Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–580–836]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea

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

EFFECTIVE DATE: December 29, 1999.

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The Applicable Statute

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

Final Determination

We determine that certain cut-to-length carbon-quality steel plate products (''CTL plate'') from Korea are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 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 in this investigation (*Notice of Preliminary Determination of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Korea,* 64 FR 41224 (July 29, 1999) (''*Preliminary Determination*'')), the following events have occurred:

In August, September, and October 1999, the Department conducted verifications of Pohang Iron & Steel Co., Ltd. (''POSCO'') and Dongkuk Steel Mill Co., Ltd. (''DSM''), the respondents in the instant investigation. A public version of our analysis and report of the results of this verification is on file in room B–099 of the main Department of Commerce building, under the appropriate case number.

On October 15, 1999, and October 27, 1999, respondents submitted revised databases. Petitioners [1] and respondents submitted case briefs on November 12, 1999, November 15, 1999, and November 16, 1999, and rebuttal briefs on November 22, 1999. On November 23, 1999, the Department held a public hearing concerning this investigation.

Subsequent to the hearing on November 29, 1999, petitioners submitted a letter alleging that respondents' rebuttal brief contained untimely filed new factual information that must be rejected. Specifically, petitioners stated that an opinion from an expert on accounting issues was new information. On December 3, 1999, respondents submitted a letter arguing that this opinion was not new factual information. The opinion in question is that of Dr. Charles T. Horngren, and was found at attachment 4 to respondent's cost rebuttal brief. We agree with petitioners that this opinion constitutes new factual information because it is offered as an ''expert opinion,'' and as such, constitutes testimony rather than a general opinion. Therefore, we find that the information in question is new factual information untimely submitted pursuant to section 351.301(b) of the Department's regulations. Normally such new factual information is returned to the submitter. However, given that this issue was raised so late in the proceeding—less than two weeks before the final determination—for administrative convenience we have not returned these data. We have not considered them in making our final determination in this case. Rather, all copies were removed from the record and destroyed, except that, pursuant to section 351.104(a)(ii)(A), of the Act, we have kept one copy solely for the purpose of documenting the reason for rejecting the new information.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (''HSLA'') steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (''HTSUS'') definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

equivalents; (4) abrasion-resistant steels (*i.e.,* USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1998, through December 31, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by POSCO and DSM covered by the description in the ''*Scope of Investigation*'' section, above, and sold in Korea during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by respondents in the following order of importance (which are identified in Appendix V of the questionnaire): painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

Because neither POSCO nor DSM had sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons. *See, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden* 63 FR 40449, 40450 (July 29, 1998) (''*SSWR*'').

Changes From the Department's Preliminary Determination

The following is a summary of changes from the Department's *Preliminary Determination.* For a full explanation of DSM and POSCO sales, *see Dongkuk Steel Mill Co., Ltd. Calculation Memorandum,* dated December 13, 1999 and *Pohang Iron & Steel Co., Ltd. Memorandum,* dated December 13, 1999. For POSCO, the Department utilized the most recent affiliated service center data submitted. For DSM, the Department revised certain codes reported for PLQUAL2H/U in accordance with corrections submitted on July 16, 1999. Additionally, the Department made the following changes to DSM's sales database: for certain U.S. sales observations we revised the per-unit international freight as a result of verification, for a certain U.S. sales observation we revised the amount reported for other discounts, and for a certain U.S. sales observation we revised the order date.

For DSM cost we made changes to the following general areas: scrap offset, affiliated input costs, start-up cost depreciation, inventory, and foreign exchange gains and losses. *See Cost of Production and Constructed Value Calculation Memorandum,* dated December 13, 1999.

Verification

As provided in section 782(i) of the Act, we verified all information provided by POSCO and DSM with respect to its sales and costs, including on-site inspection of facilities, the examination of relevant accounting and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the cost verification and sales report. *See Cost Verification Report*—Pohang Iron and Steel Company, Ltd., from James Terpstra to Official File (November 4, 1999); *Cost Verification Report*—Dongkuk Steel Mill Co., Ltd., from Garri Gzirian and Lauren Van Houten to Neal Harper (October 21, 1999); *Sales Verification Report*—Pohang Iron and Steel Company, Ltd. from Frank Thomson to James Terpstra (November 10, 1999); *Sales Verification Report*—Dongkuk Steel Mill Co., Ltd., from Howard Smith and Lyman Armstrong to James Terpstra (November 10, 1999).

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions* 61 FR 9434 (March 8, 1996).

Particular Market Situation

On October 8, 1999, petitioners submitted an allegation that a ''particular market situation'' exists within the meaning of section 773(a)(1)(C)(iii) of the Act. This allegation was based on a variety of information sources that, according to petitioners, show that the Government of Korea (''GOK'') controls the price of steel in the home market to such an extent that the prices cannot be considered to be competitively set, such that home market prices cannot be used as a basis for normal value. Petitioners supplemented this allegation on October 29, 1999.

Petitioners provided four types of evidence to support their allegations: (1) Market research, including interviews with steel industry indicating GOK control of steel prices; (2) a time series of transaction prices showing flat prices (indicative of price controls according to petitioners); (3) a GOK document related to steel prices; and (4) a variety of media articles related to this topic.

On October 19, 1999, respondents submitted a rebuttal to this allegation. Respondents asserted that the allegation was untimely and should be rejected. Respondents also stated that this allegation was fully evaluated in a previous case and found to be without merit. Finally, respondents submitted home market prices data for showing variation in home market prices, which

they claimed to be indicative of market forces operating freely.

Regarding timeliness, 19 CFR 351.301(d)(1) requires that an allegation must be submitted within 40 days after the date on which the original questionnaire was transmitted, unless the Secretary extends the time limit. In this case, the questionnaire was transmitted on March 17, 1999, and thus this allegation would normally have been due on or before April 26, 1999.

In considering whether to extend the deadline for this allegation, as permitted by the regulations, we consider, *inter alia,* how the allegation would affect the schedule of the case. *See* 19 CFR 351.302(b). The regulations state that ''unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established by this part. Furthermore, with regard to the allegation itself, the regulations regarding this provision foresee that such an allegation would lead to the rejection of an otherwise viable home market in favor of sales to a third country as the basis for normal value. *See* 19 CFR 351.404(c)(1). As such, the deadlines are predicated on the assumption that we would need sufficient time to collect and analyze third country sales. Whatever the merits of the allegation in this case, the timing of petitioners allegation would not have allowed for sufficient time to collect and analyze third country sales data. Therefore, we have not extended the deadline for filing the allegation in this case. Consequently, we find petitioners allegation to be untimely filed and have not considered it in our final determination.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from petitioners and case and rebuttal briefs from respondents.

Home Market and U.S. Sales

DSM

Comment 1: *Physical Characteristics of Subject Merchandise*

Petitioners argue that the methodology DSM used for reporting its plate specification information is flawed and cannot be accepted. Petitioners state that DSM's claim of producing high-strength shipbuilding plate from ''general'' quality slabs demonstrates an error in the physical characteristics designated by either DSM's slab supplier or DSM itself. Under either scenario, petitioners feel that DSM's reported plate specification and quality information must be considered unreliable. Petitioners argue that the Department's sales verification report says nothing about manufacturing a high strength product from general quality slab. *See Department's Sales Verification of DSM* at 12. Petitioners contend that it is not possible to create a high-strength plate from non-high strength slab. Petitioners argue that all the chemical properties (such as carbon content) which engenders a CTL plate product with high-strength qualities are added *prior* to the production of slab. According to petitioners, while the subsequent rolling and finishing of a slab (in the production of CTL plate) may improve the mechanical attributes of the product, they cannot alter the chemical composition of the product. Given these assumptions, petitioners claim that the Department cannot have any confidence in any of the plate quality and specification information submitted by DSM.

Petitioners also argue that DSM's claim that general quality plates are produced from high-strength shipbuilding slabs is inconsistent with the statute, the Department's questionnaire, and past practice. Petitioners claim that pursuant to 19 U.S.C. 1667b(a), the Department must compare products that are identical in physical characteristics, and not merely identical in the assigned product specification.

In addition, petitioners contend that there is the potential for manipulation stemming from the use of a methodology that relies on something other than physical characteristics. Petitioners argue that if the Department were to determine that the actual physical characteristics of a finished product are not relevant and the only relevant information is the specification designated on the sales invoices, then companies could legally sell their products in the United States at the lesser specification, when in fact the products actually possess significantly different physical characteristics. Petitioners recommend that the Department use partial facts available given that DSM did not assign costs to the merchandise actually produced; but rather to the merchandise as ordered by the customer. According to petitioners, this would lead to a distorted comparison between home market sales and U.S. sales. Petitioners claim that, as partial facts available, the Department should designate all of DSM's U.S. sales as sales of high-strength shipbuilding plate, to account for the fact that under the flawed reporting methodology, any of the company's U.S. sales could actually be of a high-strength shipbuilding specification.

DSM claims that they reported subject merchandise correctly and that the Department verified the information. DSM asserts that it seldom produces general quality plate using high strength slab, except in order to avoid delays in meeting a customer's order. Further, DSM states that a customer cannot use plate with a general quality certification for a high strength application. Citing the *Verification Report,* DSM argues that the Department randomly selected two months, June and July 1998, and found no instances in which general plate was produced using slabs that were not of general quality.

Department's Position

We disagree with petitioners. During verification, Department officials found one instance where DSM used slabs that were certified to a general quality specification to produce plates that were certified to a high-strength specification. In addition, DSM reported that during the POI, it used both general quality and high-strength slabs to produce plates that were certified to a general quality specification. For the following reasons we have not rejected the reported product characteristics. First, the evidence on the record supports DSM's claim that it produced high-strength plates from slabs certified to a general quality specification, and that it properly reported the quality and specification of such plates. The Department verified that the slabs in question were certified to a general quality specification, and hence DSM classified them as general quality slabs in its inventory system. *See Sales Verification Report* at 9 and exhibit 32. However, the mill test certificate for the slabs showed that their chemical characteristics satisfied the chemical standards of the high-strength specification to which the plates were produced.[2] The fact that the slabs had only been tested in accordance with the general quality specification and, thus, only certified to that specification does not change the fact that, chemically, they also satisfied the requirements of a high-strength specification and were used to produce that specification. Moreover, the plates that were produced from these slabs were tested and found to meet the high-strength specification that DSM reported to the Department. Thus, this method of production does

[2] At verification, DSM officials explained that they select the slabs to be used to produce a plate order based on similarities between the physical characteristics of the slab and the ordered plate irrespective of the quality assigned to the slab in DSM's inventory system.

not demonstrate that DSM's submitted product characteristics are unreliable. Second, at verification the Department found no evidence to indicate that DSM had incorrectly reported the physical characteristics of the plates sold. Furthermore, it is inappropriate to conclude, based solely on the quality of the slabs, that plates that were produced from high-strength slabs and certified to a general quality specification are in fact high-strength plates. The record shows that the production of high-strength plates may involve special hot-mill processing which improves the mechanical properties of certain high-strength steels. Thus, additional factors must be considered before concluding that such plates are high-strength. Moreover, there is no information on the record to show that these products were marketed or sold as a specification other than that for which they were tested and to which they were certified. Finally, the record shows that only a very small percentage of the slabs that DSM used to produce general quality plates were high-strength slabs. For the foregoing reasons, we have accepted the product characteristics as reported.

Comment 2: Commission Expense

DSM focuses a statement in the Department's verification report that one of the selling agents received a lesser commission for each sale. While DSM admits this selling agent received less of a commission for each U.S. sale it was involved in, DSM argues that this agent also received a salary which was reported in DSM's indirect selling expense. This additional compensation was not considered in the Department's analysis.

DSM argues that it is Departmental practice to report commissions paid to independent sales agents, as a direct selling expense and employee's salary, as an indirect selling expense. Accordingly, DSM has properly reported its commission expenses in the United States.

Petitioners did not comment on this issue.

