(b) of the Tariff Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made adjustments for price-billing errors, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, marine insurance, U.S. customs duties, U.S. inland freight, foreign brokerage and handling, international freight, foreign inland insurance, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, warranty expenses and other direct selling expenses), inventory carrying costs (ICCs), and indirect selling expenses (ISEs). We offset credit expenses by the amount of interest revenue on sales. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act.

Finally, we made the following changes in our calculation of EP and CEP in the Preliminary Determination based on information discovered at verification or after analysis of comments by the interested parties:

We recalculated marine insurance, foreign inland insurance, other transportation charges, and U.S. duty expenses to reflect corrections presented at the start of verification. See KTN Verification Report at 2 and KHSP Verification Report at 1 and 2. We also adjusted ocean transportation for shipments to specific points by an affiliated carrier to reflect arm's-length freight rates (see Comment 16, below). In addition, we made a number of changes to our calculation of U.S. credit expenses and inventory carrying costs to reflect the verified interest rates, to ensure use of the proper shipment date for certain CEP re-sales, and to correct the time in inventory to capture the time the merchandise was at sea (see Comments 12, 13, and 14). We adjusted indirect selling expenses (ISEs) for certain U.S. sales made through an affiliated reseller located in Germany (see Comment 11). We also adjusted ISEs for CEP sales through KHSP to reflect its correction at verification (see KHSP Verification Report at 2 and Exhibits 1 and 8). Finally, we reclassified specific observations from KTN's CEP and its ''non-U.S.'' sales listings, as appropriate, to include U.S. sales or exclude transshipments. Id.

With respect to subject merchandise to which value was added in the United States by U.S. Reseller prior to sale to unaffiliated customers, as explained above, we have applied the facts available in accordance with section 776(b) of the Tariff Act.

Affiliated-Party Transactions and Arm's-Length Test

We excluded from our analysis any sales to affiliated customers in the home market not made at arm's-length prices 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 starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. See, e.g., Certain Cold-Rolled

Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (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.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for 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)(B)(i) of the Tariff Act. As KTN'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 have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

We made a number of changes to our calculation of NV from the Preliminary Determination either based upon our findings at verification or in response to comments by the interested parties. At verification we found that KTN had understated its home market early payment discounts; we adjusted the discounts accordingly (see KTN Sales Verification Report at 1. KTN also indicated that it had inadvertently understated home market warranty expenses by a factor of 10 (see id.); we have recalculated these expenses to correct the error. We also corrected KTN's technical service expenses for sales of precision strip sales to apply the expense ratio calculated for precision strip products. In addition, we recalculated rebates for sales by NSC using the corrected percentage supplied at verification (id., see also Comment 9, below). NSC also overstated its average days in inventory in calculating ICCs; we adjusted this calculation appropriately. Furthermore, we corrected the reported sale dates for certain NSC transactions. See KTN Sales Verification Report at 1. Finally, we amended our model-match language to correct a ministerial error in reading KTN's reported finish and gauge codes (see Comment 31).

Cost of Production (COP) Analysis

Based on a cost allegation filed by the petitioners, the Department investigated whether KTN's sales of the foreign like product were made at prices which represent less than the cost of production. In accordance with section 773(b)(3) of the Tariff Act, we calculated the weighted-average COP based on the sum of KTN's cost of materials and fabrication for the foreign like product, plus amounts for selling and general and administrative (G&A) expenses and packing costs. In response to comments of the interested parties, we made the following changes to KTN's COP data:

We adjusted KTN's G&A expense rate by including the costs of international projects, year-end adjustments, and personnel costs of KTN's affiliated home market processor and reseller, Nirosta Service Center (NSC) (see Comment 23). In addition, we based our allocation of G&A expenses on KTN's total cost of manufacture (TCOM), rather than on processing costs alone, as reported by KTN (see Comment 24).

In calculating KTN's financial expenses we included exchange rate losses of Fried. Krupp, while excluding its exchange rate gains; we also included an offset to total interest expenses of Fried. Krupp's short-term interest income less the amount attributable to trade receivables (see Comment 25).

Where KTN's reported transfer prices for purchases of nickel from an affiliated party were not at arm's length, we increased these prices to represent prevailing market prices (see Comment 27).

Finally, we disallowed KTN's claim to treat NSC's processing costs as a direct selling expense, treating these instead as a component of KTN's fully-captured variable cost of manufacture (VCOM); accordingly, the processing costs reported for sales by NSC have been included in KTN's COP, rather than deducted from NV as selling expenses (see Comment 6).

Where possible, we used KTN's reported COP amounts, adjusted as discussed above, to compute weighted-average COPs during the POI. We compared the product-specific weighted-average COP figures to home market sales of the foreign like product, as required under section 773(b) of the Tariff Act, in order to determine whether these sales had been made at prices below COP. We compared the COP to the home market prices, less any applicable movement charges and discounts. 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 over an extended period of time, and (ii) at prices which permitted the recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C)(i) of the Tariff Act, where less than twenty percent of KTN's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where twenty percent or more of its sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2)(C)(i) and 773(b)(2)(B) of the Tariff Act. Because we used POI average costs, pursuant to section 773(b)(2)(D) of the Tariff Act, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. When there were no home market sales of identical or similar merchandise in the home market available to match to U.S. sales, we compared the CEP to CV in accordance with section 773(a)(4) of the Tariff Act.

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

Constructed Value

In accordance with section 773(e)(1) of the Tariff Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, interest expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by KTN in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. We used the CV data KTN supplied in its section D supplemental questionnaire response, except for the adjustments made for COP, described above.

Price-to-Price Comparisons

We calculated NV based on FOB or delivered prices to unaffiliated

customers or prices to affiliated customers that we determined to be at arm's-length prices. We made adjustments for price billing errors, where appropriate. We made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Tariff Act.

To the extent practicable, we based NV on sales at the same level of trade as the EP or CEP transactions. Finally, because KTN's sales to its home market affiliates represented more than five percent of its total home market sales, for certain of its home market affiliates we requested that KTN report its affiliates' downstream sales (i.e., sales made by the affiliate). See Limited Reporting Memorandum.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. 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. Where 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

Comment 1: Date of Sale

In the Preliminary Determination the Department relied upon KTN's invoice date as the date of sale in both the home and U.S. markets, in keeping with the Department's regulatory preference for using the invoice date as the sale date absent evidence ''that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' 19 CFR 351.401(i). Petitioners and KTN both presented direct arguments in their respective case briefs concerning the proper date of sale for this final determination.

KTN urges the Department to continue using the invoice date as the date of sale. Such a position, KTN submits, would be consistent with the Department's clear policy to rely upon the invoice date, a policy articulated in several cases including Carbon Steel Pipes and Tubes From Thailand, 63 FR 55578, 55587 (October 16, 1998) (Pipes From Thailand). KTN insists that it has provided compelling data in support of using the invoice date as date of sale. According to KTN, these data include precise figures on the frequency of changes to the essential terms of sale (including price and quantity) following the order confirmation date. KTN insists further that it provided supporting documentation of these claims during the Department's home market and U.S. verifications, and asserts that the Department reviewed this documentation at verification noting no discrepancies. ''In contrast,'' KTN concludes, ''[p]etitioners have failed to provide any evidence to support their argument that order confirmation date would be a more appropriate date to use for the date of sale.'' KTN's Case Brief at 40.

Petitioners assert that the proper date of sale is the order confirmation or, if available, the change order date. Petitioners insist that KTN has not established that the invoice date should serve as the date of sale in this proceeding, relying instead upon an ''over-simplification'' of the Department's regulations on this issue. Petitioners Case Brief at 3. Citing Pipes From Thailand and Circular Welded Non-Alloy Steel Pipe From the Republic of Korea, 63 FR 32833 (June 16, 1998) (Korean Steel Pipe), petitioners note that the Department is afforded great latitude in selecting a sale date other than the invoice date if ''the record evidence demonstrates that the material terms of sale, i.e., price and quantity, are established on a different date.'' Id., quoting Pipes From Thailand. In an industry where merchandise is produced to order, petitioners argue, and where significant lag times separate the order date and the subsequent invoice date, the Department's date-of-sale determination can have a critical impact upon the dumping calculations. The vast majority of KTN's sales, petitioners note, were produced to order.

Petitioners dismiss KTN's documentation supporting the use of invoice date as either unsubstantiated or indefensible. Id. at 5. For example, petitioners dismiss as unsupported by record evidence KTN's claims concerning changes in quantity between the original order date and the invoice date. As a preliminary matter, petitioners accuse KTN of concealing its practices with respect to ''delivery tolerances'' (i.e., pre-determined levels by which the weight of a shipment may fall above or below the ordered quantity and still satisfy the contractual terms of sale) in order to exaggerate the frequency of changes in quantity between the original order date and invoice date. According to petitioners, KTN first denied its use of delivery tolerances altogether, only to acknowledge at the Department's various sales verifications that, in fact, it relies upon an ''industry standard'' delivery tolerance of plus or minus ten percent of the ordered mass. Petitioners' Case Brief at 7. More to the point, petitioners aver, a standard ten percent tolerance cannot serve as a meaningful benchmark for measuring changes in quantity because common practice in the steel industry allows for negotiated tolerances in excess of the standard ten percent. Petitioners point to a statement by KTN's sister company Mexinox, a respondent in the companion investigation of stainless steel sheet and strip in coils from Mexico (investigation number A–201–822) that customers may agree to accept quantities above or below those called for under the nominal delivery tolerance. Id. at 8, citing Mexinox's October 29, 1998 supplemental questionnaire response at 17. Petitioners suggest that because KTN uses both standard and special negotiated delivery tolerances in its normal course of business, any claims concerning quantity changes which fail to account for the latter are without merit, as such changes were clearly anticipated in the original sales agreement. Petitioners' Case Brief at 10.

That issue aside, petitioners continue, KTN's purported analysis of data from its U.S. sales affiliate KHSP concerning changes in the essential terms of sale does not withstand scrutiny. Petitioners accuse KTN of building its case by means of data riven with a ''lack of proven representativeness, internal inconsistencies, citation to changes in items other than essential terms of sale, missing documentation, and a complete lack of discussion regarding the role of change orders.'' Petitioners' Case Brief at 10. First, petitioners aver, the Department did not select the January

1998 sales used by KTN for its analysis and did not select any other month for comparison. Therefore, the Department cannot accept KTN's sample as representative of the entire POI. Second, claim petitioners, the data include numerous internal discrepancies including conflicting or truncated order and invoice numbers that preclude tying the proffered order documentation to specific reported transactions. Third, petitioners contend, KTN's analysis included changes that, by definition, did not affect the essential terms of sale, i.e., price and quantity, including changes in payment terms. Further, petitioners maintain that other so-called changes included in KTN's analysis do not represent changes to an existing order but, rather, entirely new orders for completely different products. Petitioners Case Brief at 13. Fourth, petitioners suggest that many of KTN's claimed changes lack critical documentation, with conflicting order numbers and invoice numbers. Petitioners accuse KTN of mixing the orders and invoices between and among various sales to build its case that changes, in fact, took place. Id. at 14. More fundamentally, suggest petitioners, KTN's analysis of KHSP's January 1998 transactions inexplicably includes sales which are not included in KTN's CEP sales listing; other January 1998 transactions reported in KTN's CEP sales data are curiously absent from KTN's date-of-sale analysis. Petitioners accuse KTN of submitting an incomplete listing of its U.S. sales, further undermining the credibility of KTN's data. Id. at 15.

Citing a list of KTN's claimed changes in quantities, petitioners assert that the data indicate that these variances stemmed not from changes between order and invoice, as claimed by KTN but, rather, (i) previously-negotiated delivery tolerances in excess of the standard ten percent, (ii) partial shipments made whole by a subsequent shipment of the balance of the order, or (iii) unreported change orders which served to modify and, thus, supercede the original order. Petitioners point to the Department's KHSP Sales Verification Report as demonstrating that KTN often met customer orders by shipping a portion of the order under one invoice number and completing the original order with a subsequent shipment issued under a second invoice. Petitioners suggest that KTN has represented as changes in quantity what, in fact, were merely partial or multiple shipments of the originally-ordered quantity, ''a pervasive and industry-wide practice.'' Petitioners' Case Brief at 19.

Petitioners further insist that without any explanation or quantification of change orders, KTN's statistics concerning the frequency of changes between order and invoice dates are meaningless. Id. at 20, citing Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium, 58 FR 37083, 37090 (July 9, 1993) (Belgian Carbon Steel Flat Products). Despite KTN's efforts to gloss the role of change orders, petitioners continue, the record clearly indicates that KTN relies upon change orders in its normal course of business and that KTN failed to consider these in pressing its case that the invoice date represents the only date when the essential terms of sale are conclusively known. According to petitioners, the Department recently addressed the importance of change orders in Certain Corrosion-Resistant Carbon Steel Flat Products From Japan, 64 FR 12951, 12957 (March 16, 1999) (Flat Products From Japan). In that case, petitioners suggest, the Department relied upon the respondent's order confirmation date as the date of sale, noting that any changes in the essential terms of sale were memorialized through the subsequent issuance of a revised order confirmation.

Even if one accepts KTN's self-selected and incomplete data for January 1998, petitioners aver, for a majority of these transactions the essential terms were, in fact, set at the order date; thus, ''the order confirmation date, and not the shipment date, best reflects when material terms of sale usually are established.'' Id. at 25, quoting Flat Products From Japan, 64 FR at 12958. As in Korean Steel Pipe, petitioners contend, KTN produces merchandise to order in the vast majority of cases; subsequently, there are significant lags between the order date and the eventual invoice date. Reliance upon KTN's reported invoice date, assert petitioners, would result in the Department's ''comparing home market sales in any given month to U.S. sales whose material terms were set months earlier—an inappropriate comparison for purposes of measuring price discrimination in a market with less than very inelastic demand.'' Id., quoting Korean Steel Pipe.

Petitioners point to other perceived problems with KTN's reported sales, accusing KTN of including in its home market sales data transactions with ''impossibly old'' order dates, some of which preceded the POI by many years. Petitioners insist that such transactions arose from long-term or ''periodic requirements'' contracts. However, as the record does not include any detail concerning KTN's contractual obligations, petitioners argue, the Department ''should resolve the confusion caused by KTN by concluding that order date, not invoice date, should serve as the date of sale * * *''. Petitioners blame KTN for sowing this confusion by reporting improperly the date of the original order as its order date, rather than the final order confirmation issued by KTN. Id. at 32 and 33.

Further distorting the Department's sales analysis, petitioners contend, is KTN's basing order dates on disparate events in the home and U.S. markets, relying upon the date of the customer's original purchase order for home market transactions, while using the later confirmation date for purposes of reporting U.S. order dates. This has the effect of further exaggerating the alleged lag between home market order date and confirmation date.

Once aberrant transactions, partial shipments, and changes involving non-essential terms of sale are disregarded, petitioners argue, KTN's own data indicate that changes occur in far fewer transactions than originally claimed by KTN. Given the gaps in the record, petitioners insist, the Department cannot accept KTN's proffered data as bona fide evidence that the invoice date should serve as date of sale. Petitioners' Case Brief at 26. Petitioners list the perceived failures in KTN's date-of-sale arguments, contending that the lack of credibility inherent in KTN's reporting requires the use of total adverse facts available. In the alternative, petitioners suggest, KTN's order confirmation date in both the home and U.S. markets should serve per se as the date of sale for this final determination. Id. at 37 through 40.

In rebuttal, KTN accuses petitioners of relying upon ''fabricated theories'' and mischaracterizations of KTN's business practices in their effort to undermine the integrity of the data provided by KTN to substantiate the use of invoice date as the date of sale. See ''Rebuttal Brief of Krupp Thyssen Nirosta GmbH, Krupp Hoesch Steel Products Inc.'' (KTN Rebuttal Brief), March 30, 1999, at 7. According to KTN, petitioners' arguments do not hold up in light of the record evidence; even if they did, KTN avers, the record would still support the use of invoice date as the date of sale. KTN insists that it has provided reliable and compelling evidence that the

material terms of sale change frequently prior to the issuance of the invoice.

While stating that the burden of proof on this issue rests with petitioners, KTN nevertheless maintains that its sales data demonstrate that either price or quantity changed in a significant percentage of the U.S. sales included in its analysis of January 1998 transactions. The Department, KTN notes, reviewed these data at the verification of KHSP and noted no discrepancies. In their efforts to attack the credibility of the January 1998 analysis, KTN contends, petitioners cited examples of discrepancies without providing any context and have stretched these ''piecemeal arguments'' to substantiate spurious conclusions. KTN Rebuttal Brief at 10. As a preliminary matter, KTN insists that throughout this investigation it has not relied upon changes in alloy surcharges or quantities falling within the industry standard plus-or-minus 10 percent in its arguments for using the invoice date, thus rendering petitioners' comments both inaccurate and irrelevant. KTN also defends its use of KHSP's January 1998 sales data as especially suitable, claiming that it provided the largest sample for any month of the POI and because it fell late in the POI, thus allowing analysis of transactions where both the invoice and the order confirmation fell within the POI.

Furthermore, KTN continues, many of the perceived inconsistencies in KHSP's information stem from the latter's installation of a new computer system which became operational on January 1, 1998. Thus, all sales prior to January 1 reflect a customer invoice number identical to the invoice number issued by KTN's German affiliate Krupp Nirosta Export, GmbH (KNE) to KHSP, whereas order confirmation numbers reflected certain product codes. KTN's Rebuttal Brief at 15. Once KHSP's new SAP software was in place, KTN submits, all invoices bore a sequential number unique to KHSP; order confirmations numbers issued prior to January 1, but invoiced after January 1, would have the old numbering protocol overwritten by the new sequential SAP numbering system. KTN argues that ''[t]he numbering mechanisms, while different, are internally consistent and permit the tracing of sales transactions.'' Id. at 16 and 17.

KTN also rejects petitioners' charge that it included partial shipments against a single order in its reporting of changes in quantity. According to KTN, while the weights for individual coils posited by petitioners approximate the weight of coils shipped by KHSP to customers, the input master coil produced by KTN in Germany is twice as heavy. Thus, if available material to fill an order was short by as much as 10,000 pounds, KTN suggests, KHSP would negotiate with the customer to consider the order filled, rather than forcing KTN to roll an entire master coil to make up such a small difference. KTN Rebuttal Brief at 18 and 19.

With respect to KHSP's use of change orders, KTN contends that it has provided a copy of each existing change order applicable to any sale traced at verification or included in the January 1998 transactions (see KHSP Verification Exhibit 23). More importantly, claims KTN, not every change in the material terms of sale is memorialized through issuance of a new order confirmation. In some cases, changes in the terms of sale made after the order confirmation date are simply reflected in the invoice without the issuance of a change order. KTN Rebuttal Brief at 21. According to KTN, the sole case cited by petitioners as addressing the importance of change orders, Belgian Carbon Steel Flat Products, involved a fact pattern that was the polar opposite of KHSP's, where the Department only discovered at verification that where the essential terms of sale were altered after the initial confirmation, the respondent routinely issued change orders firmly establishing the terms of sales. Id. In contrast, argues KTN, at its U.S. verification the Department reviewed KHSP's ''compelling evidence'' concerning quantity and price changes and noted no discrepancies. Id.

Assuming that each of petitioners' contentions has merit, KTN continues, the remaining percentage of sales exhibiting changes in the material terms of sale would still be more than sufficient to warrant relying on the invoice date as date of sale. In Certain Internal Combustion Industrial Forklift Trucks From Japan, 62 FR 5592, 5611 (February 6, 1997), KTN suggests, the Department found that the invoice date best approximated the point at which material terms of sale were set in light of evidence of changes in only 4.3 to 7.5 percent of the respondent's transactions. KTN argues that even given petitioners' adverse assumptions the essential terms of KTN's sales changed with far greater frequency in the instant investigation. Furthermore, continues KTN, the Department cited the mere potential for changes as militating for the use of the invoice date. Therefore, KTN maintains, even if each of petitioners' arguments are on point, the Department's precedent favors continued reliance on the invoice date.

With respect to home market date of sale, KTN dismisses the allegedly aberrational lag times found in its home market sales listing, noting that for a significant majority of KTN's home market sales less than six months passed between the customer's order and the invoice date. KTN asserts that in a business where a customer places an order for shipments to be made at different times during the year, such lag times should be expected. KTN's Rebuttal Brief at 25.

In addition to its factual arguments, KTN contends that case precedent similarly supports the use of invoice date. For example, continues KTN, in Korean Steel Pipe, a case cited by petitioners, the Department noted the markedly different sales processes for U.S. and home market sales as supporting the use of the contract date over invoice date. KTN suggests that the instant case is easily distinguishable from Korean Steel Pipe; unlike the latter case, KTN's sales practices in both markets are essentially the same, with most transactions in both markets involving made-to-order merchandise. KTN's Rebuttal Brief at 27. KTN claims that other case precedent similarly supports use of invoice date. In Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada, 64 FR 2173 (January 13, 1999) (Flat Products From Canada), the Department opted for invoice date in light of quantity changes for a number of sales. The Department reached the same conclusion in Pipes From Thailand, KTN notes, owing once again to quantity changes between order and invoice dates. These precedents, KTN concludes, support the use of KTN's reported invoice date as the date of sale.

Department's Position: After a thorough review of the record we conclude that while petitioners raise a number of cogent arguments for using the order confirmation date as the date of sale, the weight of the record evidence supports using KTN's reported date of invoice as the date of sale for purposes of this final determination. The Department's regulations state that the invoice date will serve as the date of sale unless record evidence demonstrates ''that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' 19 CFR 351.401(i). ''Our current practice, in a nutshell, is to use the date of invoice as the date of sale unless there is a compelling reason to do otherwise.'' Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 63 FR 13170, 13194 (March 18, 1998)

(Flat Products From Korea II). Furthermore, as the Department has noted, ''price and quantity are often subject to continued negotiation between the buyer and the seller until a sale is invoiced. * * * [a]s a practical matter, customers frequently change their minds and sellers are responsive to those changes.'' Final Rule, 62 FR at 27348. The Department further recognized that the buyer and seller themselves will often disagree as to when, precisely, the terms of sale were set: ''this theoretical date usually has little, if any, relevance. From their perspective, the relevant issue is that the terms be fixed when the seller demands payment (i.e., when the sale is invoiced).'' Id. at 27349.

Petitioners note correctly that the respondent is a mill which largely produces the merchandise under investigation to fill specific orders. Therefore, as petitioners see it, once the mill has scheduled the casting of stainless slab for rolling to a given stainless coil, little room remains for altering the essential terms of sale. Furthermore, as detailed below, petitioners point to lacunae in the evidence KTN has introduced to support the use of invoice date.

KTN, in turn, has provided evidence that the material terms of sale are subject to change at any time between the order confirmation and invoice dates and has indicated that not all such changes would be reflected in KTN's order confirmation. This is especially true of home market sales, where KTN's computerized production control system allows for entry of corrections to orders without generating new order confirmations. In addition, KTN has submitted for the record evidence of actual changes in the essential terms of sale between its written order confirmation and the subsequent invoice date.

We conclude that the record evidence in the instant proceeding supports use of the invoice date. First, it is clear that KTN's records and financial statements kept in its normal course of business do not recognize a sale until the invoice is issued and payment is demanded. See, e.g., the quantity and value sections of the KTN Sales Verification Report and KHSP Verification Report. Further, and perhaps more to the point, KTN presented numerous examples during the POI where either quantity or price or both changed after the order confirmation had been issued, but prior to the invoice date. See Home Market Verification Report at 32 and Exhibit 6–IV–A, and KHSP Verification Report at 17 and Exhibit 23. Thus, as we concluded in Flat Products From Korea II, ''there is no record evidence indicating that a date other than the invoice date is the date after which the essential terms of sale could not be changed.'' Id., 63 FR at 13195 (emphasis added).

Although petitioners have raised various concerns about KTN's date-of-sale data (see immediately below), we find, however, that even after considering these issues the totality of record evidence still suggests that KTN's invoice date is the appropriate date of sale, as it best represents the point at which the essential terms of sale ''are firmly established and no longer within the control of the parties to alter without penalty.'' Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166, 38182 (July 23, 1996).

