

*Legal Authority:* Title 13 United States Code, Sections 8 and 9.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 16, 2000.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-824]

#### Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce

**ACTION:** Notice of final results of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products from Japan.

**SUMMARY:** On August 16, 1999, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. This period of review ("POR") is from August 1, 1997 through July 31, 1998. This review covers two manufacturers/exporters: Nippon Steel Corporation ("NSC") and Kawasaki Steel Corporation ("KSC"). We gave interested parties an opportunity to comment on our preliminary results. As a result of these comments, we have made changes to

our analysis. Therefore, the final results differ from those presented in the preliminary results of review.

**EFFECTIVE DATE:** February 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Contact Doreen Chen, Brandon Farlander, or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington DC 20230; telephone: (202) 482-0408, (202) 482-0182, or (202) 482-3818, respectively.

#### SUPPLEMENTARY INFORMATION:

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are 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's regulations are to 19 C.F.R. part 351 (1999).

#### Background

On August 16, 1999, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 44483 (August 16, 1999) ("Preliminary Results"). We gave interested parties an opportunity to comment on our preliminary results. For NSC, we received written comments from petitioners (Bethlehem Steel Corporation and U.S. Steel Group (a unit of USX Corporation)) on September 15, 1999. We received a rebuttal brief from NSC on September 22, 1999. For KSC, we received written comments from petitioners and KSC on September 15, 1999. We also received a rebuttal brief from petitioners on September 22, 1999. We have now completed this administrative review in accordance with section 751(a) of the Act.

#### Scope of Review

This review covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed

layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

Also excluded are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including

coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate; (4) carbon steel flat products measuring 1.84 mm in thickness and 43.6 mm or 16.1 mm in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys; and (5) carbon steel flat products measuring 0.97 mm in thickness and 20 mm in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

#### Fair Value Comparisons

To determine whether sales of subject merchandise from Japan to the United States were made at less than fair value, we compared the Export Price ("EP") to the Normal Value ("NV"), as described in the "Export Price" and "Normal Value" sections of the preliminary results of review notice. In addition, we made the following changes from the preliminary results: For KSC, we adjusted VOH and VCOM. See Comment 4 below. Also, for KSC, we adjusted G&A to include certain items. See Comment 5 below.

#### Interested Party Comments

##### NSC

*Comment 1:* Petitioners argue that the Department should reject home market sales to a certain customer because the use of the sales to this customer results in unfair sales comparisons between EP and NV. Petitioners note that the number of respondent's home market (HM) sales matched to U.S. sales in which the customer is the same for both

markets presents a "remarkable situation." Petitioners note as well that for all such sales, the U.S. customer was also the importer of record. Additionally, petitioners note that the parent company of the U.S. customer was involved in the price negotiations with NSC.

Petitioners argue that it is a fundamental principle of the antidumping law that "in determining whether subject merchandise is being, or is likely to be, sold at less than fair value, a fair comparison shall be made between the export price or constructed export price and normal value," citing section 773(a) of the Trade Act, as amended (19 U.S.C. 1677b(a)). Petitioners argue that a "fair comparison" cannot exist where the margin is based on U.S. sales that are compared with sales to the same customer in the home market and where both seller and customer have a "direct financial interest in masking any dumping that may otherwise be taking place."

Petitioners stress that such comparisons are inherently unfair because the prices are unreliable. Petitioners note that the antidumping statute and the Department's regulations and practice "go to great lengths to ensure that the prices and in the home market and prices in the U.S. market are reliable and representative of sales in each market," citing section 773(a)(1)(B) of the Act (19 U.S.C. 1677b(a)(1)(B)) (requiring that normal value be based on sales made in the ordinary course of trade); section 773(a)(2) of the Act (19 U.S.C. 1677b(a)(2)) (providing that sales intended to establish a fictitious market shall not be used in determining normal value); section 773(f)(2) and (3) of the Act (19 U.S.C. 1677b(f)(2) and (3)) (ensuring that the cost of a major input not be valued at the transfer price if such price is below market value or less than cost); section 772(d) of the Act (19 U.S.C. 1677a(d)) (requiring certain adjustments to U.S. price where the merchandise is sold through an affiliated U.S. supplier); and 19 C.F.R. section 351.403 (c) (providing that sales to affiliated parties that are not at arm's length prices not be used in determining normal value).

Petitioners argue that in the final results of the fourth administrative review of this proceeding, the Department acknowledged that sales to the same customer in both markets could support the rejection of such comparisons on "fair comparison" grounds if other factors were present, citing *Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Antidumping Duty*

*Administrative Review*, 64 FR 12951, 12953 (March 16, 1999) ("Fourth AD Final Results"). Petitioners argue that the totality of circumstances in this review demonstrates that the comparisons based on sales to the same customer in both markets are unfair.