Department's Position

We agree with DSM. We recognize that the sales agent in question received a salary in addition to his commission and that the amount of the salary was properly included in the reported indirect selling expense.

Comment 3: CEP Offset

DSM argues that a CEP offset is warranted because (1) NV is established at a Level of Trade (''LOT'') which constitutes a more advanced stage of distribution than the LOT of the CEP; and (2) the data available do not provide an appropriate basis to determine a LOT adjustment. *See* 19 CFR 351.412(c)(2); *Notice of Preliminary Determination of Stainless Steel Sheet and Strip from the United Kingdom,* 64 FR 90 (January 4, 1999). At verification, DSM demonstrated, and the Department verified, that DKA, not DSM, was responsible for negotiating prices with customers and for invoicing customers in U.S. Channels 1 and 3. In those CEP channels, DSM argues that DKA was also responsible for market research and all interactions with the U.S. customers, including arranging for freight and delivery in the United States and, in Channel 1, U.S. Customs clearance. *See Sales Verification Report* at 8–9; *Sales Verification* Exhibit 9.

Accordingly, DSM states that there is no reseller in Korea that fulfills the role on home market sales that DKA performs on U.S. sales in Channels 1 and 3. As a result, when DKA's selling activities are excluded for purposes of the LOT analysis (CEP LOT), the home market comparison price becomes incomparable because it included significant expenses, communication expenses, rent, and market research. As such, a CEP offset is warranted in this case.

Petitioners claim that a CEP offset adjustment is not warranted in this case. First, petitioners argue that the record evidence fails to indicate that there are significant differences in selling functions between DSM's home market and CEP LOTs. Second, petitioners argue that there is no effect on price comparability on the LOT in this case. As such, the Department should uphold its preliminary determination that U.S. and home market sales were made at the same LOT.

Petitioners claim that, in the event that the Department erroneously determines to make a CEP offset adjustment to normal value for home market sales matched to CEP sales, it must ensure any adjustment is properly applied and not double-counted with the commission offset adjustment. Citing *Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909 (February 23, 1998), petitioners argue that the Department must ''offset any commission paid on U.S. sale by reducing the NV by any home market indirect selling expense remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.''

Department's Position:

We agree with the petitioners. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting-price of sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling general and administrative expenses and profit. For EP sales, the LOT is also the level of the starting-price sale which is usually from the exporter to the importer. For CEP sales, the Department makes its analysis at the level of the constructed export sale from the exporter to the affiliated importer.

Because of the statutory mandate to take LOT differences into consideration, the Department is required to conduct a LOT analysis in every case, regardless of whether or not a respondent has requested a LOT adjustment or a CEP offset for a given group of sales. To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Certain Cut-to-Length Carbon Steel Plate from South* Africa, 62 FR 61731 (November 19, 1997).

As stated in the preliminary determination notice, Dongkuk reported one channel of distribution in the home market through which it sold to distributors and affiliated and unaffiliated end-users. Dongkuk reported no appreciable differences in the functions performed in selling to different types of customers in the home market. Thus, sales to these customers constitute a single marketing stage and, therefore, we continue to find that all of DSM's home market sales were made at one LOT.

In the U.S. market, DSM reported four sales channels: (1) CEP sales through Dongkuk Industries Co., Ltd. (''DKI''), Dongkuk's affiliated trading company in Korea, to Dongkuk International, Inc. (''DKA''), Dongkuk's U.S. affiliate, to unaffiliated customers; (2) EP sales through DKI, to unaffiliated customers;

(3) CEP sales through DKA, to unaffiliated customers; and (4) EP sales from Dongkuk to unaffiliated customers. After adjusting CEP sales in accordance with section 772(d) of the Act, we find no substantial differences in selling activities between EP and CEP sales. Moreover, in comparing home market sales to EP sales and CEP sales, as adjusted under 772(d), we find that DSM performs many of the same functions in selling to its U.S. and home market customers. Therefore, we find that there is no difference in the LOT for NV, EP, or CEP sales. Because there is no difference in the LOT for NV and CEP sales we have not granted DSM a CEP offset. *See Dongkuk Steel Mill Co., Ltd: Level of Trade Analysis,* dated December 13, 1999.

Comment 4: Minor Adjustments Made at the Preliminary Determination Are No Longer Needed

DSM argues that minor adjusts to DSM's database made at the *Preliminary Determination* are no longer needed. First, the Department recalculated credit expense in the home market database because of a database programming error. At the start of verification, DSM corrected the programming that had resulted in incorrect payment dates for a number of their home market sales. *See Sales Verification Report* at 3. Second, the Department had found several missing payment dates and used the signature date as payment date for those sales. Again, at verification, DSM provided the correct payment dates for the invoices that were paid subsequent to the *Preliminary Determination* and the payment date for any remaining unpaid sales. As a result, DSM claims that the Department should have no need to create new payment dates or to make any other adjustments to the sales database.

Petitioners did not comment on this issue.

Department's Position

We agree with the DSM that the minor adjustments to its database are no longer needed. At verification, DSM provided the Department with the correct payment dates for the invoices that were paid subsequent to the *Preliminary Determination* and the payment date for any remaining unpaid sales. *See Sales Verification Report* at 3 and exhibit 1.

Comment 5: Gross Unit Price for Home Surprise Sales 6 and 7

DSM argues that the verification report incorrectly stated that the prices for home market surprise sales 6 and 7 were understated. DSM argues that the value for freight revenue was not included in the variable gross unit price (GRSUPRH); rather for both sales this value was reported in freight revenue (FRTREVH) and was verified as such. *See Sales Verification Report* at Exhibit 24 and 25. However, in the normal course of business, freight revenue and gross unit price are recorded as a single line item in DSM's invoice. In its questionnaire response, DSM reported freight revenue separately from gross unit price and if it was included in gross unit price it would double the amount reported for freight revenue. DSM maintains that the freight revenue accounted for an insignificant percentage of the total value of sales for the two sales, and that the Department found no discrepancies in the reported sales values for the other sales reviewed at verification. As the Department also verified the total reported value and tested the accuracy of DSM's reported data in a variety of ways, DSM argues no adjustment is needed.

Petitioners argue that when errors are discovered at verification, it is the Department's practice to adjust the untested portion of the data in line with the verified findings based on facts available. According to petitioners, these errors are fundamental to the Department's analysis as they relate directly to the prices charged for the foreign like product and as such the Department should increase the gross unit price for all home market sales.

Department's Position

We agree with DSM that no adjustment is needed to the gross unit price of home market surprise sales 6 and 7. At verification we found that the value of freight revenue for both sales was captured in the variable FRTREVH rather than GRSUPRH. Moreover, this discrepancy does not necessitate the use of adverse facts available for all home market sales, as petitioners suggest. If the Department added the difference between the invoice gross unit price and the reported gross unit price, it would double the amount of freight revenue reported for each sale, as this is already captured in another variable, *i.e.,* FRTREVH. Consequently, the Department has made no adjustment to home market surprise sales 6 and 7.

Comment 6: DSM's Model Matching Methodology

Petitioners claim that a comparison of the plate specifications (*i.e.,* PLSPECH) for the home market matching hierarchies to the plate specifications for the U.S. market (PLSPECU) submitted by DSM and POSCO revealed significant discrepancies in the two respondents' methodologies. These discrepancies indicate that DSM's and POSCO's respective specification concordances for ''similar'' products are unreliable. Therefore, the Department should rely on facts available in determining the margins for all U.S. sales not matched to identical PLSPECHs in the home market. Specifically, the Department should assign the highest reported home market price to all sales of non-identical PLESPECHs matching to U.S. sales.

DSM contends that petitioners are most concerned that DSM and POSCO did not report the same suggested matching hierarchy in their questionnaire responses. DSM states that it is unaware of any requirement that respondents report identical matching hierarchies. Further, DSM argues that their company and POSCO were precluded from consulting with one another on this issue due to the proprietary nature of the information. Instead, the companies reviewed the physical characteristics guidelines in the Department's questionnaire; discussed it with their engineers; and made an informed assessment of the most reasonable hierarchy for all specifications sold in the home market.

According to DSM, the hierarchy for the subject merchandise is moot. Both companies sold sufficient quantities of the identical merchandise above cost in the home market to eliminate the necessity of selecting the next most similar product. DSM states that the Department verified the underlying product characteristics associated with DSM's model matching hierarchy. Because this information has been verified as accurate, and because the Department has the discretion to alter the hierarchy, there is no basis for utilizing facts available.

Department's Position

We disagree with petitioners that the reported model matching hierarchies proposed by DSM are flawed and must be rejected. The questionnaire in this case instructed respondents to identify, for every specification sold to the United States, the identical and four or five most similar specifications sold in the home market. In the questionnaire, respondents are requested to explain their identical and similar selections. The Department normally relies on this information in developing its model match concordance. However, if we disagree with any selection of similarity, we can rearrange this hierarchy as appropriate. In this case, petitioners, have not disputed any of these hierarchies at any time prior to the submission of case briefs. Moreover, we have not questioned either party on the

use of these hierarchies in any supplemental questionnaire or found specific faults with any chosen selection.

We also note that the similarity in hierarchies can vary based on the fact that each company sells a different mix of specifications in the home market. Moreover, in this case, the great majority of all of the U.S. sales were matched to either identical, or functionally identical, home market specifications. Thus, for the majority of the reported U.S. transactions, second and third next most similar specifications were not relevant to the margin calculations, as they were not utilized as matches.

Comment 7: Application of Adverse Facts Available to DSM's Cost of Production Data

Petitioners contend that the Department should apply total facts available with an adverse inference in making its final determination in this case. According to petitioners, the Department has resorted to the facts otherwise available in similar cases. *See Final Results of Antidumping Duty Administrative Review: Fresh Cut Flowers from Mexico,* 60 FR 49569 (Sept. 26, 1995) (''*Flowers from Mexico*''); *Final Results of Changed Circumstances Antidumping Duty Administrative Review: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan,* 58 FR 32644 (June 11, 1993) (''*Sweaters from Taiwan*'').

Petitioners assert that DSM's financial statements are materially misstated and, therefore, are unreliable. They question the credibility of DSM's auditors by citing articles published in 1999 in the Korean press, which indicate that this accounting firm ceased operations because of the repeated sanctions imposed by the Korean oversight authorities for poor audits of the companies it audited. Additionally, they claim that, in the course of this investigation, the Department has detected numerous examples where DSM's financial statements are either not compiled in accordance with Korean Generally Accepted Accounting Principles (GAAP), misrepresent relevant financial information, or utilize unreasonable accounting methods. According to petitioners, these problems demonstrate that DSM's financial statements are materially misstated and artificially understate the company's true costs and overstate its income. Furthermore, petitioners argue that these examples also indicate the unreliability of DSM's auditors and their audit report with respect to DSM's financial statements. Petitioners list four instances of such material misstatements:

1. Petitioners argue that DSM violated Korean GAAP by materially overstating the value of its raw materials inventory. Specifically, DSM did not state raw materials inventory at the lower of cost or market value. Petitioners point out that DSM misstated its actual accounting practice in the footnotes to its audited financial statements, by stating that it had valued its inventories at the lower of cost or market value, when in fact it did not do so. To refute DSM's defense that the company's independent auditors did not require this adjustment, petitioners refer to the U.S. Securities and Exchange Commission's (''SEC'') pronouncements on the issue of materiality of misstatements in the financial statements. Petitioners claim that DSM's failure to write-down its raw materials inventory value constitutes a material misstatement.

2. Petitioners argue that DSM, in its treatment and reporting of capitalized 1997 foreign exchange losses, misrepresented its accounting policies, mistranslated certain Korean text, violated Korean GAAP, and employed an unreasonable accounting practice. Specifically, petitioners point out that the company's 1998 financial statements footnote claimed that foreign exchange losses related to debt are amortized over the corresponding maturity periods. In 1998, however, the vast majority of these deferred expenses was transferred to fixed assets and subject to depreciation over asset lives. In addition, according to petitioners, DSM mistranslated Korean GAAP by omitting the fact that the capitalization of certain financial type expenses, other than interest expenses related to certain asset acquisitions, should be disclosed in the footnotes to the financial statements. Therefore, petitioners contend that by not disclosing the transfer of the capitalized foreign exchange losses to fixed assets DSM violated Korean GAAP.