Turning now to the parties' specific comments, we do not subscribe to petitioners' views concerning the alleged ''unrepresentativeness'' of respondent's data. In our October 9, 1998 section A supplemental questionnaire we asked that KTN ''indicate the frequency of price, quantity, material specification, delivery terms and alloy surcharge changes between confirmation and final invoice.'' [6] When KTN responded it elected to rely upon a sampling of its home market and U.S. sales, describing its sampling methodology in detail. See KTN's October 23, 1998 section A supplemental response at 14. Sampling was necessary, KTN explained, given the burden of tracking each line item of each incoming order to its corresponding final invoice. To this end KTN selected the first quarter of 1998 for both home market and U.S. sales, and presented a further detailed analysis of each specific change involving its U.S. sales during the sample month of January 1998. We reviewed the documentation for both the U.S. and home market sales samples at verification and noted no discrepancies. See, e.g., KHSP Verification Report at 17.

Having raised no objections to the methodology adopted by KTN to address this issue, and having accepted and verified the proffered samples, it would be inappropriate for the Department at this point to reject these data and make assumptions adverse to KTN's interests because the Department failed to request that KTN provide an analysis of a different universe of transactions. Furthermore, and more importantly, we have no reason in this case to suspect that an analysis of a full quarter's sales in the home and U.S. markets, coupled with the line-item-by-line-item analysis of one month's sales in the U.S. market would not capture accurately KTN's experience throughout the POI. There are no factors such as, for example, a period of hyper-inflation during the POI, or an analysis of an industry subject to sharp seasonal fluctuations in sales, which would call into question the representativeness of the samples.

Petitioners assail the reliability of KTN's evidence of claimed quantity changes. In response to our direct question concerning the use of delivery tolerances KTN responded unequivocally that ''KTN's sales orders in the United States and KHSP's sales orders in the United States do not include pre-determined weight tolerances.'' KTN's October 23, 1998 section A supplemental response at 15 (emphasis added). However, record evidence indicates that KTN does, in fact, rely upon specific delivery tolerances which are subject to negotiation. KTN has consistently affirmed, and the Department has verified, that it did not include any quantity deviations falling within the standard plus-or-minus 10 percent range as constituting a change in quantity for purposes of its date-of-sale analysis. Nevertheless, the significance of that fact is attenuated if the negotiated tolerances for KTN's sales exceeded the 10 percent mark.

That said, however, because the record also does not indicate whether any sales analyzed for changes in quantity did involve negotiated tolerances in excess of the 10 percent standard, we have no evidentiary basis to disregard KTN's verified data or to assume that the claimed quantity changes arose, in whole or in part, from specially-negotiated quantity tolerances exceeding the standard plus-or-minus 10 percent threshold.

Petitioners' argument that at least some of the claimed changes in quantity arose from partial shipments against an order, rather than a change in quantity, has merit. KTN's rebuttal brief fails to address this charge head on. KTN points to a specific order-invoice combination drawn from its U.S. sales during the POI and suggests that the customer would agree to accept less than one half of the ordered quantity as fully satisfying the contractual terms of the original sales agreement. However, KTN does not claim that this is what happened with the specific transaction. Rather, KTN concludes that ''[t]his is precisely the

[6] Although the Department customarily equates ''essential terms of sale'' with price and quantity, it should be noted that this questionnaire included within the meaning of ''essential terms of sale,'' *inter alia*, delivery and payment terms.

type of situation where KTN would agree with the customer to view the order as filled.'' KTN's Rebuttal Brief at 19 (emphasis added). KTN has presented no evidence of any transaction where a customer actually released KTN from its obligation to supply the contractually agreed-upon quantity of merchandise, as stipulated in the original sales agreement. KTN's assertion that a customer would order a large quantity of merchandise, presumably in anticipation of its needs, and then accept less than half that amount as fully satisfying the original sales contract, is unsupported by record evidence. Furthermore, KTN's comments with respect to master coils *versus* slit coils are entirely inapposite with respect to the question of partial shipments by KHSP. The sales subject to our analysis involve the smaller coils cited by petitioners in their case brief, i.e., ''the coils that are sent to customers,'' not the much larger master coils produced by KTN in Germany. See KTN's Rebuttal Brief at 18. Thus, KTN's assertion that KTN in Germany would not roll a new master coil to fill an under-shipment of as much as 8,000 or 10,000 pounds sheds no light at all on whether or not KHSP would make good the shortfall by means of a second shipment of the outstanding quantity. This distinction is critical to KTN's rebuttal argument that the evidence supplied at Exhibit 23 did not include instances wherein KHSP filled an order by means of two or more shipments issued under separate invoices.

With respect to the role of change orders, however, we find petitioners' assertions are not borne out by the record evidence in this case. Petitioners' reliance upon Flat Products From Japan as supporting the use of order confirmation dates is misplaced. In Flat Products From Japan, the petitioners, in supporting the Department's use of respondent NSC's order confirmation date, noted that ''the record clearly shows that to the extent NSC and its customer made a significant revision to any material term of sales, there is an established mechanism for accomplishing the revision; specifically, * * * NSC issues a new or revised order confirmation.'' The Department agreed: ''[v]erification results indicate that the material terms of sale were established on the date of the order confirmation. Additionally, among the sales examined, we found no material changes to the order confirmation terms.'' Flat Products From Japan, 64 FR at 12958.

In contrast, in the instant investigation the Department confirmed at verification that many changes to the terms of KTN's sales, including changes involving price and quantity, are not memorialized through the generation of a new order confirmation or change order; KTN ''will not generate a second order confirmation unless (i) the customer requests it, or (ii) the change was ''substantial'.'' KTN Sales Verification Report at 32. Given the fluid nature of KTN's ordering system, which often allows changes to simply over-write the original terms, the record of this investigation does not suggest any discrete event, be it the original order confirmation or some other event prior to invoice date, where the essential terms of sale are conclusively known. Rather, the record indicates that the essential terms of sale can and do change subsequent to KTN's issuance of the original order confirmation, and that KTN employs no systematic means of capturing and documenting changes to its customers' orders. Contrast Belgian Carbon Steel Flat Products, 58 FR at 37090 (''[f]or only two of the 20 selected sales was there no order confirmation, thus calling into question Sidmar's claim that order confirmation records are not maintained''). As the Department has noted, ''the negotiation of a sale can be a complex process in which the details often are not committed to writing. In such situations, the Department lacks a firm date on which the terms became final.'' Final Rule, 62 FR at 27349. A similar situation obtains here where terms of sale are subject to changes which are not necessarily documented through issuance of an amended confirmation order.

Finally, even accepting petitioners' assertions and disregarding all claimed quantity changes as unsupported by the record evidence, the record evidence still supports the use of invoice date as the date of sale. KTN has presented evidence—impeached neither by petitioners nor by the Department's verifications—that price changes can and did occur with some regularity between the order confirmation date and the invoice date. Thus, while we agree with petitioners that not each instance cited by KTN as representing a change in the essential terms of sale is borne out by the record evidence, the Department did verify a significant number of instances of changes in price or quantity between the order confirmation and the invoice date. As we concluded in Flat Products From Korea II ''[t]he Department has no basis to conclude that essential terms of sale were set and not subject to change at the initial contract date.'' Id., 64 FR at 12956. Thus, the totality of the evidence in this case militates against petitioners' suggestion that we abandon the presumptive date of sale identified in the Department's regulations in favor of using KTN's order acceptance date. Rather, the record indicates that the essential terms of sale can and do change subsequent to KTN's issuance of its original order confirmation, and that KTN employs no systematic means of capturing and documenting these changes. For this reason, and because KTN's internal records kept in its normal course of business do not recognize a sale until the invoice is issued, we have continued to rely upon KTN's reported invoice dates in both markets as the dates of sale for this final determination. In the event this investigation should result in the publication of an antidumping duty order we intend to re-examine this issue thoroughly in any subsequent review involving KTN, especially with respect to quantity tolerances and change orders.

Comment 2: Affiliation

KTN contends that the Department incorrectly concluded that it was affiliated with Thyssen and its U.S. and home market affiliates pursuant to section 771(33)(F) of the Tariff Act based on the conclusion that Thyssen is in the position to exercise direction and restraint over both KTN and Thyssen's own affiliates. KTN argues that in order for KTS to be affiliated with Thyssen and its subsidiaries within the meaning of 771(33), both parties must have either a direct relationship with each other (as described in paragraphs 771(33)(A) though (E) and (G)), or an indirect relationship ''through which one party, though not directly related, is nevertheless in the position to control the other (as described in paragraph (F)).'' KTN's Case Brief at 7.

Under the terms of the statute, asserts KTN, Thyssen's subsidiaries and the KTS companies cannot be deemed affiliated on the basis of a direct relationship for they share no family relationships, board members or officers, partnership relations, or hold equity positions in one another. See section 771(33)(A) through (E). KTN also argues that Thyssen's subsidiaries and the KTS companies are not affiliated under 771(33)(G), for Thyssen's subsidiaries are not in the direct bilateral control relationship envisioned in this section. Citing Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404 (April 15, 1997) (Flat Products From Korea I), KTN contends that POSCO, a respondent in the review, participated with DSM in a

joint-venture firm, POCOS. DSM, in turn, wholly-owned a subsidiary company, Union (also a respondent in the review). KTN notes that in Flat Products From Korea I the Department concluded that POSCO and Union were not affiliated under section 771(33)(G) because the two companies were separate operational entities with no overlapping stock ownership and that nothing in the record indicated that either Union or POSCO was legally or operationally in a position to control the other party. As in Flat Products From Korea I, KTN maintains, Thyssen's subsidiaries and the KTS companies have neither overlapping stock ownership nor operational or legal control over each other. KTN's Case Brief at 9.

In addition, KTN claims that Thyssen's subsidiaries and the KTS companies are not under the common control of Thyssen, and therefore are not indirectly affiliated pursuant to section 771(33)(F) of the Tariff Act. KTN argues that under section 771(33)(F), a determination of control ''calls for a comprehensive and multi-factored analysis of the particular facts of each case in the context of the industry at issue, including the history of the parties, and the course of their dealings with one another.'' KTN's Case Brief at 10. Further, KTN points out that in accordance with 19 CFR 351.102, in order to find affiliation the Department must first determine that one party is in a position to exercise control over the ''production, pricing, or cost of the subject merchandise or foreign like product'' of the other party. Id., quoting 19 CFR 351.102. KTN contends that the Thyssen subsidiaries, and KTS or the KTS companies, are not in a position to exercise such control over each other.

According to KTN, the reality of the KTS shareholders' agreement is that Thyssen does not control KTS or the KTS companies. The shareholders' agreement, KTN insists, was structured ab initio to place the ability to influence KTS's operational decisions solely with Fried. Krupp, with the intention of consolidating Fried. Krupp's stainless steel operations. KTN asserts that Fried. Krupp's operational control over KTS is further reflected by the provision in the shareholders' agreement for Fried. Krupp to buy out Thyssen's interests in the firm in the event Fried. Krupp's and Thyssen's interests diverge. Therefore, KTN claims, KTS's production, pricing, and cost decisions are controlled by Fried. Krupp, not Thyssen. KTN's Case Brief at 12.

Further, KTN contends that petitioners have cited incorrectly *Mitsubishi Heavy Industries, Ltd.* v. *United States*, 15 F. Supp. 2d 807 (CIT 1998) (Mitsubishi) as supporting the proposition that ''when two companies participate in a joint venture, it is 'impossible' that the respective subsidiaries of those two companies are not affiliated.'' Id., citing petitioners' September 25, 1998 submission on affiliation (KTN's emphasis). Even if petitioners' interpretation of this case is accurate, KTN argues, Mitsubishi does not reach the facts before the Department in this investigation. KTN asserts that in Mitsubishi the Court of International Trade (the Court) did not address whether subsidiaries of companies that participate in a joint venture were in turn affiliated but, rather, held that the two parent companies were affiliated under section 771(33)(F) by virtue of their joint-venture ownership of a third party. KTN notes that the issue in this proceeding is not whether the ultimate parent companies, Fried. Krupp and Thyssen, are affiliated, but whether various Thyssen affiliates in Germany and the United States are affiliated with the KTS companies. ''Contrary to petitioners' assertion,'' contends KTN, ''the Department has clearly stated that affiliation between parent companies by virtue of a joint venture is not a 'vehicle' through which the Department will find affiliation between other companies that are controlled by those parent companies.'' Id. Any affiliation between Fried. Krupp and Thyssen, asserts KTN, would not reach the companies' respective subsidiaries. Id. citing Flat Products From Korea I, 62 FR at 18418. Therefore, KTN concludes that Thyssen's subsidiaries cannot be considers affiliated with the KTS companies controlled by Fried. Krupp merely by virtue of the joint venture between Fried. Krupp and Thyssen.

Petitioners maintain that the Department properly determined that KTN is affiliated with Thyssen and Thyssen Stahl AG, one of KTN's two joint-venture parents, and with the member companies of the Thyssen Corporate Group. In addition, petitioners support the Department's decision to use adverse facts available in those instances where the respondent failed to cooperate fully in providing the sales data requested of these various affiliates by the Department.

Petitioners note that section 351.102(b) of the Department's regulations provides that in finding affiliation based on control, the Department will consider (i) corporate or family groupings, (ii) franchise or joint venture agreements, (iii) debt financing, and (iv) close supplier relationships, among other factors. Petitioners note further that under this same regulatory provision control will not be found to exist using these factors unless ''the relationship has the potential to have an impact on decisions concerning production, pricing, or cost of the subject merchandise or foreign like product.'' Petitioners' Rebuttal Brief at 6 and 7, citing 19 CFR 351.102(b).

Applying each of these factors in turn to this case, petitioners contend that a general pattern of corporate groupings between Fried. Krupp and Thyssen suggest that these persons are affiliates within the meaning of section 771(33). Petitioners assert that the ''massive cooperation'' between Fried. Krupp and Thyssen is recognized in the parent's respective annual reports. For example, petitioners argue, Thyssen's September 1997 annual report at note 23 states that ''[i]n the year under review, the income/loss from associated affiliates is mainly due to the transfer of only a one-digit million DM prorated profit from Krupp Thyssen Stainless.'' Thus, petitioners contend that Thyssen and its affiliates recognize that the group's consolidated stainless steel flat products activities are centered in KTS and its manufacturing company, KTN. According to petitioners, the establishment of KTS and Thyssen Krupp Stahl (TKS) represents an arrangement whereby the two corporate groups have intertwined their steel production and marketing activities well in advance of the pending merger between Fried. Krupp and Thyssen. Id. at 9.

Petitioners also argue that KTN's advertising and marketing strategies also recognize the interconnections between Fried. Krupp and Thyssen. Petitioners maintain that KTN was conceived with the express intent of both Fried. Krupp and Thyssen to establish one unified speciality steel producer that customers worldwide would perceive as being both a Krupp and Thyssen company. Further, petitioners assert that Thyssen and Krupp opened their respective channels of distribution to KTN's stainless steel products, a fact recognized in the marketplace. Petitioners' Rebuttal Brief at 9.

Second, petitioners allege that KTN, as a joint venture owned by the Krupp and Thyssen groups is both a party controlled by two other parties pursuant to 771(33)(F) and a joint venture per se as defined at 19 CFR 351.102(b). Citing Certain Cut-to-Length Carbon Steel Plate from Brazil, 63 FR 18486, 18490 (April 15, 1997) (Carbon Steel Plate From Brazil), petitioners assert that Thyssen's 40 percent ownership in KTS is more than sufficient to place it in a position of control over KTN. As in that case, petitioners contend, ''[e]ven a minority

shareholder interest, examined within the totality of other evidence of control, can be a factor that we [the Department] consider in determining whether one party is in the position to control another.'' Petitioners' Rebuttal Brief at 11, quoting Carbon Steel Plate From Brazil. Additionally, petitioners argue that contrary to KTN's arguments, evidence of actual control is not required under the statute in order to make a finding of control. Rather, control is defined as merely the ability to control, i.e., the power to restrain or direct a company's activities. Id.

According to petitioners, KTN's reliance upon Flat Products From Korea I is misplaced. Petitioners assert that KTN's argument that the Department found that POSCO and Union were not affiliated in the absence of direct equity ownership or a finding of control, in essence, negates section 771(33)(F), which defines as affiliated persons two or more persons directly or indirectly controlling any person. Petitioners contend that the issue is not whether two parties who control a third party are affiliated to each other, but whether a person jointly controlled by two parties is affiliated with the parent companies' subsidiaries. Instead, petitioners argue that the pattern of affiliations in this case mirrors that found in Stainless Steel Plate in Coils From Belgium, 64 FR 15476 (March 31, 1999) (Belgian Stainless Plate in Coils) in which the Department determined that because ALZ and TrefilARBED were two persons established to be directly or indirectly controlled by ARBED, ALZ's sales through TrefilARBED were treated as affiliated-party sales. Thus, pursuant to 771(33)(F), petitioners claim that where KTS is under common control by Krupp, and Thyssen Stahl and Thyssen, KTS is affiliated with both Krupp and Thyssen. Also, pursuant to 771(33)(G), petitioners argue that because KTS controls KTN, KTN is affiliated to Thyssen through KTS and that because Thyssen controls its affiliates, then KTN is affiliated to those affiliates through Thyssen. Therefore, petitioners contend that KTS and KTN and the Thyssen subsidiaries are two or more persons directly or indirectly controlled by Thyssen, and so, are affiliated.

Further, petitioners argue that as recognized by the Department in its December 16, 1998 Affiliation Memorandum, the shareholders' agreement between the Krupp and Thyssen groups indicates that Thyssen, through Thyssen Stahl, has the indirect ability to control the activities of KTN through KTS. Petitioners assert that by means of the shareholders' agreement Fried, Krupp, and Thyssen (i) committed their respective families of companies to having all stainless activities reside in KTS and KTN, (ii) set forth the parties' power to amend or supplement the Industrial Concept governing KTS's operations, (iii) recognized the sales and distribution functions of the Thyssen affiliates, (iv) afforded Thyssen the ability to direct KTS through the operation of the Supervisory Board, (v) provided for Thyssen's participation in the activities of KTS and KTN through membership in the KTS Management Board, (vi) afforded Thyssen an additional avenue of direction or restraint of KTS (and thus KTN) through the Shareholder Committee, (vii) established a ''super-majority'' requirement for votes involving certain business transactions, including appointments to KTS's managerial board, giving Thyssen effective veto power over critical KTS activities, and (viii) established an arbitration committee to mediate any disputes between Fried. Krupp and Thyssen over KTS's activities. Petitioners' Rebuttal Brief at pages 17 through 22. Therefore, petitioners assert, the shareholders' agreement clearly articulates Thyssen's ability to exercise indirect control over KTN via KTS.

Third, petitioners contend that the legal framework established by the shareholders' agreement provides both de jure and *de facto* bases for a close supplier relationship between KTN and a certain Thyssen affiliate. In fact, according to petitioners, KTN is entirely dependant upon this Thyssen entity for the hot-rolling of the stainless steel cast in KTN's melt shop. Similarly, petitioners note, this entity ''does not provide stainless steel hot-rolling services to any entity other than KTN.'' Petitioners' Rebuttal Brief at 24, quoting KTN's December 17, 1998 section D supplemental response at D–3. Petitioners argue that this level of mutual dependency clearly qualifies as a ''close supplier relationship'' within the meaning of both 19 CFR 351.102(b) and the SAA at 838 which refers to a ''close supplier relationship in which the supplier or buyer becomes reliant upon the other.'' Id.

Therefore, petitioners conclude, these facts leave ''no reasonable room for any doubt that KTN is affiliated with Thyssen within the meaning of [section 771(33) of the Tariff Act].'' Id. Thus, as Thyssen is affiliated with its subsidiaries and has the ability to control those subsidiaries, KTN is affiliated with the Thyssen subsidiaries as well under the combined provisions of sections 771(33)(F) and (G).

Department's Position: We disagree with KTN. As we stated at length in our *Preliminary Determination* and the accompanying Affiliation Memorandum, we have determined that KTN is affiliated with Thyssen Stahl and Thyssen. Section 771(33)(E) provides that the Department shall consider companies to be affiliated where one company owns, controls, or holds with the power to vote, five percent or more of the outstanding shares of voting stock of the other company. Where the Department has determined that a company directly or indirectly holds a five percent or more equity interest in another company, the Department has deemed these companies to be affiliated.

We examined the record evidence to evaluate the nature of KTN's relationship with Thyssen Stahl and Thyssen and have determined that KTN is affiliated with Thyssen and Thyssen Stahl. Thyssen Stahl indirectly owns and controls, through KTS, forty percent of KTN's outstanding stock and Thyssen, which wholly owns Thyssen Stahl, likewise indirectly owns and controls a forty percent interest in KTN. KTN's section A questionnaire response acknowledges that KTN is a wholly-owned subsidiary of KTS. KTS formed KTN in 1997 to handle its stainless steel production and sales. The supporting exhibits to this submission further confirm Thyssen Stahl's interest in KTS and KTS's 100-percent interest in KTN. In a submission dated October 20, 1998, petitioners placed on the record publicly available data that confirmed both the foregoing shareholding interests and that Thyssen Stahl is a wholly-owned subsidiary of Thyssen. Consequently, KTN, as the wholly-owned subsidiary of KTS, is affiliated with the joint venture partner Thyssen Stahl and its parent company Thyssen pursuant to section 771(33)(E) of the Tariff Act. See Stainless Steel Wire Rod From Sweden, 63 FR 40449, 40453 (July 29, 1998).

In addition, we have determined that KTN is affiliated with Thyssen and its U.S. and home market affiliates. Section 771(33)(F) provides that the Department shall consider companies to be affiliated where two or more companies are under the common control of a third company. The statute defines control as being in a position legally or operationally to exercise restraint or direction over the other entity. Actual exercise of control is not required by the statute. In this investigation, the nature and quality of corporate contact necessitate a finding of affiliation by virtue of Thyssen's common control of its affiliates and of KTS. See Preliminary Determination, 64 FR at 95 and the Affiliation Memorandum. Such a finding is

consistent with the Department's determinations in Carbon Steel Plate From Brazil, 62 FR at 18490 and Stainless Steel Wire Rod From Sweden, 63 FR at 40452.

We also agree with petitioners that record evidence demonstrates that Thyssen, as the majority equity holder and ultimate parent company of its various affiliates, is in a position to exercise direction and restraint over these affiliates' production and pricing. Thyssen also holds indirectly a substantial equity interest in KTN, plays a significant role in KTS's operations and management and, thus, enjoys several avenues for exercising direction or restraint over KTN's production, pricing and other business activities (see the Affiliation Memorandum). In sum, Thyssen's substantial equity ownership in KTN and Thyssen's other affiliates, in conjunction with the ''totality of other evidence of control'' requires a finding that these companies are under the common control of Thyssen. Accordingly, for this final determination we continue to find KTN is affiliated with Thyssen, Thyssen Stahl, and Thyssen's U.S. and home market affiliates.

Comment 3: Facts Available for Unreported Downstream Sales

If the Department persists in finding affiliation between the two, KTN avers, the use of adverse facts available is, nevertheless, inappropriate, as was the Department's method of applying adverse facts available for sales involving Thyssen's subsidiaries in the home market. The Department, notes KTN, used the highest normal value reported by control number in KTN's home market database. KTN claims that under section 776(b) prior to relying upon adverse facts available, the Department ''must produce substantial evidence that respondents refused to cooperate or significantly impeded its review.'' KTN's Case Brief at 15, quoting *Queen's Flowers de Columbia* v. *United States*, 981 F. Supp. 617,629 (CIT 1997). KTN contends that it cooperated with the Department to the best of its ability and substantially responded to the Department's request for information, and that any failure to supply data arose not from an unwillingness to cooperate, as suggested in the Preliminary Determination, but from KTN's inability to secure the requested data from the Thyssen affiliates. KTN cites, *inter alia*, *Usinor Sacilor* v. *United States*, 872 F. Supp. 1000 (CIT 1994) (Usinor), in which the Court remanded the Department's final determination applying adverse facts available to certain unreported downstream sales, stating that:

> [i]f Commerce finds that Usinor did not have operational control, Commerce is directed to select the weighted average calculated margin as BIA. If Commerce finds Usinor maintained operational control, Commerce may reapply the highest non-aberrant margin as BIA in a manner consistent with the court's decision in *National Steel Corp.* v. *United States.*

KTN's Case Brief at 17 (original citation omitted).