First, petitioners argue that the percentage of the comparisons based on sales to the same customer supports a finding that such comparisons are unfair. Second, petitioners argue that the customer at issue was the importer of record for the U.S. sales, and thus has a direct financial interest in ensuring that the margins on its sales would be low. Third, petitioners assert that NSC's home market prices to the customer at issue differs from home market prices to other customers for the same merchandise.

Petitioners stress that it is not necessary for the Department to find evidence of actual price manipulation in order to conclude that the comparisons in the margin calculation are unfair and improper. Petitioners assert that the Court of International Trade ("CIT") has held that it is sufficient if the record shows a "potential for price manipulation," citing *Koenig & Bauer-Albert AG, et al. v. United States*, 15 F.Supp. 2d 834, 840 (CIT 1998) and *Koyo Seiko Co. v. United States*, 936 F. Supp. 1040, 1048 (CIT 1996).

Petitioners argue that the Department's conclusion in other cases that "it is permissible for a respondent to reduce or eliminate dumping either by raising its U.S. prices or by lowering its home market prices" of subject merchandise does not apply to the instant case, citing *Fourth AD Final Results*, 64 FR 12594, which in turn cites *Furfuryl Alcohol from Republic of South Africa*, 62 FR 61084, 61085 (November 14, 1997). Petitioners assert that in the ordinary case, such increases or decreases in price represent the respondent's selling practices in two different markets. Petitioners assert that in the instant case, by contrast, any such adjustments to price on merchandise sold to the customer at issue only represents NSC's selling practices to the customer at issue.

Respondent argues that petitioners' argument (that the Department should exclude the home market sales at issue because they tend to reduce or eliminate a dumping margin) turns the antidumping statute "on its head." Respondent argues that any changes in pricing practices over time which reduce margins in fact represent the intended result of the antidumping statute. Respondent notes that the Department has stated (and in fact reaffirmed in the fourth review of this

proceeding) that: "[T]he purpose of the antidumping duty statute is to offset the effect of discriminatory pricing between U.S. and home markets. Thus, while there is no statutory requirement that a firm must act to eliminate price discrimination, if it decides to do so, how it does so is within its own discretion \* \* \* A firm may also choose to increase its U.S. prices and lower its home market prices at the same time." See *Taper Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan* ("TRBs from Japan"), 62 FR 11825, 11831 (March 13, 1997).

Respondent disagrees with petitioners' attempt to distinguish the instant review from the above cases and from the prior review. Respondent dismisses as baseless and irrelevant petitioners' contention that it is significant in this case that NSC's selling practices have not changed with respect to two different markets, but instead have changed with respect to one customer that has a direct financial stake in eliminating or reducing the margin. In this respect, respondent argues that petitioners offer no citation to the antidumping statute, regulations, or legislative history to support this distinction. Furthermore, respondent argues that petitioners' argument fails to acknowledge the distinction between the customer's physical location versus the ultimate country of destination. That is, respondent claims that the antidumping law considers NSC sales to the customer at issue to consist of sales to both the U.S. and home markets.

Finally, with regard to the potential for price manipulation, respondent argues that petitioners' allegations ignore the fact that the Department verified that NSC and the customer at issue are unaffiliated parties and that their transactions are at arm's-length. Respondent maintains that verification results show that any price changes since 1991 of NSC merchandise affected not only sales to the customer at issue, but also to other customers as well.

Respondent objects to petitioners' interpretation of the term "fair" in the statute. Respondent claims that "fair" under section 773 of the Act refers to the technical calculations that produce the essential terms "EP or constructed export price (CEP), and NV" of such a comparison. Respondent argues that "fair" signifies that calculations were made according to the relevant statutory criteria set forth in sections 772 and 773. Thus, respondent contends that a challenge as to whether a comparison is

"fair" must allege that the Department has not followed the methodological approach set forth under sections 772 and 773 of the Act.

Respondent contends that the factual record does not support petitioners' assertions regarding a potential for price manipulation. Respondent argues that in past cases, including the fourth review of this case, the Department has held that comparisons between sales to the same customer in two markets are valid, citing *Fourth AD Final Results*, 64 FR at 12954. Respondent asserts that in *Color Television Receivers, Except for Video Monitors, From Taiwan*, 55 FR 47093, 47100 (November 9, 1990) ("*Color Television Receivers*"), the Department agreed with the respondent's position that "nothing in the antidumping law or in the Department's regulations directs or authorizes the Department to ignore valid third-country sales for purposes of calculating normal value simply because those sales are made to a third-country purchaser who is related to the U.S. purchaser." *Id.*

Moreover, respondent argues that in the fourth review, the Department rejected petitioners' claim that NSC had a commercial incentive to manipulate prices in both markets, holding that "the small number of sales to the customer at issue in the U.S. in comparison to the number of sales to the same customer in the home market lessens any commercial incentive for the respondent to suppress the prices of its comparatively higher volume home market sales in order to eliminate hypothetical margins in the much smaller U.S. market." See *Fourth Review Final Results*, 64 FR at 12955.

