discussion of this issue necessarily involves a discussion of business proprietary information; see the Cost Calculation Memorandum (Final).

Comment 18: COP Allocated on the Basis of Sales Volumes Rather than Production Volumes. Petitioners note that Columbus reported its weighted-average costs based on sales quantities rather than production quantities, as requested by the Department. Since the Department has data on Columbus' production quantities, petitioners insist, the Department should recalculate Columbus' weighted-average COP on that basis.

Columbus counters that its records kept in the normal course of business track costs based on tons sold, not tons produced. Further, Columbus avers, the Department is investigating sales during the POI, not production during the POI. To avoid distorting Columbus' costs, Columbus argues, the Department should calculate COP on the same basis as does Columbus in its ordinary course of business. Columbus' Rebuttal Brief at 26.

Department's Position: We agree with petitioners that costs should be weight-averaged using production quantities. As noted in Comment 12, above, it is the Department's long-standing practice to calculate COP and CV based on the cost of manufacturing the subject merchandise produced during the POI, rather than on a COGS figure and its associated sales quantity, which includes inventory changes during the POI. Moreover, since the costs the Department is relying upon only include the costs for products produced during the POI, the corresponding production quantities must also serve as the appropriate base for allocation. Therefore, we have used the quantities produced during the POI (i.e., the quantities corresponding to the submitted COM) rather than quantities sold to calculate weighted-average COP and CVs.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Tariff Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after November 4, 1998, the date of publication of the Preliminary Determination in the **Federal Register**.

Article VI.5 of the General Agreement on Tariffs and Trade (GATT 1994) provides that ''[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.'' This provision is implemented in section 772(c)(1)(C) of the Tariff Act. Since antidumping duties cannot be assessed on the portion of the margin attributed to export subsidies there is no reason to require a cash deposit or bond for that amount. The Department has determined in its Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils From South Africa that the product under investigation benefitted from export subsidies. Normally, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct the Customs Service to require a cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below, minus the amount determined to constitute an export subsidy. See, e.g. Notice of Antidumping Duty Order: Stainless Steel Wire Rod From Italy, 63 FR 49327 (September 15, 1998). Accordingly, for cash deposit purposes we are subtracting from Columbus' cash deposit rate that portion of the rate attributable to the export subsidies found in the countervailing duty investigation involving Columbus (i.e., 3.84 percent). We have made the same adjustment to the ''All Others'' cash deposit rate by subtracting the rate attributable to export subsidies found in the countervailing duty investigation of Columbus.

We will instruct the Customs Service to require a cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the NV exceeds the EP, adjusted for the export subsidy rate, as indicated 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	Bonding/Cash Deposit Rate (percent)
Columbus Stainless	41.63%	37.79
All Others	41.63%	37.79

International Trade Commission Notification

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

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

Dated: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7536 Filed 3–30–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Belgium

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

EFFECTIVE DATE: March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Abdelali Elouaradia or Steve Bezirganian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202)

482–2243 or (202) 482–0162, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Final Determination

We determine that stainless steel plate in coils (''SSPC'') from Belgium is being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Belgium*, 63 FR 59532, November 4, 1998) (''*Preliminary Determination*''), the following events have occurred:

During November 1998, ALZ submitted responses to the sales and cost supplemental questionnaires issued by the Department. On November 20, 1998, petitioners submitted comments regarding the issue of date of sale and the Department's Belgium sales verification. On November 23, 1998, ALZ submitted corrections presumably discovered while preparing for the sales verification in Belgium. On November 30, 1998, ALZ submitted pre-verification changes and new factual information to supplement its cost of production (''COP'') and constructed value (''CV'') information. On December 3, 1998, petitioners submitted comments on ALZ's November 23, 1998, revised section B and C submission, and on ALZ's November 23 and 30, 1998 supplemental section D questionnaire responses. On January 6, 1999, ALZ submitted certain ''corrections'' to the U.S. sales database discovered while preparing for the U.S. sales verification of its U.S. sales affiliate, TrefilARBED, Inc. (''TrefilARBED''). On January 11, 1999, petitioners submitted comments regarding the Department's U.S. sales verification of TrefilARBED. Finally, on January 21, 1999, ALZ submitted new computer U.S. sales listings, which included data changes identified at the outset of the U.S. sales verification.

During December 1998 and January 1999, we conducted sales and cost verifications of ALZ's responses to the antidumping questionnaire. On January 13, 1999, we issued our cost verification report (see Memorandum to Neal Halper, Acting Director, Office of Accounting: Verification of Cost of Production and Constructed Value Data—ALZ, N.V.) (''*ALZ Cost Verification Report*''). On January 27, 1999, we issued our sales verifications reports (*see Memorandum to the File: Verification of ALZ, N.V.*) (''*ALZ Sales Verification Report*'') and Memorandum to the File: U.S. Sales Verification Report (*TrefilARBED/ALZ*) (''*TrefilARBED Sales Verification Report*'').

Petitioners and ALZ submitted case briefs on February 8, 1999, and rebuttal briefs on February 16, 1999. On February 12, 1999, petitioners withdrew their request for a public hearing.

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1997, through December 31, 1997.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the ''Scope of Investigation'' section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the Department's May 27, 1998 antidumping duty questionnaire and reporting instructions (''*Original Questionnaire*'').

Fair Value Comparisons

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

Level of Trade

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 level of trade (''LOT'') as the 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 selling, general and administrative expenses (''SG&A'') and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a

LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *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).

We applied the aforementioned criteria in our preliminary results, and indicated that the information on the record does not reveal meaningful differences between selling functions performed in the U.S. and Belgian markets (*Preliminary Determination* at 59533–34). As we further explain this issue in response to Comment 2, below, we continue to find that there is no basis for determining different levels of trade in the two markets and, therefore, we have continued to treat all of ALZ's home market and U.S. sales at a single level of trade. Accordingly, we have not made a LOT adjustment or CEP offset in this final determination.

Constructed Export Price

We calculated CEP in accordance with section 772(b) of the Act because sales to the first unaffiliated purchaser took place after importation into the United States.

We calculated CEP based on the same methodology used in the preliminary determination, except as noted below in ''Comments'' and in the Final Sales Analysis Memorandum from Abdelali Elouaradia to Steven Presing, dated March 19, 1999 (''*Final Sales Analysis Memorandum*'').

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparisons'' sections of this notice, below.

1. Home Market Viability

As discussed in the preliminary determination, we determined that the home market was viable. *See Preliminary Determination* at 59532. The parties did not contest the viability of the home market. Consequently, for the final determination, we have based NV on home market sales.

2. Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by grade, based on the sum of ALZ's cost of materials, fabrication, general expenses, and packing costs. We relied on ALZ's submitted COPs, except in the following specific instances where the submitted costs were not appropriately quantified or valued.

(a) As facts available (''FA'') for ALZ's undisclosed purchases of scrap and alloys from affiliated suppliers, we applied the highest cost reported for these materials within each grade, to the control numbers (''CONNUMs'') which represent that particular grade. We address this issue further in our response to comment 13 in the ''Interested Party Comments'' section of the notice.

(b) We revised ALZ's general and administrative (''G&A'') expenses to exclude an offset for net exchange gains. We also included exchange gains and losses related to purchases and accounts payable, consistent with our general practice in the calculation of G&A expenses. *See* Memorandum from Taija Slaughter to Neal Halper: Final Cost Analysis, dated March 19, 1999 (''*Final Cost Analysis Memorandum*'').

(c) We revised ALZ's financial expense ratio using the parent company's consolidated financial statements. *See Final Cost Analysis Memorandum* at 1.

We conducted our sales below cost test in the same manner as that described in our *Preliminary Determination* at 59534. As with the preliminary determination, we found that for certain models of SSPC, more than 20 percent of ALZ's home market sales were at prices less than the COP within an extended period of time. *See* section 773(b)(1)(A) of the Act. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above cost sales as the basis for determining NV, in accordance with section 773(b) (1) of the Act.

3. Calculation of Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of ALZ's cost of materials, fabrication, SG&A expenses, profit, and U.S. packing costs. We relied on the submitted CVs, except for the specific instances noted in the ''Cost of Production'' section, above.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers, none of which we found to be affiliated with ALZ. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made deductions for billing adjustments (*i.e.*, adjustment for transportation, when customer picks up the merchandise, invoice correction, and alloy surcharge), early payment discounts, inland freight, and inland insurance. In addition, we made circumstance-of-sale adjustments for credit, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the amount of indirect selling expenses capped by the amount of the U.S. commissions.

Currency Conversion

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

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by ALZ.

Interested Party Comments

Comment 1: Date of Sale. Citing *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*''), petitioners argue that the Department considers date of sale to be a factual issue, decided on a case-by-case basis. According to petitioners, the Department utilizes invoice date as date of sale only if the material terms of sale, i.e., price and quantity, are not established on a different date. Petitioners note that in *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 63 FR 32833, 32836 (June 16, 1998) (''*Steel Pipe from Korea*''), the Department found that the use of a date other than invoice date as date of sale is appropriate due to prior setting of terms of sale, even if that may involve basing date of sale differently in different markets, where the sales processes are quite different.

Petitioners note that, in ALZ's February 8, 1999, brief at 2, ALZ acknowledged that the invoice date is the correct date of sale for U.S. sales unless a different date *better* reflects the sale. Petitioners point out that ALZ's references to the Department's *TrefilARBED Sales Verification Report*, as evidence that terms of sale frequently change subsequent to the submission of the purchase order, are actually references to statements made by the respondent at verification and recorded in the report, rather than conclusions made by the verifiers.

Petitioners point to *ALZ Sales Verification Report* at 6, referring to ALZ's comment made during verification, as confirmation of the overriding significance of order date in the context of date of sale: (1) ALZ production is always order driven; (2) customers' order information is closely reviewed by the sales and production planning departments before production and order confirmation; and (3) order confirmation is always sent to the customer. Petitioners reject, as unverified and contrary to industry practice, TrefilARBED's assertion that, in some instances, rather than submitting a purchase order, U.S. customers might have entered into a verbal agreement with respect to terms of sale with TrefilARBED. Petitioners also note that the respondent failed to provide purchase order numbers for most of the sales in the U.S. sales database, despite the Department's request for that information. Furthermore, petitioners state that *TrefilARBED Sales Verification Report*, at 11, indicates that ALZ made efforts to limit the fluctuation of prices for the U.S. market.

Petitioners next indicate that a long time lag exists between order and invoice date across all U.S. sales, and that this time lag is considerably greater, on average, for U.S. sales than for home market sales. Petitioners note that, for U.S. further-manufactured sales, an even longer time elapses between order date and invoice date because of the additional processing involved; thus, the use of invoice date as date of sale for such transactions would be especially distortive.

Petitioners point to the absence of changes in price and quantity between the final order date (whether it be the original one or the final change order), and assert, citing *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium*, 58 FR 37083, 37090 (July 9, 1993), that the Department considers invoice date to be inappropriate as date of sale if the order confirmation date, or in some instances, the change order date, was the time during which the terms of sale were set. Petitioners state that the sales trace documentation provided by ALZ was incomplete and insufficient. Moreover, when a specific sale record only shows the final ALZ/TrefilARBED invoice, the petitioners assert that the Department must assume that the material terms of sale remained the same from order to invoice. Petitioners note that TrefilARBED acknowledged that multiple invoices are routinely used to fill orders, which explains why ordered and invoiced quantities may vary. Petitioners also note that ALZ's mill test certificates indicate quantities, so quantities shipped would clearly be known prior to actual shipment.