KTN argues that, as Usinor suggests, KTN's failure to provide information regarding its downstream resellers was not the result of deliberate recalcitrance but, rather, KTN's lack of operational control over those affiliates and its inability to obtain the information. KTN points out that it was able to gain the complete cooperation of three Thyssen affiliates located in the United States despite the absence of any operational control over these companies. KTN submits that while the Department's preliminary determination that KTN was affiliated with Thyssen's resellers because of Thyssen's potential control over both KTN and its own affiliates may be sufficient as a legal standard, it does not support the obverse conclusion that KTN had the ability to control the activities of Thyssen's affiliates and could demand their proprietary sales data. According to KTN, it had to ''rely on persuasion, not control, to access the information requested by the Department.'' KTN's Case Brief at 19.

In addition, KTN objects to the Department's characterization in the Preliminary Determination of KTN's cooperation with the Department during October and early November 1998. KTN claims that the Department's November 17, 1998 request for the reseller sales information ''mischaracterizes, and in some cases misstates, the dialog between the Department and KTN.'' Id. at 20. KTN asserts that the Department acknowledged as much by the significant deletion of the reference to the Department's ''three official requests'' for the information included in the November 17, 1998 letter's original language as this letter was paraphrased in the Preliminary Determination. KTN complains that the November 17 letter, which included a warning that adverse facts available might be used, preceded the Department's November 18 memorandum which set forth the Department's reporting requirements for downstream sales by Thyssen affiliates. Therefore, KTN argues, while ultimately KTN was unable to provide all of the requested downstream sales data, the Preliminary Determination fails to consider the overall cooperation shown by KTN throughout this proceeding, including its numerous timely responses to questionnaires, and participation in two home market and three U.S. verifications. Accordingly, KTN submits, should the Department determine that Thyssen's affiliates are affiliates of KTN, the Department must use non-adverse facts available for the two Thyssen resellers, rather than adverse facts available, as in the Preliminary Determination. KTN's Case Brief at 21 and 22.

Assuming that the Department proceeds with its use of facts available, KTN recommends that the Department apply facts available for sales to the home market resellers by adjusting these prices upward to reflect arm's length prices. KTN claims that in determining NV the Department's practice is to accept a respondent's home market sales to its affiliates, rather than sales by its affiliates, where the Department determines that the affiliated-party sales were made at arm's-length prices. KTN's Case Brief at 22, citing Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et al. (AFBs), 63 FR 33320, 33341 (June 18, 1998). If KTN's prices to its two German resellers had passed the arm's length test, the Department might have accepted those sales in lieu of sales by the affiliates to unaffiliated customers. Id. Therefore, KTN claims that rather than calculating an ''arbitrary price,'' the Department could apply facts available for the missing sales by simply adjusting KTN's prices to its affiliates upward to a level which would satisfy the Department's arm's-length test.

That failing, KTN continues, the Department may not use facts available that are excessively punitive or aberrant and ''demonstrably less probative of current conditions.'' KTN's Case Brief at 23, quoting *National Steel Corp.* v. *United States*, 913 F. Supp. 593, 596 (CIT 1996) (National Steel). While KTN concedes that the Department has not established a bright-line test for identifying and selecting non-aberrant data, KTN insists the Department articulated two guidelines in response to National Steel:

> (1) the data should be sufficiently adverse so as to effectuate the statutory purposes of inducing respondents to provide the Department with complete and accurate information in a timely manner;
>
> (2) the data should be indicative of the respondent's customary selling practices and rationally related to the transactions to which the adverse facts available are being applied.

See National Steel at 913 F. Supp. 596.

KTN believes that in its Preliminary Determination the Department applied aberrant facts available to KTN's sales to the two home market resellers by replacing KTN's prices to these two customers with prices that are not remotely related to a vast majority of these transactions. KTN cites where, in KTN's view, the Department's methodology causes aberrant results by, for example, applying prices that are double the average price and, in some cases, exceed the average price by 500 percent. KTN's Case Brief at 25 through 27. Therefore, KTN argues, if the Department chooses to apply adverse facts available it must alter its approach to exclude the use of aberrant data.

First, KTN proposes adjusting an arm's-length price factor upward by 2.65 percent to account for the potential additional profit earned by the two Thyssen resellers. KTN's Case Brief at 28, basing the profit calculation on Thyssen's 1997–1998 Annual Report. In the alternative, KTN argues, the Department may rely on its own calculation of KTN's profit on home market sales of the foreign like product. By using the CEP profit rate calculated for the Preliminary Determination, KTN claims that the Department can incorporate an additional adverse element into its application of adverse facts available. KTN maintains that either of these two methods is adverse while remaining indicative of profit levels in the German steel industry. If the Department determines that neither of these profit calculations is sufficiently ''punitive,'' the Department could rely upon the profit level calculated in the Preliminary Determination for calculating constructed profit (based on KTN's sales made in the normal course of trade). KTN's Case Brief at 31.

If the Department insists on finding KTN affiliated with the Thyssen affiliates as it did in the Preliminary Determination, KTN argues, it must apply facts available for the missing home market downstream sales by selecting prices for each CONNUM which exclude aberrant prices. KTN believes that this would have the dual effect of employing data that is adverse to KTN while at the same time avoid using aberrant data. According to KTN, this methodology would employ a ''well-accepted statistical principle'' that for a normal distribution, more than 95 percent of all observations will fall within two standard deviations of the mean. KTN's Case Brief at 32. This ''95 percent confidence interval,'' KTN suggests, would serve to cap the permissible highest price applicable to each CONNUM, thereby foreclosing the application of outlier prices.

Additionally, KTN argues that the Department should not apply adverse facts available to sales by KTN's wholly-owned home market subsidiary, Nirosta Service Center (NSC), to one of Thyssen's resellers (Reseller 2) because those sales pass the arm's-length test. Based on the Department's own results from the preliminary determination arm's-length computer program, KTN maintains that the weighted-average prices for sales from NSC to Reseller 2 was 105.276 percent of the weighted-average prices to unaffiliated customers. KTN asserts that this ratio is well above the Department's threshold of 99.5 percent for finding sales at arm's length; therefore, the Department should use these arm's-length prices rather than facts available. Finally, KTN alleges that the Department calculated adverse facts available prices for certain sales to the two German resellers that were ordered but not invoiced during the POI; assuming the Department uses KTN's reported invoice dates as the date of sale, it should therefore remove these transactions from its margin analysis.

Petitioners agree with the Department's application of adverse facts available for those home market downstream sales unreported by KTN. KTN's suggestion that its participation in this proceeding thus far demonstrates that it cooperated to the best of its ability is not, petitioners insist, persuasive. Petitioners point to KTN's ability to report the its U.S. resellers' downstream sales as evidence that it should and could have reported its home market resellers' downstream sales as well. Petitioners' Rebuttal Brief at 25.

KTN's ''second line of defense,'' continue petitioners, is similarly unavailing. Accepting KTN's suggestion that it should not be subject to facts available because it could not secure requested information from an affiliate, petitioners caution, ''is not an axiom that should be embraced by the Department.'' Petitioners' Rebuttal Brief at 27. Petitioners point to, *inter alia, Helmerich & Payne, Inc.* v. *United States*, in which, petitioners suggest, the Court sustained the Department's application of adverse facts available where requested information was controlled by an uncooperative unrelated company. Furthermore, petitioners suggest that KTN's argument is misplaced, for the question at hand is not KTN's direct control over Thyssen's affiliates but Thyssen's role as a parent company over both its own affiliates and KTN. According to petitioners, KTN's submission of the U.S. resellers' downstream sales is, at the least, evidence of Thyssen's control of these affiliates; otherwise, this represents *prima facie* evidence of KTN's control of these parties. Petitioners suggest that it is obvious that Thyssen chose to direct compliance only of its U.S. affiliates in an attempt to distort the dumping analysis. By capturing U.S. transactions further along the distribution chain, but withholding this same information regarding home market sales, ''Thyssen managed to cap normal value while incorporating U.S. transactions that, by their very nature, should incorporate price-markups that increase U.S. price.'' Petitioners' Rebuttal Brief at 28.

Petitioners also disagree with KTN's suggestion that the Department could effectively apply facts available to the unreported downstream sales by adjusting the prices of KTN's sales to the affiliated resellers upward to prices which would pass the arm's length test. Petitioners contend that this approach might have some merit if the Department were using non-adverse facts available. Rather, petitioners believe that the Department has correctly determined that KTN's failure to report home market downstream sales warrants an adverse assumption; ''KTN's suggestion would be a *de facto* concession to its incorrect premise that the arm's-length test makes unnecessary the collection of downstream home-market data.'' Petitioners Rebuttal Brief at 29. Petitioners argue that KTN's failure to report the downstream sales by two of Thyssen's home market affiliates in response to the Department's repeated requests calls for the application of adverse facts available. These requests, petitioners note, were based on the statutory and regulatory provisions governing the collection of sales data. Id. at 31.

After detailing the history and regulatory backing for the Department's various decisions both to excuse KTN from reporting certain home market sales and to require certain home market and U.S. downstream sales data, petitioners then turn to KTN's comments concerning the application of adverse facts available. Petitioners dismiss KTN's complaint that the preliminary application of adverse facts available used data that are excessively punitive and aberrant as specious. Rather, insist petitioners, the chosen facts available reflect data that are both sufficiently adverse to encourage future cooperation from the respondent, and indicative of that respondent's customary selling practices.

First, petitioners maintain that KTN confuses the necessary level of adverse inference imputed to missing data.

Citing Certain Helical Spring Lock Washers from the People's Republic of China, 58 FR 48833, 48839 (September 20, 1993) (Lock Washers), petitioners note that where a respondent cooperated generally but inadvertently failed to provide a relatively insignificant amount of data, the Department often assigns the highest non-aberrational margin calculated for a single sale to the missing data. However, petitioners insist, in the instant case the failure by KTN was one of cooperation, not an inadvertent failure, and that the data requested were critical due to the magnitude of missing downstream sales data and the importance of comparing U.S. downstream sales to a complete and accurate set of home market downstream sales. Petitioners' Rebuttal Brief at 43.′

Second, petitioners allege that KTN's argument fails to consider that adverse facts available in the instant case is not a corrective measure among sales within KTN's and NSC's home market databases, but a surrogate for entirely missing downstream sales. Petitioners concede that KTN's elimination of so-called ''outliers'' among the reported sales could, potentially, be applicable if the task were simply to correct for missing data within a given universe of sales. However, petitioners contend, KTN fails to recognize that, once appropriate distinctions are made, the general conclusions in National Steel support the Department's current approach in this investigation. According to petitioners, in National Steel the Court addressed the appropriateness of determining ''the highest non-aberrational margin'' calculated. This ruling, petitioners insist, did not challenge the Department's criteria, nor even its selection of adverse data per se. Rather, the decision questioned the Department's failure to provide reasoned explanation as to how and why the particular adverse data were used. Petitioners' Rebuttal Brief at 44, citing *National Steel* 913 F. Supp. at 596.

Here, petitioners claim, the Department is not using the highest margin calculated to correct for a missing segment of the first-level sales by KTN and NSC but, rather, the highest NVs as surrogates, with appropriate adverse inferences, for the entirely missing downstream sales. Petitioners suggest that it is reasonable to expect that the pricing patterns for these missing transactions would be significantly higher in contrast to the affiliated-party transfer prices between KTN and NSC and the respective affiliated resellers. KTN's failure to report the relevant downstream sales has deprived the Department of the means of testing precisely how much greater the downstream sales prices would be, petitioners continue. Thus, petitioners argue KTN's benchmarks for finding ''outliers'' pertain to the wrong universe of sales, and the correct set of sales from which potential benchmarks could be determined are missing due to KTN's lack of cooperation in the first place. Petitioners' Rebuttal Brief at 45.

One available alternative benchmark the Department could use, suggest petitioners, is the measurable percentage difference between the transfer prices and downstream prices reported for KTN's downstream U.S. sales. While those sales are in the United States, rather than the comparison market, argue petitioners, they become the best information reasonably available to suggest what the difference should be in the home market, in light of KTN's failure to provide repeatedly requested downstream sales information. Petitioners claim that, based on KTN's own information, KTN exaggerates the magnitude of the markups from average to highest home market prices; KTN's actual experience in the United States indicates the difference would be significantly less. If anything, petitioners continue, the divergence between transfer and downstream prices in the home market would be even higher than in the United States, given Fried, Krupp's and Thyssen's ascendency as the only primary steel manufacturers in Germany and given the history of anticompetitive practices in the domestic stainless steel markets by Fried, Krupp and Thyssen. Petitioners' Rebuttal Brief at 46.

Petitioners also dismiss KTN's claim that so-called aberrational prices arise from sales of relatively smaller quantities. Petitioners note that the nature of downstream sales is such that larger quantities sold to an affiliate typically result in smaller discrete sales made from that reseller to its downstream customers. As evidence of this phenomenon, petitioners point to the transformation of a relatively small set of sales to U.S. resellers that evolved into a much larger set of resales through U.S. resellers to unaffiliated customers. Id.

Finally, petitioners take issue with KTN's contention that transfer prices from NSC to Reseller 2 are at arm's-length and that the Department should therefore not apply adverse facts available to sales made through that reseller. Irrespective of whether a particular subset of sales may or may not be at arm's-length, petitioners aver, KTN's failure to provide requested resale data through affiliated parties caused the Department to apply adverse facts available for the missing downstream sales. Therefore, petitioners insist that the Department acted appropriately in the Preliminary Determination, and that no changes are necessary for the final determination.

Department's Position: We agree with petitioners that our use of adverse facts available was appropriate in the instant case. In accordance with section 776 of the Tariff Act, we have used partial adverse facts available where KTN failed to provide us with certain sales information concerning two of KTN's resellers sales in the home market. In contrast to KTN's attempts to portray itself as a cooperative respondent which was never adequately apprised of the Department's requirements, we offer the following narrative history of this proceeding:

On August 3, 1998, the Department issued to KTN its antidumping questionnaire, which instructed KTN to report affiliates' resales to unaffiliated customers in both the home and U.S. markets. We also directed KTN to contact the agency official in charge if sales to affiliated parties represented a ''relatively small part'' of its total sales, or if KTN was unable to collect the necessary information. Our October 9, 1998 section A supplemental questionnaire reiterated this instruction (see question 1.c) and further directed KTN to report the sales of subject merchandise in the home and U.S. market by the specific subsidiaries of Thyssen identified in KTN's section A questionnaire response. Finally, on October 27, 1998, Department personnel contacted KTN's counsel and once again requested a detailed explanation of KTN's reporting of sales to affiliated and unaffiliated customers. During that conversation we instructed KTN to report the downstream sales of certain affiliates and, if it was unable to do so, to provide the Department with a detailed explanation as to why it was unable to report such sales (see Memorandum to the File, ''Affiliated Party Sales,'' October 28, 1998).

On October 28, and November 4, 1998, KTN submitted comments and additional information regarding its downstream sales. KTN indicated in both of these submissions that, in accordance with the Department's instructions, it intended to report downstream sales information by certain home market affiliates and U.S. affiliated resellers, but for assorted other reasons, it did not intend to report its remaining affiliates' resales.

After a thorough review of the record the Department notified KTN that it was still required to report downstream and reseller sales by additional home market and U.S. affiliates (see Memorandum to the File, ''Downstream Sales,'' November 6, 1998). In addition, the Department granted in full KTN's request for an extension of time to submit the required data.

KTN's November 16, 1998, section B and C supplemental responses failed to include the requested reseller sales information requested by the Department. On November 17, 1998, we issued a letter to KTN stating the Department would apply adverse facts available to the missing sales information if we did not receive it by November 23, 1998. On that date, KTN submitted additional affiliated reseller sales information, but again failed to provide the Department with a majority of the requested downstream and reseller sales information.

Therefore, as explained in detail in the ''Affiliation'' portion of the Preliminary Determination, we also agree with petitioners that it is appropriate to make inferences adverse to KTN's interests pursuant to section 776(b) of the Tariff Act because KTN did not cooperate by responding fully to the Department's repeated requests for specific sales information. We have examined whether KTN acted to the best of its ability in responding to our requests for information. As the chronology presented above and the Preliminary Determination suggest, KTN was instructed in the original questionnaire to contact the official in charge immediately if it had downstream sales to affiliated parties. Therefore, KTN's failure to comply with the Department's instructions led it to report one home market database which included sales to NSC instead of sales by NSC. Based on the facts presented above we determine that KTN had sufficient time to prepare the requested information. Both our original August antidumping questionnaire and our subsequent supplemental questionnaires explicitly directed KTN to report its downstream sales by named affiliates in the home market. While we did eventually conclude that KTN was not required to report certain resales by certain affiliates, from the time of our initial questionnaire, KTN was required to gather all affiliated reseller information.

In addition, KTN posits erroneously the standard that because KTN was unable to convince Thyssen's home market resellers to comply with the Department's request for information it is somehow exempt from the application of facts available. However, based on the fact that we have found KTN to be affiliated with Thyssen (as stated above), it is unreasonable to assume that Thyssen was unable to compel its own resellers to provide the Department with the specific information requested. In addition, we note, as do petitioners in their case brief, that Thyssen encountered no apparent difficulty in persuading its U.S. affiliates to comply with these same requests for reseller information. It is reasonable to assume that Thyssen could have prevailed upon its home market resellers to comply in like fashion with the Department's requests for downstream sales information. Thus, KTN's contention that it acted to the best of its ability and, thus, should not be subject to adverse facts available is unconvincing.

Further, we disagree with KTN's proposed alternatives to the Department's application of adverse facts available. We find misplaced KTN's reliance on National Steel to support its claim that the Department's use of adverse facts available in the Preliminary Determination produced aberrant results. Rather, we agree with petitioners that in citing *National Steel* KTN confuses the necessary level of adverse inference imputed to missing data and fails to consider that adverse facts available in the instant case are not applied as a corrective measure among sales within KTN's and NSC's properly-reported home market databases, but represent an adverse surrogate for downstream sales data that are missing in their entirety owing solely to KTN's failure to respond.

In *National Steel* the Department applied adverse facts available to certain sales unreported by the respondent in the case, Hoogovens. The Court sustained the criteria used by the Department in selecting among the facts available, i.e., that the margin be sufficiently adverse to induce future cooperation yet also be indicative of current conditions, but reversed the Department's application of these criteria to Hoogovens absent a more reasoned explanation. While the instant case bears superficial resemblance to *National Steel*, the fact patterns for the two cases are quite different. In *National Steel* Hoogovens failed to report a small number of sales while in the instant case KTN failed to report entire databases for two of its home market affiliates, thereby sharply limiting the record information from which to select among adverse facts available. KTN's failure to report fully the requested downstream sales data serves to undercut whatever merit its argument might carry precisely because this failure precluded an independent analysis which would allow the Department to establish current conditions for either of the resellers in question. The missing data in this case are of greater significance to our analysis than was the case in *National Steel* for they represent a large volume of KTN's home market sales and would allow us to compare home market downstream sales with U.S. reseller sales. Therefore, by failing to report such sales, the respondent has limited the information available to the Department for review in applying adverse facts available. Thus, as articulated in *National Steel*, because KTN should not be rewarded for providing inaccurate or incomplete data when it is to its advantage to do so, we have selected the only reasonable means available in our application of adverse facts available. As in the Preliminary Determination, we have selected the highest NVs per control number located in either the KTN or NSC databases, and have applied these model-specific NVs to the appropriate sales to the two resellers in question. While KTN contends that our application of adverse facts available produces aberrant results, by failing to report the downstream sales requested KTN has precluded the Department's testing the missing downstream sales prices and, possibly, selecting a different benchmark. As petitioners note, given the market realities of advancing through a chain of affiliated resellers, the prices for downstream sales from the affiliates to the first unaffiliated customer would be higher than the reported transfer prices from KTN or NSC to the affiliated parties. Thus, KTN's arguments that our application of adverse facts available produced aberrant results are based on conjecture, given the absence of the requested and relevant downstream sales data. Therefore, for these final results we have continued to apply adverse facts available in the same manner as our Preliminary Determination.

In addition, we also disagree with KTN's assertion that the transfer prices from NSC to Reseller 2 are at arm's length and that the Department should therefore not apply adverse facts available to sales made through that reseller. Our Limited Reporting Memorandum indicated that we would require the requested downstream sales data for the resellers in question since we had determined that they were not at arm's length. We based this decision on our analysis of KTN's home market database which included KTN's sales to

NSC. It was not until KTN's November 16, 1998 supplemental response that it first reported NSC's downstream sales information and, thus, NSC's sales to Reseller 2. However, the question is not whether a specific subset of KTN's sales to NSC are or are not at arm's length; rather, it is KTN's failure to provide requested data on downstream sales through affiliated parties which caused us to apply adverse facts available. Therefore, because our original decision was based on available record evidence and because we do not conduct our arm's-length test on subsets of sales to any specific customer, we have continued to apply adverse facts available for sales by NSC to Reseller 2.

We agree with KTN, however, that as we have determined that the invoice date is the appropriate date of sale for this final determination (see Comment 1), we incorrectly calculated adverse facts available prices for certain sales to two resellers in the home market which were ordered during the POI, but invoiced after the POI. Thus, we have removed from our calculations all sales with invoice dates falling outside the POI.

For this final determination we have continued to calculate the highest NV reported by control number in KTN's and NSC's home market database and have applied these to KTN's and NSC's sales to its affiliates for which KTN did not report home market downstream sales.

Comment 4: Critical Circumstances

According to KTN, the Department erred in concluding in the Preliminary Determination that critical circumstances exist. KTN claims that the Department (i) examined an inappropriate period in finding ''massive imports,'' (ii) based the pre- and post-petition periods on the incorrect months, (iii) relied upon data drawn from an incomplete list of HTS item numbers, thus inappropriately excluding certain imports of subject stainless sheet in coil, and (iv) did not review import trends over a sufficient period of time.

KTN notes that in making its critical circumstance decision the Department compared the volume of imports during the pre-petition period of April through June 1998 to the post-petition period of July through September 1998. KTN contends that, as in Certain Steel Concrete Reinforcing Bars from Turkey 62 FR 9737, 9746 (March 4, 1997) (Re-Bar From Turkey), the date on which the petition is filed determines whether the month of filing will be included in the pre- or post-petition period, and that where the petition is filed during the first half of a month, the month of filing is treated as part of the post-petition period. KTN's Case Brief at 42, citing the Department's Antidumping Manual, Chapter 10 at 4. KTN argues that since the petition was filed on June 10, 1998 (i.e., the first half of the month), June should be included in the post-petition period.

Furthermore, in making a final determination as to whether an increase in imports since the filing of the petition is massive, KTN argues, the Department must utilize all of the data reasonably available. KTN asserts that it is the Department's well-established practice to base its analysis on the longest period for which information is available, beginning at the date the petition was filed and ending with the effective date of the preliminary determination. KTN's Case Brief at 43, citing, e.g., Re-Bar From Turkey, 62 FR at 9746 and Brake Drums and Brake Rotors From the People's Republic of China, 62 FR 9160, 9165 (February 28, 1997) (Brake Drums II), both of which used comparison periods of seven months. Thus, KTN avers, while the Department's regulations state only that the period of comparison must be at least three months in duration, the Department has frequently utilized a comparison period of up to seven months. Therefore, KTN maintains that the Department must utilize a seven-month comparison period of June through December 1998 (based on the publication of the preliminary determination on January 4, 1999). Using this comparison period, KTN claims that imports of subject merchandise from Germany increased by only 7.85 percent during the post-petition period over a similar seven-month pre-petition period of November 1997 through May 1998. KTN's Case Brief at 44 and Exhibit 6, citing data drawn from the Census Bureau's ''Trade Information On-Line Service.''