Respondent further argues that contrary to petitioners' claims, it is not remarkable that the customer was the same party or related to the party that was the importer of record. Respondent asserts that these factual circumstances exist in a number of antidumping cases. In addition, respondent disagrees with petitioners' claim that NSC's negotiations with the customer at issue or its customer's affiliate were improper or suggested evidence of manipulation. Respondent argues that the record shows that the sales processes criticized by petitioners are the same as those involving other customers and that the same circumstances existed in the fourth review.

*Department's Position:* As an initial matter, we note that petitioners raised, and the Department addressed, a number of these same arguments in the fourth review of this proceeding, and the facts on the record in the fourth review were significantly comparable to

the facts on the record of this review. Specifically, as in the fourth review, there are a significant number of sales to one customer in both the home and U.S. markets; for these sales, the U.S. customer was also the importer of record; and the Japanese parent was involved in price negotiations with NSC. In the fourth review, the Department addressed petitioners' arguments that use of these home market sales: (1) would result in unfair comparisons; and (2) would be improper because the potential for price manipulation existed. The Department continues to disagree with these arguments, as we did in the fourth review for the reasons stated therein. *Fourth AD Final Results*, 64 FR at 12953-54. We particularly emphasize our full agreement with NSC's position that the "fair comparison" language of the antidumping law is not a "stand alone provision." Rather, as NSC expressed it: "far from being an open-ended term referring to some ill-defined notion of equity \* \* \* the 'fair' in 'fair comparison' is a term of art that refers in shorthand to the technical calculations that produce the essential terms of such a comparison." We have concentrated our response in this review primarily on the new arguments raised by petitioners.

First, in constructing an argument that the sales comparisons at issue are improper and unfair, petitioners assert that NSC's home market prices to the customer at issue differ from home market prices to other customers for the same merchandise. This argument is tantamount to petitioners' companion argument that the sales are outside the ordinary course of trade. Therefore, we have addressed this argument in Comment 2 below.

Second, petitioners assert that this case differs from most cases with respect to a respondent's change in pricing practices in both markets, because in this case (in contrast) the sales to both markets are made to the same customer. We do not agree with petitioners that this distinction is compelling. As respondent has also noted, we find no support in either the antidumping statute, regulations, or legislative history for this distinction. In fact, as demonstrated by the fourth review, the Department's practice is to consider NSC's sales to the customer at issue in both the U.S. and home markets. The Department's discussion in *TRBs from Japan*, noted above by respondents, is particularly instructive in that the Department has identified U.S. prices and home market prices as the items which a respondent may wish to change in order to act to eliminate

price discrimination. This is, of course, because the purpose of the antidumping statute is to remedy the effect of discriminatory pricing between U.S. and home markets. In this context, the identity of the customer or customers affected by the respondent's altered pricing practices is not by itself a reason to disregard home market sales, except as otherwise contemplated under the statute (e.g., affiliated party transactions).

*Comment 2:* Petitioners claim that the sales made to the customer at issue should be rejected because they constitute sales that are outside the ordinary course of trade. Petitioners submit that under the statute, the Department may reject various categories of home market sales because they are found to be outside the ordinary course of trade. Petitioners contend that although the Statement of Administrative Action ("SAA") sets forth a variety of examples of sales that are outside the ordinary course of trade, the Department has the express authority to "consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market." See SAA, reprinted in 1994 U.S.C.C.A.N. 4040, 4171 ("SAA"). Petitioners argue that the statute provides no limits on the number of sales that may be excluded from normal value. Petitioners assert that it is the condition and circumstances, not the volume, of sales that renders a set of sales to be outside the ordinary course of trade. Petitioners claim that the Department has broad authority to "consider other types of sales and transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market." *Id.* Petitioners cite the SAA which states that: "[T]he Administration intends that Commerce will interpret section 771(15) in a manner which will avoid basing normal value on sales which are extraordinary for the market in question, particularly when the use of such sales would lead to irrational or unrepresentative results." *Id.* Petitioners quote the Department's statement that its authority in determining whether sales meet the "ordinary course of trade" standard is "far-reaching." Petitioners assert that the Department, in conducting an inquiry relating to course of trade, examines all of the facts in their entirety to determine if sales were made for "unusual reasons" or

under "unusual circumstances," citing *Final Results of the Administrative Review: Electrolytic Manganese Dioxide from Japan*, 58 FR 28551, 28552 (May 14, 1993); and *Final Results of the Administrative Review: Gray Portland Cement and Clinker from Mexico*, 63 FR 12764, 12771 (March 16, 1998).