Petitioners further argue that the record does not demonstrate that there was a change in material terms between order date and invoice date for a number of verified U.S. sales. Regarding several other U.S. sales, mentioned by ALZ in its brief as examples of changes between order and invoicing, petitioners argue that, for U.S. sale observations #734 and #735, the changes in quantity and price occurred soon after the original order, but long before the final invoicing. For U.S. sale observations #532 and #537, the change in quantity is handwritten on the order itself, which is dated several months before the invoice. Finally, petitioners note that the change in unit price from the purchase order to the invoice for U.S. sale #329 did not reflect a change in a material term but, rather, as noted in *TrefilARBED Sales Verification Report* at 37, TrefilARBED happened to record in its gross unit price a change in delivery terms that occurred subsequent to the purchase order. Petitioners indicate that such a change would normally have been recorded as a billing adjustment and, as such, it should not be considered a change in the material terms (*i.e.*, in price and quantity) of this sale. Petitioners conclude that all of the U.S. sales cited by ALZ in support of invoice date as date of sale actually support use of order date/change order date as the proper date of sale.

Petitioners argue that the information in the record does not demonstrate that, for various verified home market sales, any changes to the terms of sale have actually occurred between order date and invoice date. Rather, in those instances, the time lag between order and invoice date is very short, often only a few days. Regarding several other home market sales, mentioned by ALZ in its brief as examples of changes between order and invoicing, petitioners argue that for home market sale observations #77 and #78, although nominal changes were observed in the manner of calculating the alloy surcharge, the final alloy surcharge was consistent with that anticipated by the original order. Also, for home market sale #77 and #78, petitioners argue that the addition of specifications to which the product should be made, up through the day of invoicing, constitutes a change in ALZ's grade and clarifies the unusually long lag period between original order date and invoice date for the above-referenced home market sale observations, even if these changes do not change the classification of the product for Department purposes. Likewise, for home market sale observation #225, petitioners argue that the change in the number of standards to which the product should be made constitutes a change in the product itself, which explains the long lag between original order date and invoice date. For home market sale observation #232, petitioners note that the alloy surcharge was changed the day of invoicing, so that the invoice serves as the change of order and explains the lag of a few months between the order date and the invoice date.

Petitioners also discuss possible changes from the order date that are not mentioned by the respondent. Petitioners note that home market sale observation #50 appears to reflect a change in product dimension from the original order to the invoiced product which, while not referenced in the report and not significant enough to change the CONNUM for the sale, would constitute an actual change in terms, which helps explain the long time lag between the original order date and the invoice date. Petitioners add that home market sale observations #227 and #228 appear to be sales destined for export through trading companies, with ALZ's knowledge. Therefore, these sales are irrelevant in the context of home market date of sale because they are properly categorized as export sales. According to petitioners, this confusion demonstrates the unreliability of the database and is grounds for use of adverse FA across the entire home market database. Petitioners note that ALZ's statement at verification that there are quantity tolerances for sales is in stark contrast with ALZ's repeated assertions, prior to verification, that there were no quantity tolerances. Petitioners also note that ALZ's characterization of BILLAD2U as a field containing adjustments related to customer claims. Petitioners also assert

that another reported billing adjustment, BILLAD1U, must relate to errors in invoicing, even though it was characterized by ALZ as freight revenue obtained from U.S. customers and that, contrary to ALZ's assertion that it reported this value as a negative number because it increases sales revenue, they in fact reported this value as a positive number in some instances. Moreover, petitioners characterize ALZ's claim at verification (see *ALZ Sales Verification Report* at 21) that it ''may even agree to renegotiate the {alloy} surcharge if it had agreed to ship and invoice the merchandise in one month, but ended up doing so in the following month,'' as an unproven assertion.

Petitioners conclude that ALZ failed to (1) provide order confirmation numbers for U.S. sales; (2) report the change order information when terms changed after the original order; (3) admit, until verification, that quantity tolerances were used; (4) provide the general terms of its U.S. and home market order confirmations (on the un-copied back of documents it copied for submission); (5) limit its home market sales database to exclude export sales; (6) provide correct home market order/invoicing time lags in various ways (such as false classification changes); (7) explain its change to home market billing adjustment BILLAD1U; and (8) fully translate documentation prepared for verification.

Citing the Department's regulations at 19 CFR 351.401(i) (1998), ALZ argues that the invoice date should be used as date of sale unless the Department is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. ALZ notes that the preamble to the Department's final regulations explains that the reason for normally using invoice date as date of sale is to simplify the reporting and verification of information. ALZ further indicates that, as a matter of commercial reality, the date on which the terms of a sale are first agreed to is not necessarily the date on which those terms are finally established. ALZ also points out that, in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170, 13194 (March 18, 1998), the Department confirmed its general practice of using the date of invoice as the date of sale unless there is a compelling reason to do otherwise. ALZ argues that such compelling reasons exist only for more complex sales processes (*e.g.,* sales involving long-term contracts, or sales of large, custom-made merchandise), rather than simple submissions of purchase orders and issuances of invoices, as in this investigation. ALZ notes that the *Original Questionnaire* indicated that the Department ''will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business,'' as the date of sale. ALZ asserts that the invoice date ties easily to the financial records and thus simplifies verification. Moreover, ALZ claims that the record of this investigation shows that the invoice date is the only date that establishes the material terms of sale for ALZ's sales in Belgium and TrefilARBED's sales in the United States. ALZ argues that, in *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada,* 64 FR 2173, 2178 (January 13, 1999), the Department used invoice date as date of sale, where the respondent demonstrated at verification that there were changes in quantity between the order date and the invoice date. ALZ further notes that petitioners incorrectly cite to *Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium,* 58 FR 37083 (July 9, 1993), to demonstrate that the Department found in previous cases that the terms of sale were established on the order confirmation or the change order date. This determination, ALZ notes, was made prior to the Department's change in regulations regarding date of sale, and, thus, is irrelevant to this case.

ALZ observes that the Department acknowledged in *ALZ Sales Verification Report,* at 24, that the company official made statements regarding changes in terms of sale involving quantity, base price, alloy surcharge price, delivery terms, or changes in grade. ALZ states that these changes were obvious in the sales traces selected by the Department: two sales observations with changes involving specification and alloy surcharge, one involving changes in specification, and one involving changes in delivery terms.

ALZ also notes that *TrefilARBED Sales Verification Report* at 15 notes that ''there are often changes in price'' and that ''it is not unusual for there to be changes in quantities from the original amount ordered, that fall outside of the tolerances of the original ordered quantity.'' ALZ asserts that the verification report alludes to two U.S. sales observations with distinct changes to ordered quantity and to ordered unit price (#734 & #735), two with changes only in quantity (#532 & #537), and one with a change in unit price (reflecting a change in delivery terms which TrefilARBED recorded in a revised unit price).

ALZ asserts that the record shows, and petitioners acknowledge, that the material terms of ALZ's Belgian sales and TrefilARBED's U.S. sales frequently change after the initial purchase order. ALZ argues that petitioners' attempts to establish the date of sale as the date of the final purchase order (*i.e.,* the initial one, if unchanged until invoice, or otherwise the final change order) are meaningless, as evidenced by U.S. sales observations #734 & #735. According to ALZ, although one change order for those sales resulted in new terms, they were not the final terms, because there was another change subsequent to that. ALZ asserts that, even though in this instance the final change order was approximately three months before the invoice date, the fact remains that the terms of sale could have changed at any time until the invoice date. ALZ states that the Department observed at the home market verification that an entire order may be cancelled while the shipment is on the ocean en route to the customer.

ALZ further argues that, in *Steel Pipe from Korea,* the Department determined, on the basis of verified information, that the material terms of sale in the U.S. were set on contract date and any subsequent changes were usually immaterial in nature (or, if material, they rarely occurred). According to ALZ, *Steel Pipe from Korea* differs from this case, where the Department verified that changes were of material nature and occurred on many U.S. sales.

ALZ also disagrees with petitioners' argument that purchase order date should be used as date of sale for U.S. sales simply because there was a longer time lags between the purchase order date and the invoice date, as compared to home market sales where this time lag was shorter. ALZ notes that, in *Steel Pipe from Korea,* the Department used the purchase order date because of a long time lag. However, ALZ notes that, in that case, the respondent's sales process in the home market was to sell out of inventory. ALZ's sales in the home market, on the other hand, are made to order and, therefore, according to ALZ, the gap between the purchase order date and invoice date was longer in *Steel Pipe from Korea* than the gap between order date and invoice date for ALZ's home market and U.S. sales. Furthermore, ALZ argues that petitioners' calculations of the average differences in time lags between purchase order and invoice dates between U.S. and home market sales are

flawed because they employ weight-averaging, which gives more weight to back-to-back sales than inventory sales, thereby producing a longer overall average difference.

ALZ also questions petitioners' claim that certain ALZ home market time lags are ''aberrationally long,'' and thus not representative, without considering certain U.S. sale time lags as similarly long. ALZ proposes to eliminate sales with aberrtionally long time lags from both the U.S. and home market sales data base, noting that the difference in average time lags for U.S. sales versus home market sales is reduced even further if sales with aberrationally long time lags are eliminated from the calculations.

Further, ALZ notes that *Steel Pipe from Korea* was an administrative review, in which the Department is more concerned with time lags than in investigations. In reviews, the Department makes weight-averaged comparisons on a monthly basis, but in an investigation it does so on an annual basis. According to ALZ, in *Steel Pipe from Korea,* at 32836, the Department explicitly noted the importance of monthly comparison in reviews, stating that ''{i}f we were to use invoice date as the date of sale for both markets, we would effectively be comparing home market sales in any given month to U.S. sales whose material terms were set months earlier.'' Citing *Pipes and Tubes from Thailand,* ALZ notes that, even in reviews, the Department has used invoice date as date of sale when respondents are able to demonstrate that changes to the material terms of sale occur between the order date and the invoice date. ALZ states that, in that case, as in this investigation, the respondent's U.S. sales were made to order, indicating a longer time lag between purchase order and invoice for U.S. sales than home market sales for the Thai respondent.

Finally, ALZ disagrees with petitioners' assertion that it systematically refused to provide the purchase order numbers for certain U.S. sale observations. ALZ alleges that the Department never asked ALZ and TrefilARBED to submit purchase order numbers for U.S. sales but; rather, the Department simply requested that the company add a field to the sales databases to report the purchase order date. ALZ states that it voluntarily submitted the purchase order numbers for home market sales, but was unable to do so for U.S. sales as a result of the tremendous burden placed on TrefilARBED to respond to the Department's October 8, 1998, request for additional information. ALZ asserts that the exclusion of the order number did not impede or hinder the Department's verification at TrefilARBED.

Department's Position: We agree with both petitioners and ALZ that invoice date is the correct date of sale for ALZ's home market sales. However, we disagree with petitioners that the appropriate date of sale for the U.S. market is order date.