In addition, KTN asserts that in determining whether critical circumstances exist, the Department must examine trends over a period of time to determine whether import volumes are subject to seasonal fluctuations which could taint the results. KTN acknowledges that while there may not be a direct correlation between the volume of stainless steel imports and the season, historical data clearly indicate that the level of imports fluctuates greatly from one month to the next. Therefore, KTN maintains, the Department's findings are likely to be significantly skewed if it considers a brief post-petition period of just three months.

Finally, KTN argues in a footnote to its case brief that the Department failed to review the full range of HTS numbers which include subject merchandise. KTN takes issue with the Department's characterization of this methodological choice as producing conservative estimates, because the so-called clean HTS numbers (those restricted by definition to subject stainless sheet in coil) do not capture all imports of subject merchandise. That the HTS numbers used ''are under-inclusive,'' KTN notes, ''provides no indication as to the direction in which the flaw will skew the critical circumstances estimate.'' KTN's Case Brief at 41, n. 43.

Petitioners argue that in its Preliminary Determination the Department justifiably concluded that there was a reasonable basis to believe or suspect that (i) the importer knew or should have known that the exporter was selling subject merchandise at less than fair value and (ii) there had been massive imports over a relatively short period, thus satisfying both the second and third criteria of section 733(e)(1) of the Tariff Act. Accordingly, petitioners maintain, the Department appropriately made an affirmative preliminary determination of critical circumstances as to KTN.

In analyzing whether imports of subject merchandise had been massive over a relatively short period of time, petitioners aver, the Department correctly calculated that subject imports had increased by 67.74 percent during the post-petition period scrutinized at the time of the Preliminary Determination. Further, and contrary to KTN's assertions, petitioners contend that the Department correctly excluded certain HTS items which might cover some quantity of in-scope merchandise from its calculations of massive imports, and properly included the month of June 1998 in the pre-petition period. Petitioners argue that the Department made a conservative estimate in calculating whether imports were massive by scrutinizing imports falling under HTS categories that only include sheet and strip in coil form, and by excluding those HTS basket categories which do not indicate whether or not the sheet and strip are in coils. In so doing, petitioners claim, the Department acted properly to exclude potentially out-of-scope merchandise, such as cut-to-length stainless sheet and strip, from its analysis. Moreover, petitioners contend that the excluded HTS categories account, on average, for less than 20 percent of total imports in 1998 of all in-scope merchandise. By including the HTS categories in question, argue petitioners, the critical circumstances analysis would be skewed, and would lead to imprecise

results. Petitioners' Rebuttal Brief at 66 and 67.

Petitioners also insist that the Department properly included the month of June in the pre-petition period. Petitioners maintain that June should be included in the pre-petition period since entries of subject merchandise from Germany during June were almost certainly exported from Germany prior to the petition's filing on June 10. Therefore, suggest petitioners, since the entries in June were the result of KTN's commercial behavior before the petition was filed, June should be included as part of the pre-petition period. Petitioners aver that 19 CFR 351.206(h)(2)(i) allows for such an adjustment of the base and comparison periods where the data are available and the commercial realities of the marketplace so dictate. Petitioners' Rebuttal Brief at 68 and n. 5, citing Uranium From Ukraine and Tajikistan, 58 FR 36640, 36645 (July 8, 1993).

Further, petitioners disagree with KTN's assertion that the Department must use data through December 1998 in making its final critical circumstances determination, arguing that each case must be decided according to its own facts, as suggested by the Department's regulations at section 351.206(h)(2) and (i). However, petitioners maintain, if Census Bureau data again serve as the basis for the final determination, consideration of the months through December 1998 as well as the inclusion of June 1998 in the post-petition period, still indicates that imports of subject merchandise during the relevant periods were massive (i.e., an increase of 21.46 percent). Petitioners' Rebuttal Brief at 69. Therefore, petitioners conclude, irrespective of the periods analyzed, the Department must continue to find that critical circumstances exist with respect to KTN.

Department's Position: We agree in part with KTN and find, pursuant to section 735(a)(3) of the Tariff Act, that critical circumstances do not exist with respect to KTN. While we do find that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales (see Preliminary Determination 64 FR at 99), we have determined that imports for KTN have not been massive. Consequently, the second of the two criteria required for a finding of critical circumstances has not been met.

On March 23, 1999, we requested that KTN provide the Department with monthly shipment data for 1996 through 1998. In response KTN submitted monthly shipment data for October 1995 through December 1998. Because it is the Department's practice to use company-specific information where available (see, e.g., Re-bar From Turkey, and Certain Cased Pencils From the People's Republic of China, 59 FR 55625 (November 8, 1994)), we have based our final determination on KTN's monthly shipment data, rather than the Census Bureau data used for the Preliminary Determination.

We also agree with KTN that we incorrectly included June in the pre-petition period. As stated in Re-bar From Turkey, where the petition is filed during the first half of a month, the month of filing is treated as part of the post-petition period. Since the petition in this case was filed on June 10, 1998, we have concluded that June should be included in the post-petition period. Further, we agree with respondent that it is our normal practice to include in our analysis data concerning the respondent's imports of subject merchandise up to the date of the preliminary determination, where such data are available. See, e.g., Aramid Fiber of Poly-Phenylene Terephthalamide From the Netherlands, 59 FR 23684 (May 6, 1994). In the instant investigation the most reliable data available concern KTN's shipments of subject merchandise, rather than imports into the United States, because the former are limited to the respondent KTN and, unlike the Census data, are limited to merchandise subject to this investigation.

However, we disagree with KTN that it would be appropriate to broaden our analysis to include data through December 1998. Although the ''effective date'' of the Preliminary Determination fell on January 4, 1999, the date of its publication in the **Federal Register**, the actual date of this determination is December 17, 1998. Because the Preliminary Determination fell in the middle of the month of December, we believe it would be inappropriate to include data for the full month of December in our analysis, as this would mean including data on imports after the Preliminary Determination in our analysis of ''massive imports.'' Accordingly, we have determined that for the purpose of our critical circumstances determination it is appropriate to compare KTN's shipment data for a six-month pre-petition period of December 1997 through May 1998 to a six-month post-petition period of June 1998 through November 1998. Based on this comparison we have concluded that imports of subject merchandise decreased by 2.5 percent. Clearly, then, there was no increase in KTN's imports of subject merchandise during the post-petition period.

With respect to all other exporters who were not subject to this investigation, it is the Department's normal practice to conduct its analysis based on the experience of the investigated companies. See, e.g., Re-bar From Turkey. In Re-bar From Turkey the Department found critical circumstances for the ''All Others'' category because it found critical circumstances for three of the four companies investigated. However, as we recently determined in Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 24329 (May 6, 1999) (Hot-Rolled Steel From Japan), we are concerned that a literal application of this approach could produce anomalous results given certain circumstances. Therefore, we believe it is appropriate in this case to apply the traditional critical circumstances criteria to the ''All Others'' category. First, in determining knowledge of dumping, we look to the ''All Others'' rate, which is based on the weighted-average margins of all investigated companies. In this case such a weighted-average rate must, of needs, be based on the individual rate of KTN, the sole respondent in this investigation. KTN's rate applied to ''All Others'' is 25.84 percent. In addition, the Department normally considers a preliminary International Trade Commission (Commission) determination of material injury sufficient to impute knowledge of likelihood of resultant material injury. The Commission preliminarily found material injury to the domestic industry due to imports of stainless sheet in coil from Germany and, on this basis, the Department may impute knowledge of likelihood of injury to all other exporters. See Preliminary Determination of the Commission of Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom, 63 FR 41864 (August 5, 1998). However, while we have sufficient evidence to impute knowledge of dumping and material injury to the ''All Others'' category, we also must also evaluate the second criterion required by the statute in making a critical circumstances determination: whether there have been ''massive imports'' for the ''All Others'' category. In making this determination we examined the company-specific shipment data provided by KTN, which, as noted, indicate a decrease of 2.5 percent during the post-petition period.

We found, accordingly, that KTN's data provide no evidence of massive imports. Based on that finding we likewise determine that imports from uninvestigated exporters were also not massive during the relevant comparison periods. We also examined U.S. Customs data in an attempt to analyze overall imports from Germany of the subject merchandise. Contrary to our approach in the Preliminary Determination, we examined entries classified under the full range of HTS items which are listed in the ''Scope of the Investigation'' section, above. These data indicate that imports of subject stainless sheet in coil for Germany as a whole increased by 8.9 percent, still well below the 15 percent threshold for an affirmative finding of ''massive imports.'' However, since the full range of HTS items includes both subject and non-subject merchandise, we believe it is inappropriate to base our critical circumstances finding on these data which are overly broad. We are relying, therefore, upon the scope-specific data supplied by KTN. We find, therefore, that imports from all other exporters were not massive during the relevant period. Based on these factors the Department determines that there are no critical circumstances with regard to imports of subject merchandise from all other exporters in Germany.

Adjustments to Normal Value

Comment 5: Proper Application of Facts Available

Petitioners suggest that the series of customer codes the Department used in its preliminary margin program to identify sales through Thyssen and Krupp affiliates is not complete. With respect to sales through NSC, petitioners identify several customer codes used by NSC which, petitioners assert, the Department did not include in its preliminary margin program. In addition, petitioners argue, certain of KTN's customer codes are reported as Thyssen and Krupp affiliates which were not identified by the Department in its preliminary margin program.

KTN counters that petitioners have cited erroneously to the model-match program whereas the customers are coded correctly in the separate arm's-length test program. According to KTN, the program language cited by petitioners applies only to the application of adverse facts available to unreported downstream sales. KTN concludes that, aside from what KTN terms the inadvertent inclusion of affiliated-party sales that passed the arm's-length test, the model match program is correct and need not be changed.

Department's Position: We disagree with petitioners. To apply adverse facts available with respect to two home market resellers for which KTN failed to provide downstream sales data (see Comments 2 and 3), we included language in our model match program that aggregated all customer codes used by KTN or NSC for sales to these two resellers in their respective sales databases. Although petitioners argue that our list is not exhaustive based on an analysis of customer codes identified in the home market sales files as pertaining to ''Thyssen'' affiliates (i.e., where CUSRELH equals 3), we determined that no additional codes need to be added to the program, as the additional codes cited by petitioners identify Thyssen affiliates for whom we did not request downstream sales information. Thus, no modification is necessary to this programming language for the final determination. See Limited Reporting Memorandum for further information.

Comment 6: Adjusting for NSC's Processing Costs

Petitioners point out that in the KTN Sales Verification Report the Department indicated that it ''[was] unable to trace any expenses related to slitting for FY 1997 because NSC stated that it did not produce cost center reports during this period'' and that ''NSC was unable to provide any supporting documentation for either the slitting cost or total slitting tonnage.'' Petitioners' Case Brief at 77, quoting the KTN Sales Verification Report at 56 and 57. Petitioners assert that the Department should accordingly deny KTN's claimed direct adjustments for NSC's slitting costs.

KTN responds that the Department should accept as direct selling expenses NSC's reported slitting costs for 1998 for slitting master coils to customers' orders, and adjust home market prices accordingly. According to KTN, the Department was able successfully to verify these expenses.

Department's Position: We disagree with petitioners and KTN. With respect to NSC's slitting operations, we have determined that the claimed expenses represent direct processing costs which are accurately treated as components of KTN's variable cost of manufacture and COP for the finished products sold to the first unaffiliated customers. Accordingly, for this final determination we have increased COP by NSC's 1998 slitting costs as described in our Final Results Analysis Memorandum and have denied KTN's claim that these costs are direct selling expenses. Because we were unable to verify NSC's fiscal 1997 slitting costs, we have used the verified figures for fiscal 1998 for all relevant slitting costs during the POI.

Comment 7: Early Payment Discounts

Petitioners argue that many of KTN's home market sales appear not to have warranted early payment discounts based on the reported terms of sale. According to petitioners, the time between invoicing and payment for many transactions seemingly precludes such discounts. Petitioners suggest that this fact pattern is contrary to the discussion of early payment discounts in the Department's KTN Sales Verification Report, wherein the Department observed that ''KTN stated that as a policy it does not allow customers to take early payment discounts where they fail to meet stated terms, but that on rare occasions, early payment discounts will be granted even though a customer pays late.'' Petitioners' Case Brief at 78, quoting the KTN Sales Verification Report at 33 (petitioners' emphasis). Petitioners assert that the Department should disallow all home market early payment discounts as adverse facts available or, at a minimum, disallow those early payment discounts where reported dates of invoicing and payment did not qualify KTN's customer for such a discount.

KTN responds that the Department successfully verified its calculation of early payment discounts and argues that the application of facts available is not warranted. KTN argues that in each case in which KTN reported early payment discounts in its sales file, the sales documentation confirmed that the customer had in fact taken the discount. KTN asserts that while the customer may not have qualified for the discount for three of the five sales traces which indicated a discount was given, the actual terms of payment were verified in each case. KTN argues that, as verified by the Department, the date of payment was the date that KTN booked the payment into its accounts receivable system. Therefore, argues KTN, it is possible that a customer sent a payment within the time allowed for qualifying for an early payment discount, but that the payment was not booked into KTN's accounting system for several days.

Department's Position: We agree with respondent. During our home market verification of KTN we conducted thorough sales traces which included ensuring the accuracy of KTN's reported payment and invoice dates. We found no discrepancies in any of KTN's reported payment or invoice dates.

Furthermore, while the time lag between the verified invoice and payment dates might not have appeared to warrant an early payment discount for these transactions, we were satisfied that for those transactions reviewed which included early payment discounts, the customer in fact claimed these discounts and KTN granted them. See, e.g., KTN Sales Verification Report at 59. Therefore, we have continued to allow an adjustment to NV for KTN's reported early payment discounts.

Comment 8: Advertising Expenses

In its opening-day correction letter presented at the KTN sales verification KTN noted that it had incorrectly double-counted expenses attributable to advertising by including them in its ISEs and also reporting them as direct expenses. KTN suggested removing advertising expenses from its ISEs to correct this error. Petitioners claim, however, that information on the record establishes that the remedy suggested by KTN is unacceptable. Petitioners point to the discussion of advertising activities in the KTN Sales Verification Report, specifically the description of these expenses:

> [f]or advertising expenses, KTN explained that Informationsstelle Edelstahl Rostfrei (ISER) is the industry association which conducts a variety of activities to study and promote the uses of stainless steel. KTN presented a list of the association's activities in 1997 and 1998, including brochures and publications, seminars, fairs * * *

Petitioners' Case Brief at 80, quoting the KTN Sales Verification Report at 45.

Petitioners argue that ISER's activities are directed at KTN's current and prospective customers of stainless steel products, not at the customer's customers. Accordingly, claim petitioners, any expenses incurred by KTN related to its membership in ISER (i.e., the association dues) are correctly accounted for as part of ISEs, both for the home market and the United States. Petitioners further assert that if the Department instead decides to take the approach suggested by KTN (i.e., to reduce ISEs by the amount of ISER dues), these expenses should also be reported as direct expenses in the United States.

KTN counters that the Department should continue to treat KTN's reported home market advertising expenses as direct selling expenses. ISER, KTN asserts, undertook promotional and advertising campaigns directed at KTN's customers' customers in the German market. KTN argues that, accordingly, home market advertising expenses qualify as direct selling expenses.

Department's Position: We agree with petitioners that KTN's home market advertising expenses are properly classified as ISEs. The Department has articulated its views with respect to the proper treatment of advertising expenses in, e.g., Gray Portland Cement and Clinker from Mexico, 64 FR 13148, 13169 (March 17, 1999) and Fresh Atlantic Salmon from Chile, 63 FR 31411, 31424 (June 9, 1998). The Department normally considers as direct selling expenses those expenses that result from, and bear a direct relationship to, the particular sales in question. In the case of advertising expenses, to qualify as a direct adjustment, these expenses must also be assumed on behalf of a customer and must be associated specifically with sales of subject merchandise. ISER's activities, however, are aimed at promoting the use of stainless steel in general but not subject merchandise specifically. The expenses incurred for KTN's membership in ISER are not directly related to particular sales by KTN of subject merchandise. As indicated in our KTN Sales Verification Report at 45, ISER conducted activities to study and promote the use of stainless steel generally (i.e., the activities were not limited to stainless steel sheet and strip which is the subject of this investigation). Furthermore, there is no record evidence supporting KTN's claim that ISER's activities give rise to expenses assumed by KTN on behalf of its customers. Therefore, for this final determination, we consider KTN's home market advertising expenses to be indirect in nature. We have denied KTN's claim that these are direct selling expenses, but we have included these expenses in KTN's home market ISEs.

Comment 9: Rebates

As indicated in the KTN Sales Verification Report, NSC's rebates to a particular customer were granted at a given percentage even though NSC had initially reported a different figure in its response. Petitioners urge the Department to apply the corrected rebate percentage for 1998 sales (NSC noted that the rebates at issue applied only to sales in 1998) and to allow no rebates for the items invoiced to this customer during 1997.

Department's Position: For this final determination we have applied the corrected rebate percentage to NSC's eligible 1998 sales, as suggested by petitioners.

Adjustments to United States Price

Comment 10: Unreported U.S. Sales

Petitioners urge the Department to apply partial adverse facts available to five previously unreported U.S. sales discovered by the Department during the verification of KHSP. Petitioners argue that KHSP never included these sales in its list of corrections, nor did it provide the total quantity and value of these missing transactions in its opening-day corrections letter. The unreported U.S. sales, petitioners maintain, do not constitute minor corrections but instead new information that should be rejected by the Department and removed from the record of this investigation.

As stated in Lock Washers (58 FR at 48835), aver petitioners, the Department's policy concerning unreported sales discovered at verification is to accept for the record only that information necessary to establish the magnitude of any omissions. In Lock Washers, petitioners point out, the Department returned sales documentation concerning the unreported sales identified at verification. Petitioners also point to the investigation on Belgian Stainless Plate in Coils, in which the Department refused to take or even review complete sales data (other than the invoice) for a single unreported sale.

Petitioners assert that it is the Department's established practice to apply total facts available to missing sales information if the missing data constitute five percent or more of a sales database, or partial facts available when the missing or unreported data make up less than five percent of a given sales database. Petitioners suggest that the Department, in a manner consistent with Lock Washers (in which it resorted to partial facts available for the respondent's unreported sales data), should apply as partial adverse facts available the highest margin from the petition or, at a minimum, the highest margin calculated for a single sale based on the correctly reported CEP transactions. Petitioners contend that judicial precedent further supports the application of facts available with respect to the KHSP sales at issue. Petitioners emphasize that in *Persicio Pizzamiglio, S.A.* v. *United States,* 18 CIT 299 (1994), the Court upheld the Department's use of facts available based on unreported home market and U.S. sales.

KTN responds that the Department's acceptance at verification of the previously unreported U.S. sales was appropriate. KTN argues that petitioners' reliance on Lock Washers is

misplaced. The facts in that case, KTN argues, are not remotely comparable to the facts of this case. Citing a June 7, 1993 letter to respondent's counsel in the Lock Washers proceeding, KTN notes that the Department rejected the sales documentation at issue because it reflected ''entirely new contracts covering a significant portion of total U.S. sales quantity and value.'' KTN's Rebuttal Brief at 29. However, KTN argues, the new KHSP sales identified at verification were neither significant nor entirely new. KTN asserts that KHSP had simply misclassified four of the five previously unreported sales as non-subject merchandise and that only one was entirely new and previously unidentified. Furthermore, argues KTN, the sales at issue can hardly be considered significant given the number of U.S. transactions. KTN also disputes petitioners' claimed parallels between this case and Belgian Stainless Plate in Coils, claiming the Department has yet to issue a final determination; thus, KTN insists, there is no ''precedential authority contained in a verification report in a different investigation with different facts.'' KTN's Rebuttal Brief at 30.[7]

KTN further claims that petitioners have mischaracterized the Department's normal practice with respect to the reporting of new sales at verification. The Department's Antidumping Manual, argues KTN, clearly establishes that the decision whether or not to accept new sales at verification is to be made on a case-by-case basis. KTN cites as an example of this case-specific approach Disposable Pocket Lighters from the People's Republic of China, 60 FR 22539, 22365 (May 5, 1995) (Pocket Lighters from the PRC), where the Department discovered three previously unreported invoices at verification. In that determination, KTN points out, the Department concluded that the omissions ''were inadvertent and the corrected information was verified.'' KTN's Rebuttal Brief at 31, quoting Pocket Lighters from the PRC. The Department further indicated in its determination that ''the new sales represent a small percentage of total sales during the POI and, at verification, were not hidden or misrepresented.'' Id. KTN argues that, as in Pocket Lighters from the PRC, the Department should accept the new sales presented at verification, as they represent a small percentage of total sales and were neither hidden nor misrepresented.

Finally, KTN argues that in the event the Department agrees with petitioners that it cannot accept the new sales, it should still use the documentation provided by KHSP on the record as facts available. KTN suggest this approach would be consistent with Porcelain-on-Steel Cooking Ware from the People's Republic of China, 62 FR 32757 (June 17, 1997) (Porcelain-on-Steel Cookware), in which the Department determined that no adverse inference was warranted with respect to three new invoices discovered at verification. KTN's Rebuttal Brief at 32.

Department's Position: We agree in part with petitioners. In Certain Cut-to-Length Carbon Steel Plate From South Africa, 61 FR 61731 (November 19, 1997) (Steel Plate from South Africa), the Department applied the highest non-aberrational margin to three of respondent Highveld's unreported U.S. sales which were discovered at verification. The Department rejected Highveld's arguments that there was no significant failure to report the U.S. sales and that the effect of these omissions was minor. In fact, in that case the unreported U.S. sales represented an even smaller percentage of total sales than do KHSP's newly-identified transactions. Similarly, in the earlier Lock Washers case the Department took this same approach and applied the highest non-aberrational margin calculated for a single sale. It is also important to note that, as in this case, the respondent in Lock Washers identified the sales at issue at the outset of verification. Accordingly, we are not convinced by KTN's suggestions that disclosure of such sales at verification somehow warrants their acceptance for calculating KTN's weighted-average margin. In addition, by the time the Department conducted its U.S. verification, KHSP submitted three U.S. sales databases (on September 29, 1998, November 16, 1998, and January 6, 1999) reflecting various revisions. Thus, KTN had ample opportunity to review KHSP's submitted data for completeness.

With respect to KTN's reliance on Porcelain-on-Steel Cookware, we note that the facts in that case are distinguishable from those in this investigation. In that case the three unidentified invoices discovered at verification were relevant to the calculation of factors of production for steel inputs and did not constitute unreported sales intended for inclusion in the Department's price-to-price margin calculations.

We do not accept, however, petitioners' characterization of KHSP's omissions as ''more egregious'' than those in Lock Washers. Although KHSP did not provide the aggregate volume and value of these sales in the opening-day correction letter submitted for the record, Exhibit 1 to the KHSP Verification Report makes clear that KHSP identified these missing sales at the outset of verification. See KHSP Verification Report, Exhibit 1 at 3 and 10 through 16. Furthermore, KHSP provided a complete packet containing copies of each of the relevant invoices which the Department included on the record as a verification exhibit. Nevertheless, for the reasons stated above, we find that KHSP had three opportunities spread over four months to provide the Department with a complete listing of its U.S. sales. In response to its failure to do so, as adverse facts available, we are applying the highest non-aberrational margin calculated based on KTN's correctly reported CEP transactions to the unreported sales and have included these transactions in our calculation of the overall weighted-average margin.

Comment 11: Facts Available for Reseller's Indirect Selling Expenses

KTN contends that the Department should no longer apply facts available for ISEs for each U.S. sale made by one of Thyssen's affiliated resellers based in Germany because after the Preliminary Determination KTN provided this reseller's ISEs which were verified without discrepancy.

Department's Position: We agree with KTN. At the time of our preliminary determination KTN had not submitted information regarding the ISEs incurred by the reseller at issue. However, as part of its January 6, 1999 supplemental response, KTN reported the ISEs for this reseller. During our U.S. sales verification we specifically reviewed the ISEs for the reseller in question and noted no discrepancies. Therefore, for these final results we have used the verified ISEs as reported for this reseller.