Petitioners assert that the Department recognized in the fourth administrative review that sales to a particular customer in the home market could be rejected as outside the ordinary course of trade if such sales are shown to be "extraordinary transactions in relation to other sales transactions." *Fourth AD Final Results*, 64 FR at 12955. Petitioners maintain that in the fourth review, the Department failed to find that certain sales were outside the ordinary course of trade, stating that: "[T]here is \* \* \* no record evidence demonstrating any significant distinctions between the sales at issue and other home market sales. In particular, there is no evidence of a discernable pattern of lower sales prices to this customer as compared to NSC's other customers who purchased similar merchandise." *Id.* By contrast, petitioners assert, the record in the instant case does establish a significant difference between NSC's home market sales to the customer at issue and its sales to other purchasers. Petitioners maintain that the record shows a "discernable pattern of lower home market sales prices" to the customer at issue when compared to home market sales of similar merchandise to other customers. Petitioners argue that the Department considers whether selling prices to a particular customer are comparable to selling prices to other purchasers where the net prices to the customer in question are, on average, 99.5 percent of the prices to the other customers for the same merchandise, otherwise referred to as the "arm's-length test." Petitioners assert that the "arm's-length test" is used to analyze sales to affiliates in the home market, and has repeatedly been upheld by the courts as an appropriate and reasonable test to determine price comparability, citing *SSAB Svenskt Stal AB v. Bethlehem Steel Corp.*, 976 F. Supp. 1027, 1030-31 (CIT 1997); *Usinor Sacilor v. United States*, 872 F. Supp. 1000, 1004 (CIT 1994). Petitioners claim that application of the arm's-length test reveals that, on a CONNUM-by-CONNUM basis, NSC's prices to the customer at issue are on average below 99.5 percent of its prices to its other customers. While petitioners acknowledge that the arm's-length test is used by the Department to analyze

transactions between affiliated parties, petitioners argue that the arm's-length test is an appropriate test of price comparability and has been upheld as such by courts.

Petitioners find baseless NSC's claim, in an August 3, 1999 letter to the Department, that NSC's sales practices with respect to the customer at issue are not out of the ordinary because they are consistent with the behavior that existed between the two parties in 1991 before the antidumping order was issued. Petitioners argue that NSC's claim, which rests on data supplied in Sales Verification Exhibit 37, fails for several reasons. First, petitioners claim that the comparison in Exhibit 37 was based on the average prices for all products, rather than on a CONNUM-by-CONNUM basis, as in the arm's-length test. Second, petitioners argue that in Exhibit 37, NSC compares sales to the customer at issue only to sales to other customers from the same industry as the customer at issue, thereby omitting all other sales. Petitioners further argue that there is nothing in the record to support the claim that prices to customers from the same sector as that of the customer at issue are either at a different level of trade, or otherwise not comparable to the prices to any other customer. Third, petitioners argue that it is not clear how NSC determined which sales were destined for these customers from the same sector. Fourth, petitioners argue that, at verification, NSC was unable to re-create its sales data as it existed in 1991 because it did not maintain all the necessary records.

Respondent argues that the law and verification results demonstrate that NSC's sales to the customer at issue are in the ordinary course of trade, and therefore, the Department must include these sales in the NSC's home market sales database, as the Department did in the fourth review. Respondent asserts that, in determining whether home market sales are in the ordinary course of trade, the Department "must evaluate not just one factor taken in isolation but rather \* \* \* all the circumstances particular to the sales in question," citing *CEMEX, S.A. v. United States*, 133 F.3d 897, 900 (Fed. Cir. 1998). Moreover, respondent asserts, the burden of proving that sales are outside the ordinary course of trade lies with the party making the assertion, citing *Antidumping Duties, Countervailing Duties: Final Rule*, 62 FR 27296, 27299 (May 19, 1997).

Respondent argues that petitioners make no allegation that NSC has engaged in any of the enumerated list of practices that are presumptively deemed to constitute conditions and practices

outside the ordinary course of trade as prescribed in section 771(15) of the Act, nor have petitioners alleged that the sales at issue are characterized by factors similar to those that have been found to constitute sales outside of the ordinary course of trade in other cases, citing *CEMEX*, 133 F.3d at 901–2; *Sulfur Dyes, Including Sulfur Vat Dyes, From the United Kingdom: Final Results of the Antidumping Administrative Review*, 58 FR 3253, 3256 (January 8, 1993); and *Manganese Metal from the People's Republic of China: Final Results of the Antidumping Administrative Review*, 60 FR 56045, 56046 (November 6, 1995).

Respondent argues that petitioners rely on a single factor to support their claim that the sales are outside the ordinary course of trade—that NSC's sales prices to the customer at issue differ from those to other customers. Respondent argues that this factor alone does not meet the legal standard enunciated in the statute, regulations, and case law in support of the contention. Respondent finds that petitioners' reliance on one factor, without taking into account other relevant facts (such as long-term relationship or largest customers) is inappropriate.