3. Petitioners assert that DSM, in its treatment and reporting of 1998 foreign exchange gains, misrepresented its accounting policies, mislead the Department as to the information in the footnotes of the company's Korean financial statements, and employed an unreasonable accounting practice. Specifically, petitioners point out that the footnotes to the company's financial statements submitted to the Department claimed that foreign exchange gains and losses are amortized over the corresponding maturity periods. However, in fact, the gross amount of the gain was reported on the company's financial statements.

4. Petitioners contend that DSM's extension of the useful lives of its asset represent an unreasonable accounting practice. They note that to support the reasonableness of adopting these asset lives, DSM referred the Department to several sources, none of which, provide an adequate justification for DSM's adoption of longer asset lives for its machinery and equipment.

Petitioners summarize their arguments by asserting that each of the issues presented above represents a material misstatement and alone is a sufficient ground for not relying on DSM's financial statements. Moreover, the cumulative effect of each issue requires the Department to reject DSM's financial statements and to use total facts available. Petitioners argue that, if the Department found these material misstatements based on its limited examination, numerous other instances of material misstatement may also be present in DSM's 1998 financial results. Petitioners contend that these issues demonstrate that DSM has failed to cooperate by not acting to the best of its ability to comply with a request for information, and, therefore, the Department should apply total adverse facts available.

DSM argues that petitioners' request for the use of total adverse facts available is without merit, and should be rejected by the Department. According to DSM, it cooperated fully with the Department in this investigation, and its data submissions were fully verified by the Department. DSM contends that the alleged misstatements identified by petitioners are no more than instances in which petitioners are attempting to second-guess the interpretation and application of Korean GAAP. DSM maintains that the Department should rely on the certified Korean financial auditor's opinion that its financial statements were fairly stated. Furthermore, DSM argues that even if petitioners could identify misstatements in DSM's financial statements, the Department has held that such errors cannot form the basis for the use of adverse facts available absent a showing that the errors prevented the verification of submitted data or otherwise impeded the Department's investigation. DSM argues that no such showing has been, or can be, made in this investigation.

DSM contends that the two cases cited by petitioners in support of their position (*i.e., Flowers from Mexico* and *Sweaters from Taiwan*) are far from being on point. According to DSM, in both cases the Department resorted to

facts available only where the Department had determined that the financial statements in question were unreliable, and that it was impossible to verify the accuracy of fundamental questionnaire response data. DSM claims that these cases stand in stark contrast to facts of record in this investigation because, according to DSM, the Department verified without exception each and every element of DSM's antidumping questionnaire responses. DSM contends that the Department was able to link DSM's reported data not only to its accounting ledgers and its audited financial statements and income tax return, but also to journal vouchers, invoices, mill certificates, sales order summaries, and other underlying source documents. Therefore, DSM claims that the Department may not resort to facts available in such a situation. *See Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 61 Fed. Reg. 53711, 53713 (October 15, 1996) (''*Sulfanilic Acid from China*'').

DSM objects to petitioners attempt to impugn the legitimacy of its audit by noting that the accounting firm that performed DSM's audit was subsequently sanctioned by the Korean authorities for deficiencies in unrelated audits conducted for other companies. DSM calls this argument ''guilt by association'', and asserts that the Department may not refuse to accept the professional opinion of DSM's auditor that DSM's financial statements were fairly stated under Korean GAAP in the absence of any indication of irregularities in its audit of DSM. It points out that the Korean Securities and Exchange Commission (KSEC) has never questioned the accuracy or validity of DSM's audited financial statements. DSM also notes that its financial statements were reconciled by the Department to DSM's income tax returns, which were accepted without adjustment by the Korean tax authorities.

DSM rebuts each specific allegation of misstatement in the financial statements made by petitioners:

1. DSM claims that its inventory was properly valued on its financial statements and no adjustment should be made to its costs on account of this issue. DSM argues that petitioners' claim is misguided, and is contradicted by the proper application of the lower-of-cost-or-market rule, under both Korean and U.S. GAAP. DSM points out that its profits in the first-half 1999 are precisely opposite of the substantial losses that would have been incurred had DSM in fact overstated the value of its inventory on hand at the end of 1998.

2. DSM argues that its deferral and transfer to fixed asset value of the 1997 exchange gains and losses associated with the financing of fixed assets was in accordance with Korean GAAP. According to DSM, prior to 1997, Korean GAAP required that foreign currency gains and losses incurred on long-term debt be fully recognized in the year they were incurred. Effective for fiscal year 1997, Korean Financial Accounting Standards were amended to provide that such gains and losses could be accounted for as deferred charges or credits and amortized. The company claims that it followed this accounting treatment in 1997 and amortized both gains and losses on long-term foreign currency obligations in that year. DSM maintains that it also followed Korean GAAP when the deferred losses associated with the financing of capital assets were subsequently transferred to the capitalized cost of those assets when they were placed into service in 1998. The company cites relevant articles of Korean Financial Accounting Standards to support this treatment.

DSM disagrees with petitioners assertion that DSM's accounting treatment of these items was not properly disclosed in DSM's audited financial statements. DSM also disagrees that the translation of the relevant section of the Korean GAAP prepared internally by DSM and submitted to the Department misstates the original text. DSM argues that Korean GAAP does not require a separate disclosure in the notes of the subsequent transfer of previously deferred charges (*i.e.*, foreign exchange loss capitalized in 1997) from one balance sheet account (*i.e.*, deferred charges account) to another (*i.e.*, fixed assets account). Moreover, DSM argues that the issue of disclosure in the financial statements is simply irrelevant because, according to DSM, it fully disclosed to the Department the methodologies it used both in the financial statements and in its submitted data, and the Department verified both the methodologies and the underlying figures. DSM further points out that the Korean Securities and Exchange Commission has never questioned the adequacy of DSM's financial statement disclosure.

3. DSM argues that its accounting treatment of 1998 exchange gains and losses was also in accordance with Korean GAAP. DSM points out that in 1998 the Korean Financial Accounting Standards were amended again, which allowed DSM to make an election to return to the previous rule which prescribed that foreign exchange gains and losses on long-term assets and liabilities ''shall be recognized in the current year.'' DSM claims that it followed this accounting treatment in its 1998 financial statements, and thus recognized the full amount the long-term foreign exchange gains and losses incurred during that year. Due to a translation error, however, according to DSM, the footnote to the English language version of the 1998/1997 unconsolidated financial statements failed to include a reference to this latter change in accounting standards. Thus, according to DSM, while long-term foreign exchange gains and losses were in fact accounted for differently in 1998 than in 1997, this was due to a change in Korean Financial Accounting Standards and does not in any way call into question the consistency and reasonableness of DSM's choice of accounting policies.

4. DSM argues that its useful lives for fixed assets are fully in accordance with Korean GAAP. It asserts that not only were the useful lives specifically concurred with by DSM's financial auditors, but they are supported by an appraisal performed by a certified appraisal firm, by a survey conducted by the Korean Iron & Steel Association, and by statements by the manufacturers of the equipment, all of which attest to the reasonableness of the useful lives adopted by DSM.

Department's Position

We disagree with petitioners that the issues raised concerning DSM's audited financial statements warrant the application of total adverse facts available. The examples of alleged material misstatement cited by petitioners are issues of accounting conventions and principles adopted by company management, as opposed to the reliability of the underlying financial data. At verification, we noted no instances which raise doubts as to the reliability of DSM's underlying financial data. Although the Department agrees that an audit entails a much more thorough testing of the source financial data as compared to a verification, we noted no inconsistencies in the underlying cost information reviewed (*e.g.*, financial accounting system, cost accounting system, and production records). While there are legitimate concerns about whether the specific accounting practices identified by petitioners result in unreasonable per unit costs for antidumping purposes, we find that after reviewing DSM's treatment, of the identified issues, DSM's management applied the requirements of Korean GAAP in a reasonable manner.

Korean GAAP specifies that the market value of inventory as used in the lower-of-cost-or-market adjustment should be based on the net realizable value of the inventory. *See* DSM's Rebuttal Brief, Attachments 2. Korean GAAP is not clear as to whether the net realizable value should be determined based on the estimated sales value for the raw material in question or by starting with the estimated sales value of the finished goods the raw material will be used to produce. Specifically, it states that the net realizable value, ''shall be determined as estimated selling price, less estimated expenses that can ordinarily be expected to occur.'' *See* Cost Verification Exhibit 25. We consider DSM's approach of starting with the estimated sales value of the finished goods a plausible interpretation of Korean GAAP because the ''estimated selling price'' referred to by Korean GAAP could be interpreted as being of the finished good as well as the raw material. Thus, we disagree with petitioners that DSM's decision not to make an adjustment to its inventory for the lower of cost or market supports the position that DSM's audited financial statements are unreliable.

Effective for fiscal year 1997, Korean GAAP provided that all foreign exchange gains and losses related to long-term debt should be capitalized and amortized over the corresponding maturity period for the loans. Effective for fiscal year 1999 and 1998, *if a company elected to do so* (emphasis added), Korean GAAP provides that all foreign exchange gains and losses related to long-term debt may be recognized in full, in the year incurred. While we have concerns about the inconsistent treatment of the foreign exchange gains and losses in 1998 (recognizing the gains over a shorter period than the losses) and its effect on the antidumping duty analysis (*see* Comment 9), the treatment of exchange gains and losses fall within the confines of Korean GAAP. That is, it appears that the capitalization of the foreign currency losses associated with acquisition of equipment and the subsequent depreciation of these losses over the life of the equipment, as opposed to the corresponding maturity period of the loans, is an acceptable interpretation of Korean GAAP.

While we also have concerns about the timing and magnitude of useful life changes adopted by DSM during 1998, we do not consider these changes to constitute grounds for rejecting a company's audited financial statements in their entirety. The new useful lives adopted by DSM were largely approved by a certified independent appraiser and were fully disclosed by the company in its financial statements. While the Korean tax laws prescribe a rigid limit on depreciable lives, Korean GAAP does not set such strict constraints. Korean GAAP stipulates that companies may select estimated useful lives that differ from those in the tax law. It allows the management of a company to use its judgement, within certain guidelines, in determining useful life and depreciation methodology. Based on this, we do not find the new lives adopted by DSM necessarily conflict with Korean GAAP. *See* discussion in Comment 10.

Lastly, we disagree with petitioners that the fact that DSM's auditors have ceased operations due to repeated sanctions imposed by the Korean oversight authorities for poor audits automatically impeaches the DSM audit. Despite the problems identified by the Korean oversight committee related to audits performed on other companies, there is no evidence that similar types of problems are present with regard to DSM's audit. Absent factual evidence specific to DSM, we have no grounds to reject their audited financial statements.

Comment 8: Ending Inventory Balance Valuation

Petitioners assert that DSM has understated its true cost of production by failing to value ending inventory at the lower of cost or market value (which, according to Korean GAAP, should be determined at net realizable value). Petitioners also point out that the net realizable value as it is defined under Korean GAAP, would actually differ from the acquisition cost because it should be net of certain other costs (*e.g.*, selling expenses). Therefore, petitioners argue, because the Department does not have information on how much DSM has understated its costs due to this particular error, the Department should apply the highest known difference between DSM's stated year-end inventory value and DSM's December acquisition cost to DSM's total year-end inventory value and allocate that calculated amount over costs of goods sold.

