DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–847]

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

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

Final Determination

We determine that certain cut-to-length carbon-quality steel plate products (''CTL plate'') from Japan 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 ''*Continuation of Suspension of Liquidation*'' section of this notice.

Case History

Since the publication of the preliminary determination in this investigation (*Notice of Preliminary Determination of Antidumping Investigation: Certain Cut-To-Length Carbon-Quality Steel Plate from Japan,* 64 FR 41218 (July 29, 1999) (''*Preliminary Determination*''), the following events have occurred:

In September 1999, the Department of Commerce (''the Department'') conducted verification of Kawasaki Steel Corporation (''KSC''), the sole participating respondent in the instant investigation. On October 21, 1999, we issued our cost verification report for KSC, and on October 26, 1999, we issued our sales verification report. Public versions of our report of the results of the cost and sales verifications are on file in the Central Records Unit (''CRU'') located in room B–099 of the main Department of Commerce building, under the appropriate case number. Petitioners [1] and respondent submitted case briefs on November 5, 1999, and rebuttal briefs on November 10, 1999. On November 12, 1999, the Department held a public hearing concerning this investigation.

Facts Available

1. Application of Facts Available

Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is ''deficient'' under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

[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).

2. Selection of Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–20 (October 16, 1997).

Kobe Steel, Ltd. (''Kobe''), Nippon Steel Corporation (''Nippon''), NKK Corporation (''NKK''), and Sumitomo Metal Industries, Ltd. (''Sumitomo'') all declined to respond to the Department's antidumping questionnaire. Because these respondents have withheld requested information, we determine that it is appropriate to use facts available, in accordance with section 776(a)(2)(A) and (C) of the Act. We have also determined that because these respondents failed to respond to our questionnaire, they have not cooperated to the best of their abilities. Therefore, pursuant to section 776(b) of the Act, we used an adverse inference in selecting a margin from the facts available. As facts available, the Department has applied a margin rate of 59.12 percent, the highest alleged margin in the petition.

3. Corroboration of Information Used as Facts Available

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) (hereinafter, the ''SAA'') states that ''corroborate'' means to determine that the information used has probative value. See SAA at 870.

In this proceeding, we considered the petition information the most appropriate record information to use to establish the dumping margins for these uncooperative respondents. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics and foreign market research reports). *See* Initiation of *Antidumping Duty Investigations: Certain Cut-To-*

Length Carbon-Quality Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, the Republic of Korea, and the Former Yugoslav Republic of Macedonia, 64 FR 12959 (March 16, 1999) (''*Initiation Notice*'').

Moreover, for purposes of the preliminary determination, we corroborated the information in the petition. In this regard, we reexamined the export price and CV data which formed the basis for the highest margin in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value (*see* the July 19, 1999, memorandum to the file regarding *Corroboration of the Petition Data,* on file in the CRU). Since the preliminary determination, we received no new information which would call into question the use of petition information as facts available or our corroboration analysis.

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 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 KSC covered by the description in the ''*Scope of Investigation*'' section, above, and sold in Japan 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 the 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. In accordance with section 771(16)(B) of the Act, these physical characteristics reflect differences in the uses and value of the subject merchandise.

Because KSC had no 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*'').

Verification

As provided in section 782(i) of the Act, we verified all information determined to be acceptable for use in making our final determination, in accordance with standard verification procedures.

Changes From the Department's Preliminary Determination

Based on our analysis of the comments received, we have made certain changes for the final determination. Where applicable, these changes are discussed in the relevant sections of the party comments below. Specifically, we revised the following cost items to reflect certain adjustments arising from information obtained during verification: (1) KSC's interest expense ratio, and (2) KSC's G&A expense ratio. *See* Memorandum to the File, ''Verification of the Cost Responses of Kawasaki Steel Corporation, in the Antidumping Duty Investigation of Certain Cut-To-Length Carbon-Quality Steel Products from Japan,'' dated October 21, 1999 (''Cost Verification Report''). In addition, we have made the following changes to items concerning

KSC's home market and U.S. sales: (1) revised KSC's constructed export price calculation to include the operating expenses of its U.S. affiliate, Kawasaki Steel (America) Inc. (''KSCUSA''), (2) changed the application of the arm's-length test of KSC's home market sales from a point-of-delivery basis to a customer-specific basis, (3) granted KSC the CEP offset, (4) used the yen price as the starting price for KSC's export price transactions, (5) included three unreported U.S. sales disclosed at verification in our margin calculations, (6) recalculated Kawasho's home market credit expense to account for inconsistencies found during verification regarding Kawasho's reported dates of payment, (7) adjusted Kawasho International (USA)'s (''KI's'') short-term interest rate to account for additional interest expenses found during verification, (8) corrected a clerical error in the programming for the preliminary determination that understated Kawasho's home market short-term interest rate, (9) corrected Kawasho's warehousing expenses to account for a clerical error disclosed during verification, and (10) corrected the gross unit price on two U.S. sales by KI to account for a clerical error disclosed at verification. For further details concerning the changes listed above, *see* Memorandum to the File, ''Calculation Memorandum of the Final Determination for the Investigation of Kawasaki Steel Corporation,'' dated December 13, 1999 (''Final Determination Calculation Memo'').

Throughout the investigation, KSC argued that its U.S. affiliate, KSCUSA, is a liaison office that provides certain after-sales services to the customers of KSC's customers. According to KSC, KSCUSA provides legal, financial, and accounting support to KSC's other U.S. subsidiary companies; assists KSC with public relations in the Americas; coordinates and receives U.S. business visits from KSC officials; informs KSC of political, economic, social, and business conditions in the United States; and provides warranty/complaint and technical services to U.S. end-users of KSC steel products, including subject merchandise. *See* KSC's June 23, 1999, supplemental Section A response at A–9 and KSC's July 22, 1999, second supplemental Section A response at 10–15.

KSC states that KSCUSA is not involved in the sale of subject merchandise, but supports sales of KSC's entire line of steel products in North, South, and Central America. With respect to CTL plate sales, KSC states that KSCUSA's role in providing after-sale services involves providing technical services, handling warranty claims, and processing complaints by U.S. end-users. However, KSC states that there were no such warranty claims/complaints on subject CTL plate sales during the POI. *See* KSC's July 22, 1999, second supplemental Section A response at 10–15.

Although KSC argues that there were no warranty claims or complaints filed against CTL plate by U.S. end-users during the POI, this does not diminish the fact that KSCUSA was still operating and incurring costs (e.g., salaries, rent) to maintain the personnel and corporate infrastructure necessary to handle such complaints, in the event any are filed. For this reason, we find that KSCUSA's expenses should be included in the calculation of constructed export price (''CEP''). Since the costs incurred by KSCUSA are not specific to CTL plate, but rather apply to all of KSC's steel products, we consider these expenses to be indirect selling expenses. Because of the limited information on the record concerning KSCUSA's expenses, the most reasonable method for including these costs in KSC's CEP calculation is to calculate a ratio of KSCUSA's operating expenses over KSC's total sales in North, South, and Central America. In our calculations, we multiplied this ratio against KSC's gross unit price for CEP sales, and added the result to U.S. indirect selling expenses.

Interested Party Comments

Home Market and U.S. Sales

Comment 1: Date of Sale

Petitioners argue that section 351.401(i) of Department's regulations allows it to use ''a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' Petitioners argue that the documents and information obtained at verification support the conclusion that the material terms of sale are set on the order confirmation date and therefore the order confirmation date is the appropriate date of sale for this investigation.

Petitioners observe that when KSC revises an order confirmation, its internal records do not identify the type of revision causing the revised order confirmation to be issued. Petitioners argue that although KSC provided evidence that some changes occurred between the order confirmation and invoice date for a portion of its sales, petitioners state that KSC is unable to identify whether these changes were material or not. Petitioners observe that the Department stated in its verification report that ''neither of these methods of analysis reflects the type of revision that occurred or, in the case where multiple revisions occurred for a single order confirmation, the total number of revisions for that order.'' *See* Memorandum to the File, ''Verification of the Sales Responses of Kawasaki Steel Corporation, and its Affiliated Companies, in the antidumping Duty Investigation of Certain Cut-To-Length Carbon-Quality Steel Products from Japan,'' dated October 26, 1999, (''Sales Verification Report''), at 29. Petitioners conclude that there is no record evidence of the number of sales in which there were material changes to the terms of sale after order confirmation. Furthermore, petitioners note that although a portion of KSC's sales incurred post-order changes, the majority of KSC's sales had no changes of any kind after order confirmation. Therefore, in the absence of record evidence indicating that the material terms of sale were modified after order confirmation date, the Department must use order confirmation date as the date of sale. Petitioners cite to *Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 63 FR 9312, 9315 (February 25, 1999) (''*Russian Hot-Rolled*''), where the Department stated that ''there is no evidence on the record which indicates that, when no order amendment was provided, the terms of sale for the merchandise shipped differed from the terms of sale set in the order specification.'' Petitioners argue that in that case the Department preliminarily determined that it was appropriate to use the ''order specification date or order amendment, if applicable, as the date of sale.'' *Id.* Petitioners conclude that the *Russian Hot-Rolled* case illustrates that the Department will not adopt the invoice date as the date of sale when there is no record evidence to show modifications to the material terms of sale after the order date.

Petitioners also argue that KSC's refusal to report sales based on order confirmation warrants use of adverse facts available. Petitioners note that the Department requested KSC to report all sales on the basis order confirmation date rather than invoice date in its Supplemental Section B Questionnaire. In its response, KSC stated that it ''will not provide sales or cost information on an order confirmation date-basis.'' *See* KSC's June 23, 1990 Section B Supplemental Questionnaire Response, at 7. According to petitioners, this response indicates that KSC has failed

to cooperate by not acting to the best of its ability to comply with a request for information. Consequently, petitioners recommend that the Department use as adverse facts available the highest margin alleged by petitioners or the highest margin calculated for a single CONNUM, whichever is higher.

Lastly, petitioners argue that even if the Department accepts the invoice date as the date of sale, KSC's refusal to provide sales and cost information on an order confirmation basis, as requested in the Department's supplemental questionnaire, constitutes uncooperative behavior. Petitioners note that section 776(a) of the Act states that when ''an interested party or any other person—(A) withholds information that has been requested by the [Department] * * * the [Department] shall * * * use the facts otherwise available in reaching the applicable determination under this subtitle.'' This provision of the statute, petitioners claim, authorizes the Department to use the highest margin alleged in the petition of this investigation, which, according to petitioners, would be an appropriate response to KSC's disregard for the Department's authority to request information.

Respondent argues that, in accordance with its rules and established practice, the Department appropriately used KSC's invoice date as the date of sale in the preliminary determination of this investigation. KSC claims that section 351.401(i) of the Department's regulations establishes a presumption that invoice date be used as the date of sale, a rule which KSC argues the Department has consistently applied in recent antidumping investigations. Specifically, respondent cites *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24334 (May 6, 1999) (''*Hot-Rolled Steel from Japan*''), and *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173, 2178 (January 13, 1999), as evidence that the Department reaffirmed its practice of using the invoice date as the proper date of sale when terms of sale can change between order and invoice date.

According to KSC, the initial terms of sale are established with the order confirmation. KSC states that the initial terms of sale can and do change up to the invoice/shipment date. KSC notes that it provided evidence that the terms of sale changed for a significant portion of sales during the POI. KSC observes that the Department verified the accuracy of this information and stated in its verification report that ''[t]hroughout the course of this verification, we encountered several revised order confirmations and revised invoices'' and that ''[w]e found no discrepancies between the documents we examined and the explanation of order confirmation and invoice revisions KSC provided in its questionnaire responses.'' *See* Sales Verification Report at 30.

KSC states that in two recent investigations on hot-rolled steel products from Japan and stainless steel sheet and strip products from Japan, and one administrative review covering corrosion-resistant steel from Japan, the Department requested, and KSC provided, two complete sales databases for both the home market and U.S. market. See Hot-Rolled Steel from Japan; Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan, 64 FR 30574, 30585 (June 8, 1999) (''Stainless Steel Sheet and Strip from Japan''); and *Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 4483 (August 16, 1999). For each proceeding, KSC submitted one database compiled using order confirmation dates and another database using invoice dates. KSC notes that in all of these proceedings, the Department's purpose for requesting the information was to determine the appropriate date of sale. KSC argues that the Department verified the submitted information and determined that invoice date is the appropriate date of sale in the final determinations of each of these three proceedings.