Further, respondent maintains that petitioners' analysis regarding NSC's pricing patterns with respect to the customer is based upon an inappropriate methodology. Respondent finds inappropriate petitioners' use of the "arm's-length test" for purposes of evaluating whether NSC's sales to the customer at issue were made in the "ordinary course of trade." Respondent argues that the arm's-length test applies only to sales between affiliated parties and is not relevant for purposes of determining whether NSC's sales to the customer at issue are in the ordinary course of trade. First, respondent argues that the arm's-length test does not demonstrate pricing patterns, as argued by petitioner; rather, it measures a single average price of one customer against a single average price for a pool of customers at a particular point in time. Second, respondent argues that the arm's-length test does not provide a meaningful way to determine whether sales to the customer at issue were comparable to sales to customers in similar market segments. Respondent contends that the arm's-length test pools the entire universe of customers with common CONNUMs. Respondent maintains that the definition of CONNUMs is fairly broad, and thus the universe of sales examined under the arm's-length test can encompass more than one market segment. Respondent

claims that price fluctuations between market segments are common and expected in the ordinary course of trade. Third, respondent argues that the petitioners' application of the arm's-length test to unaffiliated customers ignores commercial realities that may significantly and legitimately affect pricing. Respondent maintains that the Department's questionnaire even contemplates such different pricing considerations, as evidenced by the various fields for various pricing elements in its computer instructions for reporting sales. Finally, respondent argues that under petitioners' methodology, sales to a number of other unaffiliated customers would also have to be considered outside the ordinary course of trade. Respondent therefore concludes that using petitioners' methodology may lead to eliminating viable sales, leaving only the highest-priced home market sales as normal value.

Respondent further argues that the Department conducted an exhaustive review of the sales to the customer at issue and confirmed that they are bona fide arm's-length transactions. Respondent argues that the Department both verified and issued questionnaires regarding various aspects of NSC's relationship with the customer at issue. In particular, at verification, the Department examined a chart which compares NSC's corrosion resistant steel sales to the customer at issue and to other customers (from an industry sector similar to the customer at issue) in 1991 and during the fifth review period. Respondent argues that this chart, provided as Verification Exhibit 37, demonstrates that NSC's sales and pricing practices with respect to corrosion resistant steel destined to the customer at issue are consistent with its normal business behavior that existed before the corrosion resistant steel antidumping petition. Respondent maintains that the Department verified that the chart provided in Verification Exhibit 37 reconciled to NSC's audited financial statements and the Department found that "the relationship between the 1997 Sales Journal and the MOF Report is consistent with that observed in 1991." See *NSC Sales Verification Report* at p. 11.

Respondent rebuts petitioners' arguments against the validity of Verification Exhibit 37. Respondent argues that petitioners are incorrect that the comparisons in Verification Exhibit 37 are invalid because the exhibit was based on "average prices for all products, rather than on a CONNUM-by-CONNUM basis." Respondent argues that the data from the exhibit concerns

sales made through a sales department which only sells corrosion resistant steel to a particular industry. Therefore, respondent maintains, the particular corrosion resistant steel sold to these customers is similar. Second, respondent argues, the exhibit is based only on sales to customers from the same industry, and thus is the most accurate foundation for price comparisons. Respondent argues that comparing NSC's sales to the customer at issue with sales to other customers from differing industries would distort the Department's analysis because such a comparison would include dissimilar products and reflect different market conditions. Respondent asserts this comparison is consistent with 19 U.S.C. § 1677(15)(section 771(15) of the Act), which calls for the examination of the "conditions and practices \* \* \* normal in the trade." Finally, respondent challenges petitioners' accusation that "NSC was unable to re-create its sales data as they existed in 1991 because it did not maintain all the necessary records." Respondent maintains that the Department performed a quantity and value reconciliation on the 1991 data to ensure that it was compiled properly, and thereby verified the reliability of NSC's 1991 data.

Respondent argues that NSC's pricing to the customer at issue may have been slightly different from prices charged to other customers in the same industry during the period of review, but this difference is fully consistent with the long-term "conditions and practices" of NSC's business in the ordinary course of trade. Respondent argues that Verification Exhibit 37 shows that the rebates to the customer at issue on average as a percentage of price are unchanged from 1991. Respondent asserts that there are several legitimate commercial reasons why certain long-term customers are charged differently from other customers. Respondent submits that the record shows that the "conditions and practices" did not change materially between the periods of comparison and that NSC's sales to the customer at issue satisfy the statutory definition of sales in the "ordinary course of trade."