Comment 12: U.S. Credit Expenses

KTN maintains that in its Preliminary Determination the Department erroneously rejected KTN's reported credit expense for CEP sales and recalculated the expense using the credit period beginning with the date that KNE shipped the product from the European port (reported as SHIPDAT3U) rather than the date of shipment to the customer from the U.S. port (reported separately as SHIPDAT1U). KTN claims that using the earlier date of shipment from Germany overstates U.S. credit expenses by double-counting the time that

[7] The Department's final determination in Belgian Stainless Plate in Coils was published in the **Federal Register** one day after the filing of KTN's rebuttal brief.

merchandise is in transit between the European and U.S. ports; KTN claims it has included this time in its ICC. KTN argues that upon shipment to KHSP from the European port KNE bills KHSP for the merchandise; at that time KHSP recognizes the products as inventory on its books and records its value in its accounts payable. Similarly, KNE books the item as a sale to KHSP and includes the total in its accounts receivable due from KHSP. Thus, the time between SHIPDAT3U and SHIPDAT1U represents a period of credit being extended by KNE to KHSP, not by KHSP to the unaffiliated customer. KTN asserts that it has properly recognized this period by including the average time at sea as part of its ICCs in Germany. Therefore, under the Department's own practice, KTN contends, the correct date of shipment to use in the calculation of U.S. credit for CEP sales is the date of shipment to the final U.S. customer from the U.S. port. KTN's Case Brief at 56, citing Brake Drums and Brake Rotors From the Peoples Republic of China, 61 FR 53190, 53195 (October 10, 1996) (Brake Drums I).

Petitioners take issue with KTN's attempt to describe these sales as if they were made from KHSP's inventory in the United States. The sales in question, petitioners note, are not of merchandise that enters KHSP's inventory and is then later sold to the unaffiliated customer, but instead are sales that have been ordered by the final U.S. customer with the terms of sale set well before entry into the United States. Petitioners' Rebuttal Brief at 55. Dismissing KTN's references to KHSP's ''accounting inventory'' as a ''clever semantic cover,'' petitioners point to KTN's own statements for the record that it does not maintain inventory in the United States, but rather, makes direct shipments from Germany to the first unaffiliated customer in the United States through the CEP agent KHSP. Id. at 56. Petitioners accuse KTN of seeking to lower its margin by shifting the ex-factory-to-U.S. port expenses from its U.S. credit (a direct expense) to its foreign ICC (an indirect expense). Thus, petitioners continue, a Deutsche-mark interest rate would apply and the amount would not be deducted from the CEP starting price. However, petitioners maintain that the valuation of merchandise during this period is in U.S. dollars, as demonstrated by the documentation of transactions from KTN through KNE to KHSP. Therefore, petitioners submit, U.S. credit expenses should be calculated based on the time from KNE's shipment from the European port (SHIPDAT3U) using a dollar-denominated interest rate.

Department's Position: We agree in part with petitioners. In response to our section A supplemental questionnaire, KTN reported that ''[i]t typically is not KHSP's practice to maintain an inventory of the subject merchandise for its customers. During the POI, KHSP did maintain a small inventory of subject merchandise, but did not sell this merchandise.'' KTN's October 23, 1998 supplemental response at 6. KTN reiterated this point in a December 1, 1998 submission on critical circumstances: ''[a]s stated in prior submissions, KTN does not maintain inventory in the United States.'' Therefore, we conclude that during the POI KHSP did not have any sales of subject merchandise made out of inventory. This being true, all of KTN's sales during the POI were made-to-order sales that were drop-shipped from KNE in Germany (i.e., direct shipments). Therefore, we disagree with KTN's characterization of these transactions as KHSP's ''inventory sales.''

Further, we disagree with KTN's conclusion that Brake Drums I articulated a practice of using the date of shipment from the U.S. port to the U.S. customer as the correct date of shipment in calculating the credit period for CEP sales. In fact, in Brake Drums I the Department stated that:

> [i]n CEP cases where the merchandise received is shipped to the U.S. customer from inventory of a U.S. affiliate, the credit period begins from the point of shipment from U.S. inventory. However, in the case of [respondent] Laizhou/Shenyang merchandise is shipped to the U.S. customer directly from the foreign port. Therefore, we have relied on a credit period beginning with the date of the bill of lading at the foreign port.

Brake Drums I, 61 FR at 53195.

Therefore, we have recalculated KTN's credit expense based on the date of shipment from the German port (SHIPDAT3U) rather than shipment from the U.S. port, which is fully consistent with Brake Drums I.

However, we agree with KTN's assertion that it recognized this time period by including the average days at sea as part of its ICCs in Germany. Therefore, in order to avoid double-counting the time in transit by including this period in both KTN's U.S. credit and its foreign ICCs, we have adjusted the latter figure to account for time at sea, as reported in KTN's section C supplemental response.

Comment 13: Proper Shipping Date for U.S. Resales

Assuming, arguendo, that the Department will again recalculate credit expenses for either KTN or KHSP sales and continues to use SHIPDT3U, KTN insists that the Department must ensure that the shipment date field used to calculate the payment days for individual transactions contains a date. KTN claims that a subset of the U.S. sales reported by KHSP represent transactions where the merchandise was directed to a different customer after the product's arrival in the United States (e.g., in the case of a canceled sale), or resales of merchandise initially rejected by the original U.S. customer after delivery. Thus, irrespective of the larger issue of KTN's proper credit period, the appropriate date of shipment for these resales is the date of shipment within the United States (SHIPDT1U). Therefore, KTN argues that should the Department continue to use the date of shipment from the European port for KHSP's other U.S. sales, the Department must still use SHIPDT1U for this subset of sales.

Department's Position: As stated in response to Comment 12, we have continued to use SHIPDT3U in our calculation of U.S. credit expenses. However, we agree with KTN that in those instances where merchandise was resold by KHSP after arrival in the United States, the date of shipment to use in our calculation of imputed credit expenses should be the date KHSP shipped the merchandise to the final U.S. customer (SHIPDT1U), and not the date of the original shipment from KNE in Germany. Therefore, we have revised our program to account for such resales in the United States. See Ministerial Errors Memorandum.

Comment 14: Short-Term Interest Rates

KTN states that as part of its Preliminary Determination the Department applied an interest rate of 9.5 percent, the prime rate plus one percent, to calculate U.S. credit expenses because KTN did not report Fried. Krupp's short-term interest rate, and because the reported U.S. short-term borrowing rate did not represent an arm's-length rate. However, KTN claims that because, as part of the post-preliminary home market and U.S. verifications, both KTN and KHSP provided information on their respective short-term borrowing rates that correct these deficiencies, these verified rates should be used for the final determination.

Petitioners raise a number of issues relevant to both KTN's home market and U.S. interest rates. First, petitioners urge the Department to reject as untimely information the figures KTN provided at verification regarding its home market interest rate. Petitioners suggest that the

Department instead either allow no adjustment whatever for home market credit as adverse facts available, or rely upon a second rate reviewed at the home market verification as non-adverse facts available.

Regarding the U.S. interest rate, petitioners assert that, despite numerous requests, KTN never supplied the necessary supporting data for the interest rates available to Krupp USA Financial Services, Inc. (KFSI). Even accepting the specific reported rate, petitioners claim, the information KHSP did present at verification regarding KFSI demonstrates that the interest rate is not at arm's length. Furthermore, petitioners contend that neither the Krupp nor the KHSP interest rate can be applied to U.S. sales since neither is based on U.S. dollar-denominated lending.

Petitioners suggest as facts available the use of the interest rate KHSP charges its U.S. customers for late payments. Petitioners argue that this rate (i) is not skewed by intra-company affiliated transactions, (ii) accurately reflects the value on receivables based on KHSP's actual commercial practice, (iii) ensures arm's length treatment, (iv) is based on dollar-denominated lending and thus is in keeping with the Department's policy of matching the denomination of the interest rate to that of the transactions to which it applies, and (v) ensures parity with the calculated net interest expenses for U.S. sales.

Petitioners also object to KTN's failure to weight-average the interest rates by the outstanding loan amounts, and chides KTN for failing to even list the amounts of these loans in the relevant exhibit to its supplemental response. For the final determination, petitioners urge the Department to continue to base KTN's U.S. interest rate on the prime rate plus one percent, or 9.5 percent. Petitioners' Case Brief at 57.

In rebuttal, KTN disagrees with petitioners assertions concerning home market interest rates, arguing that they have overlooked the fact that the Department's verification outline explicitly requested that KTN provide Fried. Krupp's short-term interest rate. In response to this request, claims KTN, it included with its opening-day correction letter the short-term interest rate for Fried. Krupp which was subsequently verified by the Department. Furthermore, KTN argues, the Department has the option of accepting new information at verification provided it serves to corroborate, support, or clarify information already on the record.

Further clarifying its position, KTN argues that, contrary to petitioners' assertions, KHSP never claimed that its short-term borrowings were from Fried. Krupp. Rather, KTN contends, KHSP's short-term borrowings were made through a Krupp central cash management system administered by KFSI. KTN argues that it has never claimed that the Fried. Krupp short-term Deutsche-mark-denominated interest rate should be applied to its U.S. sales. KTN asserts that the short-term interest rate that should be examined is KHSP's borrowing rate from the cash management system run by KFSI, which is an entirely separate cash management system from that run by Fried. Krupp. KTN's Rebuttal Brief at 46.

Regarding petitioners' concerns about the arm's-length nature of KHSP's interest rate, KTN argues that the Department examined this information during verification and found no discrepancies. Furthermore, contends KTN, petitioners assume that since KHSP is borrowing from an affiliated party, the interest rate charged by KFSI cannot be at arm's length. However, KTN argues that a given percentage of Krupp USA's capital comes from banks at market rates and the remainder comes from the central Krupp (not Fried. Krupp) cash management system. KTN also cites in support of its argument a passage from the KFSI cash management agreement.

KTN also takes issue with petitioners' questioning the methodology of deriving a rate as a simple average of daily rates during the POI. KTN contends that whether the rates were based on a simple average or a weighted average, the short-term interest rate would be almost identical. KTN's Rebuttal Brief at 47.

Finally, KTN urges the Department to use the Federal Reserve rate at the time of the transaction if KHSP's reported short-term interest rate is not used, and not the rate assessed by KHSP as late-payment interest. KTN suggests that this approach would be consistent with the Department's practice, in the absence of borrowings in the proper currency, to rely upon publicly-available information to establish a short-term interest rate. Id., at 48, citing Flat Products From Canada, 64 FR at 2176.

Department's Position: We agree with KTN. Regarding KTN's home market interest rate, as stated in the KTN Preliminary Analysis Memorandum at 12, KTN failed to provide specific information requested in its November 16, 1998 Section B supplemental response regarding the average short-term interest rate for Fried. Krupp, one of KTN's parent companies. Rather, KTN reported the rate at which it borrowed funds from Fried. Krupp. As a result, in the Preliminary Determination we used this rate as non-adverse facts available on the basis that the average rate of borrowing between KTN and Fried. Krupp would reasonably be lower than the average lending rate between Fried. Krupp and an unaffiliated lender. However, as part of our January 7, 1999 home market verification agenda, we specifically requested this information again. During verification KTN presented the Department with information pertaining to Fried. Krupp's short-term cost of borrowing which was verified without discrepancy. While petitioners note that KTN failed to report this information when originally requested, it did comply with our later requests. Therefore, for these final results we have used the average short-term interest rate between Fried. Krupp and its unaffiliated lender.

In addition, KTN's Section C supplemental response indicated that KHSP's U.S. short-term borrowing rate for loans from Krupp's central cash management system were not at arm's length when compared with publicly-available information placed on the record by KTN. See KTN's September 28, 1998 Section C supplemental response. Because, as indicated above, KTN did not provide the requested information on the specific short-term rates at which Fried. Krupp borrowed, and because the submitted rates were not at arm's length, we preliminarily recalculated KTN's credit expense using the publicly-available prime lending rate of 8.5 percent reported by KTN, increased by one percent to approximate a commercially-available lending rate. However, as part of its January 6, 1999 submission, KTN provided the short-term borrowing rate from the Krupp central cash management system run by KFSI. In addition, our U.S. verification agenda again requested that KTN provide information pertaining to the short-term borrowing rate of Fried. Krupp. See U.S. Verification Agenda, January 23, 1999 at 14. As part of KTN's U.S. verification we examined KHSP's annual cost of borrowing, comparing the short-term borrowing rates between KHSP's affiliated and unaffiliated lenders, and noted no discrepancies. See KHSP Verification Report at 21. Based on this comparison, we have determined that KHSP's affiliated-party lending rate was at arm's length. Therefore, based on information submitted on the record subsequent to our Preliminary Determination, for these final results we have used KHSP's short-

term lending rate from Krupp USA Financial Services.

Comment 15: U.S. Indirect Selling Expenses

To derive its U.S. ISE ratio, KHSP first isolated those expenses it could attribute specifically to its Wayne, New Jersey sales division which handled only sales of subject merchandise. KHSP then allocated a portion of the remaining ''unidentifiable'' selling expenses (i.e., those attributable to KHSP's selling activities generally) to sales of subject merchandise on the basis of sales value. Finally, KHSP divided the sum of the Wayne office expenses and the allocated general selling expenses by the total value of sales through the Wayne office. Petitioners argue, however, that the use of an ISE ratio applicable to the operations of KHSP as a whole (i.e., total KHSP ISEs divided by total KHSP sales value) is preferable. Petitioners' Case Brief at 45.

Furthermore, petitioners argue that the Department should deny KHSP's proposal to reduce the total ISEs by amounts for foreign exchange gains and losses and interest expenses, as they are applicable specifically to KHSP's CEP sales operations. With respect to interest expenses, petitioners argue, KHSP has failed to provide any evidence demonstrating that the amount of ISEs should be reduced by interest expenses. Petitioners cite Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 64 FR 12927 (March 16, 1999) (Flat Products from Korea III), wherein the Department stated that:

> The Department disagrees with respondents' assertions that the Department's policy is to exclude interest expenses of U.S. sales affiliates from U.S. indirect selling expenses because imputed credit and inventory carrying cost expenses are already deducted from the starting price. . . . [I]nterest expenses incurred by sales affiliates may relate to activity other than the financing of inventory or accounts receivable, and still be associated with sales of subject merchandise.

Petitioners' Case Brief at 46, quoting Flat Products From Korea III, 64 FR at 12931.

Regarding its allocation of U.S. ISEs, KTN argues that the petitioners' suggested methodology for allocating these expenses is at odds with section 772(d) of the Tariff Act, which authorizes the Department to deduct from the CEP starting price only those expenses incurred in selling subject merchandise. Petitioners' methodology, asserts KTN, would serve to overstate ISEs because it would include those expenses incurred by KHSP's Atlanta office which deals primarily with non-subject merchandise. In contrast, argues KTN, its methodology results in a more accurate calculation and is in accordance with section 772(d) of the Tariff Act in that it isolates expenses related to the sale of subject merchandise. KTN's Rebuttal Brief at 33. KTN clarifies that only where it was unable to identify which sales office incurred a given expense did it allocate the expense on the basis of overall sales value. KTN argues that the Department should accept its reported ISE ratio for U.S. sales in light of the Department's successful verification of these expenses.

With respect to the second argument raised by petitioners, KTN responds that it appropriately deducted foreign exchange gains and losses and interest expenses from its total ISEs. As noted, because section 772(d) of the Tariff Act authorizes the Department to deduct from the CEP starting price only those ISEs incurred in the sale of subject merchandise, and because the record indicates that KHSP clearly incurred no foreign exchange gains or losses on the sale or purchase of subject merchandise during the POI, a downward adjustment to exclude these amounts is justified. KTN's Rebuttal Brief at 35.

Similarly, argues KTN, an adjustment for net interest expenses is warranted. KTN disputes petitioners' suggestion that these expenses should be included in both its financial expenses and its ISEs. In fact, KTN claims, in Flat Products from Korea III the Department stated that it would exclude ''some portion or all of a U.S. sales affiliate's interest expenses in its calculation of indirect selling expenses. * * * To the extent that a U.S. affiliate's interest expenses are associated with non-subject merchandise, the Department does not deduct them from the CEP starting price.'' Accordingly, the Department ''excluded interest expenses associated with non-subject merchandise'' and then ''reduced the remaining amount for interest expense for an amount attributable to financing of accounts receivable and inventory, leaving nothing left to include in the calculation of indirect selling expenses.'' KTN's Rebuttal Brief at 36, quoting Flat Products From Korea III, 64 FR at 12931. KTN argues that the Department, in a manner consistent with Flat Products from Korea III and section 772(d) of the Tariff Act, should allow a downward adjustment to KHSP's reported ISEs for interest expenses, as ''there is no portion of KHSP's interest expense remaining to include in the calculation of indirect selling expenses after (1) excluding interest expenses associated with non-subject merchandise, and (2) reducing the remaining interest expense to account for amounts already reported as imputed expenses.'' *Id.*

Department's Position: We agree in part with petitioners. With regard to the manner in which KHSP allocated its U.S. selling expenses, as noted above, KHSP was able to identify certain ISEs associated with its Wayne, New Jersey sales office. Those expenses which could not be attributed specifically to the Atlanta or Wayne offices were allocated to Wayne on the basis of sales value. KHSP then summed the total expenses attributable to the Wayne operations and those expenses allocated to sales from Wayne and divided by the Wayne sales value to derive its ISE ratio. See KHSP Verification Report at 23 through 26 and Exhibit 8. While petitioners argue for a company-wide approach, we find no evidence that KHSP's allocation methodology is distortive or inaccurate. With respect to the first step in KHSP's allocation of its ISEs (i.e., the isolation of the Wayne office's expenses), we verified fully that the Wayne office dealt in subject merchandise exclusively as well as the manner in which KHSP determined which expenses to include. Regarding the second step in the allocation process (*i.e.*, the allocation of ''unidentifiable'' expenses on the basis of Wayne office's sales value), we have no reason to believe this approach results in distortions or somehow understates U.S. ISEs.

In a recent administrative review involving Japanese tapered roller bearings the Department employed an approach to recalculate respondent NTN's ISEs similar to the second step in KHSP's allocation. We first summed NTN's total U.S. ISEs, multiplied this amount by the ratio of covered merchandise to total sales and, finally, divided the resulting figure by sales of covered merchandise to derive an ISE ratio. See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 63 FR 63860, 63867 (November 17, 1998). For this final determination we have concluded that the manner in which KHSP allocated its U.S. ISEs is neither distortive nor inaccurate and, in fact, reflects accurately KHSP's experience with respect to sales of subject merchandise during the POI. We have, accordingly, accepted KHSP's methodology.

However, we agree with petitioners concerning KHSP's claimed downward adjustments to U.S. ISEs for exchange rate gains and losses and interest expenses. In Belgian Stainless Plate in Coils the Department, over the respondent's objections, included interest expenses in the calculation of ISEs because the record did not demonstrate that these expenses arose from the financing of inventory or accounts receivable and were not associated solely with non-subject merchandise. To the extent that interest expenses are shown to relate to the financing of accounts receivable and inventory, we normally will not include them in the calculation of ISEs. In Belgian Stainless Plate in Coils, however, we concluded that

* * * the Department has included U.S. affiliate interest expenses in the calculation of U.S. ISEs independent of our calculation of imputed credit expenses, even if the interest expenses in question constituted part of the basis for determining the interest rate used to calculate the imputed credit expenses. * * * [W]e note that the record evidence is not clear these interest expenses reflected short-term debt. More importantly, the short-term or long-term nature of the debt is irrelevant in this context, given that either type may relate to subject merchandise and involve activities other than financing of inventory or receivables.

Id., 64 FR at 15488.

As in Belgian Stainless Plate in Coils, we are unable to determine from the record whether or not KHSP's claimed interest offset to ISEs relates to the financing of inventory or accounts receivable. The only information on the record relating to KHSP's interest expenses is a worksheet prepared for verification identifying the amount of interest expenses recorded under certain account codes. See KHSP Verification Report at Exhibit 8. This itemization does not allow us to determine the nature of the loans for which these interest expenses were incurred, nor has KHSP provided any narrative explanation regarding such expenses. Accordingly, for this final determination we have denied KTN's claimed offset to ISEs for interest expenses. KTN has likewise provided no convincing evidence to support its claimed downward adjustment to U.S. ISEs to account for exchange rate gains and losses. The most we are able to determine from the record is the aggregate amount of POI exchange rate gains and losses reflected in a worksheet which accompanies Exhibit 8 of the KHSP Verification Report. Absent information regarding the circumstances under which these gains and losses were incurred, we have no basis for excluding them from KHSP's ISEs; accordingly, we have denied KHSP's offset to its selling expenses for exchange rate gains and losses.

Comment 16: Charges by Affiliated Freight Carrier

Petitioners argue that, as articulated in a Departmental memorandum in Large Newspaper Printing Presses from Japan, the Department requires evidence from a respondent that charges for goods or services provided by affiliated parties were made at arm's length. However, petitioners claim, KTN has provided no such evidence with respect to charges it incurred for international freight services provided by an affiliated carrier. In fact, maintain petitioners, an analysis which it conducted using KTN's sales data demonstrates that the international freight charges for a substantial portion of those transactions involving KTN's affiliated carrier were not at arm's length. As non-adverse facts available, petitioners argue that the Department should replace those reported international freight expenses charged by an affiliated carrier deemed not to reflect arm's-length prices with port-specific, weighted-average, arm's-length ocean freight charges derived from unaffiliated CEP freight transactions.

KTN responds that freight charges for those U.S. sales shipped by an affiliated carrier, when evaluated in total, were at arm's-length prices and, as such, do not warrant an adjustment. Using the same arm's-length methodology employed by petitioners in their October 15, 1998 deficiency comments, KTN claims to have performed an analysis of the revised data submitted with its January 6, 1999 supplemental response. The results of its analysis, argues KTN, clearly demonstrate that the transactions between KNE and the affiliated carrier were at arm's length for two of the three U.S. ports to which the carrier shipped merchandise. KTN's Rebuttal Brief at 37 and 38.

If the Department determines that an adjustment is necessary, avers KTN, it should disregard petitioners' argument for an adjustment factor which is based on prices to different final destinations. Instead, argues KTN, the Department should conduct an analysis of the correct arm's-length adjustment which uses as its final point of comparison the relative prices for all transactions at issue rather than the prices by port of destination.

Finally, KTN argues, if the Department determines that a port-specific adjustment is appropriate, it should only apply an adjustment factor to those transactions shipped to the specific port for which ocean freight charges were deemed not to be at arm's length.

Department's Position: We agree with petitioners that, for those transactions shipped by KTN's affiliated carrier, the claimed expenses were not at arm's length. After reviewing the data from KTN's January 6, 1999 submission, we have determined that for two of the three ports to which the affiliated carrier shipped merchandise, the affiliated carriers' prices were not at arm's length when compared to non-affiliated carriers' prices to the same port. The results of our analysis are more fully described in the Final Analysis Memorandum. We have not adopted KTN's suggestion to base our arm's-length analysis on the relative prices for all transactions. This approach would compare prices charged by unaffiliated and affiliated carriers shipping to different destinations for which ocean freight charges would presumably vary widely. For this final determination we have applied a port-specific adjustment factor as described in our Final Analysis Memorandum to those sales transactions shipped by KTN's affiliated carrier for which ocean freight charges were deemed not to be at arm's length.

Comment 17: Warranty Expenses

In the home market KTN reported expenses associated with warranty claims on both a transaction-specific and an allocated basis. However, KTN reported only allocated warranty expenses for its U.S. CEP sales. Petitioners argue that KTN was uncooperative by refusing to provide transaction-specific U.S. warranty expenses incurred by KHSP for CEP sales. Given that KTN was able to report transaction-specific warranty claims in the home market, petitioners see no reason why KTN would have been unable to do the same with respect to U.S. CEP sales. Petitioners offer as evidence of KTN's ability to report these expenses on a transaction-specific basis KTN's statement in its September 29, 1998 questionnaire response that ''respondents maintain a log of credit and debit memos that includes warranty claims for the subject merchandise.'' Petitioners' Case Brief at 51, quoting KTN's September 29, 1998 section C response at C–49.