Lastly, KSC argues that the invoice/shipment date is the correct date of sale because KSC and its affiliates participating in this investigation use invoice date as the date of sale in their books and records. Consequently, KSC states that using invoice date as the date of sale is consistent with its internal sources of documentation, makes reporting such information easier, and thus, simplifies the verification process.

Department's Position

We agree with respondent that invoice/shipment date is the correct date of sale for all home market and U.S. sales of subject merchandise for KSC in this investigation.

Under our current practice, as codified in the Department's regulations at section 351.401(i), in identifying the date of sale of the subject merchandise, the Department will normally use the date of invoice, as recorded in the producer's records kept in the ordinary course of business. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Administrative Review*, 63 FR 55578, 55587 (October 16, 1998) (''*Pipes and Tubes from Thailand*''). However, in some instances, it may not be appropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that the material terms of sale were established on some date other than invoice date. *See Preamble to the Department's Final Regulations*, 62 FR 27296 (May 17, 1997) (''*Preamble*''). Thus, despite the general presumption that the invoice date constitutes the date of sale, the Department may determine that this is not an appropriate date of sale where the evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

In this investigation, in response to the original questionnaire, KSC reported invoice/shipment date as the date of sale in both the U.S. and home markets. To ascertain whether KSC accurately reported the date of sale, the Department requested in its May 28, 1999, Section B supplemental questionnaire that KSC report all sales made by KSC pursuant to orders with confirmation dates within the POI. In its June 23, 1999, supplemental response, KSC indicated that there were numerous instances in which terms such as price and quantity changed subsequent to the confirmation of the original orders in the U.S. and home markets. In view of the Department's acceptance of KSC's invoice date as the date of sale in previous cases, as well as the burden and expense for responding to the Department's request, KSC did not resubmit its sales or cost information on an order confirmation date-basis. For purposes of our preliminary determination, we accepted the date of invoice as the date of sale subject to verification. *See Preliminary Determination*, 64 FR 41218.

At verification, we carefully examined KSC's selling practices. We found that it records sales in its financial records by date of invoice/shipment. For both the home and U.S. markets, we reviewed several sales observations for which the material terms of sale (*i.e.,* price and quantity) changed subsequent to the original order. Based on respondent's representations, and as a result of our examination of the company's selling records kept in the ordinary course of business, we are satisfied that the date of invoice/shipment should be used as

the date of sale because it best reflects the date on which material terms of sale were established for KSC's U.S. and home market sales.

We disagree with the petitioners' claim that order confirmation date is the most appropriate date of sale for KSC's U.S. and home market sales because the majority of KSC's sales required no change in material terms subsequent of the issuance of the order confirmation. The fact that terms often changed subsequent to the initial order confirmation suggests that these terms remained subject to change (whether or not they did change with respect to individual transactions) until as late as the invoice date. For sales that we reviewed, we found this to be true for material terms of sale such as price and quantity.

The Department's decision in *Russian Hot-Rolled* to use the order specification date as the date of sale for Magnitogorsk Iron & Steel Works (''MMK''), a Russian steel producer, was based on the fact that MMK stated that the terms of the sale are set in the order specification. *See Russian Hot-Rolled,* 63 FR 9314 (''MMK also stated that the date of the order specification would most likely be considered by the Department to be the most appropriate date of sale, because the terms of sale are set in the order specification''). Where order specifications were amended, MMK identified the sales containing such revisions and reported the date of the order amendment. Since there was no evidence on the record of that case indicating that, when no order amendment was provided, the terms of the sale for the merchandise shipped differed from the terms of sale set in the order specification, the Department accepted MMK's statement that the terms of the sale are set in the order confirmation, or in the order amendment. Furthermore, we note that in *Russian Hot-Rolled,* there was no discussion regarding the possibility or frequency of changes between the original order confirmation, any revised order confirmations, the invoice, and changes subsequent to the invoice.

The facts of the instant case are distinguishable. In the instant case, pursuant to our findings at verification, the Department determines that there are changes between the order confirmation date (*i.e,* the date of sale proposed by petitioner) and the invoice date (*i.e.,* the date of sale proposed by respondents). This fact distinguishes the factual record in the current case from the Department's decision in the *Russian Hot-Rolled* case. Therefore, in accordance with our regulations and pursuant to our findings at verification, we have determined that invoice date is the appropriate date of sale for KSC's sales, as it most accurately represents the date on which the material terms of sale are established. Because KSC provided verifiable information establishing the proper date of sale, we have not resorted to using facts available, as suggested by petitioners.

Comment 2: Critical Circumstances

Respondent argues that the Department calculated a preliminary dumping margin of 10.78 percent, which is well below the 25 percent threshold used by the Department to impute knowledge of less than fair value sales and injury when determining whether critical circumstances exist. Furthermore, respondent states that its data shows that KSC did not have ''massive imports'' within the meaning of the statute and regulation because its shipments actually declined from the base period to the comparison period. Consequently, respondent argues, the Department's finding of critical circumstances is not in accordance with law or supported by substantial record evidence. Lastly, respondent states that the time frame used by the Department to determine whether KSC had massive imports was wrong as a matter of law because the Department has no authority to examine a period of time that is disconnected with the date the petition was filed. Respondent argues that the legislative history of the critical circumstances provision indicates that Congress intended that the period of time examined to determine whether massive imports exist be the time following the filing of the petition compared to a prior period of time. Moreover, respondent argues that the press articles relied upon by the Department did not support the factual conclusion that KSC knew about this investigation. Respondent states that those articles contained general comments about the state of the U.S. steel industry, and covered a similar period of time as the other investigations against steel products conducted by the Department. Thus, respondent concludes, the Department's initial affirmative critical circumstances determination was unlawful.

Department's Position

For the reasons discussed below, we no longer find critical circumstances with regard to KSC or the ''all others'' companies. However, we continue to find critical circumstances for non-responding companies (Kobe, Nippon, NKK, and Sumitomo).

Section 735(a)(3) of the Act provides that if critical circumstances are alleged, the Department will determine whether: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

With respect to section 735(a)(3)(A)(ii) of the Act, in determining whether an importer knew or should have known that the exporter was selling CTL plate at less than fair value and thereby causing material injury, the Department normally considers margins of 25 percent or more and a preliminary ITC determination of material injury sufficient to impute knowledge of dumping and the resultant material injury. *See Certain Cut-To-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997).

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports during the ''relatively short period'' of over 15 percent may be considered ''massive.'' Section 351.206(i) of the Department's regulations defines ''relatively short period'' normally as the period beginning on the date the proceeding begins (*i.e.,* the date the petition is filed) and ending at least three months later.

1. KSC

With regard to KSC's imports, we find that there is no relevant history of dumping with respect to subject merchandise (discussed in the ''all others'' section below) and that the calculated margin is below the 25 percent threshold for determining whether the importers knew or should have known that the exporters were dumping the subject merchandise. For these reasons we determine that the first criterion under section 735(a)(3) of the Act has not been met and thus that critical circumstances do not exist for imports of KSC-produced CTL plate from Japan.

2. Kobe, Nippon, NKK, and Sumitomo

With respect to imports of subject merchandise sold by Nippon, NKK, Kobe, and Sumitomo, we have determined the final margins for those companies to be 59.12 percent (based on adverse facts available), which exceeds the 25 percent threshold. Therefore, we determine there is a reasonable basis to believe or suspect that importers knew or should have known that Nippon, NKK, Kobe, and Sumitomo were dumping the subject merchandise. Since the ITC, in this investigation, found a reasonable indication of present material injury to the relevant U.S. industry, the Department further determines that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of the dumped imports. *ITC Preliminary Determination*, April 1999.

Since there is no verifiable information on the record with respect to Nippon, NKK, Kobe, and Sumitomo's import volumes, we must use the facts available in accordance with section 776(a) of the Act in determining whether there were massive imports of merchandise produced by these companies. With regard to aggregate import statistics, these data do not permit the Department to ascertain the import volumes for any individual company that failed to provide verifiable information. Nor do these data reasonably preclude an increase in shipments of 15 percent or more within a relatively short period for any of these companies. As a result, in accordance with section 776(b) of the Act, we have used an adverse inference in applying facts available, and determine that there were massive imports from Nippon, NKK, Kobe, and Sumitomo over a relatively short period. *See* Critical Circumstances Preliminary Determination Memo, Attachment II. Because both of the necessary criteria have been met, in accordance with section 735(a)(3) of the Act, the Department finds that critical circumstances exist with respect to CTL plate products imported from Nippon, NKK, Kobe, and Sumitomo.

3. ''All Others''—It is the Department's normal practice to conduct its critical circumstances analysis of companies in the ''all others'' group based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey* (''*Rebars from Turkey*''), 62 FR 9737, 9741 (March 4, 1997) (the Department found that critical circumstances existed for the majority of the companies investigated, and therefore concluded that critical circumstances also existed for companies covered by the ''all others'' rate). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the ''all others'' rate. *See Stainless Steel Sheet and Strip from Japan.* Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the ''all others'' rate.

In the preliminary critical circumstances determination of this investigation, we concluded that there is a reasonable basis to believe or suspect that critical circumstances exist for imports plate from Japan. In that preliminary determination, we satisfied section 735(a)(3)(A) of the Act through finding a history of dumping in conjunction with a determination that importers had knowledge of dumping. Specifically, we based our decision that there is a history of dumping on the existence of a dumping finding on carbon steel plate from Japan (43 FR 22937) (May 30, 1978), which was revoked based on changed circumstances on April 17, 1986 (51 FR 13039), and found that importers had knowledge of dumping by relying upon the alleged dumping rates contained in the petition, which were in excess of the 25 percent threshold. For our final critical circumstances determination, however, we find that there is no longer knowledge of dumping with respect to the ''all others'' category for purposes of satisfying 735(a)(3)(A).

In determining knowledge of dumping, we look to the ''all others'' rate, which is based on the weighted-average rate of all investigated companies. In this case, such a weighted-average rate must, of necessity, be based on the individual rate of KSC, the only investigated company that did not receive adverse facts available in this investigation. KSC's rate, applied to the ''all others,'' is 10.78 percent. This rate is not high enough to impute knowledge of dumping to the ''all others'' category. Furthermore, with respect to the history of dumping criterion, we conclude that the prior dumping finding on carbon steel plate from Japan does not reflect a relevant history of dumping for purposes of section 735(a)(3)(A). Specifically, the age of a previous dumping finding is taken into consideration in our determination of whether there exists a history of dumping. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Certain Polyester Staple Fiber From the Republic of Korea,* 64 FR 60776, 60778–79 (November 8, 1999) (where the Department stated that ''[b]ased on the recent existence of this order, there is sufficient evidence to determine that there is a history of dumping of the subject merchandise and a history of material injury as a result thereof''). Due to the fact that the dumping finding on carbon steel plate from Japan is twenty-one years old and was revoked thirteen years ago, we no longer consider there to be a relevant history of dumping with respect to subject merchandise. Since we determined above that importers did not have knowledge of dumping of subject merchandise, we find that section 733(e)(1)(A) of the Act has not been satisfied.

Because we find that there is no relevant history of dumping and that there is no evidence on the record of this investigation to support a finding that the ''all others'' companies had knowledge of dumping, the Department finds that critical circumstances do not exist for the ''all others'' category in this investigation.

Comment 3: Level of Trade

Respondent argues that the Department ignored record evidence and violated its established policies and regulations by grouping all three home market CTL plate sales distribution channels into a single level of trade (''LOT''). According to respondent, its home market is divided into three channels of distribution: (1) Sales to unaffiliated trading companies, (2) sales to unaffiliated end-users, and (3) sales to the affiliated trading company Kawasho Corporation (''Kawasho''). Respondent notes that in its Preliminary Determination, the Department incorrectly grouped the three channels into one home market LOT. According to respondent, there are actually two distinct LOTs in the home market: LOT 1, which consists of direct sales by KSC to unaffiliated trading companies and end-users (channels 1 and 2); and LOT 2, which consists of KSC's sales through its affiliated trading company Kawasho (channel 3). The respondent argues that each LOT involves significantly different selling activities which occur at different stages in the marketing process.