Under our current practice, as codified in the Department's Final Regulations at § 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 Pipes and Tubes from Thailand* at 55587. However, in some instances, it may not be appropriate to rely on the date of invoice as the date of sale, where the evidence indicates that the material terms of sale were established on some date other than invoice date. See Preamble to the Department's final regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997). 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,* ALZ reported invoice date as the date of sale. To ascertain whether ALZ accurately reported the date of sale, the Department included in its October 8, 1998 supplemental questionnaire, a request for additional information regarding changes in terms of sale subsequent to order date. In its October 23, 1998 response, ALZ indicated that there were numerous instances in which terms such as price, quantity, product specification, and/or alloy surcharges changed subsequent to the original orders in the U.S. and home markets. ALZ cited specific figures for each type of change. For purposes of our preliminary determination, we accepted the date of invoice as the date of sale subject to verification. *See Preliminary Determination* at 59535.

At verification, we carefully examined ALZ's selling practices, namely, the manner in which ALZ records the sales in its financial records by date of invoice. For the home market, we reviewed several sales observations for which the product specifications (*i.e.,* later requests that the steel meet additional standard specifications) changed subsequent to the original order (*see ALZ Sales Verification Report* at 22–23 and at Verification Exhibit 27), and one sale observation for which there was a change in price at the time of invoicing (*id.* at 33–34). For many of the other home market sales we reviewed, the time lag between the order date and the invoice was just a few days, and, consequently, for those transactions there is no substantive difference between those dates for analytical purposes.

For the U.S. market, we reviewed several instances in which terms of sale changed subsequent to the original order. For two sale observations, for example, there were two changes—one to quantity (outside the standard tolerance), and one to price—spanning a period of several weeks after the original order (*see TrefilARBED Sales Verification Report* at 34). For several other sale observations, we noted two distinct changes to quantity subsequent to the original order (*id.* at 37), while for other sale observations there was a single change to quantity (*id.* at 36). For two additional sale observations, there was a change in price incorporated in the invoice, although this simply reflected a late change in delivery terms (*id.* at 37). Based on ALZ's representations, and as a result of our examination of ALZ's selling records kept in the ordinary course of business, we are satisfied that the date of invoice should be used as the date of sale because it best reflects the date on which material terms of sale were established for ALZ's U.S. and home market sales.

Consequently, we disagree with the petitioners' claim that the order date (or the final change order date) is the most appropriate date of sale for ALZ's U.S. sales because the terms would not change after that date. The fact that terms were often changing subsequent to the original order, and even after an initial change order, suggests that terms may continue to change, in some instances as late as the invoice date. For sales that we reviewed, we found this to be true for basic terms of sale such as price, quantity, and product specification. See *TrefilARBED Sales Verification Report* at 32–37.

The Department has indicated that time lags between order date and invoice date may be a factor used in its analysis of the appropriateness of invoice date as date of sale. *See Steel Pipe from Korea,* at 32835. However, the circumstances in *Steel Pipe from Korea* differ markedly from those in this case. In *Steel Pipe from Korea,* ''{t}he material terms of sale in the United States are set on the contract date and any subsequent changes are usually

immaterial in nature or, if material, rarely occur.'' *Id.* at 32836. In this case, ALZ reported that there were numerous instances of changes in terms of sale after the initial order date, and, as noted above, we observed many such instances at verification.

We further disagree with the petitioners' reliance on *Steel Pipe from Korea* to support its argument that the longer time lag between the date of purchase order and the date of invoice for U.S. market, as compared to the time lag on the home market, justifies the use of order date as the date of sale. First, as noted above, in *Steel Pipe from Korea,* the Department verified that the changes to terms of sale were infrequent and not material in nature. Second, unlike this case, *Steel Pipe from Korea* involved an administrative review, where the Department makes monthly (rather than annual) weighted-average comparisons. Consequently, the differences in time lags between the markets were significant for comparison purposes. *Id.* In this case, the main impact of using a different date of sale would be on the number of U.S. sales analyzed.

Finally, we disagree with petitioners' assertion that ALZ's reported sales information was inaccurate and incomplete. During the course of sales verifications, the Department requested specific documentation from ALZ in support of its claim that the date of invoice should be used as the date of sale. ALZ complied with the verifiers' request for sales trace documentation (*see, e.g., TrefilARBED Sales Verification Report* at 15 and 32–37), and the Department utilized the purchase order, change order, and invoice information provided by ALZ as part of the basis for its decision on this issue. It is true that the use of quantity tolerances was only clarified at verification, but the lateness of this clarification did not in this instance hinder the Department's analysis with respect to date of sale. Furthermore, we do not observe any remaining ambiguities pertaining to ALZ descriptions of time lags between home market orders and invoices that would hinder our analysis in any way.

Regarding missing U.S. order confirmation numbers, the Department did not request such information in its October 8, 1998 supplemental questionnaire and, thus, it would not be reasonable to expect that ALZ must report it. As to the reporting of change order information, the record evidence indicates that ALZ did report the finalized order in its U.S. sales database (see *TrefilARBED Sales Verification Report* at 34, which indicates that for a sale involving a change order, the company reported the date of this final purchase order in the field ORDERDTE).

Regarding certain third country sales that respondent mistakenly reported in its home market sales database, we reject petitioners' assertion that this minor overreporting by ALZ constitutes grounds for adverse FA across the entire home market database. Neither the *ALZ Sales Verification Report* nor Verification Exhibit 6 suggests that more than a small portion of ALZ's total sales involved such arrangements, and we did not observe any indication at verification that other such third country sales had been included in the home market sales database. We have thus excluded home market sale observations #227 and #228 from the home market sales database.

Finally, no significant ambiguities remain with respect to U.S. billing adjustments reported by ALZ, and the Department has fully accounted for those adjustments in its calculations. *See, e.g., Final Sales Analysis Memorandum* at 4.

Comment 2: Level of Trade/CEP Offset. ALZ argues that the Department should reverse its preliminary decision to deny ALZ's claim for a CEP offset. ALZ notes that, pursuant to section 773(a), the Department will, to the extent practicable, base NV at the same level of trade as the EP and CEP. ALZ claims that in the case of CEP sales, the level of trade is based on the sale from the exporter to the affiliated importer, and that when U.S. sales and home market sales are not made at the same level of trade, an adjustment may be made to account for price differences between the levels of trade. ALZ notes that, because this difference cannot be quantified based on data on the record, the Department should grant ALZ a CEP offset.

ALZ states that, to evaluate differences in level of trade, the Department examines selling functions and the stages in the marketing process at each level of trade. ALZ asserts that the record of this investigation confirms that ALZ performs more selling functions on sales to its home market customers than to TrefilARBED (see ALZ's June 24, 1998, Section A response (''Section A Response'') at A–14, A–15, and Exhibit A/3.c, and its October 7, 1998, supplemental questionnaire response (''*October Supplemental Response*'') at Exhibit S2/17.a.). ALZ asserts that the Department was mistaken to conclude that ALZ's selling functions performed in connection with its sales to TrefilARBED are similar to functions performed by ALZ in connection with its sales to home market customers. ALZ also argues that its sales to its home market customers were at a more advanced stage of the marketing process than its sales to TrefilARBED, and that its indirect selling expenses for the former are higher than for the latter.

ALZ argues that page 6 of *ALZ Sales Verification Report* establishes that the most resource-intensive selling function, namely, sales negotiation with the final customer, is performed by ALZ for home market sales but not for U.S. sales. ALZ notes that page 11 of *TrefilARBED Sales Verification Report* indicates that ALZ and TrefilARBED agree on a certain aspect of the sales to the final customer, and this aspect is revised occasionally based on discussions between TrefilARBED and ALZ. ALZ states that Exhibit 12 from the *ALZ Sales Verification Report* demonstrates that ALZ's domestic sales department is larger and costlier than its non-EU export sales department.

ALZ further contends that it is responsible for handling customer claims for sales to home market customers, but generally it is not responsible for sales to TrefilARBED. ALZ states that, although its *Section A Response* at A–14 and Exhibit A/3.c indicate that ALZ handles all aspects of customer claims by Belgian customers, including the physical inspection of the merchandise and the negotiation and resolution of the claim, the *TrefilARBED Sales Verification Report* at 5 indicates that on U.S. sales, customer claims handled by TrefilARBED are negotiated with the customer by TrefilARBED.

Pointing to its *Section A Response* at A–14, A–15 and Exhibit A/3.c, ALZ also contends that it provides its home market customers with technical assistance and product instruction, which it does not provide to TrefilARBED. ALZ claims that, for U.S. sales, TrefilARBED assumes this function.

ALZ argues that the Department's preliminary analysis was based, in part, on an erroneous assumption that ALZ's selling expenses on sales to TrefilARBED were higher, on a per-kilogram basis, than its selling expenses on home market sales. ALZ asserts that this erroneous assumption was based on two factors. First, the Department's calculation was made on a per-kilogram basis rather than on a value basis. ALZ notes that it reported its indirect selling expenses on the value basis, and information on the record indicates that the expenses incurred by ALZ on home market sales were 22 percent higher than those incurred on U.S. sales. Second, ALZ argues that the Department's calculations incorporated

an error in ALZ's questionnaire responses, which the Department noted at verification; namely that the transfer price between ALZ and TrefilARBED, the value on which the expense was calculated in the earlier submissions, was actually stated in U.S. dollars per hundred weight rather than in Belgian francs per kilogram. ALZ states that, when this error is corrected, the average indirect selling expenses for ALZ's home market sales is higher than that for its U.S. sales, even when employing the Department's aforementioned flawed per-kilogram basis methodology.

Petitioners argue that ALZ did not demonstrate that the Department should reverse its preliminary decision that different LOTs do not exist in the home and U.S. markets. Petitioners state that, as the Department concluded prior to the preliminary determination, no meaningful differences in selling functions performed in the U.S. and Belgium exist and, therefore, no LOT adjustment is warranted.

Petitioners note that *TrefilARBED Sales Verification Report* at 7 contains ALZ's admission that ''[f]or TrefilARBED, very much the same process as for Belgian customers occurs through the invoicing stage* * *.'' Petitioners contend that ALZ conducts oversight of TrefilARBED's negotiations with U.S. customers, and TrefilARBED provides information about its pricing to ALZ. ALZ, petitioners argue, has U.S. selling functions in its fulfillment of TrefilARBED's orders to ALZ, its continuous communications with TrefilARBED, and its monitoring of intra-company marketing agreements. Petitioners challenge ALZ's assertion that it has fully transferred to TrefilARBED responsibility for handling claims on U.S. sales, noting that when a quality claim is filed by U.S. customers, although the process is initiated at TrefilARBED, it is ALZ that must trace the particular shipment, skid and heat that resulted in the problems that U.S. customers report, and it is ALZ that must account for the validity of a given claim and take corrective measures where its production is found to be at fault.

Petitioners further state that ALZ failed to provide the requested level of detail with respect to the extent of differences among various selling functions, such as a designation of ''high,'' ''medium,'' or ''low'' levels as well as explanation and support for such designations. Petitioners add that ALZ, in its case brief, has misleadingly attempted to re-characterize undocumented assertions by its case officials at verification to make a pretense that new material evidence of significantly different selling functions was verified by the Department at verification.