Petitioners contend that DSM's suggested definition of the ''net realizable value'' of slab is unreasonable. According to petitioners, DSM's definition of the net realizable value of slab (a raw material input to the CTL plate under investigation) ignores the known market value of slab (*i.e.*, the value of year-end purchases of slab by DSM from unaffiliated parties) and instead relies on a derivation involving several estimated values—the estimated value of the finished plates that will be produced from the particular slabs in inventory at the time of valuation, the estimated fabrication costs associated with producing those finished plates, and the estimated general expenses associated with producing those finished plates. Petitioners argue that the Department should not ignore the known market value of the raw material being valued and instead resort to a derived value based on estimates and presumptions. Petitioners also claim that DSM provides no reference to any authority supporting its slab valuation methodology.

DSM contends that its inventories are appropriately valued in its audited financial statements, and, therefore, no adjustment to DSM's inventory value is required or permitted. DSM argues that the Department may not substitute its own judgment on the application of Korean GAAP for that of DSM's outside auditors. According to DSM, the purpose of verification is not to conduct a ''super audit'' of the company's financial statements, but rather to determine (1) that the submitted costs reconcile with the audited financial statements, and (2) that the resulting costs fairly reflect the actual unit costs of producing subject merchandise, as required for calculating COP and CV. DSM argues that any attempt on the part of the Department to override the accounting treatment specified in a company's audited financial statements is directly contrary to section 773(f)(1)(A) of the Act.

DSM argues that any conclusion that DSM or its auditors failed to follow Korean GAAP in the valuation of DSM's raw materials inventory is unsupported by any information on the record in this investigation. According to DSM, under Korean GAAP, the correct valuation of raw materials inventory for purposes of applying the lower-of-cost-or-market rule is net realizable value, and not the replacement value. The net realizable value, in turn, would be determined by calculating an estimated selling price for the finished product (*i.e.*, plate) and subtracting fabrication and general expenses. DSM disagrees with the method where the average purchase price for slab in December of 1998 is used as raw material year-end inventory value because DSM is not in the business of selling slab. DSM claims that the year-end raw material inventory value when determined according to its method provides no grounds to conclude that there was a sharp decline in value that would have required a write-down under Korean GAAP. DSM argues that any decline in value of raw materials was due to the fact that the majority of DSM's slab was imported, and the fluctuation in the Korean won

and the general instability caused by the Asian crisis led to significant fluctuations in the won-denominated price for slabs. DSM asserts that, even assuming that the market value of its raw materials inventory had declined sharply as of the end of 1998, the decline would not produce a loss material enough to require an adjustment to inventory under Korean GAAP.

DSM claims that the Department's normal policy regarding the treatment of inventory write-downs that have been made in a DSM's audited financial statements appears to be that such write-downs are normally included in cost of production for the period. At the same time, according to respondent, write-downs that are not reflected in the company's cost of goods sold for financial accounting purposes are not included in COP or CV. *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand*, 60 FR 29553, 29571 (June 5, 1995) (''*Pineapple from Thailand*''); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2118 (January 15, 1997) (''*Antifriction Bearings-1997''); Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 66472, 66495 (December 17, 1996) (''*Antifriction Bearings-1996*''). DSM argues that if the Department makes an inventory adjustment where no write-down was made for financial accounting purposes, this would violate the requirement that COP and CV be based on the actual costs of the company. *See IPSCO, Inc.* v. *United States*, 965 F.2d. 1056 (Fed. Cir. 1992).

Finally, DSM claims that, even if the Department were to erroneously determine that some adjustment is appropriate to DSM's reported costs to account for an apparent decline in the value of DSM's raw materials inventory, the adjustment proposed by petitioners would wildly exaggerate any possible decline in inventory value and would amount to an unjustified and punitive overstatement of DSM's actual costs.

Department's Position

We disagree with DSM that the Department's practice is to only consider the write-downs that are reflected in the company's cost of goods sold for financial accounting purposes. The antidumping law requires the Department to base its calculation of costs upon the costs recorded in respondent's books and records unless doing so would be distortive. Section 773(f)(1)(A) of the Act provides that for purposes of calculating COP and CV, ''[c]osts shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.''

In the instant case, Korean GAAP requires the application of the lower-of-cost-or-market rule to the company's inventory valuation. The purpose of this rule, which is also a part of the U.S. GAAP, and International Accounting Standards, as well as many other national accounting systems, is to comply with the one of the basic accounting measurement principals—the ''matching principle''. This accounting principle, in the context of inventory valuation, requires that a loss of inventory value be reflected as a charge against the revenues of the period in which it occurs. Different accounting systems, though, may differ on the specifics of the lower-of-cost-or-market rule, including the definition of the term ''market.'' The information on the record demonstrates that the Korean GAAP defines this term as ''net realizable value.'' However, as we noted above, Korean GAAP is not clear as to whether the net realizable value should be determined based on the estimated sales value for the inventory item in question (*i.e.*, raw materials in this case), or by starting with the estimated sales value for the finished goods the raw material will be used to produce.

We agree that choice of the method, just like the application of the lower-of-cost-or-market rule in general, may depend upon the specific facts and circumstances under consideration, and calls for the application of professional judgement. We believe that it is conceivable that both methods of calculating net realizable value may be acceptable under Korean GAAP. However, in this specific case, the method utilized by DSM distorts the costs because, the estimated future profits from the finished product sales mask the loss in raw materials inventory value that occurred during the POI. In the current case, we found that the method based on the sales value for raw materials is more appropriate because it more accurately reflects the costs the company incurred during the POI by utilizing the market prices readily available for this particular inventory item. Therefore, we adjusted DSM's costs to include the loss in raw materials inventory value that occurred during the period of investigation.

Comment 9: Foreign Exchange Gains and Losses

Petitioners argue that, while DSM's reclassification of 1997 long-term foreign exchange losses incurred on monetary liabilities related to specific capitalized assets may be allowed under Korean GAAP, it nevertheless is unreasonable and distorts the company's costs. Accordingly, petitioners assert that reclassification should be rejected by the Department. They contend that gains or losses incurred on monetary liabilities such as loans (or financial obligations) should remain tied to those liabilities, rather than being re-assigned to non-monetary assets. In addition, petitioners assert that DSM's treatment of its foreign exchange losses is inconsistent with its treatment of foreign exchange gains (*i.e.*, DSM's foreign exchange gains are amortized over the terms of the underlying financial instruments while its foreign exchange losses are depreciated over the useful life of its assets). This, according to petitioners, may lead to miscalculation of carry forward amounts from prior years that should be reflected in the current year. Therefore, petitioners contend that, the Department does not have the information to make the treatment of its foreign exchange gains consistent with the treatment of its foreign exchange losses and cannot reasonably determine the accurate amount of foreign exchange gains and losses for the current year. Accordingly, petitioners argue that the Department should apply adverse facts available with respect to this claimed adjustment by disallowing any foreign exchange gains and assuming the largest amount of foreign exchange losses incurred in the current year. The petitioners contend that, at a minimum, the Department should assume that all of these foreign exchange losses relate to the current period, and increase DSM's submitted G&A costs by the full amount related to the reclassification.

DSM argues that its accounting treatment of 1998 exchange gains and losses was in accordance with Korean GAAP. According to DSM, while long-term foreign exchange gains and losses were in fact accounted for differently in 1998 than in 1997, this was due to a change in Korean Financial Accounting Standards and does not in any way call into question the consistency and reasonableness of DSM's choice of

accounting policies. In addition, DSM argues that its deferral and transfer to fixed asset values of the 1997 exchange gains and losses associated with the financing of fixed assets was in accordance with Korean GAAP. DSM objects to petitioners suggestion that the gains or losses incurred on long-term obligations should remain tied to those liabilities as lacking any accounting authority, and points out that this treatment would not be supported by either Korean or U.S. GAAP. DSM points out that, notwithstanding the fact that DSM, in accordance with Korean GAAP, recognized the full amount of the long-term foreign currency gains and losses in its 1998 income statement, for purposes of the antidumping response, DSM amortized the gain over the remaining life of the underlying obligations and reported only the current portion of this gain as an offset to its reported interest expense for COP and CV.

Department's Position

Section 773(f)(1)(A) of the Act requires the Department to base its calculation of costs upon the costs recorded in the books and records of the respondent, provided such records are kept in accordance with the local GAAP, unless doing so would be distortive. In the instant case, while we agree with DSM that its treatment of foreign exchange gains and losses for the purposes of financial reporting may be consistent with Korean GAAP, we consider the inconsistent treatment of foreign exchange gains and losses to be distortive.

DSM's inconsistent treatment of foreign exchange gains and losses results in losses being amortized over the life of fixed assets, whereas the gains are being amortized over the life of loans. This inconsistency is of particular concern when the same loans which generated the 1997 foreign exchange losses assigned to fixed assets also generated a portion of the foreign exchange gains recognized in 1998. As a result, the foreign exchange losses from those loans are being depreciated over a significantly longer period than the foreign exchange gains from the same loans. This results in the smoothing out of losses and the recording of gains (*i.e. income*) in the current period of time. In order to neutralize this inconsistent treatment, we consider it appropriate to amortize the foreign exchange losses in question over the life of the loans, as opposed to the life of the equipment. This treatment is both consistent with DSM's reported treatment of its 1998 foreign exchange gains and with the Department's preferred method for foreign exchange gains and losses related to long-term debt.

Comment 10: Extension of Useful Lives of Depreciable Assets

DSM contends that the Department erroneously overstated its depreciation expense in the preliminary determination. DSM states that the antidumping law requires the Department to base its calculation of costs (including depreciation expense) upon the costs recorded in the books and records of the respondent unless doing so would be distortive, citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France*, 64 FR 30820, 30836 (June 8, 1999) (''*Sheet and Strip from France*''); *Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 6305, 6321 (February 9, 1999) (''*Silicon Metal from Brazil*'').

DSM maintains that the equipment acquired for Plate Mill #2 had never been operated and remained in mint condition at the time DSM acquired it. DSM claims that petitioners' reliance on POSCO to define an industry practice is misplaced because the shorter useful lives used by POSCO reflect a different election under Korean GAAP, and not a different practice with respect to the determination of the actual, economic useful lives of the assets.

DSM refers to *Notice of Final Determination of Sales at less than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30664, 30684 (June 8, 1999) (''*Sheet and Strip from Korea*'') as having similar circumstances and outcome. DSM claims that in that case the Department accepted the respondent's depreciation expense as reflected on the audited financial statements, even though there has been a change in depreciation methodology and useful lives from prior periods, because the respondent in that case ''provided evidence that its change in depreciation methods and useful lives were reasonable, and that the change occurred in a time period prior to the initiation of the investigation.'' DSM contends that it, too, has demonstrated that the depreciation methodology and useful lives it has used are reasonable, and that the changes in question were adopted well before the POI and before the initiation of this antidumping investigation.

DSM also claims that a major portion of the Department's adjustment to DSM's depreciation expense in the preliminary determination is unrelated to the determination of the appropriate useful lives for fixed assets. Rather, it relates to the change in depreciation convention used for determining the depreciation expense. Specifically, prior to 1998, DSM followed the ''six-month convention'' for determining depreciation. Beginning in 1998, however, DSM began calculating depreciation on a monthly basis, so that depreciation was determined with reference to the month the asset was actually placed into service. DSM argues that, while both conventions are permissible under Korean Financial Accounting Standards, the monthly convention applied by DSM is inherently more accurate than the six-month convention. DSM presents an example where, under the monthly convention, a machine installed in November of 1998 would be depreciated in 1998 only for the two months in which it was actually in service during the year. Under the six-month convention, however, the same machine would be depreciated for a full six months, as if it had been installed on July 1. Similarly, machinery installed in June of 1998 would, under the six-month convention, be depreciated for a full year, as if it had been installed on January 1. DSM also points out that this change in depreciation convention was determined to be a reasonable change in accounting methodology for fiscal year 1998 by DSM's outside auditor.

According to DSM, the Department's adjustment in the preliminary determination ignored the fact that DSM also revalued upward its fixed assets in 1998. This upward revaluation increased DSM's depreciation expense. DSM claims that if the Department intends to rely upon the previous useful life figures used by DSM prior to 1998, then it must also use the original asset values.