With regard to selling activities, respondent states that in LOT 1, KSC deals directly with its unaffiliated trading company and end-user customers, provides technical advice, negotiates price, manages credit risks, processes orders, enters relevant information into the specification control system, and makes freight and

delivery and/or warehousing arrangements when necessary. In LOT 2, respondent states that Kawasho markets the product to its customers, forecasts demand, negotiates price, manages credit risks, processes orders, enters relevant information into the specification control system, makes freight and delivery arrangements, and maintains direct customer contact. Furthermore, respondent states that although KSC performed some common manufacturer-related selling activities (*e.g.,* confirming the order once production was agreed, warranty and rebate administration, and product brochures) for all three channels of distribution, this minor overlap of services does not control the analysis.

In regard to marketing stages, respondent states that KSC's sales directly to unaffiliated trading companies and end-users (channels 1 and 2) involve one stage in the marketing process (KSC to customer), while KSC's sales through Kawasho involve a different stage in the marketing process (KSC to affiliated trading company to customer). Respondent argues that the reported sales by Kawasho, just like sales by any other trading company, are a full level of distribution removed from KSC's direct sales. Respondent concludes that sales through LOT 1 (channels 1 and 2) are at a less-advanced stage in the marketing process than are Kawasho's sales.

Respondent also argues that, in the recent *Hot-Rolled Steel from Japan* investigation, the Department found that KSC had two home market LOTs: LOT 1, which contained sales directly to unaffiliated trading companies and end-users; and LOT 2, which contained downstream sales through Kawasho.

Petitioners argue that the Department should reject KSC's claim that there exist two LOTs in the home market. Petitioners argue that the record indicates that KSC performed virtually the same selling functions for its direct channel one sales to unaffiliated trading companies as it does for its channel three sales to unaffiliated end-users through Kawasho. According to petitioners, KSC's supplemental Section A response identified eleven selling functions performed in its channel three home market sales. Petitioners contend that the record indicates that KSC provided eight of these eleven selling functions for its channel one sales. Moreover, petitioners argue that of the eight selling functions KSC provides for its channel one sales, it provides seven of these functions in channel three sales. Petitioners state that the only difference is sales processing, which is performed by KSC in channel one sales and Kawasho in channel three sales. Petitioners also argue that KSC provides nearly the same level of services for both channels. According to petitioners, KSC provides exactly the same level of service for technical advice, warranty, warehousing, rebate administration, advertising, and freight and delivery services in its channel one and channel three sales. Petitioners state that the only difference between the two channels is in performing the specification control system, where KSC's role is ''high'' for channel one sales, but ''low'' for channel three sales.

Lastly, petitioners argue that when comparing the sales activities performed for a company's direct sales with those performed for its downstream sales, the Department looks to the combined sales activities of the company and its affiliated reseller. Therefore, petitioners contend that channel three sales should be placed in a separate LOT from channel one and two sales only if the sales services performed for those channel three customers were substantially different, regardless of whether it was KSC or Kawasho which performed the selling functions. Petitioners conclude that there is no evidence on the record of this proceeding to make such a determination.

Department's Position

We do not agree that KSC's home market sales are made at two distinct LOTs. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine normal value (''NV'') based on sales in the comparison market at the same LOT as the export price (''EP'') or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general, and administrative (''SG&A'') expenses and profit.

To determine the LOT of a company's sales (whether in the home market or in the U.S. market), we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997) (''*CTL Plate from South Africa*'').

KSC sells subject merchandise in the home market through three channels of distribution: channel one involves sales by KSC to unaffiliated trading companies, channel two involves sales by KSC to unaffiliated end-users, and channel three involves sales by KSC's affiliate, Kawasho, to unaffiliated customers. For the preliminary determination, the Department found that KSC's sales to these three types of home market customers involved essentially the same level of selling functions. After a careful analysis of the information on the record, we continue to find that there was not a substantial difference in the selling functions performed by KSC in making sales to its unaffiliated customers and the combined selling functions performed by KSC and its affiliated company, Kawasho, for Kawasho's sales to unaffiliated customers. Therefore, we continue to find that there is one LOT in the home market.

In its discussion of LOT, KSC collapsed home market channels of distribution one and two into a single channel of distribution because its sales to unaffiliated customers, regardless of whether the customer is a trading company or end-user, involve the same selling functions. According to KSC, there are substantial differences in the selling activities performed by KSC for sales through this combined channel of distribution, hereafter referred to as channel 1, and its sales through channel 3 (*i.e.,* sales by Kawasho to unaffiliated customers).

In the preliminary determination, we conducted our analysis of LOT by comparing the selling functions performed for sales in the home market to the first unaffiliated customer. According to Exhibit 7 of its June 23, 1999, supplemental Section A response, KSC indicated that it provides the following selling activities for its sales to unaffiliated customers: technical advice, warranty services, advertising, freight and delivery arrangements, warehousing, inputting specification control system, sales processing, and rebate administration. KSC also indicated that the selling functions performed by itself and Kawasho, for Kawasho's sales to unaffiliated customers, consist of the following activities: technical advice, warranty services, advertising, marketing, freight and delivery arrangements, warehousing, inputting specification control system, sales processing, rebate administration, and demand forecasting. Comparing the selling functions performed for the first unaffiliated customer in channel one and channel three sales indicates that marketing services and demand forecasting are the only two selling activities performed for channel three sales that are not performed in channel one sales. Thus,

eight of the ten [2] selling functions are performed in both channel one and channel three sales. Therefore, the information on the record indicates that the types of selling functions and activities performed by KSC on sales to unaffiliated customers as compared to the types of selling functions and activities performed by both KSC and Kawasho on sales to unaffiliated customers are not substantially different. KSC's argument that there are differences between these selling functions is not supported by the evidence on the record.

With regard to the degree of selling functions provided in each channel, we note that seven of the eight types of selling functions provided in both channels are provided in the same amount for both channel one and channel three sales. *See* KSC's June 23, 1999, supplemental Section A response at Exhibit 7. The only selling function provided for in different amounts is freight and delivery, which the respondent provides in a ''medium'' amount for channel one sales and a ''high'' amount for channel three sales. Lastly, we note that of the two selling functions provided for channel three sales, but not in channel one sales (*i.e.,* market services and demand forecasting), are provided for in a ''high'' level. Therefore, although there is a difference in the amount of market services, demand forecasting, and freight and delivery activities between channel one and channel there sales, we do not consider these differences to be substantial enough as to warrant finding two different LOTs on this basis alone.

The substantial similarity in types of selling activities and level at which they are performed belies KSC's argument that channel one and channel three sales are made at different marketing stages. Because the customer types are the same, the types of selling functions are substantially the same, and there are not substantial differences in the level of functions performed, we continue to find that there is one LOT in the home market.

Comment 4: CEP Offset

Respondent argues that it is statutorily entitled to a CEP offset because its home market sales include more sales functions and selling activities (*i.e.,* are at a more advanced LOT) than do its U.S. market CEP sales. Respondent states that a CEP offset adjustment is required where NV is established at a more advanced LOT than the LOT of CEP sales and a LOT adjustment cannot be determined. Respondent notes that in the recent investigation of *Hot-Rolled Steel from Japan,* the Department granted KSC a CEP offset, concluding that the CEP LOT was different and less advanced than KSC's two home market LOTs. *See Hot-Rolled Steel from Japan,* 64 FR at 24340–24341. Since the same factual scenario exists in the instant case, respondent argues that the Department should be consistent in its administration of the antidumping statute and find the same result here.

Respondent argues that the Department's characterization of selling services performed by Kawasaki and/or Kawasho for CEP sales is inconsistent with KSC's responses and fails to account for role in marketing and selling for CEP sales provided by KI. According to respondent, KSC performs some common manufacturer-related services in support of all steel sales in the home market and U.S. market, including technical advice, warranty service, and product brochures. According to respondent, these are the bulk of the services offered by KSC and Kawasho to CEP customers. Respondent contends that neither KSC nor Kawasho forecasts demand, provides marketing services, warehouses, processes the final sale, or maintains regular customer contact in CEP sales. Instead, respondent states that KI is responsible for these services in CEP sales.

Respondent claims that the record demonstrates that KSC's home market LOTs were at a more advanced stage of distribution and more remote from the factory than the CEP LOT. Respondent explains that the CEP LOT involves three marketing stages: (1) KSC sells to Kawasho, (2) Kawasho sells to KI, and (3) KI sells to unaffiliated end-users and distributors. Since KI is the company that sells the merchandise to the first unaffiliated customer in the United States, respondent states that the bulk of sales functions for CEP sales are performed by KI. Since the record does not provide an appropriate basis for quantifying a LOT adjustment on comparison market sales, respondent argues that the Department should grant KSC a CEP offset.

Petitioners argue that respondent has failed to establish that its home market sales are made at a more remote LOT involving more substantial selling functions than its CEP sales. According to petitioners, the combined selling functions of KSC/Kawasho for the CEP sales are very similar to the selling functions performed for KSC's home market sales. Petitioners contend that there are only three selling functions, out of eleven functions, which are performed on the home market sales at a higher level than they are performed for the CEP sales. Specifically, petitioners note that KSC performs the following services for its home market sales but not for CEP sales: warehousing, sales processing, and rebate administration. According to petitioners, these services are not substantial enough to warrant a finding that the home market sales were made at a more remote LOT. Moreover, petitioners note that KSC/Kawasho performed a slightly higher level of services for its CEP sales than for its home market sales in another three categories (*i.e.,* marketing service, freight and delivery arrangements, and demand forecasting). Petitioners conclude that because the home market sales did not involve substantially greater selling functions than the CEP sales, and were therefore not at a more remove LOT, these sales should be compared without a CEP offset.

Department's Position

We agree with respondent that it should be granted a CEP offset. 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.

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. 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 CTL Plate from South Africa,* 62 FR at 61731.

[2] KSC actually reports eleven home market selling functions. Since KSC reported that neither it nor its affiliates provide inventory maintenance for sales through any channel of distribution, in either the home or U.S. markets, we have disregarded this selling function from our analysis.

In the preliminary determination, the Department denied a CEP offset adjustment to the NV of KSC's sales that were compared to CEP sales in the United States, because the Department preliminarily found that all of KSC's home market sales were made at the same LOT as the LOT of KSC's CEP sales in the United States. Upon further analysis of the record evidence, we now determine that the selling functions performed by KSC and Kawasho in Japan in connection with the CEP sales through KI, the U.S. affiliate, are less and different than the selling functions provided by KSC/Kawasho for home market sales to unaffiliated customers. Specifically, we note that in combination, KSC and Kawasho provide a high level of marketing services, warehousing, sales processing, rebate administration, and demand forecasting in the home market to unaffiliated customers, but did not provide the same level of services on its CEP sales to the United States. Instead, these services are provided by KI in the United States (*i.e.,* marketing services, sales processing, demand forecasting) or are not offered for CEP sales (*i.e.,* warehousing and rebates). *See* KSC's April 27, 1999, Section A response at Exhibit 13 and June 23, 1999, supplemental Section A response at Exhibit 7. We note that the Department verified this information and is therefore satisfied that it has substantial, reliable information to reach a decision as to the levels of trade at which KSC and its affiliates sell subject merchandise. *See* Sales Verification Report. Thus, after further examination of the record, the Department is now granting a CEP offset because the facts on the record indicate that KSC's CEP LOT is different from and less advanced than KSC's home market levels of trade and that the data on the record do not permit the Department to make a LOT adjustment based on the effect of the LOT difference on price comparability.

Comment 5: Downstream Sales to Affiliated Parties

Petitioners note that KSC sold through Kawasho subject merchandise to 26 affiliated resellers/processors in the home market and that such sales constitute a significant portion of the home market sales. Petitioners observe that although the Department's questionnaire required KSC to report the downstream sales, KSC replied that it is unable to report such sales for two reasons: (1) The affiliates are unable to ''systematically distinguish'' CTL plate produced by KSC from that produced by other manufacturers, and (2) even if they could identify such merchandise, the affiliates' sales records do not contain the information concerning product characteristics that is necessary to construct the CONNUM. Petitioners note that KSC claimed that it can only determine the appropriate CONNUM based on the complete order information stored at KSC, which is obtained through KSC's order confirmation number.