Petitioners suggest that KTN's attempt in its supplemental questionnaire response to justify an allocation in preference to transaction-specific reporting is not adequate. In fact, petitioners contend, the fact patterns regarding U.S. warranty claims bear a similarity to those of the home market for which KTN reported sale-specific

warranty expenses. Petitioners further argue that while the Department found only minor discrepancies in its verification of KTN's home market transaction-specific warranty expenses, such was not the case for its allocated warranty expenses. KTN officials admitted, petitioners claim, that the warranty expense total was calculated incorrectly due to the erroneous inclusion of a billing adjustment category among warranty claims when compiling the response. Petitioners' Case Brief at 52. In light of these alleged discrepancies, petitioners urge the Department to apply the highest single absolute value for reported CEP warranty expenses to all CEP sales of prime merchandise and to use zero for home market warranty expenses. Id. at 53.

As an additional matter, petitioners maintain that the respondent's reliance throughout the course of this investigation on AFBs, 62 FR 2081 (January 15, 1997) is misplaced. Petitioners claim that AFBs did not, as KTN suggests, advance the proposition that average allocated warranty expenses are preferable to transaction-specific expenses. Rather, contend petitioners, the Department stated in AFBs that it would accept allocated warranty expenses provided it was not feasible for the respondent to report the expense on a more specific basis.

Petitioners' argument, KTN asserts, is a misinterpretation of both the law and the facts in this case. KTN argues that while the Department's regulations express a preference for transaction-specific reporting as a whole, the Department has for many years explicitly recognized that warranty expenses may be reported on an allocated basis. KTN argues that the reason for this practice is twofold. First, KTN asserts, warranty obligations arise from the universe of all transactions for which the warranty is offered whereas warranty expenses arise only on the few transactions for which the warranty is invoked. KTN argues that it is wrong to attribute the cost of a general obligation only to those transactions for which a specific expense was incurred. KTN's Rebuttal Brief at 40. Second, claims KTN, the Department has noted in AFBs that ''it is not possible to tie [POI] warranty expenses to [POI] sales, since the warranty expenses can be incurred on pre-[POI] sales. Likewise, [the respondent] may not incur warranty expenses on [POI] sales until a future time period.'' Id., quoting AFBs 62 FR at 2098 (KTN's redactions).

KTN argues that, like the respondent in AFBs, KTN and KHSP have reported warranty expenses in the most feasible manner given each company's circumstances and that its chosen methodology is neither distortive nor inaccurate. KTN asserts that it attempted to assign home market warranty expenses to specific product groups, but discovered that, due to limitations arising from claims where information regarding product type was not recorded or not available, it was not possible to do so. In those instances, KTN notes, its computer system assigned these unattributable expenses to a single product group. As a result, KTN argues, the attempted product group allocations did not properly reflect claims within the group. KTN points out that as soon as it discovered this shortcoming, it prepared a revised worksheet that allocated warranty expenses across all subject merchandise, differentiating them only by market. KTN further asserts that, contrary to petitioners' contention, the Department did in fact verify and accept KTN's allocated warranty expenses during the home market verification. Id. at 41.

With respect to the manner in which KHSP reported warranty expenses, KTN notes that KHSP tabulated the warranty expenses associated with specific transactions and reported those expenses on an allocated basis. KTN asserts that the Department was able to verify that KHSP accurately captured all expenses associated with warranty claims. Moreover, argues KTN, its methodology does not lead to inaccuracies or distortions because in both the home market and the United States warranty expenses incurred on stainless steel merchandise were allocated across sales of stainless steel merchandise on the basis of value. Id. at 42.

Furthermore, KTN argues, even if the Department should reject KTN's argument for allocating warranty expenses, the use of adverse facts available is not appropriate. KTN disagrees with petitioners' characterizations that KTN was ''uncooperative'' and ''steadfastly refused to report invoice-specific warranty expenses'' for U.S. sales. In fact, KTN claims, it fully complied with the Department's requests for information regarding warranty expenses and has provided the Department with verified information which would allow it to apply warranty expenses to U.S. sales on a transaction-specific basis, thereby rendering the application of adverse facts available especially unnecessary.

Department's Position: As the Department verified, KTN and KHSP are generally able to tie warranty claims to specific sales even though they initially reported warranty expenses on an allocated basis. With respect to its home market sales, for its January 6, 1999 supplemental response KTN searched its database through September 1998, or six months after the close of the POI, for warranty claims associated with subject merchandise and, where possible, linked these to POI sales in order to report these expenses on a transaction-specific basis. Regarding U.S. warranty expenses incurred by KHSP, we noted during our verification that its debit and credit memos bore references to the original invoices which would have allowed it to track such claims on a sale-specific basis, even though KHSP had reported these expenses using an allocation in its original submissions. As indicated in the KHSP Verification Report, we verified KHSP's allocated warranty expenses and examined the manner in which the company tracked warranty claims.

However, notwithstanding KTN's and KHSP's ability to track these expenses on a transaction-specific basis, we have long recognized that the nature of warranty expenses (*i.e.*, that claims made for specific sales are often made long after the close of a given period of investigation or review) often renders necessary the use of an allocation. While KHSP maintains a log containing, *inter alia*, credit memos relating to claims, there is no guarantee that a review of this log six months after the completion of the POI will accurately capture all warranty expenses relating to POI sales, as the potential remains for claims against POI sales to be presented at yet a later date. This same potential for inaccuracy also affects home market sales because there are likely to have been claims made on subject POI transactions which were processed after the date through which KTN searched its database (i.e., September 1998). As we noted in AFBs, it is not always possible to tie POI warranty expenses to POI sales, since the warranty expenses can be incurred during the POI on sales before the POI; likewise, a respondent may not incur warranty expenses on POI sales until well after it is required to submit those sales to the Department.

Therefore, we agree with KTN and have used the verified information on its allocated warranty expenses for home market and U.S. sales. With respect to home market sales, however, because the Department found minor discrepancies between the reported and verified allocated warranty expenses, in accordance with section 776(a)(D) of the Tariff Act, we have based the warranty adjustment on the facts available. We calculated the lowest reported ratio of warranty expenses using the

transaction-specific warranty expense and applied this ratio to all home market sales. This calculation is further detailed in our Final Analysis Memorandum; see also KTN Sales Verification Report at pages 47 and 48.

Comment 18: Other Corrections at Verification

Petitioners highlight three items from the U.S. and home market verification reports which were specified in the opening-day correction letters. First, in light of KHSP's admission at verification that there were certain sales for which it did not apply the expense ratio calculated for certain brokerage and handling charges, petitioners request that the Department correct the reported CEP sales listing to ensure that all transactions reflect this charge. In addition, petitioners urge the Department to revise KHSP's reported U.S. duty expenses for resales to reflect the corrected ratio KHSP calculated prior to verification. Finally, petitioners request that the Department apply to EP sales marine insurance charges which KTN initially did not report.

KTN does not dispute petitioners' comments with respect to these issues and points out that it brought these items to the attention of the Department during the first day of the home market and U.S. verifications.

Department's Position: For this final determination we have made revisions to our computer programs to correct for these errors.

U.S. Reseller Issues

Comment 19: Facts Available for U.S. Reseller

Petitioners present a number of grounds for disregarding the questionnaire response of KTN's affiliated processor and reseller in toto and basing the margin for this body of U.S. sales transactions on adverse facts available. Petitioners accuse U.S. Reseller of (i) failing to provide requested sales documentation at verification, (ii) misclassifying a significant portion of its sales as being of unknown origin by refusing to trace the original suppliers, (iii) failing to report physical characteristics of its merchandise essential to the Department's sales matching, (iv) classifying sales of prime material as secondary, or non-prime, (v) neglecting to report early payment discounts granted on its sales, and (vi) mis-reporting further-manufacturing costs. Petitioners' Case Brief at 82.

In addition to the alleged shortcomings in U.S. Reseller's sales response, petitioners point to a number of problems with U.S. Reseller's further-manufacturing COP response, as well. For example, petitioners note that U.S. Reseller allocated further-processing costs to products which did not undergo further processing. In certain cases reviewed at the cost verification, continue petitioners, the output weight of the finished goods exceeded the input weight of the original master coil, which is, petitioners note, a physical impossibility. Furthermore, petitioners assert, U.S. Reseller reported incorrectly quantity extras (surcharges for further processing performed on small orders), and failed to account for the costs of finishing operations performed on the underside of sheet products and ''re-spinning'' single coils into several smaller coils. These failings, petitioners aver, are ''systemic in nature and thus universally applicable'' as they arise from the underlying computer program used to identify the characteristics of specific products and to assign costs based on these identified characteristics. Id. at 99. Petitioners maintain that the Department cannot be left the task of reconstructing an accurate response; therefore, the only appropriate solution is the application of total adverse facts available to the U.S. Reseller portion of KTN's response. In the alternative, petitioners urge the Department to apply partial adverse facts available for all missing or miscalculated cost data and sales adjustments.

KTN takes issue with petitioners' attempt to portray isolated errors discovered at verification as impeaching the entirety of U.S. Reseller's sales data. For example, the inability to produce the requested surprise sales documentation, KTN avers, stemmed from U.S. Reseller's inability to retrieve the relevant sales documentation from its archives and represented the only instance in which U.S. Reseller was unable to provide documents requested by the Department. KTN suggests that given U.S. Reseller's ''questionable'' involvement in this investigation through the Department's finding of affiliation, U.S. Reseller cannot be held to the same standard as a respondent in an ongoing administrative review process.

KTN also dismisses the significance of any noted reporting errors, and attributes these to the computer program developed by U.S. Reseller solely to comply with the Department's detailed reporting requirements. As a steel service center, KTN maintains, U.S. Reseller has no need to track each input stainless steel coil to the finished products as re-sold to the ultimate end user. As a result, avers KTN, U.S. Reseller never developed the computer programming necessary to tie each transaction to its input stainless steel. KTN explains that U.S. Reseller attempted to accomplish this first by merging data maintained separately by U.S. Reseller's different warehouses to develop a list of each item sold. U.S. Reseller then had to merge this item list with its invoice history file which, KTN continues, would provide links to the original customer orders. Aside from errors arising from bad data, e.g., data entry errors when originally posting the items, KTN suggests, this merger of data was successful in ''the overwhelming majority of transactions * * *''. KTN claims that for those invoices sourced from multiple input coils, U.S. Reseller developed a computer algorithm to match input coil and output sheet and strip on the basis of product characteristics and weights consumed versus weights shipped to customers. KTN dismisses the subset of erroneous results as ''very small and fully identified,'' with potential mismatches of input and output material occurring in no more than 4.25 percent of the reported transactions. Id. at 70 and 72 (original emphases). Even this subset is overstated, KTN claims, by the inadvertent inclusion of sales of non-subject merchandise. KTN further claims that it identified each of the ''problematic'' transactions for the cost verification team, discounting assertions in the U.S. Reseller Cost Verification Report that time constraints precluded any examination of this list.

KTN ''freely concedes'' that its linking program did not execute perfectly. However, KTN insists, any resulting errors were (i) identified to the Department, (ii) fully explained, and (iii) only affected slightly more than four percent of U.S. Reseller's reported sales. Therefore, KTN concludes, ''[t]he accuracy of the remaining 95.95 percent of transactions is simply not at issue.'' KTN Case Brief at 74.

As for early payment discounts, KTN suggests that the number of transactions affected by this error was minuscule. Exhibit 11 of the U.S. Reseller Sales Verification Report, KTN notes, included the overall value of early payment discounts and their significance expressed as percentages of both total sales value and subject merchandise sales value. Even were the Department to assume that all early payment discounts applied to sales of subject merchandise, submits KTN, these discounts are insignificant.

KTN also disputes the significance of the Department's conclusion in the U.S. Reseller Cost Verification Report that U.S. Reseller failed to allocate finishing costs for products sold with a ''pre-

buffed'' bottom finish. U.S. Reseller ''conceded at verification that this was a programming error that was simply overlooked,'' KTN asserts. Contrary to the U.S. Reseller Cost Verification Report, KTN maintains, it fully identified each transaction affected by this error; in any event, avers KTN, the quantity of such transactions is trivial, involving just 26 items. KTN Case Brief at 75.

With respect to re-spinning costs, KTN contends that these are common to virtually all products sold by U.S. Reseller; as such, argues KTN, re-spinning costs are not separately identifiable in U.S. Reseller's normal records. KTN claims that as a result U.S. Reseller appropriately included re-spinning costs in its calculation of fully-absorbed factory overhead.

As for the allocation of costs for processing performed by outside vendors, KTN urges the Department to place this matter in perspective by considering that processors of both aluminum and stainless steel accounted for a minority of the total processing charges incurred by U.S. Reseller from outside vendors. U.S. Reseller had no means to identify directly the portion of the processing expenses properly allocable to stainless versus other products, KTN avers; U.S. Reseller acted reasonably, therefore, in allocating these expenses using the proportion of stainless to non-stainless processing based on its own historical experience. For the Department to assume otherwise, KTN objects, is rank speculation. KTN Case Brief at 78. KTN also disputes the significance of any discrepancies between processing costs as recorded in U.S. Reseller's management reports and the actual amounts observed in spot checks conducted by the Department at verification, and challenges the fairness of the methods employed in uncovering these discrepancies. Prior to January 1998, KTN asserts, computer records allowing vendor-specific calculations of outside processing costs were not available. U.S. Reseller, therefore, relied upon its management reports, ''the only consistent source of information on processor-specific outside processing costs covering the entire POI.'' KTN Case Brief at 79. Furthermore, KTN insists, U.S. Reseller fully explained these discrepancies as arising from credit notes or unpaid invoices issued after U.S. Reseller's books for a given month had been closed. Claiming that there is no evidence that the discrepancies introduce bias in any particular direction, KTN suggests that the Department has no grounds for concluding that the charges of outside processors has been either over- or under-stated.

KTN further argues that there is no mystery about the difference between the verified quantity of processed goods used in calculating yield losses and the higher figure included in KTN's section E further-manufacturing response: for its first response U.S. Reseller had assumed erroneously that all of its merchandise had been subject to further processing. KTN insists that U.S. Reseller identified and corrected this error in its January 6, 1999 supplemental section E response. The Department was able to trace the corrected actual amount without discrepancy during the U.S. Reseller cost verification. KTN's Case Brief at 80.

Department's Position: We agree with petitioners that, pursuant to section 776(a) of the Tariff Act, total facts available are warranted with regard to sales through KTN's affiliated further manufacturer. In the instant case the use of total facts available for the U.S. Reseller portion of KTN's section C response is warranted because the methodology and computer programming used by U.S. Reseller to identify its products' physical characteristics and to match each of these products with its associated costs were found at verification to be accomplishing neither end consistently or accurately. Moreover, both the frequency of the errors and the absence on the record of information necessary to correct certain of these errors serve to undermine the overall credibility of the further-manufacturing response as a whole, thus compelling the Department to rely upon total facts available for U.S. Reseller's database. Reliance upon total facts available is required for all further manufactured sales because the submitted data do not permit calculation of the adjustments required under section 772(d)(2) of the Tariff Act for ''the cost of any further manufacture or assembly (including additional material and labor) * * *''.

We also find, as explained below, that the use of an adverse inference is appropriate in this case because the record established that U.S. Reseller did not cooperate with the Department by acting to the best of its ability in responding to our requests for information. The manifest and manifold errors in U.S. Reseller's response evidence a failure to conduct even rudimentary checks for the accuracy of the reported further-processing data. Indeed, a reasonable check by company officials could have shown that (i) products that underwent no further processing were being assigned further-processing costs, (ii) further-processed products were not being assigned their appropriate processing costs, (iii) coils passing through certain processes were not being allocated any cost for the process, and (iv) the output width of slit coils generated by a given master coil exceeded the original width of that input coil.

The Department may correct reported costs or adjust incorrect data in response to its findings at verification. See, e.g., Extruded Rubber Thread From Malaysia, 64 FR 12967, 12976 (March 16, 1999). In this case, however, correction of the specific flawed data is not a viable option because of the high percentage of errors found through our testing (nearly 40 percent of the items tested were found to be in error). In addition, some of these errors cannot be corrected using information on the record. More importantly, the fundamental nature of these errors raises concerns as to the validity not only of the data subjected to direct testing, but of the remainder of the response as well.

The Department's August 3, 1998 antidumping questionnaire put interested parties on notice that all information submitted in this investigation would be subject to verification, as required by section 782(i) of the Tariff Act, and, further, that pursuant to section 776 the Department may proceed on the basis of the facts otherwise available if all or any portion of the submitted information cannot be verified. In addition, in letters dated February 17 and 23, 1999, the Department provided U.S. Reseller with the sales and cost verification agendas it intended to follow, both of which repeated the warning that any failure to verify information could result in the application of facts available. The cost verification agenda identified nine transactions that the Department intended to test. U.S. Reseller had a full week to gather supporting documentation for these nine transactions and to test for itself the accuracy of the further manufacturing data. Clearly, U.S. Reseller did not avail itself of these opportunities, since our testing at verification revealed that costs for three of the nine selected transactions contained fundamental and significant errors. See U.S. Reseller Cost Verification Report at 14 through 17. When the Department then selected nine additional transactions for review, four of these were also found to reflect significant errors. These included allocating processing costs to non-processed material (id. at 15), mis-allocating quantity surcharges (id.), and, more troubling, reporting finished weights which exceeded the weight of the input material (''[t]his is impossible

and for this reason we could not verify the amount of processing for this observation.'' Id.).

The first step identified in the Department's verification agendas calls for the respondent, at the outset of verification, to present any errors or corrections found during its preparation for the verification. As we stated above, none of the errors discussed here were presented by U.S. Reseller at the outset of verification; yet many of them were manifestly apparent and U.S. Reseller was obligated to notify the Department prior to the start of verification of these problems.

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

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

We also find unpersuasive KTN's suggestion that because U.S. Reseller had to develop the computer program as a result of the Department's highly detailed questionnaire it should therefore be held blameless for any errors arising from its implementation of its chosen computer logic. We must stress that every respondent in every antidumping investigation is faced with the question of how best to sort and retrieve the sales and cost data as maintained in its normal course of business to respond to our questionnaire. This necessarily entails the winnowing of its larger universe of sales to capture only that merchandise subject to our investigation, and the further creation of unique data fields to reflect the specific model-match criteria and the applicable expense adjustments set forth in the questionnaire. Finally, the resulting database must be refined to present the transaction-specific information on sales and adjustments in the precise formats required by the Department. That U.S. Reseller, like virtually all respondents in antidumping proceedings, chose to rely upon a computer program as the easiest means to accomplish this end is entirely unremarkable and in no way mitigates the failings found in this case. We note further that KTN and a number of its home market and U.S. affiliates largely succeeded in supplying data relating to sales, expenses, and COP in responding to the same antidumping questionnaire with equally detailed reporting requirements. The surfeit of errors in U.S. Reseller's data was not the result of any unduly burdensome reporting requirements imposed by the Department; rather, these shortcomings resulted in their entirety from U.S. Reseller's reliance on faulty computer programming and data which U.S. Reseller apparently failed to review prior to verification.

In addition, we disagree with KTN's assertion that it was able to quantify the extent of the cost errors on the final day of verification. First, we note that U.S. Reseller made no attempt to explain or quantify two of the errors discovered by the Department, the allocation of processing costs to unprocessed material and the misreporting of the small-quantity surcharge. More to the point, due to the volume of information that must be verified in a limited amount of time, the Department does not look at every transaction, but rather samples and tests the information provided by respondents. See, e.g., *Bomont Industries* v. *United States*, 733 F. Supp. 1507, 1508 (CIT 1990) ([v]erification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness) and *Monsanto Company* v. *United States*, 698 F. Supp. 275, 281 (CIT 1988) (''[v]erification is a spot check and is not intended to be an exhaustive examination of a respondent's business''). It has been the Department's long standing practice that if no errors are identified in the sampled transactions, the untested data are deemed reliable. Conversely, if errors are identified in the sample transactions, the untested data are presumed to be similarly tainted absent satisfactory explanation and quantification on the part of the respondent. See, e.g., *Tatung Company* v. *United States*, 18 CIT 1137 (December 14, 1994). This is especially so if, as here, the errors prove to be systemic in nature. The fact remains unchallenged that for two days of a scheduled three-day verification we tested a number of further-manufactured transactions to assess the reliability of U.S. Reseller's methodology for reporting costs and discovered numerous errors. U.S. Reseller claimed on the last day of verification that it had reviewed its further-manufacturing data and isolated the magnitude of these errors. KTN's assertion in its case brief that U.S. Reseller succeeded in identifying all of the errors is an unsubstantiated ipse dixit which could not be verified in the time remaining. The only way to test this eleventh-hour claim would have been to re-verify the entire further-manufacturing database to ensure that all erroneous transactions had, in fact, been captured. Moreover, as indicated in the verification outlines presented to KTN and U.S. Reseller, the proper time for U.S. Reseller to check the accuracy of its reported data was before these data were submitted, or, at the latest, prior to the start of the verification. We presented KTN and its U.S. Reseller

with the cost verification agenda one week in advance precisely to allow them to prepare properly for verification. Had U.S. Reseller reviewed the accuracy of the computer program used to report its further manufacturing costs prior to verification, it could have identified the errors and presented them to the Department on the first day of verification. We consider it inappropriate for respondents to expect the Department to retest the entire further manufacturing database on the last day of verification after the Department uncovers numerous errors as a result of its routine testing. Furthermore, the requirements of section 782(d) that the Department provide a respondent the opportunity to remedy such errors is inapplicable. Rather, as we stated in Certain Cut-to-Length Carbon Steel Plate from Sweden,

> [w]e believe [respondent] SSAB has misconstrued the notice provisions of section 782(d) of the [Tariff] Act. Specifically, we find SSAB's arguments that the Department was required to notify it and provide an opportunity to remedy its verification failure are unsupported. The provisions of section 782(d) apply to instances where ''a response to a request for information'' does not comply with the request. Thus, after reviewing a questionnaire response, the Department will provide a respondent with notices of deficiencies in that response. However, after the Department's verifiers find that a response cannot be verified, the statute does not require, nor even suggest, that the Department provide the respondent with an opportunity to submit another response.

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

Finally, we reject KTN's arguments with respect to the propriety of drawing an adverse inference with respect to a respondent ''whose involvement in the proceeding was questionable in the first place.'' KTN goes to great pains to assert that it never had control over the data submitted by U.S. Reseller; therefore, any lack of cooperation evinced by U.S. Reseller cannot be imputed to KTN. See, e.g., KTN's Rebuttal Brief at 73 and Public Hearing transcript at 46 and 47. KTN presents the issue as one in which KTN was at the mercy of recalcitrant parties, only some of whom could be persuaded to participate in the investigation: ''U.S. Reseller's sales and cost data found its way into the record of this investigation only after its release was negotiated and it was confidentially transmitted to KTN's counsel.'' Id. However, KTN's protestations that its officials in Bochum, Germany did not have the opportunity to review U.S. Reseller's submitted data for accuracy beg the point. The Department has never suggested that KTN was in a position to compel a reluctant U.S. Reseller to provide its sales and cost data to KTN; rather, the thrust of our affiliation determination has consistently been that Thyssen, not KTN, was in a position to direct its German and U.S. affiliates to provide complete and timely responses to the Department. We suggest here that where it was in KTN's interests to do so, Thyssen did precisely that, by instructing selected affiliates to cooperate with the Department's investigation. For reasons beyond the Department's ken, U.S. Reseller chose to submit responses under the guise of a cooperative respondent while withholding crucial information to make its responses usable for purposes of establishing statutory U.S. price.