In conclusion, DSM asserts that, for the reasons stated above, and consistent with the Department's decision in *Sheet and Strip from Korea* and long-standing precedents, the Department should eliminate the adjustment to DSM's depreciation expense made in the preliminary determination and instead use the actual depreciation expense for the subject merchandise reported by DSM and verified by the Department.

Petitioners assert that DSM has massively understated its depreciation costs by extending the useful lives of depreciable assets, using new asset lives that are unreasonable. Petitioners argue that the revaluation of assets and the restatement of asset lives are not inextricably linked, but rather independent decisions having no direct bearing on one another. Therefore, according to petitioners, the Department

should reject DSM's extension of asset lives.

Petitioners assert that claims by manufacturers of equipment that their machinery and equipment is still functional after 20 years are irrelevant because the functionality of equipment over an extended period relates to the magnitude of repair and maintenance performed. For the same reason, petitioners maintain, the KSA's survey is not relevant to the issue at hand, because different companies may have different policies on equipment maintenance. In addition, petitioners point out that the asset lives referred to by DSM relate to new assets, while most of the DSM's newly acquired assets had not been operated for fourteen years, and not been maintained for six years. They also note that it is unclear from the information provided by the respondent exactly which of the fourteen-year old equipment was in ''mint condition,'' and which had already been installed in Mexico by the previous owners.

Petitioners argue that the finding of the certified appraiser that provided the basis for DSM's change in useful lives should be ignored because, the appraisal was not conducted with professional due diligence. Petitioners claim that the appraiser was unaware of the fact that the equipment in question spent over a decade in Mexico before it was purchased by DSM. They also contend that the appraiser did not examine any information on POSCO's plate equipment to compare it to DSM's equipment. Petitioners claim that DSM in several instances did not follow the useful lives guidelines established by the Korean Appraisal Board (''KAB''). Petitioners note that, for example, the lives assigned to certain equipment exceed the limits indicated in KAB guidelines.

Petitioners claim that by adopting extended asset lives DSM violated a fundamental accounting convention. That convention, according to petitioners, is the practice of following particular accounting techniques applicable to the company's industry. Specifically, petitioners refer to useful lives used by POSCO (*i.e.*, up to 9 years), which is the only other major producer of CTL plate in Korea, as being indicative of the useful lives that would have been used by other Korean producers of the same products.

Petitioners also claim that, even though DSM changed its useful lives policy prior to the initiation of the case, it was already clear at that point to all the parties involved in the investigation, based on the statistics and dynamics of the DSM sales in the United States, that an antidumping investigation was practically unavoidable. Petitioners assert that this was at least one of the factors DSM considered in switching to an accounting policy reducing the reported costs.

Petitioners contend that the cases cited by DSM in support of retaining the company's submitted depreciation expenses are distinguishable from the current situation. According to petitioners, in *Sheet and Strip from France, Silicon Metal from Brazil* and *Sheet and Strip from Korea*, the respondents' submitted costs were not found to be unreasonable (*i.e.*, distorted), while in the instant investigation petitioners claim that DSM's submitted depreciation expenses do distort the company's actual costs.

Department's Position

Sheet and Strip from Korea represents one of the most recent cases where the Department identified the factors it considers in deciding whether a change in an accounting method, or estimate, should be allowed for the purposes of COP and CV calculations. That is, the Department, while relying on a company's normal books and records, analyzes the reasonableness of the newly adopted accounting method, and considers if the fact, or an expectation, of being involved in an antidumping investigation might have played a role in the company's decision to change its accounting practice (*see Sheet and Strip from Korea*, 64 FR 30664, 30684 (June 8, 1999)). In the instant case, within months of initiation of the investigation, DSM made three changes affecting its depreciation expense calculations: revaluation of fixed assets, change in depreciation convention, and extension of useful lives.

We agree with DSM that revaluation of fixed assets and a change in depreciation convention may result in more accurate cost reporting. The revaluation of fixed asset values restates amounts recorded in prior years to current currency levels. We also agree with DSM that the new month-of-acquisition convention for when to start depreciating an asset, being in conformity with Korean GAAP, reasonably reflects the costs, and is generally more accurate than the six-month convention previously used by the company. Therefore, we allowed these two changes to the company's depreciation methodology.

However, we disagree with DSM's assertion that it has demonstrated that the new useful lives are reasonable. Pursuant to section 773(f)(1)(A) of the Act, the Department ''shall consider all available evidence on the proper allocation of costs, * * *, if such allocations have been *historically used* by the exporter or producer *in particular for establishing appropriate amortization and depreciation periods*.'' (emphasis added) In 1998, DSM departed from its historical useful life policy by aggressively extending asset lives, which resulted in a dramatic reduction in depreciation expenses. This is distortive because it understates the actual depreciation expense incurred during the POI as well as understating the depreciation expense for the current fiscal year.

DSM refers to useful life guidelines established by the Korean Appraisal Board (''KAB'') as support for the company's revised asset lives. However, we agree with petitioners that the useful lives DSM assigned to certain equipment exceed the limits indicated in KAB guidelines. Furthermore, the KAB guidelines require that the condition of the equipment in question should be taken into account when choosing an appropriate life within the established range. As we stated in our Cost Verification Report, all the opinions and guidelines provided by DSM to support the extended useful lives referred to the lives of new equipment. *See Cost Verification Report* at 12. However, it has been established in the course of investigation that the equipment DSM acquired for Plate Mill #2 was not new. The September 1998 article from *Steel Times International* supplied by DSM shows that some of the equipment was already installed by the Mexican company and had to be dismantled (*see* DSM's November 8, 1999, submission at Attachment 1). Therefore, we agree with petitioners that it is unclear from the information provided by DSM exactly which components of the fourteen-year-old equipment were in ''mint condition.''

Moreover, even if we were to assume that, as DSM claims, this equipment had never been operated, fourteen year old equipment is still subject to obsolescence, if not other factors commonly associated with a ''moth balled'' asset. Nevertheless, DSM assigned to these assets the useful lives that in certain cases even exceeded the upper limits established by KAB for these types of assets. *See Cost Verification* Exhibit 8. For these reasons, we believe that the longer useful lives distort the reported costs of production by allowing respondent to recognize a small amount of depreciation in a given year. The resulting distortion understates the true actual depreciation expense for the period, thereby resulting in lower reported total cost of production. Therefore, we have adjusted the new extended useful lives, and

applied to both the COP and CV calculations the lives historically used by the company because this approach more consistently and accurately captures the costs.

Comment 11: Startup Adjustment

DSM argues that its audited financial statements reasonably accounted for the costs of construction, test, and start-up of Plate Mill #2. DSM claims that this is the accounting treatment followed by DSM for financial accounting purposes, which is in accordance with Korean GAAP, and which has been accepted by the Department in previous cases.

DSM argues that it did not request the startup adjustment provided for in section 773(f)(1)(C) of the Act because, according to DSM, the purpose of section 773(f)(1)(C) is to adjust costs for purposes of calculating COP and CV under the antidumping statute when a respondent's normal accounting system fails to account for the effects of start-up operations. DSM contends that this is an exception to the general rule in section 771(f)(1)(A) that costs shall be calculated based on the books and records of the producer, when those books are maintained in accordance with GAAP. Therefore, according to DSM, because its normal costs already reasonably account for the effects of start-up operations, no adjustment to DSM's normal costs under section 773(f)(1)(C) is necessary. *See Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above (''DRAMs'') From Taiwan*, 64 FR 56308, 56318–56319, (October 19, 1999) (''*DRAMs from Taiwan''); Micron Technology, Inc.* v. *United States*, 893 F. Supp. 21, 36 (CIT 1995); *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Canada*, 63 FR 9182, 9186–9187 (February 24, 1998) (''*Wire Rod from Canada*''); and *Micron Technology, Inc.* v. *United States*, 893 F. Supp. 21, 36 (Ct. Int'l Trade 1995).

DSM also argues that even if the Department were to determine that the criteria for an adjustment under section 773(f)(1)(C) are relevant to this case, DSM's new plate mill clearly satisfies the criteria for startup operations under the statute (*i.e.*, it is a new production facility and requiring substantial new investment). Furthermore, DSM asserts that it has demonstrated that its production levels at Plate Mill #2 during the first five months of 1998 were limited by technical factors uniquely associated with the start of commercial production. Therefore, DSM contends that no adjustment should be made to its reported costs, as reflected in DSM's audited financial statements.

Petitioners contend that the Department should adjust DSM's COM to eliminate DSM's startup adjustment. Petitioners note that, according to 19 U.S.C. § 1677b(f)(1)(C)(ii), ''Adjustments shall be made for startup operations only where—(I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and (II) production levels are limited by technical factors associated with the initial phase of commercial production.'' Petitioners argue that DSM did not satisfy the first prong of the statute because the opening of the Plate Mill #2 production in the first half of 1998 represented simply an expansion of the capacity of an existing production line (*i.e.*, extension of existing plate production in Pohang). With respect to the second prong, petitioners argue that DSM did not satisfy it either because: (a) DSM did not provide evidence demonstrating that production quantities were limited; (b) the company's operations were not limited by technical factors, but rather, were limited because its employees were on vacation; (c) the capacity utilization DSM defined as commercial was actually achieved in the middle of the claimed startup period; and, (d) DSM failed to link the three technical factors it claimed to have limited production levels with the production process, or explain how these factors actually limited the production. Therefore, according to petitioners, DSM has failed to satisfy either prong of the startup adjustment test under the statute and the Department should deny the claimed startup adjustment entirely.

Petitioners disagree with DSM's position that the statutory criteria for a startup adjustment is not relevant and that the only criteria is whether the Plate Mill 2's treatment was consistent with Korean GAAP. Petitioners contend that, even if this is true, the Department must reject DSM' startup calculations, because DSM has not shown that the mill's treatment was in accordance with the Korean GAAP (which, according to petitioners, distinguishes the current case from *DRAMs from Taiwan* and *Wire Rod from Canada* cited by DSM) and that its treatment reasonably reflect DSM's actual costs.

Department's Position

We agree with DSM, in part. Section 773(f)(1)(C) of the Act provides for a claimed start-up adjustment in cases where a respondent has not already done so in its normal books and records. Nevertheless, under section 773(f)(1)(A) of the Act, the Department is directed to follow the normal records of the exporter or producer if such records are kept in accordance with the producer's home country GAAP and reasonably reflect the costs associated with the production of the merchandise. Therefore, because DSM's normal records already accounted for the start-up operation, we must follow such treatment if it reasonably reflects the costs associated with the production of the merchandise.

However, we have determined that the DSM's accounting method for startup period costs is distortive in two respects: First, it overstated the period of startup and, therefore, understated the reported costs. DSM asserted that its production levels at Plate Mill #2 were limited by technical factors uniquely associated with the start of commercial production during the first five months of 1998. However, at verification, we found that, from the end of March through May, the daily production quantities were relatively the same as the daily production levels for the three months subsequent to DSM's designated end to the start-up period. Therefore, we identified the point at which DSM reached normal production levels and have adjusted the start-up period costs accordingly.

Second, under DSM's method, the company capitalized the startup period costs net of startup period sales. We agree that this approach may be acceptable for financial accounting purposes because, if a company does not include the same sales in its gross sales figure on its financial statements, the effect of such treatment on the company's net income figure is minimal. However, for COP and CV calculations, we consider this methodology to be distortive because the same startup period sales that are included in the home and U.S. sales files, are, at the same time, used as an offset to the costs. Therefore, in calculating our adjustment, we eliminated the effect of the startup period sales on the startup period costs. For further explanation of our findings at verification, *see DSM Cost Verification Report*, dated October 21, 1999. Consequently, we have adopted DSM's treatment of startup costs except for these two corrections, because its methodology, otherwise accurately reflects costs associated with production of the subject merchandise.