Petitioners argue that during verification of one such affiliated processor, the Department learned that KSC's claim that the affiliated resellers/processors could not ''systematically distinguish'' subject merchandise produced by KSC from that produced by other manufacturers is incorrect. According to petitioners, verification showed that the processor examined could use its internal, computerized documentation to electronically link sales invoices to KSC plate identification numbers. Thus, petitioners conclude that the affiliate can identify KSC as the manufacturer for each sale using the KSC plate identification number.

Moreover, petitioners argue that KSC's claim that the affiliated resellers/processors cannot report complete product characteristics necessary for constructing the CONNUM does not excuse KSC's failure to report the downstream sales. Petitioners note that verification revealed that the processor examined maintains records of four of the product characteristics used in constructing the CONNUM. According to petitioners, even if only partial information on the product characteristics was available from the affiliated resellers/processors, KSC should have complied with the Department's questionnaire by reporting its downstream sales to the fullest extent possible. In fact, petitioners claim that it is the Department's practice to use a modified matching program where there are missing product characteristics in the reported database. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 61 FR 13815, 13830–31 (March 28, 1996) (''*Plate from Canada*'').

Furthermore, petitioners argue that since the processor examined at verification electronically records the KSC plate identification number, KSC could have reported all product characteristics used in creating the CONNUM by linking these plate identification numbers to its own computerized production or sales records. Even if linking its own sales records to plate identification numbers supplied by the affiliates was not possible, petitioners argue that KSC could still have reported the complete product characteristics of the merchandise sold to the affiliated resellers/processors by examining the general characteristics of the merchandise sold to each affiliate. Specifically, petitioners note that the record indicates that KSC sold merchandise with a limited number of product characteristics to the processor examined at verification. Petitioners argue that since this processor maintains records with respect to four of the product characteristics, KSC could have deduced the remaining product characteristics from its general knowledge of the characteristics of the merchandise it sold to the processor. Therefore, petitioners conclude that KSC could have combined the characteristics supplied by the affiliate with the characteristics it can determine through its knowledge of the merchandise sold to the affiliate, and constructed the full CONNUM. Petitioners contend that all of the product characteristics necessary to comprise the CONNUM were available to KSC and could have been reported.

Moreover, petitioners claim that, contrary to KSC's statements, the verification report indicates that the processor examined can match sales invoices to the KSC order confirmation, which would allow KSC to construct a CONNUM for sales through this company. According to petitioners, the verification report indicates that the processor examined can electronically link its sales invoices to its production instruction slips, which contain the plate identification numbers. Petitioners contend that this allows the processor to identify all sales of plate produced by KSC. The petitioners assert that while the processor cannot electronically link its sales invoices to the KSC order confirmation number, it can manually match the plate identification number to the mill certificate, which lists the KSC order confirmation number. Therefore, petitioners argue, the processor can, for purposes of reporting downstream sales, match its sales invoices to the KSC order confirmation number through a combined electronic and manual process. Petitioners argue that the manual portion of this process is not unreasonably burdensome given the ample time allowed for response.

Petitioners conclude that since KSC incorrectly claimed that the affiliated resellers/processors could not identify KSC as the manufacturer of its purchased plate and did not report downstream sales to the best of its ability, the Department should apply adverse facts available for the sales to the affiliated resellers/processors that do not pass the arm's-length test.

Petitioners argue that section 776(a) of the Act directs the Department to use ''facts otherwise available'' because KSC failed to (1) provide ''necessary information'' for the calculation of NV, (2) KSC and its affiliated resellers ''withheld information that has been requested'', and (3) KSC ''failed to cooperate to the best of its ability to comply'' with the Department's request for data on sales of foreign like product made through affiliated resellers.

As adverse facts available, petitioners recommend that the Department treat the sales to the affiliates that fail the arm's-length test as having passed this test. Then, petitioners continue, for the U.S. sales that match to those upstream sales which had previously failed the arm's length test, the Department should apply as adverse facts available the highest calculated margin for any KSC CONNUM.

Respondent argues that the Department correctly used its upstream sales to the affiliated resellers/processors in place of downstream sales by those affiliated companies in the preliminary determination. Respondent states that it cannot report downstream sales to the first unaffiliated customer through the affiliated resellers/processors in the home market because the sales records of those affiliates do not permit systematic linkage of final sales data with relevant product characteristics. Without such product characteristics, respondent states that it cannot create a reportable CONNUM for these sales. To construct the CONNUM, respondent states that it must link its order confirmation number to the sales data of the affiliated resellers/processors. According to respondent, allowing KSC to report upstream sales in place of unreportable downstream sales is consistent with the Department's regulations and practice. As evidence, respondent cites to *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom,* 63 FR 33320, 33341 (June 18, 1998), where the Department allowed a respondent to report upstream sales to affiliates where they were unable to report downstream sales because of the affiliates' unsophisticated computer systems.

Respondent states that petitioners make three arguments in their effort to demonstrate that KSC should have reported the downstream sales from the affiliated resellers/processors. First, respondent states that petitioners maintain that it was possible for all affiliated resellers/processors to report downstream sales because one such affiliate could manually identify the manufacturer and link its downstream sales to the required product characteristics. The respondent observes that the verification exhibits indicate that while the production instruction slips record the plate identification number, it is hand-written and not entered into the system like other information in the documents. Therefore, respondent argues that the affiliated processor would have to manually examine its production instruction slips to identify KSC plate identification numbers and then manually link the production instruction slips to the mill certificate to obtain the KSC order confirmation number. According to respondent, this task is not possible for the processor examined, nor the other 25 affiliated resellers/processors, given the volume of sales involved and the tight time frame of this investigation.

Respondent states that the second argument made by petitioners is that KSC could have reported all product characteristics by having the affiliated resellers/processors report the limited product characteristics available in their computerized records and then having KSC provide the remaining characteristics either through linking its upstream sales to the affiliate (via the plate identification number) or through its general knowledge of the merchandise sold to the affiliate. According to respondent, this argument is incorrect and largely grounded on petitioners' hindsight analysis of the upstream sales to the examined processor on the present home market sales file. Respondent states that the processor examined can derive a limited database of sales containing plate specification, width, thickness, quantity, and price from its computerized sales/production records. However, respondent argues that the processor could only manually identify the original manufacturer of the CTL plate from each (physical) production instruction slip because the manufacturer-specific product identification number is physically hand-written, rather than electronically entered, on the instruction slip. Thus, respondent concludes that the affiliated processor is not able to systematically identify the plate manufacturer in the sales and production records.

Furthermore, respondent notes that petitioners suggest that KSC has the capacity to report the other product characteristics such as paint, patterns in relief, and descaling because products with these characteristics were not sold to the examined processor during the POI. According to respondent, this argument can only be made in hindsight and with the benefit of an already completed home market sales file. Respondent states that this analysis does not use the examined processor's, or the other affiliated resellers/processors', computerized sales records and begs the question of how such information would be reported without linking to KSC's order confirmation number. Respondent argues that petitioners are suggesting a multi-step process whereby KSC and Kawasho provide data that may or may not be relevant that the affiliate must match by a process of manual examination, all within the time frame of responding to the Department's questionnaires. Respondent states that given the practical limitations of reporting these sales within the statutory and regulatory schedules in place and the affiliates' inability to identify sales of subject merchandise except through a process of sale-by-sale manual examination, the Department must conclude that the only method for the affiliated resellers/processors to report accurate CONNUM information is to link back to Kawasaki's order confirmation number.

Lastly, respondent states that petitioners put forward a third argument that KSC should report incomplete CONNUMs based upon the limited product characteristic information recorded by the affiliated resellers/processors. Respondent states that petitioners would then have the Department plug the missing product characteristic data and use the downstream sales information for purposes of its margin calculation. According to respondent, the case cited by petitioners, *Plate from Canada,* as evidence supporting their argument is factually dissimilar to the instant investigation. Respondent argues that in *Plate from Canada,* a respondent was unable to identify product characteristics for ''a very small portion'' of secondary and excess prime merchandise U.S. market sales, and that the Department accepted the reporting of only ''relevant'' physical characteristics in ''this limited circumstance.'' In the instant investigation, respondent concludes, the downstream sales by affiliated resellers/processors (1) equal much more than ''a very small portion'' of home market sales and (2) would be missing product characteristics that cannot be dismissed as irrelevant.

Department's Position

We disagree with petitioners that KSC is able to report the downstream sales by the 26 affiliated resellers/processors. KSC is directly affiliated with one

reseller/processor and is affiliated through Kawasho to an additional 25 resellers/processors. Jointly, the downsteam sales from these resellers/processors constitute a substantial portion of home market sales. In its questionnaire responses, KSC stated that these affiliates cannot report their downstream sales for two basic reasons: (1) the affiliates are unable to ''systematically distinguish'' CTL plate produced by KSC from that produced by other manufacturers, and (2) even if they could identify such merchandise, the affiliates' sales records do not contain the information concerning product characteristics that is necessary to construct the CONNUM.

During verification, we selected one of Kawasho's affiliated resellers/processors, referred to hereafter as Company X, to examine the feasibility of this affiliate reporting its downstream sales, in order to determine the veracity of KSC's representations. Having verified Company X's records and internal tracking systems, we agree with KSC that Company X is unable to use its computerized records to systematically link its sales invoices to (1) plate produced by KSC and (2) the KSC order confirmation number. During verification we found that Company X can electronically link its sales invoices to the relevant production instruction slip. This slip contains the hand-written, rather than electronically entered, plate identification number. Thus, Company X would have to manually search its production instruction slips in order to identify KSC-produced CTL plate. Furthermore, Company X stated during verification that, in its normal course of business, it manually matches the plate identification number found on the production instruction slip to the appropriate mill certificate, which is mailed to its customer. The mill certificate contains the order confirmation number that is used by KSC to construct the CONNUM. While petitioners are correct in that Company X must have an organized system in which it does this match, that does not diminish the fact that this process is manual and that Company X would have to search its records again for purposes of reporting downstream sales. Therefore, although Company X can combine a computerized and manual search process to identify plate produced by KSC and link it back to the KSC order confirmation number, given the number of sales Company X had during the POI, we find that this process is unreasonably burdensome given the time constraints of an antidumping investigation.

We also disagree with petitioners argument that KSC can link its own sales records to the plate identification numbers supplied by the affiliated resellers/processors, or use its knowledge of the types of products sold to those affiliates, in order to supply any missing product characteristics. This argument assumes that the affiliated resellers/processors can systematically identify both the manufacturer and the plate identification numbers. In the case of Company X, we found that it can electronically link its sales invoices to the relevant production instruction slip. Although the production instruction slip does contain the plate identification number, it is hand-written, rather than electronically entered onto the slip. Thus, Company X can identify KSC produced merchandise and the KSC plate identification number only through a manual search of its production instruction slips. Given the volume of sales at Company X, and the time constraints of an investigation, this manual search would be unreasonably burdensome.

Lastly, we disagree with petitioners argument that KSC should have reported whatever limited information concerning the product characteristics that comprise the CONNUM that is available through its, or the affiliates records. Each product characteristic is a vital and necessary component of the CONNUM used by the Department in order to match United States and home market sales. Reporting a partial CONNUM is of no use in our margin calculations in this investigation. As respondent points out, the case cited by petitioners as evidence supporting its position is factually distinguishable from the instant case. In *Plate from Canada,* the Department used a modified model match methodology for sales in the United States and home market where the respondent was unable to report the full product characteristics. In that case, the Department concluded that it was appropriate to conduct a modified model match on sales of excess prime merchandise for which there were limited product characteristics reported because (1) the Department verified that respondent reported all physical characteristics it could, (2) sales of such merchandise represented a very small portion of its home market and United States sales, and (3) the missing physical characteristics were not important to the respondent's customers or relevant to the way the product was sold. In the instant case, were the Department to require the affiliated resellers/processors to report the characteristics available to them, there is no evidence on the record to determine that the missing characteristics (*e.g.*, whether painted, heat treated, patterned, or descaled) are not important to the respondent's customers or irrelevant to the way the product is sold.

Comment 6: Currency for the Gross Unit Price of EP Sales

Petitioners observe that respondent negotiates its EP sales prices with unaffiliated trading companies in U.S. dollars and then converts this dollar price into a yen price using the exchange rate in effect a certain number of days after shipment. Petitioners note that respondent originally reported the gross unit price for EP sales in yen, but in response to a Departmental request, converted the yen prices into dollars (using the exchange rate in effect a certain number of days after shipment). Furthermore, petitioners note that respondent tracks the yen price, rather than the dollar price, as the price actually paid to KSC by the trading company and is the price KSC tracks through its internal books and records. In addition, petitioners note that the dollar price that appears on KSC's invoice contains the trading company's markup, and is therefore the price to the trading company's customer. However, petitioners observe that the yen price listed on the invoice is the price to KSC's customer, the unaffiliated trading company.