Regarding ALZ's quantitative analysis of the relative levels of indirect selling expenses incurred by ALZ with respect to both markets, petitioners categorize respondent's methodology as flawed. First, petitioners argue that absolute values do not constitute an appropriate basis for this comparison because at issue in this case is the relationship between expenses and the activities. Second, petitioners argue that the values cited by ALZ for the respective home market and U.S. sales are incorrect. Petitioners contend that ALZ limited the U.S. value to the general wages element of indirect selling expenses, while ALZ derived the home market value by including such items as cars and other expenses that are applicable to U.S. sales, in whole or in part. Petitioners also note that the total invoice value used in the denominator of the calculation of the indirect selling expense factor for home market sales includes values for unreported transactions (*i.e.*, those invoiced to parties in Belgium, but shipped outside of Belgium). Petitioners also state that ALZ's calculations of the indirect selling expense factors were based on inconsistent numerators and denominators: ALZ divided SSPC-specific expenses by all-product invoice values, when it should have divided all-product expenses by all-product invoice values. The lack of verified, accurate SSPC-specific numerators and denominators, petitioners note, prevents an SSPC-specific calculation of the factors in question. Petitioners state that when value-based ratios are re-calculated based on total expenses over total turnover, the indirect selling expense ratio for U.S. sales is greater than that for home market sales.

Finally, with respect to ALZ's indirect selling expense factor calculations, the only expenses ALZ lists that relate to home market sales but not to U.S. sales involve two rental cars and annual guest passes to the ALZ soccer box in Genk. Petitioners state that these items cannot constitute the basis for more advanced selling functions, and by extension, the basis for a more advanced stage of marketing in Belgium.

Department's Position: The Department addressed, in detail, the alleged differences in selling functions claimed by ALZ in the Department's *CEP Memorandum*, dated October 27, 1998, which was prepared for purposes of the preliminary determination. ALZ has not attempted to refute the Department's evaluations of those alleged differences, except as indicated below. In its case brief, ALZ claims that differences pertaining to the extent of its involvement in sales negotiation, claims, and technical assistance in the two markets establish that its home market sales are at a different and more advanced level of trade than its U.S. sales. We reject this conclusion for the reasons described below.

Regarding differences in sales negotiation, we found that ALZ's sales process for its home market customers is very similar to its sales process for TrefilARBED. *See ALZ Sales Verification Report* at 7. We noted at verification that ALZ negotiates contracts with TradeARBED Luxembourg governing the relationship between ALZ and TrefilARBED, and that these contracts are subject to renewal and revision. *See ALZ Sales Verification Report* at 7. In addition, according to TrefilARBED, there are occasional revisions to base prices and extras prices for transactions between ALZ and TrefilARBED, and that sometimes such revisions result from discussions between ALZ and TrefilARBED. *See TrefilARBED Sales Verification Report* at 13. Furthermore, because TrefilARBED buys subject merchandise from sources other than ALZ (*see, e.g., id.* at 12), it is reasonable to assume that ALZ makes some effort to encourage TrefilARBED to purchase from ALZ.

We found that ALZ is involved not only with sales negotiation for transactions between itself and TrefilARBED, but also with TrefilARBED's sales to unaffiliated U.S. customers. This involvement appears to be critical. As noted by ALZ in its case brief at 6, TrefilARBED and ALZ agree on a certain aspect of TrefilARBED's U.S. sales which, if made public, according to the respondent, ''would cause substantial harm to ALZ's competitive position'' (see the cover letter to ALZ's Case Brief of February 8, 1999).

Finally, any difference in size between the non-EU export sales department (which handles U.S. sales) and the domestic sales department (which handles home market sales) is not directly relevant to our analysis, given that it does not demonstrate different levels of activity for particular home market and U.S. sales.

In conclusion, we find that ALZ is involved in comparable levels of sales negotiation activity for its sales of SSPC to TrefilARBED as it is for its sales of SSPC to home market customers.

With respect to ALZ's argument that customer claims handled by TrefilARBED are negotiated with the customer by TrefilARBED, the

information first submitted by ALZ in its *Section A Response* at Exhibit A/3.c suggests that some claims made by U.S. customers could be made with ALZ, and that TrefilARBED may make claims with ALZ.

Regarding technical assistance, ALZ has not provided information with respect to the differences in the level of assistance provided to home market customers. ALZ's admissions that (1) it does not maintain any type of relationship with its customers (*see* page B–10 of ALZ's September 4, 1998, submission (''*September Supplemental Response*'')), and (2) it maintains a relationship with its customers with respect to customer category or end-use only to the extent that the customer will state what it will usually do with the material when first ordering from ALZ (*see October Supplemental Response* at 4–5) indicate that the level of technical assistance is not big. *ALZ Sales Verification Report* at 6 indicates that ALZ creates a customer-specific technical sheet for new customers, but it is not clear from the record that this function requires substantial effort or, furthermore, how typical it is for ALZ to gain new customers.

We agree with petitioners that there are a few categories of indirect selling expenses which ALZ includes in the buildup for its home market expenses but not for its U.S. sales. However, we disagree that the record evidence indicates that we should consider these expenses (*i.e.*, costs in connection with car rentals and a box at the local soccer stadium) as applicable to U.S. as well as home market sales. We consider these factors to be of minimal importance with regard to distinctions between levels of trade between markets.

ALZ argues that an error that it incorporated into its submission resulted in an overstatement of the ratio of ALZ U.S. indirect selling expenses to total U.S. sales (value or quantity), and that when this is accounted for, the revised ratio is less than the ratio of ALZ's home market indirect selling expenses to total home market sales (value or quantity). However, even if we were to correct such an error and utilize ALZ's methodology, we could not determine that different LOTs exist on this basis alone. First, ALZ's analysis is distorted because (1) it compares SSPC-specific indirect selling expenses to total (SSPC and non-SSPC) invoice values, and (2) it includes in total invoice the values associated with products invoiced in Belgium but shipped outside of Belgium. More importantly, even if a 22 percent difference existed, it would not be sufficient to warrant a determination of different LOTs, given that ALZ merely alleged that differences in numerous selling functions existed between both markets, but failed to demonstrate the relative magnitude of those differences or, in most if not all instances, that any differences existed at all. Consequently, ALZ failed to support its contention that different LOTs exist. Thus, consistent with our preliminary determination, we find that a CEP offset is unwarranted.

Comment 3: Foreign Brokerage/Handling and International Freight for U.S. Sales. Petitioners assert that ALZ had misreported its relationship to Transaf N.V. (''Transaf''). Petitioners note that, while ALZ falsely reported at page C–10 of *September Supplemental Response,* that it was not affiliated with Transaf, the Department verified that Transaf is five percent owned by ARBED and 95 percent owned by TradeARBED Luxembourg. Petitioners further indicate that, according to ALZ's submission, Transaf is primarily responsible for both foreign brokerage/handling and international freight for shipments to the Chicago area. Petitioners identify certain U.S. sales that were clearly destined to the Chicago area, based on the destination information provided in the U.S. sales database for various sales. Petitioners also note that the respondent did not provide the requested destination information for numerous U.S. sales, and that it is almost certain that Transaf was the broker for a significant portion of these sales as well. Petitioners indicate that the average freight charge of sales not identifiable as to the Chicago area is considerably above the average freight charge for virtually all sales identifiable as to the Chicago area, even though charges for transportation to Chicago, which is an inland destination, should be significantly higher than similar charges for east coast shipment. Consequently, petitioners argue, the misreporting of ALZ's relationship with Transaf provides grounds for the use of adverse FA, and petitioners state that the highest reported per kilogram expense for the field in question should be applied to all U.S. sale observations.

ALZ argues that petitioners have provided no support for their call for the application of adverse FA for ALZ's international freight and brokerage charges. ALZ contends that petitioners have exaggerated Transaf's role in U.S. sales. ALZ notes that it explained to the Department the reasons why only certain U.S. shipments were handled by Transaf. ALZ contends that petitioners are incorrect to assume that every sale to Chicago was shipped via Transaf when, in fact, not every sale in Chicago involved Transaf. Furthermore, ALZ argues, petitioners provide no support for their assertion that it is almost certain that Transaf was the broker for a significant portion of the sales for which no destination was reported. ALZ argues that the petitioners' arm's-length test is flawed because it is based on the assumption that the brokerage for all Chicago sales was done by an affiliated party. Furthermore, ALZ argues that the record demonstrates that shipments involving Transaf cannot be compared to other sales. ALZ states that the Department verified that most of Transaf's shipments are bulk shipments, while container shipments are not Transaf's primary concern. ALZ also states that the Department noted in *ALZ Sales Verification Report* at 28 that shipments to Chicago through Transaf were made in bulk shipments, typically without pallets. Therefore, ALZ concludes, the cost basis for shipments through Transaf were radically different from the cost basis for other shipments, both with respect to quantities shipped and with respect to packing materials.

Department's Position: We agree with the petitioners. In the Department's *Original Questionnaire* at A–4, we asked ALZ to report all of its affiliates, in addition to describing the nature of each affiliate's involvement with the product under investigation. In response, ALZ did not indicate that it was in any way affiliated with Transaf, a company from the same ARBED Group, which handles foreign brokerage and international freight for ALZ's U.S. sales. Subsequently, in its response to the Department's supplemental questionnaire, ALZ informed us that it was not affiliated with Transaf. *See September Supplemental Response* at C–10. ALZ reiterated this assertion at the outset of verification. *See ALZ Sales Verification Report* at 3. However, in the course of verification, when asked about the reference to Transaf on ARBED's website, ALZ finally admitted that it is affiliated with Transaf. *Id.* at 3–4. Because the record evidence is not clear to what extent brokerage/handling and international freight services were handled by Transaf, as opposed to other brokers, the Department is unable to identify with certainty the Transaf-related U.S. sale observations.

Section 776(a) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to

subsection 782(d) and (e), facts otherwise available in reaching the applicable determination. In addition, section 776(b) provides that an adverse inference may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information.

As detailed above, ALZ withheld information concerning its affiliation with Transaf, a company in charge of various brokerage/handling and international freight services for ALZ's U.S. sales. Moreover, ALZ did not admit that it was affiliated with Transaf until verification, when this relationship was established by the Department officials, as described in the verification report. *See ALZ Sales Verification Report* at 3. Moreover, contrary to ALZ's assertion, the Department did not verify that most of Transaf's shipments are bulk shipments or that container shipments are not Transaf's primary concern. Furthermore, the record does not demonstrate the extent to which certain pallets were used for shipments handled by affiliated brokers, as opposed to those handled by unaffiliated brokers, or the full extent to which variations in reported costs could reflect pallets or containerization costs. Claims relating to these issues were raised as late as verification and, thus, any supporting information in this connection would have been untimely under § 351.301(b)(1) of the Department's regulations. As a result, ALZ could not demonstrate, in a timely fashion, that (1) other brokers handled the brokerage/handling and international freight to the Chicago area, (2) Transaf was not involved with shipments to other destinations, or (3) Transaf charges to ALZ were at arm's length.