*Department's Position:* The statute and SAA are clear that a determination of whether sales (other than those specifically addressed in section 771(15) of the Act) are in the ordinary course of trade must be based on an analysis comparing the sales in question with sales of merchandise of the same class or kind generally made in the home market. Commerce must evaluate not just "one factor taken in isolation but rather \* \* \* [a]ll the circumstances

particular to the sales in question.” *Murata Mfg. Co. v. United States*, 820 F. Supp. 603, 607 (CIT 1993); *CEMEX*, 133 F.3d at 900.

In this respect, we believe that petitioners have drawn an inaccurate conclusion based on the Department’s discussion of this issue from the fourth review period. The Department noted in that review that: “[T]here is no record evidence demonstrating any significant distinctions between the sales at issue and other home market sales. In particular, there is no evidence of a discernible pattern of lower sales prices to this customer as compared to NSC’s other customers who purchased similar merchandise.” See *Fourth AD Final Results*, 64 FR at 12955. This statement should not be read to indicate that the mere presence of evidence, or even the actual existence, of lower average prices to one unaffiliated customer is sufficient evidence to consider a sale to be outside the ordinary course of trade. Thus, the arm’s-length test, which was developed to determine whether sales between affiliated companies may be used, is not adequate to determine whether sales to an unaffiliated customer are outside the ordinary course of trade. Indeed, such a reading is contrary to the statute and, as NSC argues, would lead to disregarding large portions of sales databases submitted in many of the antidumping cases the Department administers. In fact, in the fourth review, the Department noted that there existed further factors which the Department considered, and which did not compel the Department to consider the sales in question to have been made outside the ordinary course of trade (*i.e.*, the relative volume of sales to the customer in both markets suggested there was little commercial incentive for the respondent to engage in the suppression of home market prices to eliminate hypothetical margins; there was nothing unusual about the fact that there were sales made to both markets through one customer; there was no other evidence demonstrating any significant distinctions between the sales to the customer at issue and other home market sales).

Therefore, as we did in the fourth review, we have evaluated the circumstances particular to the sales in question in reaching our final determination in this case. First, we note that the volume of sales to the customer at issue for the home market is large. We note that the existence of a small quantity of sales of a certain type is one factor Commerce considers when assessing whether sales had been made outside the ordinary course of trade. See, *e.g.*, *Mantex v. United States*, 17

CIT 1385, 841 F. Supp. 1290, 1307–08 (CIT 1993). While this fact alone does not mean that sales cannot be considered outside the ordinary course of trade if they were made in significant quantities, we note that the statute and the SAA are clear that a determination of whether sales (other than those specifically addressed in section 771(15) of the Act) are in the ordinary course of trade must be based on an analysis comparing the sales in question with sales of merchandise of the same class or kind generally made in the home market. As a general proposition, the more significant the sales to the customer in question are, in comparison to overall home market sales, the more difficult it becomes to separate the sales in question from those “generally” made in the home market. Therefore, we believe that as the percentage of sales in question rises, so should the overall evidentiary requirements supporting a finding of sales outside the ordinary course of trade be all the more rigorous.

We also find that the non-price factors we considered in support of our finding in the fourth review (*i.e.*, the relative volume of sales to the customer in both markets suggested there was little commercial incentive for the respondent to engage in the suppression of home market prices to eliminate hypothetical margins; there was nothing unusual about the fact that there were sales made to both markets through one customer) are equally applicable in this review.

With regard to relative pricing, we do not find the record evidence determinative in either direction. Specifically, while petitioners have argued that prices to the customer at issue demonstrate a “discernable pattern of lower home market sales prices,” we note that the test petitioners applied to reach their conclusion is a price comparability test (arm’s-length test) which has been developed specifically to examine whether prices to affiliated parties are comparable to prices to unaffiliated parties in the home market. Petitioners have offered no rationale and no basis in law, Department regulations, or practice to support the proposition that the arm’s-length test is the appropriate model for analyzing sales to an unaffiliated party. In this regard, we note that there do exist theoretical alternatives for conducting an analysis (*e.g.*, the pattern of price differences analysis which the Department has used in other cases to determine whether a level of trade adjustment may be warranted for different levels of trade, and respondent’s own alternative analysis, as presented in Sales Verification Exhibit 37). On the other hand, we agree

with petitioners that respondent’s methodology takes the class of customer into consideration even though there is no evidence on the record to otherwise suggest that sales were made by NSC at different levels of trade during the period of review.

In summary, we believe that the evidence on the record supports a determination that these sales were made in the ordinary course of trade.

*Comment 3:* Petitioners note that there was an error in the model-match program which incorrectly referenced NSC’s sales to its affiliate. NSC agreed with petitioners’ comment and also found that the reference to the sales date of NSC’s sales to its affiliate was incorrect.

*Department’s Position:* We agree with petitioners and NSC and have modified the calculations for the final results of review accordingly.