Considering the above facts, petitioners argue that the Department should use the gross unit price in yen for the purposes of its final determination. Petitioners cite the recent final determination in the *Hot-Rolled Steel from Japan* investigation, where the Department faced an identical set of facts for one of the respondents and found the yen price to be the appropriate gross unit price for use in the margin calculation. *See Hot-Rolled Steel from Japan,* 64 FR at 24345. In order to be consistent with *Hot-Rolled from Japan,* and because the yen price is the price that appears on the invoice, is paid to KSC, and is tracked through KSC's internal records, petitioners recommend that the Department use the yen price in its final determination.

Respondent urges the Department to use the dollar price of its EP sales to unaffiliated Japanese trading companies because EP sales are first negotiated and set in dollars. According to respondent, the final invoice contains the dollar price (which includes the trading company markup), the yen price (which does not include the trading company

market), and the exchange rate used by KSC to convert from dollars to yen. Respondent explains that in its supplemental responses, it used the exchange rate listed on the invoice to convert the yen price into a dollar denominated invoice price, exclusive of the trading company markup. Respondent concludes that the Department should use the dollar price of EP sales because dollar-based prices represent the original negotiated price and currency. According to respondent, this is consistent with the Department's supplemental request that the sales be reported in the currency in which they are set.

In its rebuttal brief, respondent notes that the petitioners argue that the Department should be consistent with its recent final determination in *Hot-Rolled Steel from Japan,* where it used the yen-based prices for EP sales. Respondent notes, however, that petitioners have initiated legal action in the Court of International Trade (''CIT''), challenging the Department's use of the same yen-based EP prices in the *Hot-Rolled Steel from Japan* investigation that they are asking the Department to use in the instant case. In the instant case, respondent contends that the Department can simply and most accurately obtain dollar-denominated prices for use in its margin calculation by using KSC's reported dollar-based prices.

Department's Position

We disagree with the respondent that the Department should use the reported gross unit U.S. price in dollars and not the price in yen. Record evidence indicates that KSC negotiates the purchase price in dollars with unaffiliated Japanese trading companies and converts this price into yen using an exchange rate in effect a certain number of days after shipment. KSC records on the invoice the negotiated dollar value (which includes the trading company markup), the yen value (which does not include the trading company markup), and the exchange rate used by KSC to convert the dollar price to yen. The record also indicates that KSC is paid by its customers in yen and tracks the yen price from the invoice through its internal books and records.

The Department verified that the dollar price negotiated between KSC and the Japanese trading companies is converted to yen using the exchange rate in effect a certain number of days after shipment, which is listed on the invoice. This conversion is made pursuant to the terms of sale agreed upon by the parties at the time of the order confirmation. We also verified that KSC receives payment in yen and tracks the yen value from the invoice through its accounting records as part of its normal course of business. Therefore, since KSC (1) records the yen price negotiated between KSC and the unaffiliated trading company on the invoice, (2) receives payment in yen, and (3) the yen value is tracked through KSC's accounting records, we find that the price in yen is the appropriate price to use in our calculations.

In reporting U.S. sales to the Department, KSC originally reported the yen invoice price as the gross unit price for EP sales. Pursuant to the Department's request, KSC revised its U.S. sales listing and converted its yen invoice price into the dollar price originally negotiated between KSC and the unaffiliated trading companies using the exchange rate in effect a certain number of days after invoice/shipment. Since the yen invoice price is the proper starting point for calculating KSC's U.S. price, we converted the dollar price back into yen by applying KSC's reported exchange rate to the dollar price. However, in the normal course of our margin calculations, EP sales are converted from the foreign currency into dollars at an exchange rate determined by the Department to be in effect on the date of sale. Therefore, for purposes of our calculations, we converted the yen invoice price into dollars using the Department's exchange rate in effect on the date of sale.

Comment 7: Kawasho's Date of Payment

Petitioners note that of the five home market Kawasho sales verified by the Department, only two sales did not show a discrepancy between the reported payment date and the actual payment date. Petitioners observe that in response to these discrepancies, the Department examined an additional twenty home market Kawasho sales. Of these twenty, petitioners note that only seven sales reported the correct payment dates. Moreover, petitioners note that, of the 25 total sales examined, only nine contained the correct payment dates. Therefore, petitioners argue that the frequency of errors (*i.e.,* 64 percent) render the data unreliable. Since the ''necessary information is not available on the record'' with respect to Kawasho's payment dates, petitioners argue that the Department should reject Kawasho's reported payment dates in favor of facts available. In addition, petitioners contend that since Kawasho is in possession of the sales documents that show the correct date of payment, it should have reviewed those documents to ensure that it had correctly reported such information in its original sales response. Petitioners state that because respondent did not act ''to the best of its ability'' in providing accurate payment dates, the Department should employ an adverse inference. As adverse facts available, petitioners recommend that the Department base the credit expenses for all of Kawasho's home market sales on the shortest payment period for all such sales.

Respondent states that the payment date discrepancies found during verification applied to a group of national defense specification products sold to defense contractors in the home market. Respondent notes that, as demonstrated at verification, Kawasho relied on the payment term stated in the invoice to determine the actual payment dates included in the file because actual payment date information was not accessible by computer and could not be manually obtained given the time constraints of this investigation for Kawasho's large volume of home market sales. Respondent notes that the discrepancies resulted from instances of both early and late payment. Thus, respondent notes that for these sales, Kawasho both over- and under-estimated imputed credit expenses. Furthermore, respondent notes that besides the sales of national defense products, there is no evidence on the verified record that Kawasho's payment dates and credit expenses were systematically underreported. Respondent argues that since Kawasho correctly identified the payment date according to the invoice payment terms in the other verified sales, should the Department accept petitioners' arguments, the application of facts available should be limited to sales of national defense specification products and not categorically applied to all Kawasho sales as petitioners have suggested.

Respondent also argues that Kawasho could not systematically gather and report the actual payment dates of its customers because the payment date information contained in ''Collection Summary by Customer'' and ''Accounts Receivable by Customer'' is inaccessible by computer. According to respondent, Kawasho used the terms of payment to compute the payment date since Kawasho's customers almost always pay according to the payment terms.

Respondent states that of the 25 Kawasho home market sales examined, 22 were of sales of unique national defense specification products. Respondents argue that none of these products are sold in the United States and represent a very small percent of the total number of home market

transactions. Respondent concludes that the payment date discrepancies should be viewed in the context that they primarily involved sales of national defense products. Therefore, respondent concludes that any conclusions drawn by the Department with regard to payment dates must be limited to Kawasho's sales of those products.

Department's Position

We agree with petitioners in part. During verification, we examined five home market sales made through Kawasho. Actual payment was received earlier than the reported date of payment for two of the sales, while actual payment was received later than the reported date of payment for a third sale. In response to these inaccuracies, the Department examined the reported date of payment for the twenty home market sales with the highest reported credit expenses. Of these twenty sales, the correct date of payment was reported for seven sales, the date of payment was incorrectly reported for seven sales (actual payment was received earlier than the reported date), and six sales had no reported date of payment. Since we identified the actual date of payment for the six sales with no reported date of payment, we have recalculated the credit expenses for these sales using the actual date of payment and, therefore, did not include these sales in our analysis of the sales with incorrectly reported dates of payment.

Of the remaining 19 sales reviewed, we found that 10 had incorrect dates of payment. We also found that four of the five customers associated with the total 25 sales we examined had at least one inaccurate date of payment. Although these 25 sales do not constitute a random sample of the home market sales made by Kawasho, we did not place any customer or time constraints on their selection. Therefore, we find that the results from these sales have value in representing Kawasho's home market sales. Thus, we find that the date of payment discrepancies found for four out of five customers are indicative of problems regarding date of payment for Kawasho's other customers.

Concerning respondent's argument that the inaccuracies found in the date of payment are limited to national defense specification products, we note that there were date of payment inconsistencies found during verification for sales of non-defense specification products. In fact, respondent states in its rebuttal brief that ''(t)he Department found two additional inconsistencies in Kawasho's reporting of payment dates for non-national defense specification products causing credit to be under-reported for one sale and over-reported for the other.'' *See* KSC's November 10, 1999, submission at 22. Thus, two of the ten sales which had an inaccurate date of payment were found to involve non-defensive specification products. These two sales indicate that the problem regarding the reported date of payment is not limited to national defense products. Moreover, even if we were to agree with respondent and limit our conclusions concerning this issue to only national defense specification products, we note that there is no evidence on the record identifying all of the specifications used for national defense products. As we are unable to rely upon the reported dates of payment to calculate home market credit expenses, we determine it is appropriate to resort to the use of facts available, pursuant to section 776(a)(2)(D) of the Act.

We disagree with petitioners that we should make an adverse inference in applying facts available. We verified that Kawasho is unable to systematically determine the actual date of payment. As verification Exhibit K–17 indicates, Kawasho officials had to use their accounts receivable by customer journal, collection summary by customer journal, outstanding collection details journal, and collection schedule journal in order to demonstrate the actual date of payment for the sales in question. Therefore, we find that Kawasho's use of the terms of payment to compute the payment date reflected a reasonable attempt to comply with the Department's request for information given the very large volume of Kawasho's home market sales and the time constraints of this investigation.

Therefore, in order to correct for these inaccuracies, we are using the information obtained during verification to adjust the date of payment reported for Kawasho's home market sales. Specifically, we calculated the difference between the actual date of payment and the reported date of payment for the 10 sales with incorrectly reported dates. We then summed the number of days difference for each of the 10 sales, including the sales for which the actual date of payment was earlier than the reported date of payment and the one sale for which the actual payment was after the reported date of payment. We divided this sum by the total number of sales examined with reported dates of payment (*i.e.,* 19 sales) to calculate the average number of days difference between actual and reported payment dates. Lastly, we subtracted this number from the reported date of payment for all of Kawasho's home market sales.

Comment 8: The Arm's-Length Test

Respondent argues that the Department does not have the authority to exclude sales made to affiliates for consumption from its margin analysis, and by doing so, has violated the antidumping statute and the WTO Antidumping Agreement. Respondent states that an examination of relevant statutory language of the Act reveals that Congress gave the Department no authority to disregard home market sales to affiliates for consumption. According to respondent, this lack of authority is apparent by noting that Congress gave the Department the authority to exclude home market sales to affiliates in only two provisions of the Act: (1) Section 773(a)(5) provides for the exclusion of sales to affiliates who sell to downstream purchasers in favor of using the downstream sales, and (2) section 773(b)(1) allows for the exclusion of certain sales from the calculation of NV that are made at less than the cost of production. In addition, respondent argues that two other statutory provisions, which define export price and constructed export price, also make explicit reference to affiliation. Respondent concludes from these passages that Congress selectively and deliberately accorded the Department authority to exclude sales to affiliated parties and knew how to provide guidance and instruction to the Department in this area. Respondent argues that there is no evidence in the statute that Congress intended the Department's authority to extend to home market sales to affiliates for consumption. By applying an arm's-length test to exclude sales for consumption, the Department has acted beyond Congresses' delegation of authority in this matter.

Further, respondent claims that the exclusion of non-matching sales violates the requirement that a ''fair comparison'' be made between sales in the home and U.S. markets. Respondent observes that the WTO Antidumping Agreement provides that a fair comparison of NV and export price requires the Department to include all sales absent a demonstration that their inclusion would affect price comparability. Respondent argues that the Department's arm's-length test, as applied, rejects any demonstrations or evidentiary standard in favor of an inflexible rule, which violates the due process protections of the Fifth Amendment to the Constitution, since the Department's rule makes the exclusion without providing any

opportunity to present rebuttable evidence. However, respondent notes that the record of the case demonstrates that not all sales to affiliates are made at less than arm's-length because the Department's preliminary analysis indicates that many such sales passed the arm's-length test. Thus, respondent states that the Department's presumption about these sales is not universally or necessarily true. Respondent concludes that absent positive evidence showing sales to affiliated parties are not at arm's-length, the Department has no basis for not including them in its calculation of NV.