We note that throughout this investigation KTN has been represented by legal counsel who certified each of KTN's (and U.S. Reseller's) submissions of fact in this case, claiming the counsel had read the submission and had ''no reason to believe [it] contains any material misrepresentation or omission of fact.'' See 19 CFR 351.303(g). Similarly, on January 13, 1999, U.S. Reseller certified that the responsible company official had read its submission and that the information therein was, to the best of the official's knowledge, complete and accurate. See, e.g., KTN's January 15, 1999 section E supplemental response. Finally, throughout the preparation for the U.S. Reseller verifications and the verifications themselves, counsel were present at all times in the conference room. U.S. Reseller was also assisted by economic consultants retained by KTN specifically for purposes of preparing responses in this antidumping investigation. The fact remains that despite its disagreement with the Department's decision on affiliation, Thyssen succeeded in persuading U.S. Reseller to submit a response; from that moment forward, it was incumbent upon U.S. Reseller to submit complete and accurate responses to our questionnaires. It was the further responsibility of KTN's legal representatives, acting throughout this proceeding on KTN's behalf, to ensure that the data it helped prepare were reliable. Finally, the record does not reflect that once KTN was directed to submit U.S. Reseller's sales and cost information it was having trouble securing U.S. Reseller's cooperation (aside from KTN's stated objections for the Department's legal reasoning). Had this been the case of KTN painfully and laboriously extracting each datum from a recalcitrant unaffiliated party, one would expect the record to reflect this in, for example, written pleas of an inability to submit the requested data, or appeals for modifications to reporting requirements in response to limited available data. Instead, there is silence on this point. KTN proceeded throughout the investigation as though U.S. Reseller's full cooperation was a given, once the Department had notified KTN that the further-processed sales would be required for our analysis.

Therefore, the Department concludes that KTN had the resources to secure the necessary level of cooperation from U.S. Reseller. In addition, the Department finds that, for the reasons discussed above, U.S. Reseller failed to cooperate by acting to the best of its ability in compiling its further-manufacturing response. Moreover, because the U.S. Reseller's information is essential to the dumping determination, the use of adverse facts available is appropriate irrespective of KTN's involvement in providing the information. See, e.g., Hot-Rolled Steel From Japan, 64 FR at 24367. Therefore, consistent with section 776(b) of the Tariff Act, we have drawn an adverse inference in selecting among the facts available for use in lieu of U.S. Reseller's unverifiable data. As adverse facts available we have assigned the highest non-aberrational margin calculated on KTN's properly reported U.S. sales.

Comment 20: U.S. Sales of Unidentified Origin

Petitioners accuse KTN of belatedly submitting such vast revisions to U.S. Reseller's sales listings as to constitute an entirely new response. Petitioners note that on January 6, 1999, KTN reported for the first time a significant body of U.S. Reseller's sales transactions. These sales data were not only submitted late, petitioners aver, but also in many cases were missing essential information identifying the manufacturer and the products' physical characteristics.

With respect to unidentified suppliers, petitioners deem unpersuasive KTN's evolving explanations for these discrepancies. The stainless industry requires strict quality control, petitioners insist, including warranty provisions and the routine transmission of quality certifications from the producing mill. Out of necessity, U.S. Reseller would be able to track merchandise back to its suppliers. Petitioners also dismiss as irrelevant KTN's claims that its computer system did not permit a full linking of U.S. Reseller's sales transactions to the supplying mills. Even if true, petitioners argue, KTN's assertions do not obviate its

responsibility to take the steps necessary to supply the Department with complete data including, if necessary, the manual search of paper records. Petitioners aver that had KTN raised this issue, i.e., its difficulty in reporting accurately all sales, when it received the questionnaire in August 1998, ''the Department and petitioners could have addressed how best to proceed in a deliberate fashion with KTN.'' Petitioners' Case Brief at 86. Petitioners accuse KTN of deliberately withholding this information until after the Preliminary Determination so it could present the Department with a *fait accompli* on the eve of the Department's verification.

Petitioners further argue that the Department's verification debunked KTN's claims with respect to U.S. Reseller's ability to report the supplying mill; of a random sampling of seven invoices involving unidentified suppliers, in three cases U.S. Reseller was able readily to identify the manufacturer. Petitioners note that three months elapsed between U.S. Reseller's initial sales listing of November 16, 1998 and its final database submitted on February 17, 1999; U.S. Reseller's failure to use this time to identify its supplying mills demonstrates that it failed to cooperate to the best of its ability. The Department's response, petitioners argue, should be recourse to adverse facts available.

Furthermore, petitioners maintain, much of U.S. Reseller's sales data includes significant discrepancies such as missing gauge or finish information that render the data useless for the Department's analysis. As with the missing supplier information, petitioners argue, even if U.S. Reseller's computer records did not readily permit collation and reporting of this information, a review of U.S. Reseller's sales records would have yielded the required product characteristics. Petitioners point to the Department's finding at verification that the omissions arose from errors such as the inclusion of non-subject merchandise (e.g., stainless steel angles) in U.S. Reseller's sales listings, data entry errors, or missing values generated by the computer program used to merge the various source files used in compiling U.S. Reseller's response. U.S. Reseller had ample time, petitioners suggest, to conduct a manual review of sales documents to remove non-subject merchandise from its response and to supply the missing characteristics for the remaining sales of subject merchandise.

Continuing in their rebuttal brief, petitioners dismiss KTN's request for the Department to make extensive corrections to its reported data and insist upon the use of adverse facts available. Petitioners' Rebuttal Brief at 57. In fact, petitioners suggest, some of the proposed corrections are beyond the Department's capacity. For example, sales of stainless steel angles which U.S. Reseller inadvertently included in its sales listing are not readily discernible from the submitted computer sales file. These corrections, petitioners maintain, should not be the Department's burden; rather, the Department should rely upon adverse facts available for the U.S. Reseller portion of KTN's response.

KTN argues in rebuttal that there is no longer any question that the U.S. Reseller could not trace the origin of these sales. KTN's Rebuttal Brief at 68. According to KTN, the Department's cost and sales verification reports both noted that once U.S. Reseller transfers inventory between its locations, its computerized inventory system issues a new stock number, thereby erasing the original link with the supplying mill. KTN quotes approvingly the Department's conclusion that ''* * * the Company is unable to identify [the products'] original source through the system.'' Id., quoting the Reseller Cost Verification Report at 5.

Rejecting as absurd petitioners' argument that U.S. Reseller could have tracked the source manually, KTN claims that, while physically possible such a trace would require an inordinate amount of effort and would cause extended disruption to U.S. Reseller's business operations. The Department, maintains KTN, ''cannot impose such unreasonable burdens on respondents * * *''. Id. at 69.

KTN characterizes petitioners' comments as betraying a fundamental misunderstanding of the nature of the additional sales reported on January 6, 1999, and why KTN chose to include them. KTN reiterates its view that the only transactions which properly should be included in the Department's final determination are those which can be established affirmatively as having originated at KTN. Consistent with this view, KTN argues, its initial U.S. Reseller response included only those items sold which could be linked directly through the inventory database to a master coil produced by KTN; any transactions which lacked this direct link were omitted. KTN justifies this approach by suggesting that more likely than not, the unidentified material came from a supplier other than KTN, given the relative proportion of stainless flat products positively identified as having been supplied by KTN.

KTN insists that the purpose of its later decision to report transaction-specific data on the unidentified merchandise was to assist with the Department's verification and not to concede that these sales should properly be subject to our margin calculations. As to the proper treatment of these transactions for the final determination, KTN urges the Department to disregard them entirely. In the alternative, KTN suggests allocating the unidentified transactions across the three concurrent investigations involving stainless sheet in coil (i.e., from Germany, Mexico and Italy) based on the verified share of the identified sales supplied by each of the respondents in these investigations (respectively, KTN, Mexinox, and Acciai Speciali Terni, S.p.A.). For this investigation this could be accomplished by multiplying the weight of each unidentified transaction by the percentage of U.S. Reseller's merchandise purchased from KTN, as reflected in the sales sourced from identified suppliers.

Department's Position: We agree, in part, with petitioners and with KTN. In its January 6, 1999 supplemental response KTN reported a large quantity of sales by U.S. Reseller which lacked any information identifying the supplying manufacturer. As noted, KTN claimed that it had no immediate computer link to trace the origin of coils which had been transferred between U.S. Reseller's different warehouses. Thus, it had included this unidentified mass of sales in each of the sales databases filed on the records of the investigations of stainless sheet in coils from Germany, Mexico, and Italy.

As explained in response to Comment 19, we have determined that the errors affecting U.S. Reseller's reported sales and cost data, including its failure to identify properly the supplier of a major portion of its sales, render this portion of KTN's section C response unreliable in its entirety for purposes of our margin calculations. However, this conclusion does not dispose of the issue of the proper treatment of the unidentified transactions. For a significant portion of U.S. Reseller's U.S. transactions during the POI the manufacturer is simply unknown. The absence of the supplying mill for this body of sales affects not only this investigation, but also those involving stainless steel sheet in coils from Mexico and Italy. Furthermore, the absence of this elementary and critical information forecloses any attempt by the Department to apportion these sales accurately between merchandise which is subject to one of the three ongoing investigations and that which is properly considered non-subject

merchandise because it was obtained from either a domestic or other foreign mill. Thus, this gap in the record is one of overarching importance, impinging upon our ability to calculate accurately the margins in three separate antidumping duty investigations.

We cannot accede to KTN's suggestion that we exclude the unidentified transactions entirely from our calculations. While we are not able to state with precision which of these transactions represent subject stainless sheet in coils from Germany, KTN has conceded that some are properly subject to this investigation (as, indeed, some are subject to the concurrent investigations involving Mexico and Italy). The Tariff Act and the implementing regulation do envision a number of scenarios where the Department may disregard transactions in its analysis (sample transactions or sales of obsolete merchandise, for example, or when sampling transactions pursuant to section 777A of the Tariff Act). However, these exceptions all involve an independent analysis by the Department of the facts surrounding the proposed exclusions and its reasoned explanation on the basis of the record that the transactions at issue are either unnecessary or inappropriate for inclusion in our calculations. There are no provisions allowing the Department simply to ignore a significant portion of U.S. sales based on a reseller's putative inability to identify the affiliated respondent manufacturer.

As for this claimed inability, KTN attempts to present as the Department's own conclusions what were, in fact, its reporting of KTN's claims at verification. Thus, the Reseller Sales Verification Report noted that ''Reseller explained that if material from its warehouse is sold to another location * * * the [receiving] warehouse subsequently will enter the merchandise into its own inventory by recording itself as the supplier.'' U.S. Reseller Sales Verification Report at 6. However, the report also states on the previous page that ''Reseller clarified that the original supplier's identification is traceable, but is not vital to its own needs.'' Id. at 5. Further, we found at verification that, notwithstanding U.S. Reseller's assertions, in many cases it was possible through a rudimentary search of U.S. Reseller's existing computerized records to identify the supplier. As petitioners note, of seven ''unidentified supplier'' transactions sampled at verification, we were able to trace immediately the outside supplier for three of these using nothing more than a personal computer in U.S. Reseller's offices. See U.S. Reseller Sales Verification Report at 10.

As noted above, we have determined that the use of adverse facts available is appropriate for the sales and further-manufacturing data submitted by U.S. Reseller. As for the unidentified body of sales, the Department also finds that the available computer records would allow U.S. Reseller to trace with facility the supplier for nearly half of the sample transactions selected at verification. Had U.S. Reseller made full use of its readily-available computer data, the effort required to identify the manufacturer for the remaining transactions would have been substantially less, thus largely attenuating the ''enormous amount of work'' involved in ''manual tracing'' * * * through several layers of internal paper transactions, inventory records, and sales records.'' KTN's Rebuttal Brief at 68. Accordingly, we find that U.S. Reseller failed to cooperate by acting to the best of its ability in compiling information essential to our analysis, such as the identity of the supplying mill, and will make an adverse inference in apportioning the unidentified transactions.

In selecting facts available we find that there is no record support for KTN's proposal that we allocate the unknown universe of U.S. Reseller's transactions based on the observable percentages in the known universe; this approach would still result in the Department's disregarding over half of the unidentified U.S. transactions without any justification in the record. First, since by KTN's own admission some portion of the unidentified sales were supplied by KTN, the resulting percentage of merchandise identified as being of German origin is understated. In addition, we have no means of conducting an independent evaluation of this large body of sales to determine whether the patterns found for the identified universe of transactions would hold true for merchandise which, obviously, moved in different channels of distribution (e.g., through its transfer between or among U.S. Reseller's locations). Thus, for purposes of this final determination we have adopted a variant of KTN's proposal. As an adverse inference we are treating all of the unidentified merchandise as having originated with one of the three respondent firms in the concurrent investigations. To apportion the unidentified sales among the three investigations we have adjusted the quantity for each of the unidentified sales on a pro rata basis, using the verified percentages of U.S. Reseller's merchandise supplied by each respondent mill. We have then applied a facts-available margin to these transactions, as explained above in response to Comment 19.

Comment 21: Merchandise Imported in Cut-to-Length Form

KTN notes that at the verification of the U.S. Reseller it identified certain transactions involving non-subject merchandise which had inadvertently been included in U.S. Reseller's sales files. These sales involved merchandise originally imported from Germany in cut-to-length form and, thus, not subject to the instant investigation. In addition, U.S. Reseller reported a number of transactions involving stainless steel angles, shaped products likewise not subject to this investigation. KTN suggests that the Department use its reported data, coupled with a list of non-subject transactions provided at the U.S. Reseller verification, to delete these sales from its reported data base.

Petitioners dismiss as without merit KTN's request that the Department correct U.S. Reseller's sales data, noting that not all of the non-subject sales can be identified using the reported data. The burden of compiling an accurate sales listing, petitioners aver, should not rest with the Department.

Department's Position: While KTN claims that it identified the quantity of cut-to-length merchandise at the outset of the U.S. Reseller verification, we compared these figures to the sales data submitted on January 6, 1999. We found the total quantity of stainless sheet which was acquired by U.S. Reseller in cut-to-length form as reflected in U.S. Reseller's sales listing greatly exceeded the quantities for cut-to-length products presented in Exhibit 6. Because we cannot reconcile the various figures we have no evidentiary basis for making the quantity adjustment claimed by KTN. See Final Analysis Memorandum. As a result we have applied the adverse facts available margin to the entire quantity of stainless sheet products included in U.S. Reseller's submitted data.

Comment 22: Other U.S. Reseller Issues

Petitioners and KTN each presented a number of other arguments pertaining to the sales by U.S. Reseller, many addressing points raised in the U.S. Reseller Sales Verification Report. As mentioned in passing under Comment 20, above, petitioners and KTN commented on additional problems discovered at the U.S. reseller verification, including (i) U.S. Reseller's inability to provide documents for the ''surprise'' sales trace requested at verification, (ii) the discovery by the

Department of unreported early payment discounts on U.S. sales, and (iii) the alleged mis-classification of prime merchandise as non-prime.

Petitioners also faulted KTN on the manner in which U.S. Reseller calculated its ISEs for further-manufactured merchandise, including its omission of its net financial expenses from the ISE calculation. In addition, petitioners suggested that the Department recalculate U.S. Reseller's SG&A to correct ''serious discrepancies'' discovered by Thyssen, Inc.'s independent auditors. Furthermore, petitioners accused U.S. Reseller of mis-allocating its stainless steel scrap yield ratio by using a numerator and a denominator derived from different universes of transactions. KTN objected in turn to each of petitioners' comments on these issues. For its part, KTN protested the timing of the release of the U.S. Reseller verification reports and the subsequent schedule for filing case and rebuttal briefs; petitioners dismissed KTN's objections as baseless.

Department's Position: Because we have determined to use adverse facts available for U.S. Reseller's sales data, these additional comments are moot and are not addressed further here.

KTN's Cost of Production

Comment 23: General and Administrative Expenses

Petitioners assert that the Department should include expenses relating to KTN's international projects, year-end adjustments, and personnel costs in KTN's revised G&A. Petitioners also argue that revenue from rebate claims, provisions and internal freight do not warrant treatment as offsets to KTN's G&A expenses, suggesting that the Department does not adjust a respondent's COP for offsets unrelated to its production activities.

In petitioners' view the costs associated with KTN's international projects, comprising joint ventures such as Shanghai Krupp (SKS) in the People's Republic of China, ''directly affect[ ] the allocation of the entire Nirosta world-wide manufacturing scheme.'' Petitioners' Case Brief at 64. In addition, petitioners contend that KTS's experiences in building and launching new facilities, such as the joint-venture plant in Shanghai, will benefit the entire Nirosta group. Thus, petitioners argue, international projects expenses should be included in KTN's G&A calculation.

Furthermore, petitioners argue that KTN's year-end adjustments pertain to pension and legal liabilities; as such, petitioners maintain, these adjustments are properly considered part of KTN's general operations and should be included in KTN's total COP. Finally, petitioners argue that adjustments KTN makes in its normal course of business relating to NSC's executive compensation should be included in KTN's G&A total because (i) there is no evidence these expenses pertain solely to NSC's operations and (ii) KTN has not reported these expenses separately under NSC's G&A expenses.

In addition, petitioners argue, expenses arising from the acquisition by KTN's parent KTS of Mexinox, the Mexican re-roller of stainless steel hot bands purchased from KTN, should be included in KTN's G&A expenses because Mexinox is an integral part of KTN's operations. Therefore, petitioners aver, the ''extremely interwoven nature'' of the Nirosta group shows that the Mexinox acquisition costs are in fact related to the core business of KTN and should be included in KTN's total COP. Petitioners' Case Brief at 63 and 64.

However, petitioners claim that revenues from rebate claims, provisions and internal freight do not warrant treatment as offsets to KTN's G&A expenses, suggesting that the Department does not adjust a respondent's COP for non-production-related offsets. Petitioners Case Brief at 63, citing *U.S. Steel Group* v. *United States*, 998 F. Supp. 1151 (CIT 1998), and Certain Pasta From Italy, 63 FR 42368, 42371 (August 7, 1998).

KTN counters that costs associated with the international projects center are unrelated to the production of subject stainless sheet in coils in Germany, as they are associated with the foreign operations of KTS. Likewise, accruals for severance payments do not represent G&A expenses incurred during the POI. KTN maintains that the downsizing for which the expenses were accrued never took place; thus, no severance payments were actually made. KTN expresses no objection, however, to including the personnel costs associated with NSC's operations in its G&A calculation.

KTN also rejects petitioners' assertion that the costs incurred in the Mexinox acquisition should be included in KTN's G&A. According to KTN, these costs incurred by KTN's parent company, KTS, bear no relationship to costs ''pertaining to production and sales of the foreign like product by the exporter in question''—the statutory test for including SG&A expenses for purposes of COP. KTN insists that because these expenses were incurred by KTS, rather than the respondent KTN, and because they are not associated with production and sale of the foreign like product by KTN, they are properly excluded. KTN dismisses as unfounded petitioners' assertion that Mexinox represents an integral part of KTN's operations, noting that the black band supplied by KTN to Mexinox represents a raw material cost to Mexinox which has been captured fully in Mexinox's verified COP.

With respect to rebates, claims, provisions, and internal freight, KTN suggests that petitioners' objections are based upon the incorrect assumption that the adjustments involve revenue received by KTN, an assumption fueled by the Department's Preliminary Cost Calculation Memorandum and KTN's Case Brief, which repeated this erroneous characterization. KTN's Rebuttal Brief at 50. In fact, KTN insists, these items are not revenues but adjustments to revenue, i.e., expenses, which have been reported properly within KTN's sales listing. Treating these items as adjustments to KTN's G&A, argues KTN, would result in double-counting. Petitioners' reliance on U.S. Steel is misplaced, KTN concludes, because that case addressed the proper classification of expenses within a cost response as either G&A or a cost of manufacture (COM), not whether the disputed items should be included in both the cost and the sales files.

Department's Position: We agree with petitioners that the costs associated with international projects as well as those arising from year-end adjustments should be included in KTN's G&A expenses. The costs of international projects are properly included in G&A because they relate primarily to general expenses of the group as a whole. These projects had not developed into stand-alone commercial entities. Thus, as petitioners note, their costs affect directly the allocation of the entire Nirosta world-wide manufacturing scheme.

As for the year-end adjustments, throughout the investigation KTN provided conflicting information as to the true nature of these adjustments. At verification we determined that the majority of these were for severance accruals. *See* KTN Cost Verification Report at 19 and 20. We consider severance costs to be expenses that relate to the general operation of a company as a whole. In setting up a severance accrual, KTN was reasonably certain that it would need to make severance payments for its workers currently employed by the company at some point in the near future. KNT recognized these severance costs during the current year and they directly relate to the company's current employees. Accordingly, we consider it appropriate to include these year-end adjustments in

the respondent's G&A calculation. Finally, as both petitioners and KTN agree, we have included NSC's personnel costs in the G&A expense ratio calculation.

Regarding the Mexinox acquisition costs, we agree with KTN that these expenses should not be included in KTN's G&A expenses. While we agree with petitioners' characterization of Mexinox as an integral part of Fried. Krupp's operations, we do not consider it appropriate to include inter-company finance charges in our calculation of G&A expenses. Financing expenses related to Fried. Krupp's purchase of Mexinox will be captured in Fried. Krupp's consolidated financial statements.

We also agree with KTN regarding the treatment of rebate claims, provisions and internal freight. As noted in Exhibit 23 of the KTN Cost Verification Report, the expenses included in this account are predominantly for commissions and freight which the Department treats as selling expenses. Appropriately, KTN has reported these expenses in its sales listing. Therefore, we have excluded them from the G&A expense calculation.

Comment 24: Allocation of G&A Expenses

KTN takes issue with the Department's suggestion in the KTN Cost Verification Report that G&A expenses should be allocated based on total cost of manufacture (TCOM). Rather, KTN insists, its methodology, which allocates aggregate G&A expenses to products based on processing costs alone, achieves a more accurate result, as it is not skewed by wide variations in material costs. Material costs vary sharply, KTN explains, not only as a result of the differing alloy content of different grades of stainless steel, but also because of fluctuations in alloy prices. Therefore, according to KTN, while G&A activities do not vary according to grades of steel, material costs do vary depending upon the nickel content of the specific steel grade. As a result, KTN avers, inclusion of material costs will result in products which require the same G&A activities having sharply divergent per-ton allocated G&A expenses. KTN's Case Brief at 50. While it is reasonable, KTN suggests, to assign a higher G&A cost to a product which requires more processing activities, as the processing requires active management, it is inherently unreasonable to assign higher G&A costs to a product whose sole distinction is a higher cost for its constituent materials. Therefore, KTN believes that the Department should accept KTN's reported activity-based G&A expenses and not recalculate G&A based on its TCOM.

Petitioners oppose KTN's request for the allocation of its G&A expense ratio based on processing costs alone, calling KTN's suggested approach ''a results-oriented attempt to distort fully absorbed costs.'' Petitioners' Rebuttal Brief at 52. Such an approach, contend petitioners, results in a grade-neutral ratio which assigns the same absolute G&A expense to both low-cost and high-cost products. Petitioners insist that, contrary to KTN's methodology, the proper allocation of G&A over COM always includes the cost of materials. The rationale for a value-based allocation, petitioners argue, is that higher-value products absorb the same proportional amount, but a greater absolute amount, than lower-value products. *Id.* at 53. Petitioners argue that this approach for the allocation of SG&A expenses has been used consistently by the Department in such cases as Pure Magnesium from the People's Republic of China, 63 FR 3085 (January 21, 1998). Petitioners draw further support from Belgian Stainless Plate in Coils where the Department rejected the respondent's ''improvements'' in attempting to use a quantity-based methodology in allocating its selling expenses. As a result, petitioners note, the Department allocated the respondent's SG&A expenses solely on the basis of value.

Department's Position: We agree with petitioners that G&A expenses should be allocated as a percentage of the total cost of manufacturing the merchandise, as opposed to KTN's assertion that they be allocated as a percentage of processing costs. As set forth in Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan, 61 FR 38139, 38149 (July 23, 1996) and Certain Carbon and Alloy Steel Wire Rod From Canada, 59 FR 18791, 18795 (April 20, 1994), our normal methodology for allocating G&A expenses is to apply these types of costs as a percentage of total manufacturing cost. This approach recognizes that the category termed ''G&A expense'' comprises a wide range of costs, some of which bear such an indirect relationship to the immediate production process that any allocation based on a single factor, i.e., processing costs, would be purely speculative. The Department's normal method for allocating G&A costs based on total manufacturing cost takes into account all production factors (i.e., materials, labor, and overhead) rather than a single factor chosen arbitrarily. By allocating G&A consistently over total manufacturing costs the Department attempts to minimize discriminatory cost allocations. In addition, G&A expenses represent period costs, not product costs, and as such they should be spread proportionately over all merchandise produced in the period. By computing G&A based on a percentage of total manufacturing costs, each product absorbs the same proportional amount of G&A expenses relative to its total cost, even if the absolute amount might vary. This approach avoids distortions to the price or cost analysis caused by apportioning a higher percentage of processing costs to lower-cost products.