## KSC

*Comment 4:* Petitioners argue that the Department did not correctly adjust KSC’s variable costs of manufacturing (“VCOM”) and variable overhead (“VOH”) in the preliminary results to eliminate the double-counting of labor costs contained in KSC’s reported VCOM. Petitioners argue that the Department incorrectly adjusted for this double-counting by multiplying the supervisory portion of total direct labor costs from DIRLAB, and subtracting this cost from VOH. Instead, petitioners argue that the Department should have multiplied the direct labor portion of total labor costs by direct labor (“DIRLAB”), and subtracted this cost from VOH.

Respondent did not submit rebuttal comments on this issue.

*Department’s Position:* We agree with petitioners and we have modified our recalculation of KSC’s VOH and VCOM for the final results of review accordingly. See *Final Analysis Memorandum for KSC* (“*Final Analysis Memo for KSC*”) (February 14, 2000) (Business Proprietary Version) for the calculation.

*Comment 5:* Petitioners argue that the Department should adjust KSC’s general and administrative (“G&A”) expenses to include the following items: (1) expenses on special retirement payment; (2) past service portion of pension cost; (3) extraordinary loss on disposal of tangible fixed assets; and (4) loss on disposal of fixed assets. Petitioners argue that the expenses from these four expense item categories were erroneously not included by KSC in its calculation of G&A. In support of their argument, petitioners cite the Department’s original questionnaire,

dated September 30, 1998, D-20, which requests that KSC include "period expenses which relate indirectly to the general production operations of the company rather than directly to the production process for the subject merchandise." Also, petitioners argue that the Department has, in past cases, included such expenses in the calculation of respondent's GA, citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan* ("Final Determination of Stainless Steel from Japan"), 64 FR 30574, 30589-30591 (June 8, 1999); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan* ("Preliminary Determination of Hot-Rolled Steel from Japan"), 64 FR 8291, 8296 (February 19, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan* ("Final Determination of Hot-Rolled Steel from Japan"), 64 FR 24329, 24356-24357 (May 6, 1999).

Respondent did not submit rebuttal comments.

*Department's Position:* We agree with petitioners and have included the above four expense items in our calculation of KSC's G&A for the final results of review. The first three items are classified by KSC as extraordinary loss items and are from its audited non-consolidated financial statement (ending March 31, 1998), and the fourth item is classified by KSC as a non-operating expense from KSC's Ministry of Finance ("MOF") report (ending March 31, 1998), which is filed with the Japanese government. We have used the financial statement period ending March 31, 1998 because it most closely corresponds to the POR. Although KSC has classified the first three items as extraordinary expenses under Japanese GAAP, we determine, as we did in prior cases for these types of expenses for KSC, that the first two expense items are not extraordinary. Therefore, we have included these expenses in our calculation of KSC's G&A expense rate. See *Final Determination of Hot-Rolled Steel from Japan* and *Final Determination of Stainless Steel from Japan*.

For KSC's losses on its disposal of fixed assets (items three and four, noted above), as stated in prior cases for these types of expenses for KSC, it is our practice to calculate G&A expenses using the operations of the company as a whole, regardless of whether these assets are used purely for the production of subject merchandise or

non-subject merchandise. See *Final Determination of Hot-Rolled Steel from Japan* and *Final Determination of Stainless Steel from Japan*. We note that KSC excluded these losses from the disposal of fixed assets because they pertain to non-subject merchandise. As referenced in the above cases for KSC, our practice is to include the gains or losses from the disposal of fixed assets in GA. Therefore, in this case, we have included the losses on KSC's disposal of fixed assets in our calculation of KSC's G&A expense rate.

*Comment 6:* KSC argues that the Department's level of trade ("LOT") analysis did not properly consider record evidence and violated established policies and regulations by combining, in the same home market ("HM") LOT, direct sales to unaffiliated trading companies made by KSC and KSC's affiliated producer, Kawatetsu Galvanizing Co., Ltd. ("Kawahan") (channel one) with resales to downstream purchasers through KSC's affiliated trading company, Kawasho Corporation ("Kawasho") (channel three). KSC argues that Kawasho competes with the unaffiliated trading companies that purchased KSC- and Kawahan-produced subject merchandise, and the sales by Kawasho and these unaffiliated trading companies are at the same LOT. KSC argues that Kawasho's resales to downstream purchasers are at a different stage of marketing, and have different selling activities when compared to KSC's and Kawahan's direct sales, and should be treated by the Department as such for the final results. KSC argues that the Department's failure to segregate sales involving different marketing activities is a violation of the statutory directive to recognize separate LOTs when such levels involve the performance of different selling activities, citing 19 U.S.C. 1677b(a)(7)(A)(i) (1999)(section 773(a)(7)(A)(i) of the Act).