Lastly, respondent argues that the Department should apply its arm's-length test on a customer-specific basis, and not on a point-of-delivery basis as it did in the preliminary determination.

Petitioner argues that the Department has the authority to exclude from NV certain sales made to affiliated parties for consumption because they were made on a non-arm's-length basis and were outside the ordinary course of trade. Petitioners claim that the fact that merchandise was sold to an affiliated party for consumption rather than resale does not indicate that the sale was made at arm's-length or was otherwise made in the ordinary course of trade. Furthermore, petitioners note that the CIT has on numerous occasions upheld the Department's application of the arm's length test to home market sales. Petitioners state that the CIT ruling in *Usinor Sacilor* v. *United States,* 872 F. Suppl 1000, 1004 (CIT 1994), which upheld the application of the arm's-length test to home market sales to affiliated companies, is dispositive of this issue.

Petitioners argue that section 773(a)(1)(B) of the Act gives the Department the discretion to use the prices of sale made through affiliated parties in determining NV and permits, but does not require, the Department to base NV on sales to affiliated parties in the home market. Moreover, petitioners contend that the SAA directs the Department to ignore sales to affiliated parties which cannot be demonstrated to be at arm's-length prices for purposes of calculating NV. *See* SAA at 827. Petitioners argue that section 773(a)(5) of the Act, contrary to respondent's interpretation, is not a grant of authority to exclude sales of affiliated resellers, but is instead a grant of discretion to include such sales. Petitioners contend that there is nothing in the statute which in any way limits the Department's authority to exclude sales to affiliates based on the fact that they consume the merchandise. Moreover, petitioners claim that sales to affiliates for consumption can be just as unrepresentative of normal selling practices as sales to affiliates for resale. Petitioners assert that the critical question is whether there is any evidence to lead the Department to conclude that such sales were made on an arm's-length basis.

Petitioners also argue that it has been the Department's longstanding practice to exclude sales to affiliated parties ''where no related customer ratio could be constructed because identical merchandise was not sold to unrelated customers, (and the Department) is unable to determine that these sales were made at arm's-length.'' *See Certain Cold-Rolled Carbon-Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993). Moreover, section 351.403(c) of the Department's regulations permits the use of sales to affiliates ''only if satisfied that the price (to the affiliated party) is comparable.'' Petitioners argue that it is the burden of the respondent to prove that sales to related parties are at arm's-length prices and that the Court of Appeals on the Federal Circuit (''CAFC''), in *NEC Home Electronics., Ltd.* v. *United States,* 54 F.3d 736 (Fed. Cir. 1995) at 744, rejected the argument that it is somehow the Department's burden to prove that a sale to an affiliated party was not made at arm's length. Therefore, petitioner concludes that absent any evidence that KSC's sales made to affiliated parties for which there are no sales of identical merchandise to unaffiliated parities were made at arm's-length, the Department should continue to determine that such sales were not made on an arm's-length basis and are outside the ordinary course of trade.

Department's Position:

We disagree with KSC. Section 773(a)(5) of the Act provides that sales of the foreign like product between affiliated parties ''may be used in determining NV.'' Thus, the statute provides the Department with discretion in determining whether to include sales between affiliates in the calculation of NV. The SAA, however, limits this discretion and provides that ''Commerce will continue to ignore sales to affiliated parties which cannot be demonstrated to be at arm's-length prices for purposes of calculating normal value.'' SAA at 827, citing section 773(a)(5) of the Act. Moreover, the Department's regulations state that NV may be calculated based upon sales between affiliated parties ''only if * * * the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller.'' *See* 19 CFR 351.403(c).

As the CAFC has noted, ' '[c]ommon sense, of course, would indicate that strictly by themselves sales to a related purchaser would be a questionable guarantee of a fair home market price.' '' *NEC Home Electronics* v. *United States,* 54 F.3d 736, 739 (Fed. Cir. 1995), *quoting Connors Steel Co.* v. *United States,* 527 F. Supp. 350, 354 (CIT 1981). ''There is a perceived danger that a foreign manufacturer will sell to related companies in the home market at artificially low prices, thereby camouflaging true [normal value] and achieving a lower antidumping duty margin.'' *NEC Home Electronics,* 54 F.3d at 739, *citing Ansaldo Componenti, S.p.A.* v. *United States,* 628 F. Supp. 198, 204 (CIT 1986) (''Related party home-market sales tend to be lower in price because related companies generally decrease prices to each other to the advantage of the principal entity'').

In order to determine whether sales to affiliated parties should be included in the NV calculation, the Department has consistently required respondents to demonstrate that the merchandise is sold to affiliates at arm's-length prices. In this regard, the Department treats prices to an affiliated purchaser as ''arm's-length'' prices if the prices to affiliated purchasers are on average at least 99.5 percent of the prices charged to unaffiliated purchasers. *See* Preamble to Antidumping Regulations, 62 FR 27295, 27355 (May 19, 1997); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 61249, 61257 (November 10, 1999) (''*Cold-Rolled Steel from Brazil*''). As petitioners correctly note, this test has been affirmed by the courts. *See Usinor Sacilor* v. *United States,* 872 F. Supp. 1000, 1094 (CIT 1994). We note that this decision does not distinguish between merchandise sold for consumption or resale in affirming the application of the arm's-length test. Therefore, we reject KSC's argument that it is unlawful to exclude home market sales to affiliated purchasers where those sales are for consumption.

The Department's exclusion of KSC's home-market sales to affiliated parties that have not been demonstrated to be at arm's-length prices is consistent with the above-described law and practice. Contrary to KSC's arguments, these exclusions do not reflect the application of an irrebutable presumption. Instead, the arm's-length test provides respondents with an opportunity to demonstrate that including home market sales to affiliates in the calculation of NV is appropriate

pursuant to section 773(a)(5) of the Act. Stated differently, a respondent which demonstrates that prices are at arm's length rebuts the presumption that ''a foreign manufacturer will sell to related companies in the home market at artificially low prices * * *.'' *See NEC Home Electronics,* 54 F.3d at 739. Moreover, the CAFC in *NEC Home Electronics* affirmed the CIT's decision which confirmed that the burden is on respondents to come forward with evidence demonstrating that sales to affiliated parties are at arm's-length prices. *Id.* at 744. *See* also *Cold-Rolled Steel from Brazil,* 64 FR 61257 (excluding sales to affiliates where no price ratio could be constructed because identical merchandise was not sold to unaffiliated customers).

In this case, KSC did not offer any evidence that such sales were made at arm's-length prices. While KSC is correct to note that the arm's-length test could not be applied to sales for which no identical merchandise is sold to unaffiliated parties, KSC did not offer any alternative means of demonstrating the arm's-length nature of such sales. Indeed, in the preamble to the Department's antidumping regulations, the Department indicated that, in addition to the arm's-length test, ''there may be other methods available'' of determining the arm's-length nature of sales to affiliated parties. However, without any evidence to the contrary, we must continue to conclude that, pursuant to section 773(a)(5) of the Act and 19 CFR 351.403(b), respondent has not demonstrated that sales to its affiliates were at arm's-length prices. Consequently we have continued to exclude such sales for purposes of calculating NV. As the Department has excluded such sales in accordance with the antidumping statute, there has been no violation of KSC's due process rights, as argued by KSC.

We also disagree with KSC's argument that the exclusion of such sales from NV violates the United States' obligations under the WTO Antidumping Agreement. As the CAFC in *Federal Mogul Corp.* v. *United States,* 63 F.3d 1572 (Fed. Cir. 1995), explained: ''GATT agreements are international obligations, and absent express Congressional language to the contrary, statutes should not be interpreted to conflict with international obligations.'' *Federal Mogul,* 63 F.3d at 1581. Indeed, the United States Supreme Court elaborated on this canon of construction. ''It has also been observed that an act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains * * *.'' *Murray* v. *Schooner Charming Betsy,* 6 U.S. (2 Cranch.) 64, 118 (1804). *See also Fundicao Tupy S.A.* v. *United States,* 652 F. Supp. 1538, 1543 (CIT 1987) (''An interpretation and application of the statute which would conflict with the GATT Codes would clearly violate the intent of Congress.''); *Footwear Dist. and Retailers of America* v. *United States,* 852 F. Supp. 1078, 1092–93 (CIT 1994), *quoting* Restatement (Third) of the Foreign Relations Law of the United States, at 115, comment a, p. 64 (1987) (''Congress does not intend to repudiate an international obligation of the United States * * * Therefore, when an act of Congress and an international agreement * * * relate to the same subject, the courts, regulatory agencies, and the Executive Branch will endeavor to construe them so as to give effect to both.''). Rather, the statutory provisions discussed above implement the United States' obligations under the WTO Antidumping Agreement, including Article 2.4 cited by KSC, with respect to the calculation of NV. Because KSC's home-market sales to affiliated parties not demonstrated to be made at arm's-length prices affect price comparability, the statutory and regulatory scheme, as applied in this case, are consistent with Article 2.4 of the Antidumping Agreement. Thus, the United States has fully implemented its WTO obligations with respect to the calculation of NV in cases where home market sales to affiliated parties are not demonstrated to be made at arm's-length prices.

With respect to KSC's argument that the Department should apply its arm's-length test on a customer-specific basis rather than a point of delivery basis, we agree with respondent and have changed our methodology accordingly.

Comment 9: Kawasho's Warehouse Expenses

Petitioners argue that the Department should reject Kawasho's reported warehousing expenses because Kawasho's allocation methodology causes inaccuracies and distortions in these reported costs. Petitioners note that KSC, in its Section B response, stated that Kawasho incurs warehousing expenses for certain home market sales, but not for all such sales. Petitioners observe that KSC stated that Kawasho is unable to report transaction specific warehousing costs because it records its warehousing costs by product category, rather than on a sale-by-sale basis. Petitioners note that Kawasho allocated its warehousing costs to all home market sales by dividing its total warehousing expenses incurred for the CTL plate product category by the total tonnage sold of the CTL plate product category. Furthermore, petitioners state that, according to KSC, Kawasho's CTL plate product category includes both subject and non-subject merchandise. Because KSC's allocation methodology allocates warehousing costs to certain sales that were not warehoused, and the methodology includes non-subject merchandise, petitioners conclude that KSC's reported warehousing expenses are inaccurate and distortive.

Respondent argues that Kawasho's warehousing expenses were reported on the most specific basis possible, given how Kawasho maintains its internal books and records. According to respondent, Kawasho's warehousing expenses are maintained by product-category, rather than on a transaction-specific basis. Respondent argues that Kawasho has a CTL plate category that includes subject and non-subject merchandise. Since Kawasho keeps its records in this manner during the normal course of business, respondent argues that it is not feasible to report Kawasho's warehouse expenses on a more specific basis. Moreover, respondent argues that section 773(a)(6)(B)(ii) of the Act allows the Department to reduce NV for movement expenses, such as warehousing expenses, and that section 351.401(g)(4) of the regulations directs the Department not to reject an allocation methodology solely because the method includes expenses incurred with respect to sales of non-subject merchandise. Respondent argues that during verification, the Department examined the warehouse records kept by Kawasho and verified the accuracy of the numbers used for the calculation. Specifically, the Department examined ''the quantity and warehousing expenses listed for both subject merchandise product codes and non-subject merchandise product codes * * * (and) found no discrepancies.'' *See* Sales Verification Report at 44. Thus, respondent argues, there is no evidence on the record that the out-of-scope merchandise incurred a disproportionate amount of warehousing expense. Respondent concludes that the Department should reject petitioners' argument and continue to use Kawasho's warehousing expenses in the final determination.

Department's Position: While we prefer that respondents report warehousing charges on a transaction-specific basis, we are satisfied that, based on its records, Kawasho is unable to report its warehouse expenses on that basis. Moreover, we note that section 351.401(g) of the Department's regulations provides that we may consider allocated expenses and price adjustments when transaction-specific

reporting is not feasible, provided we are satisfied that the allocation method used does not cause inaccuracies or distortions.

As we stated in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom,* 63 FR 33320, 33340 (June 18, 1998), ''while we do initially examine transaction-specific information on home-market sales, ultimately we calculate a weighted-average home-market price for comparison to U.S. sales. The averaging of net home-market prices has the effect of averaging the components used to calculate those net prices, including inland freight. Therefore, the use of an allocated expense would not necessarily result in a distortion of home-market prices.'' Although that case was referring to a respondent's inability to report transaction-specific inland freight expenses, we find that the same principle applies here.