Comment 12: Transactions with Affiliated Entities

DSM contends that, in the final determination, the Department should eliminate the adjustment it made in the

preliminary determination on purchases of slab through two affiliated trading companies, Dongkuk International, Inc. (''DKA'') and Dongkuk Corporation (''DKC''), and should base its valuation of DSM's slab costs on the prices reported by DSM for these slab purchases as reflected in DSM's normal cost accounting system. DSM argues that the major input rule does not apply to these slab purchases because DKA and DKC did not produce the slabs. According to DSM's interpretation of the Act, while section 773(f)(2) of the Act—the ''Transactions Disregarded'' rule applies to transactions between any affiliated persons, section 773(f)(3)—''the Major Input Rule'' applies only to situations when an affiliated person is involved in production of a major input to the merchandise. DSM cites section 773(f)(3) which refers to the case ''of a transaction between affiliated persons involving the *production* by one of such persons of a major input to the merchandise'' (emphasis added). DSM asserts that there is an apparent contradiction between this section of the Act and section 351.407(b) of the Department's antidumping regulations, which refer to ''a major input *purchased* from an affiliated person'' (emphasis added). DSM notes that, in the event of a conflict between section 773(f)(3) and the Department's regulations, the statutory language governs.

DSM argues that the intent of major input rule, as explained in SAA to the Uruguay Round Agreement Act, is to prevent manipulation of costs between affiliated producers, and not just any affiliated parties. DSM disagrees with the Department's reasoning in such cases as *Notice of Final Determination of Sales at Less Than Fair Value—Stainless Steel Round Wire from Canada*, 64 FR 17324 (April 9, 1999) (''*SSRW from Canada*''), where the Department explained that the intent of major input rule and the related regulations is ''to account for the possibility of shifting costs to an affiliated party. This possibility arises when an input passes to the responding company through the hands of an affiliated supplier, regardless of the value added to the product by the affiliated supplier.'' DSM contends that the Department's decision in *SSRW from Canada* is directly contrary to the language and intent of section 773(f)(3) and should not be followed in this investigation. DSM further asserts that the statutory language with regard to the major input rule is unambiguous, and allows for only one interpretation: the affiliated person must be engaged in the ''production'' of the merchandise, or the rule does not apply. As to the ''possibility of shifting costs to an affiliated party'', DSM claims that where the Department knows the actual price charged by an unaffiliated producer of the input (*i.e.*, the market value), and where the affiliated supplier performs no substantive role in the transaction, such a possibility does not exist.

DSM proceeds with an argument that DSM should be even entitled to value the purchases it made through DKA and DKC at the price paid by the affiliates to the unaffiliated suppliers, not the higher transfer price paid to DKA or DKC, and cites *AK Steel Corporation* v. *United States*, 34 F. Supp. 2d, 756, 765 (Ct. Int'l Trade 1998) (''*AK Steel Corporation*''), where the Court upheld the Department's determination not to apply 19 U.S.C. 617b(f)(2)–(3) to transactions between collapsed entities.

DSM asserts that because DKA and DKC are not the manufacturers of the merchandise, the Department's calculations of their cost of production for the purposes of major input rule err by including costs and expenses incurred by these trading companies in unrelated lines of business. DSM also claims that, in fact, DKA and DKC simply provide a service to DSM which is limited to the resellers' minor commission or margin on the exchange and does not rise to the level required for an adjustment to be permitted under the major input rule. *See Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 30710, 30747 (Comment 29) (June 8, 1999) (''*Sheet and Strip from Germany*'').

Furthermore, DSM argues that no adjustment to the transfer prices reported by DSM is permitted under Section 773(f)(2) of the Act. DSM claims that if, however, the Department decides to disregard the transfer price in this situation, the price paid by DKA and DKC to its unaffiliated suppliers should be used by the Department as the amount that ''would have been if the transaction had occurred between persons who are not affiliated'' under the alternative valuation rule of Section 773(f)(2) of the Act. According to DSM, the Department should compare the price DSM paid to DKA or DKC (*i.e.*, transfer price) to a ''market value'' based on the actual price the affiliates paid to their unaffiliated slab suppliers for that particular slab, but not based on DSM's purchases of slabs from other suppliers. Finally, DSM argues that because the transfer price paid by DSM to its affiliates is greater than the price paid by the affiliates to their unaffiliated suppliers for those very slabs, there can be no basis for the Department to determine that the transfer price ''does not fairly reflect the amount usually reflected'' in sales of such slabs.

Petitioners contend that the Department should follow its decision in *SSRW from Canada* and revise DSM's submitted costs to properly value its slab inputs that were purchased through its affiliates to reflect the higher of transfer price, cost of production, or market value. They argue that, just as in *SSRW from Canada*, the possibility of shifting of costs exists in this case because, while the price at which the affiliated party purchased the input from an unaffiliated party may represent a ''market'' value of the input, the transfer price may or may not reflect all costs related to the input.

Petitioners contend that the Department should adjust it for the following items: (a) Indirect selling expenses of the affiliates should be included in their cost of production; (b) any offset for the interest income should be excluded from the affiliates' finance cost calculations since DSM improperly included long-term interest income in the offset amount; (c) interest expenses of DKA, which were included in DSM's consolidation, and were improperly excluded by the Department in its preliminary determination; and, (d) the highest of transfer price, cost of production, or market value, determined on quarterly basis.

Department's Position

We disagree with respondents, in part. Section 773(f)(2) of the Act allows for the Department to disregard transactions between affiliates if the transfer price does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. Because the affiliate is providing an input (slabs) into the production of subject merchandise, as well as services related to the acquisition of the slab input, the selling, general and administrative expenses (''SG&A'') of the affiliate must be included. We disagree with respondent that the trading company's overhead should not be added to its purchase price (*i.e.,* its cost of sales) in determining the value of the input. The trading company purchases the material, takes title to the item, and provides for the sale and transport of the good to the affiliated respondent. All of these activities have costs associated with them that must be taken into account in order to calculate a total actual cost.

Finally, we disagree with the respondent that in identifying a market value, the Department's preference

should be to look to the prices that the affiliated suppliers paid to their unaffiliated suppliers, and not to the prices paid by the respondent to its unaffiliated suppliers from whom it directly purchased the major input. Both sets of transactions may constitute a usable market value. Respondent seems to suggest that because the affiliated supplier's supplier is providing the specific input, the price between them would be the preferable standard. We disagree. The price that a respondent pays directly to a supplier might be preferable since the statute, at section 773(f)(2), specifically refers to transactions ''in the market under consideration.'' The prices paid by the respondent in an investigation by definition represent the market under consideration. Therefore, we have valued the inputs received from affiliates at the higher of the affiliate's average acquisition cost plus SG&A, average market price, or transfer price.

Comment 13: Production Quantities During ''Test'' Period

Petitioners claim that while DSM did not include any production costs incurred in the ''test'' period, it did include the related production quantities. Petitioners argue that the Department should revise DSM's manufacturing costs to exclude these quantities from per-unit cost calculations.

DSM notes that it did include in the reported costs the material cost associated with the ''test'' period, as well as the related quantities. Only fabrication costs associated with this production were ultimately capitalized and added to Plate Mill #2 fixed assets. While DSM agrees that petitioners' argument has certain merit, it argues that the production quantities during the test period are so small as to have virtually no effect on the per-unit costs. DSM claims that it ignored the impact of these test period quantities and material costs simply as a matter of convenience and, also, to facilitate verification of total production quantity and total costs by remaining consistent with DSM's internal accounting treatment.

Department's Position

We agree with DSM that although the production quantities during the test period were small, as noted in our *Cost Verification Report* at 14, there is an inconsistency in DSM's treatment of the ''test'' period quantities and costs: all the quantities are included in the reported production quantity, only a portion of the related costs was included. Moreover, for accurate per-unit cost calculations, any exclusion of the production quantities should be accompanied by the exclusion of the related costs, which would result in an adjustment that has virtually no effect on the per-unit costs. Section 351.413 of the Regulations addresses the Department's authority to disregard insignificant adjustments under section 777A(a)(2) of the Act. ''[A]n ''insignificant adjustment'' is any individual adjustment having an ad valorem effect of less than 0.33 percent, or any group of adjustments having an ad valorem effect of less than 1.0 percent of the export price, constructed export price or normal value, as the case may be.'' *See* 19 C.F.R. 351.413 (1997). In the instant case, the effect of the individual adjustment on an ad valorem basis is less than 0.33 percent of normal value (i.e., Constructed Value). See DSM Cost Verification Report; see also Final Cost of Production Analysis Memo, dated December 13, 1999.

Comment 14: Gain from Disposal of Certain Fixed Assets

DSM argues that the Department should not adjust its reported G&A expenses to eliminate gains from the disposal of fixed assets that included certain non-depreciable assets. According to DSM, it is the Department's long-standing policy that gains and losses on the disposal of fixed assets, including the sale of an entire manufacturing facility, should be included in COP and CV as part of G&A expenses, provided that these assets had been used to produce subject merchandise. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 64 FR 35,590, 35,614 (July 1, 1999) (''*Antifriction Bearings—1999*''); *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador,* 60 FR 7019, 7042 (February 6, 1995) (''*Roses from Ecuador*'').

Petitioners contend that the Department should continue to disallow DSM's offset to G&A expenses generated by the sale of the above mentioned fixed assets. They point out that DSM reported negative G&A expenses, based largely on the large gain the company received on the sale of certain non-depreciable fixed assets. *See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review,* 57 FR 3167 (January 28, 1992) (comment 57) (''*Forklift Trucks from Japan*''). Petitioners, argue, as evidenced by the above-mentioned cases, that the Department has never allowed this type of negative SG& A reported in its calculation of COP.

Petitioners assert that, according to *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe From the Republic of Korea,* 57 FR 53693, 53704 (November 12, 1992) (''*Stainless Steel Pipe from Korea*''), the Department's practice on treatment of dispositions of fixed assets is that in order to be included in the reported costs, these dispositions should be a normal part of the company's operations and a routine disposition of fixed assets. Petitioners argue that in the current case, the sale of assets in question is outside of DSM's ordinary course of business and is not a ''routine disposition'' of fixed assets, and the resulting gain is not income from activities related to the company's general operations. Petitioners argue that the cases cited by DSM (*Antifriction Bearings—1999, Roses from Ecuador,* et al.) are easily distinguished from the present case because in those cases the Department found that the assets were used to manufacture the subject merchandise and their sale were a normal part of operations, or did not address whether the transaction at issue was routine.

Department's Position

We disagree with DSM that the Department should include, as an offset to G&A expense, the gain incurred on the sale of certain non-depreciable fixed assets. We also disagree that this asset's relationship to production is the standard for whether to include the gain in G&A expense. *U.S. Steel Group* v. *United States,* 998 F.Supp. 1151 (CIT 1998). G&A expenses are those expenses which relate to the general operations of the company as a whole, rather than to the production process. Therefore, it is not relevant whether or not the particular asset was used to produce subject merchandise.

In analyzing whether to include an item in G&A, the Department considers the nature of the activity and whether the activity is significant enough to be treated separately from the respondent's other business activities. ''[I]n determining whether it is appropriate to include or exclude a particular item from the G&A calculation, the Department reviews the nature of the G&A activity and the relationship between this activity and the general operations of the company.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above (''DRAMs'') From*

Taiwan, 64 FR 56308, 56323 (October 19, 1999). In cases where the activity is comparatively small in relation to the company's primary activities, the Department has included the occasional miscellaneous gain or loss in G&A expense. However, at the point where an activity becomes significant enough to constitute a separate business activity, the Department treats it as such. ''However, the gain SMP is claiming as an offset to G&A expenses is related to the sale of a *significant* manufacturing plant and adjacent land area. This sales transaction is not a routine disposition of fixed assets' (emphasis added). *Stainless Steel Pipe from Korea,* 57 FR 53693, 53704 (November 12, 1992). *See, also, Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil,* 64 FR 38756, 38791 (July 19, 1999). In past cases, the portion of the sale of facilities related to certain non-depreciable fixed assets has not been specifically addressed, indicating that the particular treatment of those assets must not have been significant to the overall gain or loss. *See, e.g., Roses from Ecuador,* 60 FR 7019, 7042 (February 6, 1995). In the instant case, the gain on the sale of these non-depreciable assets constitutes the bulk of the gain from the sale of the facility and, as noted above, is greater than DSM's entire G&A expense.