We also disagree with KTN's assertion that activity-based costing and standard accounting practices support the allocation of period costs based on processing costs. As the name suggests, activity-based costing provides that a cost element should be allocated based on the activity which gave rise to that cost element. G&A expenses, however, do not arise from individual processing costs or activities. We also disagree with KTN's unsupported argument that the more processing a product undergoes, the greater the amount of general and administrative activities properly associated with the product. By definition, G&A expenses relate to the general operations of the company as a whole and, as noted, to a period of time, not to specific products or processes. Absent evidence that our normal G&A allocation method unreasonably states G&A costs, we allocate such costs based on the total manufacturing cost. Therefore we have calculated KTN's G&A expenses as a percentage of the total manufacturing cost, including material costs.

Comment 25: Exchange Rate Gains and Losses

Petitioners maintain that because KTN was unable to reconcile its reported schedule of exchange gains and losses to the financial statements of Fried. Krupp, the Department should adopt the methodology suggested in the KTN Cost Verification Report by including foreign exchange rate losses, but excluding foreign exchange rate gains, in calculating consolidated financial expenses.

KTN disagrees, asserting that the Department should rely upon the exchange rate gains and losses realized by KTN proper, rather than the overall exchange rate experience of Fried. Krupp as a whole. To the extent the Department does rely upon the exchange rate gains and losses indicated in Fried. Krupp's financial statements, KTN argues, any losses should be offset

by the gains. KTN further avers that the Department found sufficient evidence at verification to distinguish between the short-term and long-term interest reflected in Fried. Krupp's consolidated 1997 financial statements; interest income from long-term investments is shown separately from other interest and similar income drawn from short-term resources.

Department's Position: As a general matter we disagree with KTN that for computing interest expenses the Department should use KTN's company-specific foreign exchange and interest income figures rather than the consolidated figures reflected in Fried. Krupp's financial statements. The Department has a longstanding practice of calculating the respondent's net interest expense rate based on the financing expenses incurred on behalf of the consolidated entity. This practice recognizes the fungible nature of invested capital resources (i.e., debt and equity) within a consolidated group of companies. The Court sustained this approach in *Camargo Correa Meais, S.A.* v. *United States,* 17 C.I.T. 897, 902 (August 13, 1993), where the Court quoted approvingly Certain Small Business Telephone Systems and Subassemblies Thereof From Korea, 54 FR 53141, 53149 (December 27, 1989):

> The Department recognizes the fungible nature of a corporation's invested capital resources including both debt and equity, and does not allocate corporate finances to individual divisions of a corporation * * * Instead, [Commerce] allocates the interest expense related to the debt portion of the capitalization of the corporation, as appropriate, to the total operations of the consolidated corporation.

Accordingly, we will continue to use the consolidated financial statements of Fried. Krupp in the calculation of KTN's financial expense ratio.

As for the foreign exchange gains and losses, the Department requested in two questionnaires and again at verification that KTN provide information to support the inclusion of Fried. Krupp's foreign exchange gains and exclusion of its foreign exchange losses from the interest expense computation. However, KTN, which has the sole ability and responsibility to support the requested adjustments, failed to provide any supporting information. Thus, we agree with petitioners that since KTN failed to provide evidence to support the inclusion of gains and the exclusion of losses from the financial expense ratio calculation, we have included Fried. Krupp's foreign exchange rate losses while excluding its foreign exchange rate gains from the financial expense ratio calculation.

We agree with KTN, however, that based on our findings at verification, the interest income used as an offset to financial expenses is appropriately classified as short-term. Fried. Krupp's 1997 consolidated financial statements distinguish between interest earned from long-term and short-term financial assets. Accordingly, we included the interest income earned from short-term assets, less the amounts relating to trade receivables, as an offset to financial expenses.

Comment 26: Deep-Drawing by Affiliated Processor

Petitioners accuse KTN of failing to report that an affiliated party, Thyssen Umformtechnik, performed deep drawing operations on stainless flat products produced by KTN. The Department, petitioners contend, must apply adverse facts available in accounting for this critical element in KTN's COP.

KTN suggests that petitioners have misunderstood the role of these deep drawing operations. KTN maintains that rather than representing a cost associated with producing the foreign like product, deep drawing actually involves the consumption of the foreign like product in the manufacture of non-subject products ranging from vacuum bottles to automotive parts.

Department's Position: We agree with KTN with respect to the alleged role of deep drawing operations in the production of the foreign like product. The deep drawing at issue, as KTN claims, involves the consumption of the merchandise in the production of non-subject products and is not, as petitioners contend, a ''critical element'' of KTN's reported COP. As such, we made no adjustment for the deep drawing processes performed by Thyssen Umformtechnik.

Comment 27: Failure To Report Affiliated Supplier

Petitioners note that KTN purchased small quantities of titanium[8] from a company owned by Acciai Speciali Terni S.p.A. (AST), a sister company of KTN. According to petitioners, KTN failed to disclose prior to the Department's cost verification that the titanium was in fact purchased from an affiliated party. KTN's failure to disclose its affiliation with the supplier warrants use of adverse facts available, petitioners insist, because while titanium may represent a small portion of KTN's total raw material purchases, it comprises a major portion of the material costs for those grades of stainless steel which are alloyed with titanium.

KTN rejects as pure conjecture petitioners' arguments concerning purchases of titanium from its affiliate. Petitioners, KTN avers, have provided no information or analysis which could lead the Department to suspect the nature of the transactions between the affiliate and KTN. Furthermore, argues KTN, titanium purchases from the affiliate involved only small quantities of this input.

Department's Position: We disagree with petitioners. KTN disclosed at the outset of verification that it purchased small quantities of titanium from an affiliated company's subsidiary. We discussed the affiliation and these purchases with KTN officials, and noted that KTN's product brochures list titanium as a trace element (i.e., less than one percent) in certain grades of stainless steel. Given the relative insignificance of this input, we deferred further testing of the purchases and instead focused our testing on KTN's purchases of more significant inputs. Thus, contrary to petitioners' assertions, KTN identified the nature of these purchases; at verification the Department exercised its discretion in electing to concentrate on inputs which have a greater affect on KTN's reported COP.

Comment 28: Major Inputs From Affiliated Suppliers

Petitioners insist that KTN did not provide its affiliates' acquisition costs for certain raw materials used in the production of subject stainless steel sheet and strip. Petitioners argue that, as major inputs, the raw materials purchased from affiliates should be valued at the higher of transfer prices, market value, or the affiliates' COP, in accordance with section 773(f)(2) and (3) of the Tariff Act. However, in the instant case, petitioners aver, the transfer prices paid by KTN to its affiliated suppliers for inputs such as nickel and chromium were, on average, below market value. Petitioners' Case Brief at 68, citing Exhibit 23 of the KTN Cost Verification Report. Petitioners disagree with the Department's opinion, voiced in this report, that KTN's transfer prices were greater than both market value and the affiliates' COP (i.e., the affiliates' acquisition costs). Furthermore, evidence of the affiliates' overall profitability does not address whether or not the transfer prices at issue were above the cost of acquisition for these raw materials.

[8] The specific input and the supplier's identity were afforded treatment as business proprietary information, and were so treated in petitioners' case brief. However, KTN identifies the input publicly in its rebuttal brief.

Petitioners suggest increasing the value of KTN's nickel, chromium, and scrap inputs by the difference between KTN's highest unit costs for purchases from unaffiliated suppliers and the average transfer price, using the data in KTN Cost Verification Exhibit 23. If the Department persists in conducting the major inputs test in spite of KTN's refusal to provide its affiliated suppliers' acquisition costs, petitioners continue, the Department as a ''corrective measure'' should increase the value of these inputs by the difference between the average transfer price and the average market price.

KTN asserts that the Department verified that the transfer prices for raw materials supplied by affiliated parties were greater than both market prices and the affiliates' cost of production; accordingly, KTN argues, the Department should use the transfer prices in calculating COP and CV.

Department's Position: We disagree with petitioners. Section 773(f)(2) allows the Department to test whether transactions between affiliated parties involving any element of value required to be considered in calculating COP (i.e., major or minor inputs) are at prices that ''fairly reflect * * * the market under consideration.'' Section 773(f)(3) allows the Department to further test whether transactions between affiliated parties involving a major input are at prices above the affiliated supplier's cost of production. In other words, if an understatement of the value of a major input would have a significant impact on the reported cost of the subject merchandise, the statute allows the Department to insure that the transfer price or market price is above the affiliated supplier's COP.

The determination as to whether an input is considered major is made on a case-by-case basis. See Final Rule, 62 FR at 27362. In determining whether an input is considered major, among other factors, the Department looks at the percentage of the input obtained from affiliated suppliers (versus un-affiliated suppliers) and the percentage the individual element represents of the product's COM (i.e., whether the value of inputs obtained from an affiliated supplier comprises a substantial portion of the total cost of production for subject merchandise. Id. In the instant case we examined both the percentage of the input obtained from affiliated versus unaffiliated suppliers and the percentage of the product's COM represented by the specific elements of value, here, nickel, chromium, and alloyed scrap. The limited amounts of the inputs obtained from affiliated suppliers, combined with the relatively small percentage the individual elements represent of the product's COM, mitigates the effect purchases of these inputs from affiliates would have on KTN's total COP. Accordingly, we determine that in this investigation section 773(f)(3) of the Tariff Act does not apply to the nickel, chromium, and alloyed scrap purchased from affiliated parties. However, we did find that the prices paid to affiliated parties for nickel were below market price; therefore, as provided by section 773(f)(2) of the Tariff Act, we have increased the COM accordingly.

Comment 29: Hot Rolling Costs

Petitioners charge KTN with supplying data on the costs of hot-rolling services provided by an affiliate that are both incomplete and inaccurate. As a result, petitioners maintain, the Department lacks the necessary data to conduct the major input test described at section 773(f)(3) of the Tariff Act. Because KTN failed to provide its affiliate's total actual manufacturing costs, as well as the supporting documentation to calculate the affiliate's SG&A and net financial expenses, argue petitioners, the Department must rely upon adverse facts available to establish the TCOM for all of KTN's products.

According to petitioners, KTN selectively applied variances (to adjust standard costs to actual costs) to only limited portions of its cost build-up. In doing so, petitioners contend, KTN failed to account fully for the affiliate's actual per-unit costs of the hot-rolling services. Petitioners claim that as a result, KTN's reported costs do not cover the actual COM of the affiliated hot-roller.

Petitioners contend KTN has further skewed its reporting of hot-rolling costs by failing to include amounts for the affiliate's variable operating costs and SG&A expenses. Petitioners insist that to capture fully the affiliate's COP, the reported costs must include the SG&A of the affiliate, as well as the interest expenses of its parent firm, Thyssen Stahl AG. Further, petitioners argue that KTN failed to submit for the record data on the affiliate's expenses, such as its financial statements, that would allow a calculation of these additions to COM. Absent the profit and loss statement of the affiliate or, at the least, its parent, petitioners contend, there is no way to establish either the SG&A or financial expense portions of fully-captured COP for this hot rolling.

In light of KTN's failure to report the actual TCOM and the additional data necessary to determine adjustments for SG&A and net financial expenses, petitioners aver, the Department must resort to the facts available to establish KTN's COP. Petitioners suggest as an adverse inference that the Department should apply the single highest TCOM to all of KTN's products. That failing, conclude petitioners, the Department should adjust the reported COM to reflect actual, not standard, costs, and to include surrogates for the missing SG&A and financial expense data for the affiliated hot roller.

KTN takes issue with a number of petitioners' assertions. First, KTN argues, petitioners have not even established that the hot-rolling services at issue constitute a major input for the purposes of section 773(f)(3). Hot-rolling services, submits KTN, account for a small fraction of KTN's costs and are not a major input. That petitioners fail to address a necessary predicate to their entire line of argument, KTN maintains, is grounds for rejecting that argument entirely. While acknowledging that the Department has no bright-line figure for establishing what constitutes a major input, KTN nevertheless suggests that hot rolling adds relatively little value to the foreign like product; stainless steel derives most of its value from metallurgy (*i.e.*, at the liquid steel stage) and through cold rolling, annealing, and other finishing processes. Hot rolling, KTN concludes, is not a major input.

Second, KTN maintains, petitioners' allegations betray a misunderstanding of KTN's reporting methodology; the Department, on the other hand, tested this methodology at verification and found it to be sound. KTN's Rebuttal Brief at 57. KTN claims that petitioners virtually ignored the agreement between KTN and its affiliate setting forth the terms for its purchase of these services, whereas the Department examined this document, tested its formulae, and concluded that the transfer price covered the affiliate's cost of providing hot rolling. Petitioners' assertion that certain of the affiliate's costs were omitted from the transfer price, KTN avers, is drawn from the incorrect document, which merely addresses end-of-year adjustments to these costs. Rather, KTN maintains, the hot-rolling services agreement provides an itemization of costs to be included in the transfer price that is so liberal that ''KTN is of the view that it is paying too much for the hot rolling services.'' KTN's Rebuttal Brief at 61.

KTN concludes that petitioners' objections to its reported hot-rolling costs are misinformed. KTN insists that it has provided all documentation requested by the Department, and these hot-rolling services were discussed at length at verification. Petitioners'

arguments, therefore, should be dismissed.

Department's Position: We agree with KTN that the transfer prices paid to its affiliated hot roller were at arm's length and, therefore, no adjustment is necessary. As mentioned above, when determining whether an input or process is considered major, the Department considers, *inter alia*, the percentage of the input or process obtained from affiliated suppliers and the percentage the individual element represents of the product's COM. In this case because hot-rolling comprises a relatively small percentage of the foreign like product's COM the impact of any misstatement of these costs upon total COP is reduced. As a result, we have determined that the hot-rolling services supplied by the affiliate do not constitute a major input as defined by section 773(f)(3) of the Tariff Act. However, as the hot rolling represents an input supplied by an affiliate, the Department still tests whether or not the transfer prices were at arm's length. In the instant case no market prices for hot-rolling services were available. Therefore, at verification the Department confirmed that the transfer prices, after the year-end adjustments enumerated in the purchase contract, were above the affiliated supplier's cost of production. Further, the Department confirmed at verification that the contract between KTN and its affiliated hot roller establishes prices which cover all fixed and variable manufacturing costs and SG&A as well as a provision for profit to the affiliate. Finally, we verified that the actual prices paid by KTN to the affiliate reflected the terms of the contract.

Ministerial Errors and Miscellaneous Comments

Comment 30: Separate Weighting of Nickel Alloys for Model Matching

KTN argues that the Department should use separate product codes for its 304L low-nickel and 304L high-nickel alloys because there are significant differences in the physical characteristics between the two which have a direct bearing on their respective costs of manufacture. KTN points to the widely divergent nickel content of the low-and high-nickel variants of its 304L stainless steel.

Petitioners contend that the model-matching grade criteria should not undergo selective modification to redefine product bands in the results-oriented exercise suggested by KTN, citing *Ferrosilicon from Venezuela*, 57 FR 61879, 61880 (December 29, 1992) (preliminary determination), and 58 FR 27522 (May 10, 1993) (final determination).

Department's Position: We agree with petitioners. In order to understand the Department's position, it is first helpful to clarify our methodology for assigning weight factors. We assigned individual weighting factors to those reported grades recognized by the AISI nomenclature. We also assigned unique factors to any reported proprietary grades or foreign grade specifications if the chemical content was sufficient to distinguish them from any existing AISI grade already assigned a ranking factor in our matching hierarchy (e.g., DIN specification 1.4462). Where a proprietary or foreign grade specification was similar in chemical composition to an AISI grade, we assigned it the same weight as the comparable AISI grade, rather than assigning a unique weighting factor to that particular grade. We also did not assign unique weights to certain ''sub-grades'' (e.g., 304DDQ) because the percentage ranges of chromium, carbon, nickel, and molybdenum do not differ from the broader AISI grade.

After deciding which grades to assign unique weighting factors, we established a linear weighting system designed to search for matches within the general classes of stainless steel (e.g., the chromium-nickel series, the straight chromium (hardenable) series, and the straight chromium (non-hardenable) series). In addition to ensuring matches within the general classes or families of stainless steel, our weighting system is designed to match grades in the same family based on chemical composition. For example, within the chromium-nickel series, where an identical match is not possible, our preference is to pair grades containing molybdenum (e.g., grades 316 and 317) with each other before searching for a grade with no molybdenum (e.g., grades 302 and 304).

KTN argues that the Department should use separate product codes for 304L low-nickel and 304L high-nickel alloys, stating that

> * * * DIN grade 4306 can be equated to AISI grade 304L. However, KTN sells different versions of DIN grade 4306—4306.00 and 4306.90. DIN grade 4306.00 has a nickel content of 10.0 through 10.2% while DIN grade 4306.90 has a nickel content of 8.05–9.12%. These differences in nickel content result in a large difference in costs and thus in price as well. Therefore, for sales of 4306.00, KTN has reported the information in GRADE2H as ''304L H'' with an H indicating high nickel content. For sales of 4306.90, KTN has reported the information in GRADE2H as ''304L L,'' with an L indicating low-nickel content.

KTN's September 29, 1998 section B questionnaire response at 9.

AISI grade 304L, to which we have assigned a unique weighting factor for purposes of our model match, contains between 8 and 10.5 percent nickel by weight. The nickel ranges specified by KTN for 4306.90 (304L L), 8.05 to 9.12 percent, and 4306.00 (304L H), 10 to 10.2 percent, fall entirely within the broader range specified for AISI grade 304L. Therefore, while the nickel content of the low- and high-nickel variants differs somewhat, both fall within the limits recognized as acceptable for grade 304L stainless steel. Accordingly, for this final determination we have not altered our model match program to distinguish between different variants of the same grade 304L stainless steel.

Comment 31: Errors in Model-Match Program

KTN claims that the programming language included in the Department's model-match program to consider gauge and finish did not execute properly due to a formatting discrepancy between the number of digits used in the Department's program and the number included in KTN's reported sales databases. As a result, KTN notes, two of the nine physical criteria intended for use in the model-match program were not considered, thus skewing the matching and the attendant adjustments for differences in merchandise (difmer).

Department's Position: We examined our model-match program and agree with KTN that the program inadvertently failed to consider the gauge and finish variables when matching home market and U.S. products. KTN reported gauge and finish in a different format than it did the other physical characteristics considered in the model-match program, inserting a leading zero for all values less than ten. As a result, for many models the program read the gauge and finish variables as equal to zero, and generated missing values for those records. Furthermore, in cases where sales of coil in the United States were matched to sales of similar merchandise in the home market (rather than sales of the identical coil) the model-match program did not calculate difmer adjustments as it should but, rather, set the value for these adjustments to zero. Therefore, for this final determination we have amended our program to account for the leading zeros inserted in KTN's reported gauge and finish. See also the Department's Ministerial Errors Memorandum.

Comment 32: Disclosure Under Administrative Protective Order

Petitioners argue that KTN has improperly double-bracketed the identities of its affiliated Thyssen distributors in the United States and Germany, refusing to release this information under administrative protective order (APO), even though this information has been in the public domain. According to petitioners, documentation they submitted on November 12, 1998 and January 11, 1999, clearly shows that the stainless steel distribution role of the various disputed Thyssen distributors ''is not only generally known, but in fact advertised, placed on the Internet, briefed in public company announcements, analyzed in the trade press, touted in public annual reports, outlined in Dun and Bradstreet company profiles, reported to the SEC, and highlighted in product brochures.'' Petitioners' Case Brief at 109. Therefore, petitioners assert that given these circumstances, KTN should not be allowed to succeed in pressing its claim for proprietary treatment for the affiliates' identities and should not only be required to release the names under APO, but should publicly identify these parties for the record.

Department's Position: We disagree with petitioners. From the outset of this investigation KTN has not released the names of its affiliates in the U.S. or home market under APO, instead choosing to double-bracket their names. On September 28, 1998, petitioners wrote the Department requesting that KTN be required to replace double-bracketed affiliated party names with single bracketing or, at a minimum, use a naming convention or coding of affiliates that would permit the consistent and reliable tracking of affiliations throughout the investigation. In a November 5, 1998 letter, KTN argued that in accordance with section 771(c)(1)(A) of the Tariff Act, it should not be required to disclose the names of KTN's customers to counsel for petitioners. Petitioners responded on November 12, 1998, by submitting documentation in support of its assertions that the affiliates' names which KTN was attempting to withhold from disclosure under APO were, in fact, in the public domain. After a thorough review of the record, on December 4, 1998, we notified KTN that ''we will permit the double bracketing of all customers in both the home market and U.S. market. We require however, that you code the affiliated customers in both markets.'' Letter from Ann Sebastian to Hogan & Hartson, December 4, 1998. On December 15, 1998, KTN submitted this coding, as instructed. On January 11, 1999, petitioners again placed information on the record attempting to bolster their original claim that these names deserved treatment as public information.

Section 777(c)(1)(A) of the Tariff Act states that ''[c]ustomer names obtained during any investigation which requires a determination under section 705(b) or 735(b) may not be disclosed by the administering authority under protective order until either an order is published under section 706(a) or 736(a) as a result of an investigation or the investigation is suspended or terminated.'' Further, the Department's regulations hold that ''[t]he Secretary will require that all business proprietary information presented to, or obtained or generated by, the Secretary during a segment of a proceeding be disclosed to authorized applicants, *except (i) customer names submitted in an investigation*.'' 19 CFR 351.304(a)(2) (emphasis added).

Based on the plain language of both the statute and the Department's regulations we have concluded that KTN was entitled to withhold the names of affiliates in the U.S. and home market from release under APO during this investigation. While petitioners provided voluminous documentation that KTN's affiliates' names were publicly available during the POI, we must defer to the statute's sensitivity regarding the improper disclosure of customer names during an antidumping duty investigation. Of all categories of business proprietary information routinely collected by the Department in antidumping duty proceedings, the Tariff Act specifically prohibits only the disclosing of customer names by ''the administering authority,'' i.e., the Department.[9] After thorough review we have determined that petitioners' documentation does not definitively indicate whether or not these parties were indeed customers of KTN. Thus, while these parties' names may be available through public means, the nature and extent of their dealings with one another are not. Requiring KTN to publicly release such information without conclusive public evidence of their roles has the potential for causing competitive harm to KTN. Further, it is important to note that the Department instituted one of the petitioners' proposed compromise solutions by requiring KTN to provide codes for its affiliates which were then released to petitioners. Therefore, for this final determination we will continue to allow KTN to withhold the identities of its affiliated customers in both the home and U.S. markets.

[9] Section 777(c)(1) also protects from disclosure privileged and classified information, which rarely factors into antidumping investigations, and ''information of a type for which there is a clear and compelling need to withhold from disclosure.''

Comment 33: Erroneous Subtraction of Home Market Billing Adjustments

KTN claims that the Department erred by adding, rather than subtracting, its reported billing adjustments when creating a variable to represent total discounts, rebates and billing adjustments. These billing adjustments, KTN asserts, should be added to the home market gross price, not deducted as in the Preliminary Determination.

Department's Position: We agree with KTN. We inadvertently deducted KTN's home market billing adjustments in our calculation of home market net price. Therefore, for these final results we have subtracted KTN's billing adjustment from our calculation of total discounts and rebates, which has the net effect of adding them to gross unit price, as appropriate.

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 imports of subject merchandise 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**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price or constructed export price, as indicated in the chart 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 (in percent)
Krupp Thyssen Nirosta GmbH	25.72
All Others	25.72

International Trade Commission Notification

In accordance with section 735(d) of the Tariff Act, we have notified 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 from Germany are materially injuring, or threaten material injury to, the U.S. industry. If the Commission determines that material injury, or threat thereof, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the Commission finds that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

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

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

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

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

EFFECTIVE DATE: June 8, 1999.

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

The Applicable Statute

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

Final Determination

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

Case History

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

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

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

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

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

Scope of the Investigation

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

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

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