KSC explained that Kawasho maintains its warehouse expenses on a product-category specific basis in its books and records, and that this product category contains both subject and non-subject CTL plate. *See* KSC's June 23, 1999, supplemental Section B response at 25. During verification, we examined Kawasho's warehouse expenses and found no evidence that such expenses could be reported on a transaction-specific basis. Since Kawasho does not maintain transaction-specific warehousing expenses, we agree with KSC that allocating Kawasho's total warehouse expense for subject and non-subject CTL over its total tonnage sold of subject and non-subject CTL plate is the most accurate per-unit expense that Kawasho can derive from its books and does not unreasonably distort the reported expense. Moreover, we are satisfied that KSC reported Kawasho's expenses in the most specific manner feasible and allocated these expenses reasonably for the calculation of NV. Accordingly, we have continued to use Kawasho's warehousing expenses in our final determination.

Comment 10: KI's Short-Term Interest Rate

Petitioners argue that the Department's verification report indicates that KSC did not fully report KI's short-term interest expenses. According to petitioners, the Department learned at verification that KI did not report the interest expenses it incurred with respect to (1) export sales of log and lumber products to Japan and (2) certain overnight loans that occurred during the POI. Because KI has not provided the interest rates paid on the above borrowings, petitioners contend that the information necessary to calculate KI's overall interest rate is not available on the record. Therefore, petitioners urge the Department, pursuant to Policy Bulletin 98.2, to recalculate KI's U.S. dollar short-term interest rate based on the average prime rate in effect during the POI.

Respondent asserts that the Department should reject petitioners' argument and use KI's reported short-term interest rate. Respondent argues that credit costs are imputed based on the time value of money, and not based on the cost of debt actually incurred. Respondent states that in this respect, it is important that a respondent provide an interest rate for imputing credit expense that reflects commercial reality. With respect to the overnight loans, respondent states that it excluded this rate as one that KI would not reasonably incur to finance receivables. Moreover, respondent claims that because the average interest rate for these loans is lower than that for the reported short-term borrowings, it would have actually benefitted by incorporating this interest rate into its reported interest rate, as it would have raised its CEP price by reducing U.S. credit expenses.

Respondent also states that it properly excluded the item ''Interest on Export Bills Discounted (Log & Lumber)'' from its calculation of a short-term interest expenses because the ''interest expense'' incurred does not even relate to actual interest paid for short-term borrowings to finance working capital requirements, but rather consists of discounted payments received by KI from the bank upon presentation of letters of credit. Moreover, respondent states that this interest expense is also incurred only by KI's Seattle office on sales of lumber products to Japan, and does not involve the sale of subject merchandise to the United States. Since KI's reported interest rate accurately represents a commercially reasonable payment for financing receivables, and this information was thoroughly verified by the Department, respondent argues that the short-term borrowing expenses for CEP sales as reported in KSC's Section C response are correct.

Department's Position: We agree with petitioners that KSC should have reported its interest expenses associated with overnight loans, but we disagree with petitioners that KSC should have reported the expenses associated with KI's export sales of log and lumber products to Japan. The Department calculates a respondent's imputed credit expenses using ''a short-term interest rate tied to the currency in which the sales are denominated. We will base this interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction.'' *See* Policy Bulletin 98.2 at 6, dated February 23, 1998. During verification, we learned that KI incurred interest expenses on overnight loans that were used for various corporate purposes during the POI. Since these overnight loans are short-term in nature, denominated in the currency of the sales transaction, and are obtained in the normal course of business, we determine that these loans should have been included in KSC calculation of KI's weighted-average short-term interest rate. During verification, we noted the total amount of interest paid by KI for these overnight loans obtained during the POI. Since the average balance of these loans for the POI is not on the record, we are unable to calculate the weighted-average POI interest rate for these loans. In light of our verification findings, we have added the POI interest expense paid on overnight loans to the reported interest paid on KI's short-term borrowings. Using this larger amount for interest paid during the POI, we have recalculated KI's short-term interest rate.

With respect to the expense KI incurred on its export sales of log and lumber products to Japan, we agree with KSC that it was proper not to report these expenses. During verification, we learned that KI's Seattle office exports log and lumber products to Japan on a letter of credit basis, with an extended term of payment for its Japanese customers. The expenses in question are the discounted payment KI receives from the bank upon presentation of the letter of credit. We have not included these interest expenses in our calculation of the short-term interest rate used to calculate imputed credit expense on U.S. sales because these expenses are not the best measure of the opportunity cost associated with sales of subject merchandise.

Comment 11: KSC's Usance Expenses

Respondent argues that the Department should not include the usance-related expenses incurred by KSC on the importation of certain raw materials. Respondent states that it purchases certain raw materials from trading companies who obtain usance loans from Japanese banks for the ''upstream'' purchase of the raw material from the actual supplier (*e.g.,* mining company). Respondent alleges that these usance loans between the bank and trading company are

denominated in U.S. dollars. Respondent argues that although KSC negotiates directly with the bank and sets the terms of the usance loan obtained by the trading company, it is the trading company, not KSC, that receives the funds from the loan to purchase raw materials and eventually pays back the bank. Respondent states that in return for offering KSC an extended period of payment (*i.e.,* two to three months) on such raw material purchases, KSC pays the trading companies a yen-denominated interest amount. Respondent notes that KSC pays the purchase price, plus the interest amount, to the trading companies, not the banks.

According to respondent, there are two reasons for not including the expenses KSC pays to the trading companies in KSC's yen-based short-term borrowings. First, respondent states that including these expenses would violate the Department's practice by calculating a respondent's credit expenses based on another entity's borrowings. According to respondent, the Department has ''a clear preference for the actual borrowing experience of the respondent'' in calculating credit expenses and will incorporate usance interest only for loans actually obtained by a respondent. *See Certain Steel Concrete Reinforcing Bars from Turkey,* 64 FR 49150, 49155 (September 10, 1999). In the instant case, respondent states that it does not obtain usance loans, rather it purchases raw materials in yen from trading companies that obtain usance loans.

Respondent argues that where usance loans are obtained by another entity that is not the respondent, the Department will not include a usance-related interest in the short-term interest calculation. Citing to *Color Television Receivers from the Republic of Korea,* 55 FR 26225 (June 27, 1990), respondent states that the Department considered petitioners' contention that usance loan interest should be incorporated into respondent's short-term borrowing rate, even though respondent did not actually obtain usance loan funds. According to KSC, the respondent in that case argued that the usance loan funds were not provided to it directly, but rather to its suppliers. KSC states that the Department agreed with respondent and excluded the usance interest rate from the short-term interest calculation, concluding that ''these particular usance loans, which are not available for general financing purposes such as accounts receivable, were properly excluded from the calculation of the company's average short-term borrowing rate.'' *Id.* In addition, respondent argues that the Department should not impute a dollar-based interest rate to KSC's short-term borrowings that are exclusively in yen. Respondent argues that in *LMI-La Metalli Industriale S.p.A.* v. *United States,* 912 F.2d 455, 460–61 (Fed Cir. 1990), the CAFC noted that different interest rates correspond to different currencies and rejected the government's position that it could impute a lira-denominated interest rate to dollar-denominated U.S. sales. It concluded that the cost of credit ''must be imputed on the basis of usual and reasonable commercial behavior'' using short-term interest rates that conform with ''commercial reality.'' *Id.*

According to respondent, any short-term interest rate calculated for KSC must be a yen-based rate because its CTL plate transactions are yen-denominated transactions. Citing to Policy Bulletin 98.2 at 2, respondent contends that the Department's practice for calculating imputed credit expenses is to use a ''short-term interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction.'' Respondent contends that it pays the trading company for the raw material inputs in yen, receives payment from its customers in yen, and records all sales in its books in yen. Accordingly, respondent argues that the Department must denominate its short-term borrowing rate and credit expenses in yen.

Petitioners did not comment on this issue.

Department's Position: We have not included KSC's usance-related expenses in our calculation of KSC's imputed credit expenses. These expenses relate to the terms of sale between KSC and its suppliers and thus are similar to other fees and interest paid to suppliers, such as late-payment charges. Therefore, we did not include these expenses in determining KSC's short-term borrowing rate.

Comment 12: Deduction of Profit from CEP Sales

Respondent argues that the Department's methodology of deducting CEP profit from the U.S. price for CEP sales violates the ''Fair Comparison'' requirement established in Article 2.4 of the Antidumping Agreement, which provides that the Department may make adjustments to the extent needed to account for differences that affect price comparability (*e.g.,* profit). Respondent argues that profit is properly adjusted for in U.S. sales involving further manufacturing, where a portion of the U.S. profit is based on the additional value resulting from the physical change in the good. Unlike further manufacturing, respondent states that normal CEP goods and their home market counterparts are physically identical. Moreover, respondent contends that in the instant proceeding, there is no record evidence to support a finding that CTL plate sold in CEP transactions through KI and CTL plate sold by KSC in the home market are not physically comparable. Therefore, respondent contends that deducting CEP profit in KSC's CEP sales violates the fair comparison provision of Article 2.4.

Respondent argues that the inherent unfairness in the Department's methodology is even more evident when the CEP offset is added to the analysis. In situations where the Department grants an offsetting deduction of indirect selling expenses from normal value, this offset rebalances the comparison by deducting from normal value the same kind and character of indirect selling expenses deducted in determining CEP, but only in part. Respondent argues that profit assigned to the CEP selling expenses was deducted along with those expenses, but no profit was allocated to the selling expenses deducted from normal value, even though the express purpose of the offset is to put the transactions on an equal footing (*i.e.,* produce a fair comparison). Respondent concludes that in order to achieve a fair comparison, the Department must adjust its methodology and eliminate the automatic deduction of profit when determining CEP.

Petitioners argue that the Department should reject KSC's argument because Section 772(d)(3) of the Act states that ''the price used to establish constructed export price shall also be adjusted by * * * the profit allocated to the expenses described in paragraphs (1) and (2).'' Petitioners contend that the Department, in the preliminary determination, calculated CEP with an adjustment for profit in accordance with this statutory provision. In fact, argue petitioners, this statutory provision does not leave the deduction of profit to the Department's discretion. Rather, petitioners contend that this provision explicitly requires the Department to make this adjustment. Lastly, petitioners argue that the deduction of profit from CEP does not result in an unfair comparison in violation of the Antidumping Agreement, as claimed by Kawasaki. In support of their position, petitioners cite to the SAA, which states ''(the) deduction of profit is a new adjustment in U.S. law, consistent with the language of the Agreement, which

reflects that constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers.''

Department's Position: We disagree with respondent. Consistent with section 772(d)(3) of the Act, we properly reduced CEP by the profit allocated to certain enumerated expenses (*e.g.,* commissions, credit, and warranties). Indeed, KSC does not argue that the Department's deduction of CEP profit is inconsistent with U.S. law, but instead argues that the deduction is inconsistent with U.S. obligations under Article 2.4 of the Antidumping Agreement. We do not agree. Section 772(d)(3) of the Act implements Article 2.4 of the Antidumping Agreement, which requires that a ''fair comparison'' shall be made between export price and normal value. However, Article 2.3 states that where there is no export price because of an affiliation between exporter and importer, a constructed export price may be calculated. When such constructed export price is used, Article 2.4 makes clear that there shall be ''allowances for costs * * * *and for profits accruing* * * *'' Article 2.4 (emphasis added). Thus, when promulgating section 772(d)(3) which provides for the deduction of CEP profit, the administration made clear that ''[t]he deduction of profit is a new adjustment in U.S. law, consistent with the language of the Agreement, which reflects that constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers.'' SAA at 823. In this regard, section 772(d)(3) clearly implements U.S. obligations under Article 2 of the Antidumping Agreement and the Department's deduction of CEP profit in this case is consistent with these obligations.