A gain or loss on the sale of a non-depreciable asset, particularly one as significant as that incurred by DSM, warrants separate treatment. This is due to the fact that no depreciation expense associated with this asset were accounted for in the calculation of the cost of production. This is especially true in light of the fact that non-depreciable assets, which are not consumed in the production process and generally retain their value regardless of the state of a particular industry, are normally not treated as a depreciable asset. Depreciation expense is generally not calculated on these assets, which means that no costs associated with these expenses are included in COP or CV. Therefore, it would not be reasonable to include the associated gain or loss on disposal of this kind of assets when they are sold. As a result, we have continued to exclude the gain for the final determination.

POSCO

Comment 1: Whether POSCO's home market and U.S. sales were made at a different LOT than sales by POSCO's affiliated service centers.

POSCO asserts that, based on the information on the record, the Department should conclude that POSCO's home market sales are at a different LOT than the service centers' sales because each sells to purchasers at different stages in the chain of distribution and each performs qualitatively and quantitatively different selling functions. POSCO argues that the differences in the LOT between POSCO and the service centers is demonstrated by significant differences in their marketing positions, quantity sold, customer base, selling activities, warranty services, and sales expenses.

POSCO states that it is an integrated manufacturer which produces a wide range of steel products, sells subject merchandise on a large scale, and has adapted its expense structure in order to maximize profit by selling on a large scale. On the other hand, according to POSCO, the service centers are small resellers which sell out of inventory on a much smaller scale.

In addition, POSCO asserts that it sold significantly more subject merchandise than the service centers during the POI. According to POSCO, its customers are large end-users, resellers or wholesalers, and service centers that buy in large quantities and process the products. The service centers' customers, on the other hand, are typically small resellers and end-users who cannot hold inventory or shear products, and therefore, tend to order small quantities. POSCO argues that these differences in customer base and customer purchasing power are significant indications that POSCO sells merchandise at a different point in the distribution chain than the service centers and, thus, at a different LOT.

POSCO states that the regulations, at 19 CFR 351.412(c)(2), require the Department to look for differences in selling activities when conducting a LOT analysis, and that the differences in the LOT between POSCO and service centers is demonstrated by significant differences in their selling functions. POSCO states that the service centers maintain inventory for sales of subject merchandise, while POSCO sells subject merchandise to order. Another difference, according to POSCO, is that it usually produces subject merchandise in standard lot sizes because its customers later process the merchandise, while the service centers typically process the merchandise into different sizes for small customers who are unable to perform this function. POSCO also states that it provides more delivery options and more differentiated freight arrangements than the service centers. POSCO argues that, while the company and the service centers do provide some similar delivery terms, the mere fact that certain selling activities are performed in a similar manner does not preclude a finding of different LOTs.

POSCO argues that the Department has also emphasized differences in warranty services, technical services and other sales-related activities when examining LOTs, and cite *Carbon Steel Products from Germany,* 64 F.R. at 16,703, 16,705 (April 6, 1999); *Steel Wire Rod from Canada,* 63 F.R. at 9191–9193 (April 1, 1999); *Stainless Steel Sheet and Strip in Coils from Mexico,* 64 F.R. 30790, 30807–30810 (June 8, 1999). POSCO argues that while it provides warranty services for base metal and provides technical services to its customers, the service centers do not.

POSCO next argues that the differences in the LOT between POSCO and the service centers is demonstrated by differences in their sales expenses. POSCO argues that its selling expense structure is very different from that of the service centers, in that it spends significantly more on sales expenses. POSCO further argues that the service centers assume the risk of finding a customer for the products they purchase from POSCO, while POSCO has a commitment from its customer before production. Respondent states that the Department noted no discrepancies in the data POSCO presented in support of POSCO's arguments regarding the different LOTs, and that the Department's findings at verification confirm its analysis.

Petitioners argue that there is no significant difference between the levels of selling activity performed by POSCO and its affiliated service centers because, while the service centers may inventory products longer than POSCO, POSCO provides such selling functions as warranty, technical advice and market research for all customers.

Petitioners claim that, contrary to POSCO's assertion, no significant difference exists between sales quantities and customer categories sold upstream and those downstream. Petitioners further argue that, in any case, differences in sales quantities and customer categories are irrelevant for purposes of determining separate LOTs. According to petitioners, without evidence that significant differences in selling functions exist between sales channels, there is no basis for the Department to determine that different LOTs exist.

Department's Position

We agree with petitioners. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the

comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit. For CEP sales, the Department makes its analysis at the level of the constructed export sale from the exporter to the affiliated importer. *See* sections 773 (a)(7)(A) and 772 (b) of the Act.

Because of the statutory mandate to take LOT differences into consideration, the Department is required to conduct a LOT analysis in every case, regardless of whether a respondent has requested a LOT adjustment or a CEP offset for a given group of sales. To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR at 61731.

In the *Preliminary Determination,* the Department found that there were no differences in LOT between POSCO's and the service centers' home market sales and, therefore, did not make any LOT adjustment to the normal value. *See LOT Memo,* dated July 19, 1999; *Preliminary Determination,* 64 FR at 41226–27. In order to determine whether NV was established at a different LOT than EP sales, we examined stages in the marketing process and selling functions along the chains of distribution between POSCO and its home market and U.S. customers. Based on our analysis of the chains of distribution and selling functions performed for EP sales in the U.S. market, we continue to determine that POSCO and its subsidiaries POSCO Steel Sales and Service Co., Ltd. (''POSTEEL''), the service centers, and POSAM (for EP sales) provided a sufficiently similar degree of services on sales to all channels of distribution, and that the sales made to the United States constitute one LOT. *See LOT Memo,* dated July 19, 1999; *Preliminary Determination.*

We find that the facts in this case are similar to those in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea,* 64 Fed. Reg. 48767, 48773 (Sept. 8, 1999). While different types of selling activities were performed by POSCO, POSTEEL, and the service centers, in examining the selling functions associated with various LOTs, the Department will compare the *cumulative* level of selling activity rather than simply collating specific activities. *See LOT Memo,* dated July 19, 1999; *see generally, Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR at 61731. In comparing the cumulative level of selling activity, we find that the differences in selling functions between POSCO's two claimed home market LOTs are not substantial. Accordingly, we find the U.S. sales and home market sales to be at the same LOT, such that no LOT adjustment under section 773(a)(7)(A) of the Act is warranted.

Comment 2: Whether the Department should reclassify POSCO's U.S. sales as CEP transactions

Petitioners contend that the Department should reclassify POSCO's U.S. sales as CEP transactions, and assert that record evidence demonstrates that POSAM sets prices in the United States and performs a number of significant selling functions.

According to petitioners, POSAM was solely responsible for selling POSCO's product and keeping contact with POSCO's customers. Petitioners argue that U.S. customers initially contact POSAM, and POSCO has admitted that during the POI it did not send any sales personnel or senior managers to the United States. Petitioners also state that POSCO reported that POSAM employs numerous individuals in the United States responsible for various activities that are consistent with an active selling operation in the United States, not an operation whose only purpose is to process sales-related documentation. In addition, petitioners state that POSAM's financial statements indicate that POSAM extended credit for its customers' purchases of subject merchandise from POSCO and POSTEEL. Thus, according to petitioners, POSAM is undertaking the entire risk of these sales and, as such, is far more than a mere processor of sales-related documentation.

POSCO argues that its sales through POSAM are properly treated as EP sales. Respondent states that the Department closely examined this issue at verification and found that POSAM merely functions as a forwarder of requests to POSCO, and that only POSCO can approve the price and terms of sale.

POSCO maintains that the Department found at verification that all prices and terms of sale for U.S. sales are determined by POSCO or POSTEEL and not POSAM, and that POSAM's role was limited to that of a processor of sales-related documentation and providing a communication link. *See Sales Verification Report,* dated November 10, 1999. POSCO asserts that in no instance did POSAM have discretion to adjust prices or negotiate with the customer. Furthermore, according to POSCO, POSAM merely served as a communication link between POSCO and its U.S. unaffiliated customers due to the time difference and communication costs.

POSCO also argues that POSAM employs few employees and that it would not be feasible for such a small number of employees to conduct and operate an ''active selling operation.'' Next, POSCO states that POSAM did not extend credit to POSCO's customers but merely received payment which it then transferred to POSCO. Finally, POSCO argues that the circumstances in the instant investigation are distinguishable from other proceedings before the Department. In prior cases such as *Stainless Steel Wire Rod, Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products, and Stainless Steel Plate in Coils from the Republic of Korea,* the circumstances were different and the factual basis for the Department's decisions also differed. In each of the above-mentioned cases, there was tangible evidence that POSAM did not change or reject prices; POSAM is not the importer of record for the overwhelming majority of sales; and POSAM did not provide any financing to the U.S. customers. Based on these factors, POSCO argues that there is nothing on the record to indicate that POSAM took steps beyond those necessitated for EP classification. Accordingly, POSCO requests that the Department continue to accord EP treatment to POSCO's U.S. sales through POSAM.

Department's Position

We agree with POSCO that sales through POSAM are more appropriately treated as EP transactions. The facts in this investigation are similar to the facts in the *Final Determination of Stainless Steel Wire Rod from the Republic of Korea* 63 FR 40461 (July 29, 1998) cited by POSCO, and sufficient record evidence exists which leads the

Department to conclude that POSCO's U.S. sales through POSAM warrant classification as EP sales.

The Department treats sales through an agent in the United States as CEP sales, unless the activities of the agent are merely ancillary to the sales process. Specifically, where sales are made prior to importation through a U.S.-based affiliate to an unaffiliated customer in the United States, the Department examines several factors to determine whether these sales warrant classification as EP sales. These factors are: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of the affiliated selling agent; (2) whether this is the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. selling agent are ancillary to the sale (*e.g.,* arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.,* negotiating prices), we treat the transactions as CEP sales. *See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review,* 62 FR 18389, 18391 (April 15, 1997); *see also Mitsubishi Heavy Industries* v. *United States,* 15 F. Supp.2d 807, 811–12 (CIT 1998).

We note that neither party has disputed that POSCO's U.S. sales through POSAM meet the first two criteria of the Department's standard. Therefore, the determining factor in this case is the degree of involvement by POSAM in the sales process. In the *Preliminary Determination,* the Department based its EP classification of sales through POSAM on POSCO's statement that POSTEEL or POSCO determined price and terms of sale. *See* 64 FR at 41227–28. Based upon our findings at verification, it is clear that POSTEEL and/or POSCO perform almost all selling activities for U.S. sales through POSAM, including undertaking business trips to meet with potential U.S. customers of the subject merchandise. *See Sales Verification Report* at 11. The record further supports POSCO's assertion that POSAM is merely a processor of sales-related documentation. First, POSAM is only a point of contact via whom the U.S. unaffiliated customer ultimately contacts POSCO or POSTEEL. POSAM officials explained that because of the time zone difference and the cost of long distance, it would be expensive and inconvenient for the customer to contact POSTEEL directly. *See Sales Verification Report,* dated November 10, 1999. POSAM acts as merely a conduit between the unaffiliated U.S. customer and POSTEEL. *See Sales Verification Report,* dated November 10, 1999. POSAM merely collects payment from the customer and transfers this money to POSTEEL or POSCO. *See Sales Verification Report,* dated November 10, 1999. The functions performed by POSAM indicate that it is a mere facilitator and not a seller of subject merchandise. This selling arrangement between POSAM and POSTEEL is similar to the one between POSAM and Changwon, addressed in *Stainless Steel Wire Rod,* where the U.S. customers remit payment to POSAM, which subsequently transfers the payment to POSTEEL, which, in turn, transfers it to Changwon. *See Stainless Steel Wire Rod From Canada,* 64 FR at 40419. Furthermore, of the sales examined by the Department during the POSAM verification, we found no evidence that POSAM was given discretion in adjusting the price of the sale. *See Sales Verification Report* at 30. Thus, the record evidence demonstrates that POSAM has no sales negotiating authority with regard to U.S. sales. Therefore, because of the lack of significant risk incurred by POSAM, in addition to its lack of other selling activities, we find that POSAM's activities are merely ancillary to the sales process and have classified POSCO's U.S. sales through POSAM as EP transactions.