Under these circumstances, we were unable to identify which U.S. sale observations were handled by Transaf, and the absence of destination information for many of the sales further inhibits our effort to limit the application of FA to only a portion of the U.S. sales database. Furthermore, because ALZ failed to provide accurate and timely information regarding its affiliation with Transaf, despite our explicit requests, we find that it failed to cooperate to the best of its ability in providing this information and, therefore, an adverse inference is warranted. This is consistent with the Department's practice of applying adverse FA when certain requested information is withheld by an interested party in its questionnaire response, but discovered at verification. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile*, 63 FR 56613, 56620 (October 22, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Spain*, 63 FR 40391, 40396 (July 29, 1998). As partial adverse FA, we have assigned the highest reported per hundred weight brokerage/handling and international freight expense for the U.S. sales which can reasonably be assumed to have involved shipments to the Chicago area. For further explanation of the Department's methodology for this issue, see *Final Sales Analysis Memorandum* at 3.

Comment 4: Missing U.S. Warehouse Expenses. Petitioners allege that ALZ failed to report the U.S. warehouse expenses for some U.S. sales. According to petitioners, ALZ reported that TrefilARBED did not incur any warehousing for further-processed material during the POI. Petitioners observe, however, that if the merchandise leaves the warehouse without further manufacturing, ALZ is charged for storage. In addition, petitioners argue that the above sales have no reported warehouse expense, even though the data show that there were warehoused, rather than further manufactured. Consequently, petitioners argue, the Department should apply, as adverse FA, the highest single charge reported under the U.S. warehouse expense.

ALZ points to the Department's verification report which notes that when material is transferred to a customer at the warehouse/processing facility, TrefilARBED does not incur the warehousing expense. ALZ argues that if the Department uses FA, it should apply the average of all reported warehousing.

Department's Position: We partially agree with petitioners. While ALZ has indicated that there are circumstances in which TrefilARBED is not charged for warehousing, it is not clear that those circumstances were applicable to certain U.S. sales observations without a reported warehousing expense.

At the U.S. sales verification, TrefilARBED reiterated its explanations of U.S. warehousing expenses that had been originally provided in ALZ's questionnaire responses. *See TrefilARBED Sales Verification Report* at 12–13. TrefilARBED noted that, for certain warehousing locations, if the merchandise leaves the warehouse without having been further processed, TrefilARBED is charged a set per coil warehousing expense if it is shipped to the customer without further processing. If title to the merchandise is transferred by TrefilARBED to the customer at these facilities, TrefilARBED does not incur warehousing charges. Finally, if the merchandise at warehouses is further processed, TrefilARBED is not charged for warehousing.

For the few sale observations at one of the warehouses in question that did not involve steel that was further processed, and for which no warehousing expenses were reported, the record does not establish that title was transferred to the customer prior to leaving the warehouse. Consequently, to account for the missing warehouse expenses, we have decided to apply the set per coil fee amount for the warehouse in question as the basis for the unreported expense. Furthermore, in one instance involving a sale of unprocessed steel from a warehouse location not even covered by the aforementioned ALZ explanation regarding transfer of title, we have decided to apply a per pound storage expense charged by the warehouse in question for another transaction (see page 9 of Verification Exhibit 4 from the TrefilARBED sales verification).

Comment 5: Packing Costs. Petitioners argue that ALZ, despite repeated inquiries by both petitioners and the Department, reported and maintained distorted U.S. packing cost data in its U.S. sales databases, until the outset of verification, in an effort to minimize its preliminary duty rate. Petitioners state that ALZ was aware of the fact that ocean-going coils would require more expensive packing than those shipped to domestic customers.

According to petitioners, although ALZ acknowledged at the outset of verification that it had understated its U.S. unit packing costs (due to having characterized the reported figures as on a per kilogram basis when they in fact had been on a per pound basis), ALZ's reporting methodology continues to be flawed. Petitioners argue that ALZ calculated an average skid cost and divided it by the quantity of the particular product invoiced. Under this methodology, petitioners assert, the larger the coils packed, the less packing material and labor is absorbed. Petitioners note that larger coils would require more labor and material; thus, the use of an average skid cost is inappropriate.

Furthermore, petitioners argue that for U.S. sales, U.S. packing costs, for the most part, cannot be tied to values examined at verification. In addition, petitioners question why a particular sea-packing code does not apply to a single U.S. sale, and assert that certain calculated packing costs are nonsensical. Based on ALZ's assertion at verification (*see ALZ Sales Verification Report* at 28) petitioners

also question whether or not Transaf has passed along skid charges to ALZ. Assuming it has, petitioners query on what basis such charges could be presumed to have been at arm's-length. Finally, petitioners dispute ALZ's assertion that a certain packing type did not involve pallet costs.

Petitioners state that, given the small number of sales observations, ALZ could have provided transaction-specific packing costs. Petitioners state that, in light of ALZ's illogical constant-to-weight based allocations, its systematic misreporting of U.S. packing charges, its failure to report its affiliation with Transaf, and its unsupported claims regarding lack of pallet costs, the Department should apply adverse FA to all U.S. packing costs. Petitioners state that this should be based on the highest single reported U.S. packing charge. Alternatively, the Department should, at the least, apply that charge to all sales packed with no pallet costs and to all sales for which ALZ failed to report a packing type (*i.e.*, those ordered in 1997 but invoiced thereafter).

ALZ argues that its packing cost calculation methodology provides the most accurate measure of per-unit packing costs allowed by ALZ's records and accounting system, and accounts for cost differences between export and home market packing methods. Furthermore, ALZ states that the Department tied all of the reported packing costs directly to ALZ's income statement.

ALZ also argues that, when transaction-specific reporting is not feasible, the Department's regulations at section 351.401(a)(1) allow for expenses and price adjustments on an allocated basis. In addition, ALZ states that the Department neither requested transaction-specific packing costs, nor expressed any concern that the allocation methodology used by ALZ produced distorted results.

In addition, ALZ notes that, during verification, the company explained that the slight variation observed by the Department between reported and verified packing expenses was due to the truncation of the original per-unit packing expenses prior to their conversion to per-kilogram amounts.

Furthermore, ALZ argues that petitioners mistakenly infer which packing methods used include skids. Finally, ALZ asserts that for shipments made through Transaf, ALZ did not incur costs for pallets because shipments via Transaf are made in bulk.

Department's Position: We disagree with petitioners. First, the petitioners' assertion that ALZ intentionally understated its U.S. packing expenses in its initial responses in order to minimize the preliminary margin rate is unsubstantiated. The record evidence does not support the petitioners' claim that ALZ employed such a strategy, or that the magnitude of the initial understatement was such that it would have a major effect upon the margin.

Second, ALZ described its basic methodology for reporting packing expenses in its questionnaire responses, and the Department has found no grounds for rejecting either that methodology or the reported expenses specifically derived from that methodology. *See Section B Response* at 47. The Department conducted a thorough review of those reported expenses. At verification, the Department found no evidence that, for a given packing type, significantly greater labor or material expenses would be incurred for larger coils compared to smaller coils. *See ALZ Sales Verification Report* at 27. Contrary to petitioners' assertion, U.S. packing costs did, in fact, tie to values examined at verification, and the Department did not find any evidence of miscoding of packing type for U.S. sales. *Id.* at 28.

Moreover, contrary to the petitioners' allegation, there is no evidence on the record that any reported packing expenses for U.S. sales are understated. For almost all U.S. sale observations, the total reported packing expenses (kilograms times cost per/kg) is within the range of total per coil packing expenses. The only discrepancy in reported U.S. packing noted at verification involved rounding of numbers and, as such, it was minimal (see *ALZ Sales Verification Report* at 21). The remaining few U.S. sales observations with reported packing expenses outside the range of total per coil packing expenses involve disproportionately small quantities which may have been a fraction of an individual shipped coil and, therefore, would only absorb a portion of the total coil packing expenses.

Finally, the Department never requested that ALZ report transaction-specific packing expenses, and the petitioners provided neither rationale nor precedent for such reporting. With respect to any packing expenses that might have been incurred by Transaf in its brokering arrangements for ALZ, the Department has addressed Transaf-related expenses in Comment 3. Consequently, the Department has made no additional adjustments to ALZ's reported packing expenses.

Comment 6: Sales with no Reported Warehouse/Vendor Identification. Petitioners argue that ALZ did not report the warehouse location for a number of observations. Thus, none of the discussions and documentation for warehousing in the U.S. verification report could be tied to the U.S. sales database. As a result, the petitioners argue that the Department should apply to these sales, as adverse FA, the highest single charge reported under U.S. warehouse expense.

ALZ argues that (1) the information on the field WARELOCU is not a factor in the Department's antidumping duty calculation, and (2) the missing information did not hinder the Department's ability to verify the per-unit warehousing expenses for the selected sales.

Finally, ALZ states that the Department verified that TrefilARBED accurately reported the per-unit warehousing expense for two observations with no warehouse location. According to ALZ, FA is not warranted for TrefilARBED's warehousing expenses.

Department's Position: The Department agrees with petitioners that for some U.S. sale observations the warehouse location is missing. However, the Department did verify some sales for which the warehouse location was not reported and found no major discrepancies. *See TrefilARBED Sales Verification Report* at 36. Therefore, the Department will not use FA for sales with no warehouse location, but where a positive U.S. warehouse expense was reported.

As noted in Comment 4, ALZ provided two explanations for instances in which TrefilARBED would not have been charged for warehousing: if the material was further manufactured or if title to the material was transferred to the customer at the warehouse. However, we note that those explanations related only to warehousing performed by a particular company. Various U.S. sale observations involve merchandise that was warehoused, but for which ALZ failed to identify the warehouse location. While ALZ indicated that TrefilARBED did not incur any warehousing expenses for further processed material during the POI (see September Supplemental Response at 16), it did not state that transfer of title was relevant in the context of warehousing charges other than for the one particular warehousing company. Furthermore, no information exists on the record to indicate when title was transferred to the final customer.

Section 776(a) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such

information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to subsection 782(d) and (e), facts otherwise available in reaching the applicable determination. In addition, section 776(b) provides that an adverse inference may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information.

Despite having been given several opportunities, prior to verification, to explain its warehousing expenses in detail (see the *Original Questionnaire* under the U.S. warehousing expense field; the August 11, 1998 supplemental questionnaire at question 34; and the September 25, 1998 supplemental questionnaire at question 9), ALZ chose not to explain those charges for all of the warehouses it utilized. Moreover, the Department indicated in its U.S. sales verification outline that it was willing to review information regarding how the reported charges for warehousing of material not further processed were determined by the respondent for each of the six warehouses (*see, e.g., TrefilARBED Sales Verification Report* at 28). However, at verification, TrefilARBED failed to provide such information. In light of ALZ's failure to report the information repeatedly requested by the Department, we have determined that ALZ did not act to the best of its ability, and have assigned, as partial adverse FA, the highest reported U.S. warehousing expense to U.S. sales observations involving merchandise that was warehoused at an unidentified location, but for which no warehousing expense was reported. However, because ALZ stated that TrefilARBED did not incur any warehousing expenses for further processed material, we have not assigned any warehousing expenses to any such U.S. sale observations for which further manufacturing expenses were reported.

Comment 7: U.S. Brokerage and Handling Charges. Petitioners argue that, according to documentation examined by the Department, the value reported for U.S. brokerage and handling, for U.S. sales observation #30, was incorrectly derived. In addition, there is no discussion regarding the extent of the under-reporting. Therefore, petitioners argue that the Department should correct all of the reported U.S. brokerage and handling charges to reflect the under-reporting found in U.S. sales observation #30.