Comment 13: U.S. Sales Disclosed at Verification

The respondent argues that the Department should add the additional U.S. sale disclosed during verification to KSC's U.S. sales database. According to respondent, the Department's verification team asked KSC whether Kawasho made any direct sales to the United States other than through its U.S. affiliate, KI. In response to this question, respondent contends that it investigated whether Kawasho had any direct sales during the POI to the United States and uncovered a single, unreported, direct sale to the United States by Kawasho. Respondent argues that although this sale consisted of three separate shipments, the Department should consider it to be a single sale. Respondent states that upon finding this inadvertent omission, it immediately, and voluntarily, brought this sale to the verification team's attention. In order to demonstrate to the Department that there were no further unreported sales, respondent states that it provided the verification team with substantial documentation proving that the U.S. sales file is now complete. In addition, respondent notes that it provided a full sales trace package for this omitted sale, complete with all necessary documentation to support the sales adjustments KSC claims are associated with this sale. Respondent notes that the quantity and value and sales adjustment documentation were accepted by the verification team. Respondent argues that this lone sale is a clerical error and represents an insignificant portion of KSC's U.S. sales transactions, and if it is included in the U.S. sales database, will have a de minimis effect on the final dumping calculations.

Respondent argues that failure to include this sale in the Department's analysis, or to use the data relevant to this sale, would result in an inaccurate margin, in derogation of the statutes's purpose. Respondent cites to several cases where the Department added unreported U.S. sales to the respondent's U.S. sales database after the omission of such sales was discovered at verification in order to determine current margins as accurately as possible. Respondent states that in *Stainless Steel Sheet and Strip in Coils from the Republic of Korea,* 64 FR 30664, 30680 (June 8, 1999), the Department added one unreported U.S. sale to the file after its omission was discovered at verification. Moreover, respondent notes that in the Korean case, the Department accepted the corrective information concerning this sale nearly one month after the end of verification. Respondent states that in *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile,* 63 FR 31411, (June 9, 1998) (''Atlantic Salmon from Chile''), the Department added twenty-seven U.S. sales to the U.S. sales database that were disclosed during verification. *See Atlantic Salmon from Chile,* Analysis Memorandum for Pesquera Mares Australes, dated June 1, 1998, at 2. Respondent also cites to *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Mexico,* 64 FR 30790, 30812 (June 8, 1999) (*''Stainless Steel Sheet and Strip from Mexico''*), where the Department added sales to the sales database and stated that ''we have no reason to believe that respondent intentionally withheld from the Department the sales at issue here * * *'' we are satisfied that the record is now complete and accurate regarding this company's sales of subject merchandise during the POI.''' *Id.* (citation omitted). According to respondent, there is nothing on the record of the instant investigation that would support a conclusion that KSC deliberately withheld the one sale at issue from the Department. In addition, respondent cites to *Usinor Sacilor, Sollac* v. *United States,* 872 F. Supp. 1000, 1008 (CIT 1994), and argues that the Department's decision to reject information is governed by the interests of accuracy and fairness, and whether accepting new information will impose a burden on the Department. According to respondent, the most accurate margin requires that all sales be included in the sales databases, determining an accurate margin is the most fair calculation for all parties concerned, and adding the disclosed sale imposes only a minimal, if any, burden on the Department.

Respondent also argues that KSC's disclosed sale constitutes a minor correction to information already on the record and therefore should be accepted by the Department. As supporting evidence, respondent cites to *Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From the United Kingdom,* 64 FR 30688, 30701 (June 8, 1999), where the Department utilized its minor errors practice to accept a small quantity of additional home market sales mistakenly omitted by the respondent, that were disclosed at verification. In *Stainless Steel Sheet and Strip from Mexico,* 64 FR at 30812, respondent claims that the Department added unreported U.S. sales disclosed at verification to the sales database when the volume of sales at issue was a very small percentage of respondent's U.S. sales. Lastly, respondent cites to *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan,* 64 FR 17336, 17340 (April 9, 1999), where the Department accepted missing sales disclosed at verification because the sales were minor in scope and immaterial.

Respondent notes that the Department may also disregard the unreported sale altogether. According to respondent, in one case, the Department ignored unreported sales and declined to use facts available against the relevant sales in *Bicycles from the People's Republic of China,* 61 FR 19026, 19041 (April 30, 1996), and *Random Access Memory Semiconductors of One Megabit and Above from Taiwan (''DRAMs''),* 64 FR

56308, 56318 (October 19, 1999). Moreover, respondent notes that in DRAMs, the Department stated that ''the amount of sales in question is relatively insignificant, both in terms of quantity and value of respondent's home market sales. Thus, we are disregarding those sales discovered during verification because the volume of unreported sales is relatively insignificant.'' *Id.* In the instant case, respondent argues that the single unreported sale accounts for a very small percentage of KSC's total U.S. sales and will have a de minimis impact on the final margin.

Lastly, respondent argues that if the Department considers the sale to be an error in KSC's data that was disclosed after the deadline for submission of factual information, the sale should still qualify for inclusion on the U.S. sales database under the Department's policy for correcting clerical errors. The respondent argues that the Department, in *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 42833, 42834 (August 19, 1996) (''*Certain Fresh Cut Flowers from Colombia*''), identified six criteria under which it will accept corrections of clerical errors. Respondent claims that the sale in question meets each of these criteria: (1) the sale was not disclosed because it was a simple oversight, (2) the corrective documentation provided to the Department at verification is reliable and was verified to be accurate, (3) KSC disclosed the unreported sale at the earliest reasonable opportunity and provided corrective information, (4) the clerical error allegation and corrective documentation were submitted well before KSC's due date for the administrative case brief, (5) adding the disclosed sale to the U.S. sales database does not require a substantial revision of the response, and (6) KSC's corrective documentation does not contradict information previously determined to be accurate at verification. For these reasons, respondent argues that its disclosed sale qualifies as a clerical error for which the Department should accept a correction.

Some of the petitioners argue that they have at numerous times over the course of this investigation raised the issue of whether Kawasho made any sales to the United States other than sales through its U.S. affiliate, KI. In each instance, petitioners state that KSC claimed in strong terms that all U.S. sales have been reported and that Kawasho only made sales to the United States through KI. Petitioners argue that the three sales disclosed at verification clearly contradict all of KSC's past denials and renders respondent's data unreliable. Moreover, petitioners claim that the strong manner in which respondent previously denied the existence of EP sales through Kawasho, indicates that KSC's omission cannot fairly be characterized as ''inadvertent.'' To the contrary, petitioners argue that the record strongly suggests that KSC acted aggressively to prevent the discovery of relevant information. Petitioners observe that KSC claims that the unreported sales are an isolated incident. According to petitioners, the issue is not merely of a small number of missing sales, rather it is about the discovery of an unreported kind of sale, through an unreported channel of distribution. Since the purpose of verification is to test a representative sample of sales for discrepancies, petitioners claim that the discovery of these unreported U.S. sales should be understood as representative of a substantial percentage of incorrectly classified and unreported sales. For this reason, petitioners contend that the Department cannot trust the veracity of KSC's sales data. Based on the discovery of unreported U.S. sales and KSC's false claim that it is unable to report downstream home market sales, petitioners conclude that KSC has failed the verification tests of its home market and U.S. sales. These petitioners argue that KSC has not acted to the best of its ability to provide information requested by the Department and urges the Department to apply total adverse facts available.

Other petitioners argue that the Department should apply partial facts available to the quantity of KSC's three unreported U.S. sales. Although the respondent characterizes its disclosure as voluntary, petitioners note that KSC did not report the unreported sales until several days into the verification, rather than at the outset. Furthermore, petitioners argue that the Department has applied adverse facts available under circumstances where the respondent has been more forthcoming than KSC in this case, such as where the respondent identified unreported U.S. sales on the first day of verification. *See Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany,* 64 FR 30710, 30732 (June 8, 1999) (''*Stainless Steel Strip from Germany*''), Petitioners also argue that even though KSC claims its omission was inadvertent, KSC had numerous opportunities during the course of the investigation to review its U.S. sales database and check it for completeness. Petitioners state that KSC clearly failed to do so.

Petitioners also note that although KSC provided a package of supporting documentation concerning its three unreported sales on the record at verification, there is no requirement that the Department use such information for its final determination. Petitioners cite to *Stainless Steel Strip in Coils from Germany,* where the respondent KTN similarly ''provided a complete packet containing copies of each of the relevant invoices'' at verification concerning previously unreported U.S. sales and claimed that the ''corrected information was verified.'' Petitioners contend that the Department emphasized the respondent's responsibility to provide complete U.S. sales information and rejected the corrective information in favor of partial adverse facts available. Petitioners contend that the facts are similar with regard to KSC and that given the untimeliness of the proffered information, the Department should consider only the quantity of the missing sales and reject all of the other transaction-specific data.

Petitioners also argue that the cases cited by respondent do not support its position. In *Atlantic Salmon from Chile,* 63 FR 31411, the Department's analysis memorandum shows that the unreported sales were made in the United States by an unaffiliated reseller. Petitioner concludes that, unlike the instant case, application of facts available in *Atlantic Salmon from Chile* would not have been proper since the respondent had no control over the conduct of the reseller. Moreover, petitioners state that in *Stainless Steel Sheet and Strip in Coils from Mexico,* 64 FR at 30812, unlike the instant case, the respondent reported the missing sales to the Department on the first day of verification. According to petitioners, reporting missing sales on the first day of verification is important because it is the only way to ensure that the disclosure is in fact voluntary. Petitioners argue that since KSC disclosed this sale while the Department was testing for completeness, KSC now finds itself in the position of attempting to dispel the inference that disclosure occurred because the Department's discovery of such sales would have been inevitable.

Lastly, petitioners argue that KSC is wrong in its statement that the Department can properly accept its new sales information as a ''correction of a clerical error.'' Petitioners observe that one of the criteria set forth in *Fresh Cut Flowers from Colombia* for correcting alleged clerical errors is that ''the error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgement or a substantive error.'' In the instant case, petitioners assert that KSC's failure to

report the sales was demonstrably not clerical. Rather, petitioners state that it was based on KSC's substantive error that Kawasho did not make any direct sales to a U.S. customer. Thus, petitioners concluded that the Department cannot accept the new sale as a clerical error. These petitioners recommend that the Department apply adverse facts available to the quantity of this sale. As adverse facts available, petitioner urges the Department to apply the highest calculated margin on KSC's other sales to the unreported sales and include the unreported sales in the overall weighted-average margin.

Department's Position: We disagree with petitioners that the three unreported sales disclosed at verification by KSC are not minor. During verification, while the Department was conducting various completeness tests, KSC voluntarily disclosed that it had found a previously unreported sale to the United States made by Kawasho. Since this sale comprised three individual shipments, and we are defining a sale as a single shipment in this investigation, we concluded that there were actually three unreported sales disclosed at verification. These sales, which were made by Kawasho directly to an unaffiliated Japanese trading company that in turn sold the CTL plate to its U.S. affiliate, are properly classified as EP sales through Kawasho. During verification, KSC provided substantial quantity and value information to support its assertion that there are no additional unreported U.S. sales. We examined this quantity and value information and are satisfied that there are no additional unreported U.S. sales.

The Department's practice is to accept new information during verification only when that information constitutes minor corrections to information already on the record, or when that information corroborates, supports, or clarifies information already on the record. We agree with KSC that these disclosed sales constitute minor corrections to information already on the record. Therefore, we included the information we accepted at verification concerning these three sales in our margin analysis for the final determination.

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 Japan that were entered, or withdrawn from warehouse, for consumption on or after April 30, 1999 (90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**) for Kobe, Nippon, NKK, and Sumitomo, which received the petition rate of 59.12 as adverse facts available. In addition, we will continue to suspend liquidation of all entries of subject merchandise from Japan that were entered, or withdrawn from warehouse, for consumption on or after July 29, 1999 (the date of publication of the Department's preliminary determination) for KSC and those companies which received the ''all others'' rate. We shall refund cash deposits and release bonds for KSC and ''all others'' companies for the period between April 30, 1999 and July 29, 1999 (*i.e.,* the critical circumstances period). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the NV 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
Kawasaki Steel Corporation	10.78
Kobe Steel, Ltd	59.12
Nippon Steel Corporation	59.12
NKK Corporation	59.12
Sumitomo Metal Industries, Ltd	59.12
All Others	10.78

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.

[FR Doc. 99–33235 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–826]

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

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Maisha Cryor, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5193 or (202) 482–5831, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay 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 Italy 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 (*Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From Italy,* 64 FR 41213 (July 29, 1999) (''*Preliminary Determination*'')), the following events have occurred:

On July 28, 1999, ILVA S.p.A, (''ILVA'') alleged that the Department of Commerce (''the Department'') made a ministerial error in the preliminary determination because it incorrectly