Comment 3: Whether the Department should disregard POSCO's model-matching methodology

Petitioners state that due to significant discrepancies between the model-matching reporting methodologies submitted by POSCO, the Department should disregard POSCO's model-matching methodology. Petitioners argue that for a U.S. specification, POSCO and Dongkuk assigned different home market specifications in the most similar model match chart. According to petitioners, this indicates that POSCO's and Dongkuk's specification concordances for similar products are unreliable. Petitioners argue that the Department should assign, as facts available, the highest reported home market price to all sales of non-identical home market specifications matching to U.S. sales.

POSCO claims that its model match methodology was verified and is reliable. POSCO states that petitioners propose that the Department assign the highest reported home market price to all sales of non-identical specifications matching to U.S. sales because POSCO did not report the same model matching hierarchy in the questionnaire responses. POSCO claims that it is not aware of any requirement that respondents report identical matching hierarchies. POSCO asserts that the Department verified POSCO's approach to model matching and the underlying information at verification. POSCO further argues that the issue of model match hierarchy is moot due to the fact that, for the specification at issue, the Department did not have to match to a similar product for POSCO. POSCO claims that both companies sold a sufficient quantity of the product above cost in the home market to eliminate the necessity of selecting the next most similar product.

Department's Position

We disagree with petitioners that POSCO's reported model matching hierarchies are flawed and must be rejected. The questionnaire in this case instructed respondents to identify, for every specification sold to the United States, the identical and four or five most similar specifications sold in the home market. In the questionnaire, respondents are requested to explain their identical and similar selections. The Department normally relies on this information in developing its model match concordance. *See Original Questionnaire Response: Section B, C and Appendix V* (March 17, 1999). However, if we disagree with any selection of similarity, or if any petitioners raise any issues, we can and do rearrange this hierarchy in any way we deem appropriate. Prior to raising this issue in their case brief, petitioners did not dispute any of the hierarchies proposed by respondents.

The Department verified the methodologies chosen by each of the responding companies, and we noted no discrepancies between the companies' records in the normal course of business and the characteristics reported to us. We also note that each company sells a different mix of specifications in the home market. Thus, the similarity hierarchies can vary based on this fact. Therefore, we find that the methodology used by POSCO to report physical characteristics and matching hierarchies is accurate and reasonable under the circumstances. In addition, in this case, the great majority of all of the U.S. sales were matched to either identical, or functionally identical, home market specifications. As a result, we have not

questioned the use of these hierarchies in supplemental questionnaires or found specific faults with any of POSCO's selections. Thus, the second and third choice for similar specifications are not relevant to the margin calculations because these categories were not used in matching.

Comment 4: *Whether the Department should apply adverse facts available for POSCO's reported downstream sales in the home market.*

Petitioners claim that POSCO's reported sales and cost information for affiliated service centers is significantly flawed and, as a result, the Department should apply adverse facts available for POSCO's reported downstream sales in the home market. Petitioners argue that POSCO did not distinguish between prime and non-prime merchandise sold by its affiliated service centers despite the Department's explicit requests for that information. Petitioners state that the Department discovered that POSCO's reporting of the PRIMEH Fields for sales made by one service center was based entirely on the nature of the merchandise purchased from POSCO, rather than on the nature of the merchandise sold by the service center. Petitioners argue that while the merchandise purchased from POSCO by one service center was reported as prime material, that does not confirm the fact POSCO sold only prime merchandise. Petitioners claim that the merchandise could have been damaged during shipment or failed to meet customer-specified characteristics that would warrant the production of non-prime merchandise.

Petitioners further claim that POSCO failed to report affiliated service centers' further processing costs for products produced by POSCO. Petitioners argue that POSCO reported variable costs for the affiliated service centers based solely on POSCO's own costs, as opposed to the combined manufacturing costs of POSCO and its affiliated service centers. Petitioners state that POSCO only provided cost information for the unique products produced by the affiliated service centers and did not provide the information requested by the Department for the common products produced by both POSCO and the affiliated service centers. Petitioners claim that POSCO withheld critically important information and did not fully cooperate with the Department's repeated requests and therefore, the Department should apply adverse facts available.

POSCO argues that the Department verified the accuracy of its reported downstream sales information. POSCO claims that the service center's product code defines the merchandise that it is selling, not the merchandise that it purchased. POSCO argues that the second and third digits identify whether the merchandise was imported or purchased domestically and the fourth and fifth digits of the code identifies the specification of the merchandise being sold. Therefore, POSCO claims that the service center is able to demonstrate that its sales of second grade material were not from POSCO. POSCO states that it provided complete and accurate answers to the Department's questions on reporting the conditions of the merchandise.

POSCO states that it fully explained the basis for its methodology, and the Department verified the accuracy of the reporting methodology. POSCO claims that the Department verified that the additional cost has a de minimis impact and is therefore, unnecessary for the service centers to be included in the analysis.

Department's Position

We agree with POSCO. At verification, the Department conducted a detailed examination of the reported downstream sales to determine the accuracy of the reported characteristics and the methodology for reporting any additional processing costs and expenses. *See Sales Verification Report*, dated November 10, 1999, at 2. Therefore, we have used the reported downstream sales in our analysis.

We agree with petitioners, in part, that POSCO failed to report the reseller's further processing costs on the COP computer tape. At verification, POSCO indicated that it did not include such costs in the reported COPs because they would be negligible when included and weight-averaged with POSCO's costs. *See Cost Verification Report,* dated November 4, 1999, at 7. We tested this at verification and found that POSCO's failure to include the resellers' further manufacturing costs resulted in a minor understatement of COP. *See Cost Verification Report.* We have increased the reported COP, based on our findings at verification, to account for this understatement.

The Department normally requests responding companies to identify whether sales are of prime or secondary merchandise in both the home and U.S. markets to ensure that a proper comparison is made between sales in both markets. *See Original Questionnaire Response: Section B and C* (March 17, 1999). However, the Department will also consider the burden on the responding company, whether the information is retained in the normal course of business, and whether the requested information is retrievable without undue burden. In the instant case, the Department examined the records of the affiliated resellers which we visited. We verified that one reseller does not maintain a product code designation for non-prime or off-grade merchandise, thus rendering it impossible for that reseller to identify possible sales of non-prime merchandise. *See Sales Verification Report,* dated November 10, 1999 at 22. For the other reseller with which we conducted verification, we noted no discrepancies in reviewing documentation to confirm its assertion that it had no sales of non-prime merchandise purchased from POSCO during the POI. *See Sales Verification Report,* dated November 10, 1999, at 25.

Based upon our examination of POSCO's records and its affiliated resellers' records, the Department finds that POSCO's information was properly reported to the Department as requested. Therefore, we have continued to use all of POSCO's downstream sales in our analysis.

Comment 5: *Facts Available for Certain Unique Product Costs*

Petitioners argue that the Department should resort to adverse facts available in adjusting POSCO's reported costs for certain products. Petitioners claim that POSCO did not identify the unique costs associated with producing products to various specified widths. Petitioners state that POSCO indicated that it did not identify unique costs for the width characteristic for cut-to-length plate although it tracked the unique costs for hot-rolled plate and hot-rolled sheet products. Petitioners claim that the Department confirmed that for subject merchandise produced at the plate mill, POSCO's reported costs did not reflect the differences in width. Petitioners argue that width is an important physical characteristic in the Department's model match hierarchy and that POSCO failed to cooperate to the best of its ability to provide information requested by the Department.

POSCO claims that, as verified by the Department, the costs associated with width are minor. POSCO states that width was not taken into account in the product definition for plate products. POSCO argues that the Department confirmed that any attempt to superimpose width as a cost allocator raises serious risk that other costs would be distorted in the process.

Department's Position: We agree with POSCO that the cost differences associated with width are minor and that any attempt to adjust for these differences could be distortive. As detailed in the cost verification report,

we determined the minor cost differences associated with width (one of several relevant physical characteristics) and found a way to isolate, measure, and adjust for them. *See Costs Verification Report*, dated November 4, 1999, at 5. However, POSCO's reported costs differ for reasons unrelated solely to physical characteristics—POSCO's costs for different products vary based on which plate mill will produce the product as well as which blast furnace, steel making unit, and concast unit will produce the slab. *See POSCO Cost Verification Report,* dated November 10, 1999. Because each of these has different efficiencies and standard costs, the same product (not to mention products whose only difference is thickness) will have a different cost based on which mill in which it was produced. As a consequence, cost differences are not purely isolated to physical characteristics. Thus, applying an adjustment factor based solely on physical characteristics to the reported costs, which vary for reasons not associated with physical characteristics, may not increase the accuracy of the reported costs. We note that POSCO reported the actual costs it incurred to produce the subject merchandise. For COP purposes, these costs are accurate and reliable. However, for purposes of adjustments for physical differences in merchandise, these costs are somewhat problematic in that POSCO cannot always isolate cost differences purely associated with physical differences (*e.g.,* when identical products are produced at separate facilities, production efficiencies become a factor in the calculation of the cost of the product). In this case, the vast majority of price-to-price comparisons are of identical merchandise. Therefore, any adjustment would have a negligible effect.

Comment 6: *Variable and Total Cost of Manufacture*

Petitioners argue that POSCO misstates the burden of producing complete and accurate data. They argue that the data provided to the Department and petitioners was not readable due to the existence of multiple VCOM values within a single CONNUM. Petitioners state that POSCO's revised table of ''cost by CONNUMU,'' attached to the July 16, 1999 letter, is not an acceptable explanation of the previous inadequate submission. In all cases, most of the sales represented by the CONNUMU had been assigned one VCOM value, while other VCOM was assigned to a much smaller number of sales. In POSCO's revised table, the VCOM value which had previously been assigned to the smaller number of sales for each CONNUMU is now identified as being the actual VCOM value for all sales. Accordingly, petitioners feel that this is not a logical explanation of POSCO's previous submission. In light of these deficiencies in the database, petitioners recommend the Department apply, as partial facts available, the highest calculated margin for any CONNUM to each of these sales implicated by the deficiencies.

POSCO claims that its reported variable and total cost information on the U.S. sales database is correct. POSCO asserts that an inadvertent error in creating files caused different values in variable costs for the same products in a previous submission. POSCO states that the error has been corrected and subsequent databases have reported a single variable cost and a single total cost of each unique CONNUM. POSCO claims that the costs were fully and successfully verified by the Department.

Department's Position

We agree with POSCO. Upon review of the record, we found that the errors noted by petitioner made when POSCO filed its July 12, 1999, response appear to be inadvertent. Subsequently, at the request of the Department, POSCO corrected this error in its post-verification filing on October 27, 1999. The Department has utilized the database filed on October 27, 1999, with the unique variable cost of manufacturing and total cost of manufacturing in its final determination.

Comment 7: Home Market Viability

Respondent claims that the issue regarding home market viability raised by petitioners should be rejected by the Department. Respondent argues that since petitioners did not raise that issue in their case briefs, they have waived the right for consideration of the issue by the Department.

Department's Position

The Department has not considered or substantially addressed this issue in the instant final determination because petitioners allegations were untimely. For a full discussion, *see Particular Market Situation,* section, above.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Korea that were entered, or withdrawn from warehouse, for consumption on or after July 19, 1999 (the date of publication of the Department's preliminary determination) for DSM, and those companies which received the ''all others'' rate. POSCO's rate continues to be de minimis, as it was in the *Preliminary Determination;* therefore the Department will not suspend liquidation of these entries. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Pohang Iron & Steel Co., Ltd..	0.05 de minimis
Dongkuk Steel Mill Co., Ltd..	2.98
All Others	2.98

ITC Notification

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

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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