ALZ argues that the *TrefilARBED Sales Verification Report* provides no further discussion regarding the extent of the error found in U.S. sales observation #30, because the error was limited to this one sale. Furthermore, ALZ states that, at verification, the Department performed complete sale traces on 14 U.S. sale observations, where many charges including U.S. brokerage and handling charges were verified. Consequently, considering that the Department found only one discrepancy related to these charges, the application of FA of any kind is unwarranted.

Department's Position: We agree with ALZ that the use of FA is unwarranted for this expense. The Department reviewed numerous other sales traces and cited no discrepancies for those reported expenses. See *TrefilARBED Sales Verification Report* at 32–37. Consequently, the Department finds that petitioners' allegation is unsupported by record evidence and our verification findings. Therefore, the use of FA is unwarranted.

Comment 8: U.S. Indirect Selling Expenses. Petitioners argue that ALZ's calculation of the U.S. indirect selling expenses of its affiliate, TrefilARBED, is methodologically wrong. Petitioners assert that ALZ calculated these expenses using quantity as a basis, while the Department's questionnaire specifies that allocations should be based on the manner in which the seller incurs a given expense in the ordinary course of business. Petitioners assert that the rationale for a value-based calculation is that a higher-value product absorbs a greater absolute amount of costs. In support of this position, petitioners cite the following Department precedent: *Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review,* 63 FR 3085, 3088 (January 21, 1998) (''*Magnesium from China*''); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from India,* 60 FR 10545, 10547 (February 27, 1995); *Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China,* 62 FR 9160, 9164 (February 28, 1997); and *Frozen Orange Juice Concentrate from Brazil; Final Results of Antidumping Duty Administrative Review,* 55 FR 26721, 26723 (June 29, 1990). Petitioners note that a respondent must calculate G&A expenses on an annual basis as a ratio of total G&A expenses divided by cost of sales, and such methodology logically applies to the reporting of SG&A by a sales affiliate. Therefore, petitioners argue, TrefilARBED, the selling agent, must report its total SG&A expenses on the basis of value of its merchandise, just as ALZ as a factory reports its G&A expenses on the same basis.

Petitioners also note that ALZ, when given the opportunity to explain its allocation of indirect selling expenses by quantity rather than value, only stated that a value-based allocation would result in a disproportionate allocation to SSPC relative to other products. Petitioners argue that this claim is unsupported by any findings at verification or elsewhere on the record.

In addition, petitioners challenge the completeness of the reported total TrefilARBED indirect selling expenses. Petitioners state that ALZ based part of its argument for not including TrefilARBED's net interest expenses in the TrefilARBED indirect selling expense calculation on the fact that all of TrefilARBED's financial expenses pertain to short-term debt. *See September Supplemental Response* at C–23 and C–24. Petitioners argue that because the Department found at verification that only a portion of TrefilARBED's interest expenses pertained to short-term debt (*see TrefilARBED Sales Verification Report* at 29), the Department should include in TrefilARBED's indirect selling expenses, as partial adverse FA, the entire interest expense. Alternatively, petitioners argue that the Department should include in TrefilARBED's indirect selling expenses, as non-adverse FA, the portion of TrefilARBED's interest expenses that cannot be classified as short-term interest expenses.

ALZ asserts that quantity is properly used to determine the correct amount of SG&A expenses to include in the calculation. ALZ adds that a comparison of the indirect selling expenses reported for U.S. observations 13 and 18 clearly demonstrates that, under TrefilARBED's value-based methodology, higher value sales do absorb a greater amount of selling expenses.

ALZ states that the Department verified that TrefilARBED's sales department is organized by product line (*see TrefilARBED Sales Verification Report* at 2), and argues that TrefilARBED's resources are not applied to the sales value of specific product lines, but rather on the need to handle the tonnage sold of a particular line. For example, ALZ notes, the resources needed for selling stainless steel plate in coils are not determined by the value of the product, but by the need to meet the customer's demands in terms of quantity. Consequently, the most appropriate method to allocate a portion

of TrefilARBED's total SG&A expenses to subject merchandise, ALZ argues, is to use quantity as the allocation factor.

Regarding interest expenses incurred by TrefilARBED, ALZ argues that the Department does not request or use such expenses in its calculations of U.S. affiliate indirect selling expenses, and that it is, in fact, the Department's stated practice to exclude all types of interest expenses from the calculation of SG&A. *See Final Determination of Sales at Less Than Fair Value: New Minivans from Japan,* 57 FR 21937, 21956 (May 26, 1992). Furthermore, ALZ argues that there is no evidence on the record indicating that items excluded from the interest rate calculation were long-term in nature, and the other interest expenses, as explained at verification, do not pertain to short-term loans (*see TrefilARBED Sales Verification Report* at 29–30), but they refer almost entirely to other short-term financing expenses. ALZ argues that, if the Department erroneously chooses to include some portion of TrefilARBED's interest expenses in the calculation of indirect selling expenses, it should limit that amount to total interest expenses minus total interest expenses on short-term loans used in the interest rate calculation. ALZ provides a calculation of this remainder, and an allocation of that amount to subject merchandise.

Department's Position: We agree with petitioners that the Department should use a value-based allocation rather than a quantity-based one. ALZ was given ample opportunity to explain its allocation methodology prior to verification, and the information provided did not justify the calculation of the indirect selling expense factor based on quantity. The initial *Section C Response* at Exhibit C/48.2 simply presented the quantity-based calculation. When asked why it employed such an allocation methodology, ALZ stated that allocating the expenses based on value would result in an ''artificially high'' allocation to SSPC and ''would not be proportionate'' to the company's expenses in terms of other products. However, ALZ did not explain the basis for these assertions. *See September Supplemental Response* at C–22. When asked further about the rationale for its quantity-based allocation methodology, ALZ stated that the amount of selling expenses incurred by TrefilARBED bears no relation to the sales value of any particular product line. ALZ noted that salaries, the largest component of TrefilARBED's SG&A, are not determined or paid according to product line, and that some salaries are paid to personnel not even involved with sales. *See October Supplemental Response* at 9. ALZ indicated that the same holds for all of the other SG&A expenses, such as rent, management fees, medical insurance, etc., and concluded that ''[b]ecause all of TrefilARBED's sales are based on weight, quantity is the most accurate factor to use to allocate total SG&A expenses between subject and non-subject merchandise.'' *Id.* at 9–10.

As we explained in *Magnesium from China* at 3088, the Department's normal practice is to base calculations of SG&A factors based on value (cost), and ALZ has not provided a credible explanation of why the Department should utilize a quantity-based methodology in this instance. First, because it is clear that TrefilARBED's sales are based on price and value as much as they are on quantity, we find that ALZ's basic premise provides no basis for the use of a quantity-based allocation. Second, the fact that TrefilARBED's sales department is organized by product line does not demonstrate that a quantity-based allocation is appropriate. Finally, the record evidence does not demonstrate that TrefilARBED's resources are applied based on the need to handle the tonnage sold of a particular line. We note that ALZ's reference to U.S. sale observations #13 and #18 only shows that when a given indirect selling expense factor is applied to two sales, a higher indirect selling expense figure is calculated for the sale with the higher price. This does not negate the fact that the factor calculated by ALZ was based on a quantity-based allocation, rather than a value-based one. In conclusion, we agree with petitioners that the allocation should be based, in its entirety, upon value.

We disagree with ALZ that we do not include U.S. affiliate interest expenses in the calculation of indirect selling expenses. As the Department recently explained, it will include such interest expenses in the calculation of total indirect selling expenses to the extent that such expenses do not reflect the financing of inventory or accounts receivable, which would be reflected for reported sales in the imputed inventory carrying cost and imputed credit expense fields, and do not relate to non-subject merchandise. *See, also, Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews,* 64 FR 12927, 12931–32 (March 16, 1999) (''Korean Flat-Rolled Steel''). *See, e.g., Certain Fresh Cut Flowers from Colombia; Final Results and Partial Recission of Antidumping Duty Administrative Review,* 62 FR 53287, 53294 (October 14, 1997); *Certain Cold-Rolled Carbon Steel Flat Products from Germany; Preliminary Results of Antidumping Duty Administrative Review, 60 FR 39355* (August 2, 1995), unchanged in *Certain Cold-Rolled Carbon Steel Flat Products from Germany; Final Results of Antidumping Duty Administrative Review,* 60 FR 65264, 65281 (December 19, 1995); and *Notice of Amended Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled Carbon Steel Flat Products from Korea; Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,* 63 FR 20572, 20573 (April 27, 1998).

In this case, the interest expenses cannot be determined to have reflected the financing of inventory or accounts receivable, and are not identifiable as related solely to non-subject merchandise. In our September 25, 1998 supplemental questionnaire we requested that ALZ ''explain the extent to which the interest expenses incurred by TrefilARBED were associated with the financing of receivables, and the extent to which the interest expenses incurred by TrefilARBED were associated with non-subject merchandise.'' ALZ responded that most of the interest expense involves non-subject merchandise, but that it could not at that time indicate the extent to which these expenses related to subject merchandise. *See October Supplemental Response* at 11. Thus, in accordance with our practice, we decided to include them in the calculation of U.S. indirect selling expenses. However, because the Department did not find evidence that TrefilARBED's interest expenses related disproportionately to SSPC or to non-subject merchandise, we have concluded that these expenses, like other indirect selling expenses, should be allocated to SSPC based on the ratio of SSPC value to total product value.

We disagree with ALZ's assertion that interest expenses should not be included in the calculation of indirect selling expenses because of double-counting. As noted above, the Department has included U.S. affiliate interest expenses in the calculation of U.S. indirect selling expenses independent of our calculation of imputed credit expenses, even if the interest expenses in question constituted part of the basis for determining the interest rate used to calculate the imputed credit expenses. Regarding ALZ's assertion that virtually all of TrefilARBED's expenses involved short-term debt and, therefore, they should not be considered for inclusion in the calculation of indirect selling expenses, we note that the record evidence is not clear these interest

expenses reflected short-term debt. More importantly, the short-term or long-term nature of the debt is irrelevant in this context, given that either type may relate to subject merchandise and involve activities other than financing of inventory or receivables. Despite our request for more detail, the breakdown of the TrefilARBED interest expenses provided in the October *Supplemental Response* at Exhibit S2/13 does not indicate what portion of these expenses related to financing inventory or accounts receivable. Consequently, we agree with petitioners that we should include the entire interest expense figure in the calculation of total TrefilARBED indirect selling expenses, and have allocated them to subject merchandise on the same value-basis as that indicated above.

Finally, as noted in *TrefilARBED Sales Verification Report* at 2, some additional TrefilARBED expenses (related to insurance) should be included in the calculation of total indirect selling expenses. Those expenses have been included in the Department's recalculation for the final results.

Comment 9: Credit and Inventory Carrying Costs in Constructed Value. ALZ asserts that the Department inadvertently included credit and inventory carrying in its calculation of CV. ALZ notes that the statue directs the Department to calculate selling costs for CV value based upon the actual expenses of the company.

Petitioners did not comment on this issue.

Department's Position: We agree with ALZ. In accordance with section 773(e)(2)(A) of the Act, the calculation of CV should not include additions for imputed expenses. Consequently, we have changed our CV accordingly.

Comment 10: Changes to the Department's SAS Computer programing. First, petitioners assert that the kilogram/hundred weight conversion factor used in the preliminary determination margin calculation, 45.3579, should in fact be 45.3597.

Second, petitioners note that the Department should adjust its margin calculations to account for billing adjustment 3, which ALZ reported for the first time in its November 13, 1998 submission, but which was not used in the preliminary calculations. Petitioners state that this expense was reported as a negative value. Because it relates to further manufacturing the billing adjustment should be subtracted from (thereby increasing) the further manufacturing expense.

Third, petitioners assert that the Department should adjust its margin calculation program so that billing adjustments 1 and 2 are utilized in the calculation of net price for further manufacturing sales.

ALZ did not comment on the above issues.

Department's Position: We agree with petitioners, and have made the adjustments. However, we note that the formula cited by petitioners regarding the third change is not utilized in our calculations because ALZ coded all U.S. sales, whether or not further manufactured, as CEP sales, and adjustment for further manufacturing expenses is made in the CEP net price calculations.

In addition, the Department has also made changes pursuant to previous comments indicated above, and has also made some adjustments based on information noted at the sales verifications (see the *Final Sales Analysis Memorandum*). Adjustments to costs are discussed below and in the *Final Cost Analysis Memorandum*.

Comment 11: Unreported U.S. Sale. Petitioners argue that, as the Department noted during the TrefilARBED verification, ALZ failed to report one sale during the POI. Therefore, the Department should apply, as FA, the highest margin to the quantity of this sale.

ALZ argue that the Department should not apply adverse FA on the one unreported sale. ALZ notes that, if the Department uses invoice date as the date of sale, then this one sale will not be part of the POI. However, ALZ notes that if the Department decides to use order date as the date of sale, the Department should not apply FA for this one sale because the quantity and value are very small relative to the entire U.S. sales universe, and because ALZ has cooperated with the Department's requests for information throughout the investigation.

Department's Position: The Department has decided to use invoice date as date of sale in this case (see Comment 1). We verified that the one sale in question, which TrefilARBED identified at the outset of the TrefilARBED verification, was invoiced after the POI. *See TrefilARBED Sales Verification Report* at 3. Consequently, the sale in question is not needed for our analysis.

Comment 12: Major Inputs. ALZ argues that the hot rolling services provided by SwB, an affiliated company, occurred at prices that were above market prices and its affiliate's COP. Thus, according to ALZ, the Department has no grounds to adjust such transfer prices in accordance with sections 773(f)(2) and (3) of the Act. According to ALZ, the transactions used by the Department to determine market prices for the preliminary determination were not representative of those transactions with SwB. ALZ states that these transactions are not comparable because ALZ benefits from a large quantity contract with SwB for hot rolling services, while the unaffiliated customers use SwB's hot rolling services for small quantities only. According to ALZ, the appropriate market price is the price charged by its unaffiliated supplier, who performed the same hot rolling services as SwB for comparable quantities.

ALZ asserts that, if the Department continues to inflate ALZ's hot rolling service costs for the final determination, the percentage used to increase the costs should not be applied to the hot rolling fixed overhead field, the transportation costs within the hot rolling variable overhead field, or the percentage of merchandise hot-rolled by the unaffiliated party.

The petitioners contend that the Department correctly adjusted ALZ's affiliated hot rolling transactions for the preliminary determination. According to petitioners, to determine whether the transfer prices reflect arm's-length prices, the Department normally compares the transfer price to (1) the prices related suppliers charge to unrelated parties, or (2) the prices charged by unrelated suppliers to the respondent. Thus, the Department's reliance on prices SwB charges unaffiliated purchasers for its services is fully in accordance with its practice and the law. Petitioners claim that the best measure of market value for services SwB provided to its affiliate, ALZ, is in fact prices SwB charged unaffiliated customers for those same services. Petitioners contend that ALZ's claim that SwB hot rolled an uncomparable volume of material for unaffiliated customers is without merit. Petitioners maintain that the volume of material hot rolled by SwB for unaffiliated customers is commercially significant.

Department's Position: We agree with ALZ that the hot rolling services provided by its affiliate, SwB, occurred at above market prices and its affiliate's COP. Accordingly, we agree with ALZ that no adjustment is necessary. Section 773(f)(2) of the Act directs the Department to disregard transactions between affiliated parties if such transactions do not fairly reflect amounts usually reflected in sales of merchandise under consideration in the market under consideration. We consider the prices ALZ paid to its

unaffiliated supplier of hot rolling services to be the best indicator of market prices in this case. These prices are for comparable services provided by SwB, and are reflective of the market under consideration. Because we found, during verification, that sales between SwB and its unaffiliated customers represent sales to foreign customers (*see ALZ Cost Verification Report* at 18), we consider them not to be reflective of the market under consideration.

Comment 13: Affiliated Party Purchases. The petitioners argue that adverse FA should be applied to ALZ's COP due to ALZ's failure to disclose affiliated party purchases of certain raw materials it deems to be major inputs. According to petitioners, even though ALZ had over seven months to disclose that it purchased raw materials from affiliates, it was not until verification that this information was disclosed. Thus, according to petitioners, the Department was unable to adequately test these affiliated party raw material purchases to ensure that they occurred at arms-length prices and above its affiliated suppliers' actual COP. Given ALZ's numerous deficiencies, petitioners contend that the use of total FA is fully warranted. If the Department does not agree to apply total FA, petitioners propose the application of adverse FA on a product-specific basis. As adverse FA, petitioners contend that the Department should apply the highest reported cost for scrap and alloys by grade to all CONNUMs within that particular grade.

As further support for the application of adverse FA, petitioners claim that the undisclosed affiliated party purchases are major inputs as defined in the *Final Determination of Sales at Less than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan,* 61 FR 38139, 38162 (July 23, 1998), (''*LNPP's from Japan*''). According to petitioners, as set forth in *LNPP's from Japan,* a major input in this investigation accounts for five percent or more of any individual production stage, and any input that accounts for two percent of more of the total COP of the plate in coils.

For the final determination, ALZ argues that the Department should not consider the quantities of scrap and ferroalloys supplied by affiliated parties as representative amounts of a major input. ALZ contends that the amount of scrap and ferroalloys provided by affiliated suppliers for the subject merchandise is not a representative amount; therefore, ALZ did not disclose them as major input as requested by the Department's questionnaire.

Further, ALZ asserts that, for the final determination, if the Department decides to apply the major input rule to the affiliated purchases of raw materials, it should compare the transfer price to the market price. According to ALZ, at verification the Department had the opportunity to compare the transfer price to the market price, concluding that there were minimal or no differences between the prices charged by affiliated and unaffiliated suppliers. In addition, ALZ argues that, to compare scrap and ferroalloy prices for the same elements, the Department must take the price fluctuations into account and compare materials with similar chemical compositions.

With respect to the application of FA, ALZ maintains that, if the Department determines that FA must be applied, the FA adjustment should only be applied to the raw material inputs purchased from affiliated suppliers. ALZ notes that, for instance, in *Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China,* 62 FR 41347, 41356 (August 1, 1997), the Department decided that, because the respondent was cooperative in all other regards, it applied adverse FA only to one or two items. ALZ asserts that it has complied fully with all the Department's requests throughout the investigation. Thus, if the Department decides to apply FA, it should only be with respect to the raw material costs that are deemed deficient.

Department's Position: We agree with petitioners. In section D of the *Original Questionnaire,* we specifically instructed ALZ to identify all inputs obtained from affiliated parties. *See* Section D of the *Original Questionnaire,* at II.A.5. In its questionnaire response, ALZ stated that ''it receives inputs from two affiliated parties for the production of subject merchandise : Stahlwerke Bremen (hot-rolling mill) and ALBUFIN (annealing and pickling of hot-rolled coils).'' *See* ALZ's July 27, 1998, Section D response at 9. Subsequently, during the cost verification at ALZ's production facilities, the Department discovered that the company purchased raw materials from affiliated parties. *See ALZ Cost Verification Report* at 2. As a result of this untimely disclosure, the Department was not able to adequately test the affiliated party raw material purchases to ensure that they occurred at arm's-length prices and above the affiliated suppliers' actual COP.

Section 773(f)(3) of the Act provides that, where transactions between affiliated parties involve a major input, the Department may value the major input based on the COP if the cost is greater than the amount (higher of transfer price or market price) that would be determined under section 773(f)(2). Under this provision, the Department is required to review purchases from affiliated parties of major inputs in order to determine that they reasonably reflect a fair market value. In this instance, ALZ failed to provide in its questionnaire responses information regarding the company's purchases of raw materials from its affiliated supplier, thereby precluding the Department from adequately addressing this issue prior to verification. Furthermore, at verification, we obtained some raw material purchase price information from non-affiliates for certain raw materials. This information provided an idea of the significance of the unreported affiliated party raw material purchases; however, it was insufficient to verify that ALZ's purchases of these products from the affiliate were at fair market value.

Section 776(a) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to subsection 782 (d) and (e), facts otherwise available in reaching the applicable determination. In addition, section 776(b) provides that an adverse inference may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information.

As detailed above, ALZ withheld information concerning its purchases of raw materials from an affiliated party in its questionnaire responses. It was not until verification that the affiliated nature of the supplier relationship was discovered by the Department verifiers, as described in the verification report. *See ALZ Cost Verification Report* at 2. Under these circumstances, we were unable to obtain information needed to test affiliated party purchases because the data available to the Department did not allow the Department to isolate identical types of scrap and ferro-alloy purchases, in their entirety for the POI, to allow for a meaningful market value analysis. As a result, the Department is unable to determine whether the reported transfer prices for certain raw materials occurred at arm's-length prices. Thus, we determine that use of partial FA is appropriate in valuing the cost of certain raw materials in our calculation of the COP and CV.

Furthermore, in light of ALZ's failure to provide the data regarding purchases of inputs from affiliated parties, despite our specific instructions, we find that the company failed to cooperate to the best of its ability in providing this information and, therefore, adverse inferences in applying FA are warranted. This is consistent with the Department's practice of applying adverse FA when certain requested information is withheld by an interested party in its questionnaire response, but discovered at verification. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile,* 63 FR 56613, 56620 (October 22, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Spain,* 63 FR 40391, 40396 (July 29, 1998). As partial adverse FA, we have applied the highest cost for scrap and alloys reported within each grade, to its respective materials fields in the COP and CV databases, for CONNUMs with the particular grade. *See Final Cost Analysis Memorandum* at 1.

Because we cannot adequately evaluate whether the unreported transactions with ALZ's affiliates occurred at market prices, we are unable to reach the question of whether the affiliated party purchases of raw materials constitute major inputs. It should be noted, however, that we disagree with petitioners' characterization that the Department's threshold for what constitutes a major input is outlined in *LNPPs from Japan,* (*i.e.,* an input that represents at least two percent of cost of manufacturing (''COM'')). As stated in *LNPPs from Japan, i*n a typical case in which subject merchandise only requires a few inputs, a threshold of two percent for defining a major input may be low. However, in that case, the product required thousands of inputs with no single input representing a large share of the total product cost. In addition, the company involved in the LNPP investigation obtained numerous inputs from affiliated suppliers, the sum of which represented a substantial portion of the total COM of LNPP. Thus, as the Department explained in *LNPP's from Japan,* the product under investigation in that case is very unique and our determination in that case should not be used as precedent for the major input rule. As we explained in the Preamble to the Departments regulations, the determination of whether an affiliated party input constitutes a ''major input'' is made on a case-by-case basis, and the decision depends on the nature of the input, the product under investigation, and the nature of the transactions and operations between the producer and the affiliated suppliers. *See* Preamble at 351.407.

Comment 14: Non-Prime Products. ALZ argues that the Department should accept the revised costs for non-prime products, which according to ALZ, accurately reflect the actual costs incurred to produce these products. ALZ stated that, originally, it incorrectly reported only the direct materials costs associated with the production of non-prime products. According to ALZ, it is the Department's practice to assign the same cost to prime and non-prime merchandise. As evidence of this, ALZ points to *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Determination of Sales at Less than Fair Value,* 61 FR 35177, 35182, (July 5, 1996) (''*PET film from Korea*''), in which the Department relied on equal costing for the production of prime and off-grade film. Thus, according to ALZ, for the final determination, the Department should use the revised COP and CV databases submitted by ALZ for non-prime merchandise.

Petitioners contend that ALZ succeeded in ''capping'' its preliminary rate by intentionally misreporting costs for non-prime merchandise. However, to avoid the use of FA for the final determination, ALZ reported actual non-prime costs, which will lower the overall profit level. Therefore, petitioners assert that the Department should consider the impact of ALZ's preliminary and intentional misreporting of non-prime costs in its final determination.

Department's Position: We agree with ALZ that non-prime products should reflect the actual costs incurred to produce the products. The Department recognizes that the same costs are incurred to produce non-prime and prime products of the same chemical composition. As stated in *PET Film from Korea* at 35182, the only difference between prime and non-prime products is that at the end of the production process the products are classified. Since we have found no problems with the revised reported costs for non-prime merchandise, for the final determination, we used the revised COP and CV databases for non-prime products. We note that there is no support on the record for petitioners' claim that ALZ intentionally misreported its costs for non-prime merchandise.

Comment 15: Depreciation. ALZ alleges that, in the preliminary determination, the Department double-counted depreciation expense in its cost calculation. According to ALZ, the Department included the field for depreciation in the cost calculation even though this field was already captured in the fixed overhead field. ALZ asserts that, for the final determination, the Department should correct the double-counting of depreciation by excluding the depreciation variable in the calculation of COP and CV.

Petitioners contend that ALZ's argument rests on the assumption that the values in the depreciation field for COP and CV duplicate the depreciation elements in each fixed overhead field. According to petitioners, ALZ did not apply the depreciation ratio to the ''other variable overhead'' costs. Petitioners claim that ALZ changed without explanation, the ratio applied to ''other variable overhead'' between the first COP and CV databases submitted and the latest cost submissions. Given that ALZ changed its methodology without informing the Department, petitioners submit that adverse FA should be used to calculate depreciation in the final determination. Moreover, petitioners assert that, if the Department determines that the use of adverse facts available is not warranted, at minimum, the Department should use the COP and CV databases which conform with the narrative submitted by ALZ.

Department's Position: We agree with ALZ that the depreciation fields in the COP and CV databases should be excluded from the cost calculation. At the preliminary determination, the Department was unable to thoroughly evaluate whether all of ALZ's depreciation costs were fully captured . However, at verification, the Department reviewed several cost build-ups for selected products (see ALZ's Cost Verification exhibits 12, 13, and 14) and determined that the depreciation costs were included in the fixed overhead field.

The petitioners' argument that ALZ changed the ratio which was applied to other variable overhead is without merit. As the Department examined at verification, and as ALZ demonstrated in its exhibits, the depreciation ratio was properly applied to the variable processing costs within the ''other variable overhead'' field (see ALZ's Cost Verification exhibits 12, 13, and 14).

Comment 16: Extraordinary Costs. ALZ argues that the Department should revise its costs for a certain product to exclude extraordinary costs incurred outside the ordinary course of business. Specifically, ALZ points to the fact that in order to comply with customer specifications, which were not known at the time the production of the product

began, the merchandise had to be sent to an outside processor, thus causing ALZ to incur extraordinary costs for this product. ALZ states that in the ordinary course of business it would not incur the extra costs to produce the coil. In support of its position ALZ cites section 773 (b)(3)(a) of the Act, in which it notes the Department is required by the statute to rely on costs that ordinarily permit the production of the product in the ordinary course of business. In addition, as evidence of this ALZ points to *Stainless Steel Wire Rod from Taiwan; Final Determination of Sales at Less than Fair Value,* 63 FR 40461, 40467, (July 29, 1998) (''*Wire Rod from Taiwan*'') and *LNPP's from Japan,* 61 FR at 38153, in which the Department chose to exclude costs associated with unforseen events.

Petitioners contend that the Department should dismiss ALZ's claim of extraordinary costs and, instead, apply adverse facts available. Petitioners point out that, *LNPP's from Japan* and *Wire Rod from Taiwan,* the two cases cited by ALZ, dealt with accidents that were unexpected and unforeseen. Further, petitioners cite *Floral Trade Council* v. *United States,* 16 CIT 1014 (1992), under which the court established a two-prong test defining ''extraordinary'' events, namely, these events must be (1) infrequent in nature, and (2) unusual in occurrence. Petitioners argue that ALZ's series of business decisions giving rise to the additional costs do not rise to the general level of potential unpredictability of accidents, and have no credibility as unforseen, unpreventable and infrequent events.

Furthermore, petitioners argue that the Department should apply total adverse FA to ALZ's total costs or adverse FA to certain proprietary cost for ALZ, due to its failure to timely report affiliated party purchases for the extraordinary costs incurred by ALZ.

Department's Position: We agree with petitioners that the costs incurred by ALZ for outside processing are not extraordinary in nature. The Statement of Administrative Action (the SAA) at 832 states that ''when an unforeseen disruption in production occurs which is beyond management's control * * * (the Department) will continue its current practice such as using the costs incurred for production prior to such unforeseen event.'' The Department's long-standing practice with regard to ''unforeseen events'' is to treat expense items as extraordinary only when they are both unusual in nature and infrequent in occurrence. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India,* 63 FR 72246, 72251 (December 31, 1998) (the Department determined that death of the manager, flooding and crop disease were not extraordinary or unforeseen); *Notice of Final Determination of Sales at Less Than Fair Value: Static Access Memory Semiconductors from Taiwan,* 63 FR 8909, 8932–33 (February 23, 1998) (the Department denied a claim for an offset due to losses incurred because of a fire); and *Notice of Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina,* 60 FR 33539, 33549 (June 28, 1998) (the Department rejected respondent's claim for an offset due to restructuring costs). Because adjustments of this type are, by definition, extraordinary, the Department makes its decisions regarding extraordinary costs on a case-by-case basis.

In this case, ALZ needed services from an outside processor in order to meet special requirements of one of its customers. The decisions to use an outside processor to do what was needed to meet the requirements of its customer was a business decision, not an extraordinary expense. ALZ's claim that it does not normally use outside processors to perform the service at issue does not make it an extraordinary event. As the court held in *Floral Trade Council* v. *United States* 63 F.3d 318 (Fed. Cir. 1995), extraordinary events must be infrequent in nature and unusual in occurrence. We do not consider a steel company needing specialized services from an outside processor to be infrequent in nature or unusual in occurrence. In fact, we consider this to be a routine event for a company in the steel industry. Furthermore, ALZ's reliance on section 773(b)(3)(a)'s requirement that the Department must rely on costs that permit the production of the product in the ordinary course of business is misplaced. We do not agree that the outside processing cost incurred by ALZ in order to meet its customer's requirements was outside the ordinary course of business. The obligation to comply with customer specifications throughout a production process is a normal part of doing business and does not place it outside of the ordinary course of business. Thus, for the final determination, we are not excluding the outside processing costs incurred to produce the product in question.

We disagree with the petitioners' assertion, however, that we should apply total adverse FA in calculating ALZ's dumping margin as a result of ALZ's acquiring these proprietary services from an affiliate. The Department was informed within a week prior to verification that the extraordinary costs incurred by ALZ were performed by an affiliated party. We have no reason to believe that the transfer price between ALZ and its affiliate for these services did not occur at arm's-length prices. The same affiliate that provided ALZ with hot rolling services also provided the proprietary service at issue. At verification we tested the appropriateness of the transfer prices between ALZ and its affiliate for the hot rolling services, noting that no adjustment was necessary (see Comment 12 above and *ALZ Cost Verification Report* at 18). We do not consider it necessary to test every transaction with an affiliate in order to conclude that all transactions with the affiliate can be relied upon. In this case, based on our findings at verification, we conclude that the transfer prices between ALZ and its affiliate for the proprietary services at issue can be relied upon based on the results of our testing of the hot rolling transfer prices between ALZ and the same affiliated supplier (*id.*).

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 Belgium that are entered, or withdrawn from warehouse, for consumption on or after November 4, 1998 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
ALZ, N.V	9.86
All Others	9.86

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S.

industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, 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: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7537 Filed 3–30–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–830]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan

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

EFFECTIVE DATE: March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Gideon Katz or Michael Panfeld, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5255 or (202) 482–0172, respectively.

The Applicable Statute

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

Final Determination

We determine that stainless steel plate in coils (''SSPC'') from Taiwan is being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the amended preliminary determination (*Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan, (Amended Preliminary Determination*) (63 FR 66785, December 3, 1998), the following events have occurred: We conducted a cost verification of YUSCO's questionnaire response from November 30–December 4, 1998, and a sales verification of YUSCO from December 14–17, 1998. We also conducted verifications at Ta Chen Stainless Pipe, Co. from December 18–21, 1998 and Ta Chen International from January 12–15, 1999.

Petitioners and respondents submitted case briefs on February 8, 1999. On February 11, 1999, petitioners (the only party requesting a public hearing) withdrew their request for the public hearing. Petitioners and respondents submitted rebuttal briefs on February 16, 1999.

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this investigation are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1997, through December 31, 1997.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Facts Available

We determine that the use of facts available is appropriate for YUSCO in accordance with section 776(a) of the Act, because it failed to report all of its home market sales made during the POI.

Where necessary information is missing from the record, the Department may apply facts available under section 776 of the Act. Further, where that information is missing because a respondent has failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the Department to use facts available that are adverse to the interests of that respondent, which may include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. As described below in detail in Comment 1, YUSCO did not act to the best of its ability in the reporting of its home market sales. We have chosen the highest of the calculated petition margins for Taiwan of 8.02 percent as total adverse facts available.

Middleman Dumping

1. Dumping Calculation

As a result of further analysis and comments raised by interested parties, we have changed our middleman dumping methodology. As in our *Amended Preliminary Determination,* for the final determination, we have determined whether a substantial portion of Ta Chen's U.S. sales were below acquisition costs by comparing the total value of stainless steel plate sold below acquisition cost to the total value of all stainless steel plate sales made by Ta Chen during the POI. We first identified sales below acquisition cost by comparing Ta Chen's resale price for stainless steel plate sold during