KSC further argues that the Department erroneously determined that channel one sales (unaffiliated trading companies) were at a different LOT from sales made from KSC and Kawahan to end-users (channel two), despite these sales being at the same marketing stage (i.e., direct from the mill) and having comparable selling activities. Specifically, KSC argues that the selling activities for channels one and two are at similarly low levels of activity for end-user price negotiations, credit checks, and payment collection.

KSC argues that the Department underestimated the selling activities in channel three by not examining Kawasho's selling activities. KSC argues

that the Department must analyze the selling activities of KSC, Kawahan, and Kawasho for the reported sales through channel three. KSC notes that, contrary to the Department's preliminary finding that there were nine selling activities through channel three, sales in channel three have twelve selling activities when Kawasho's selling activities are also considered. KSC argues that Kawasho exclusively performs the following three additional selling activities: credit checks, arranging for freight, and payment collection. KSC further argues that the channel three selling activities are at a significant level for all twelve selling activities. In contrast, KSC argues that eight of these twelve selling activities are either not offered or offered at minimal levels through channel one. KSC then argues that the Department is not constrained to combine channels one and three into one LOT just because there are several similar selling activities that are offered in both channels, citing the Preamble to the Department's regulations, *Final Rule*, 62 FR at 27371; and the SAA at 830, 1994 U.S.C.C.A.N. at 4168.

KSC also cites 19 C.F.R. 351.412(c)(2) to support its argument that the Department finds sales at separate LOTs if the sales are at different marketing stages. KSC argues that channel one sales involve only one marketing stage (producer to unaffiliated party), while channel three sales involve two marketing stages (producer to affiliated party, then affiliated party to unaffiliated purchaser). Thus, KSC argues that channel one sales are at a less-developed stage in the marketing process than are channel three sales.

Finally, KSC argues that the Department must consider where in the distribution chain the reported sales are made, citing a Department policy bulletin, which states:

In asking for LOT information, the Department is trying to determine where in the distribution chain the respondent's customer falls (end user, distributor, retailer). The presumption is that the net price and/or selling expenses and, therefore, the foreign market value (FMV) are different at each LOT. See *Import Administration Policy Bulletin 92/1* at 2.

KSC notes that the Department's determinations in recent cases support its argument. First, KSC cites *Preliminary Determination for Hot-Rolled Steel from Japan*, 64 FR 8291, 8297 (February 19, 1999) (upheld at final), in which, under the same set of circumstances, the Department determined that the following two LOTs existed: (1) LOT one, which consists of sales to unaffiliated trading companies and end-users; and (2) LOT two, which

consists of downstream sales through Kawasho). Also, KSC cites *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France* ("Final Determination for Stainless Steel from France"), 64 FR 30820, 30824 (June 8, 1999), in which KSC notes that the Department determined that two LOTs existed, with one LOT consisting of sales to unaffiliated trading companies and end-users (LOT one), and the other LOT consisting of downstream sales through an affiliate (LOT two). KSC argues that, in this case, the Department determined that two LOTs existed because sales through the affiliate were made at a more remote marketing stage than sales in LOT one, and that there were significant distinctions in selling activities between the two LOTs. Finally, KSC argues that in *Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France* ("Preliminary Determination for Cut-To-Length Steel from France"), 64 FR 41197, 41200 (July 29, 1999), the Department determined that there were two LOTs on the basis that downstream sales through the affiliate were at a more remote marketing stage, and there were distinctions between the marketing activity for the distribution channels.

Furthermore, KSC argues that the differences in marketing functions and selling activities among the channels of trade are reflected in KSC's reported indirect selling expenses, which KSC argues are higher as an aggregate percentage of channel three sales than of channels one and two sales. KSC asserts that the weighted average of indirect selling expenses as a percentage of gross unit price for channel three sales is approximately double the corresponding expense figures for channels one and two, and that the expense figures for channels one and two are relatively close. KSC argues that, according to the Department's regulations and past practice, such differences in selling expenses give credibility to a LOT claim, citing the Preamble to Department's regulations, 62 FR at 27371, which states that: "Substantial differences in the amount of selling expenses associated with two groups of sales also may indicate that the two groups are at different levels of trade," and *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 63 FR 35190, 35193 (June 29, 1998) ("[W]ith respect to the level of selling expenses involved at each

channel of distribution, our examination of the expenses reported to the home market sales indicates that \* \* \* the per-unit indirect selling expenses are higher for sales made through LOT C than for those made at LOT A/B. Consistent with the Department's practice and regulations, we have considered this as an additional factor in our determination that LOT C is separate from, and more advanced than, LOT A/B.")

Finally, KSC argues that it should be allowed a LOT adjustment, if the Department continues to combine channels one and three at a separate LOT. KSC argues that there exists a consistent pattern of price differences between channel three sales compared to sales through channels one and two in support of this argument.

Petitioners did not comment on this issue.

*Department's Position:* We disagree with KSC in part. While KSC is correct that the Department failed to consider Kawasho's selling activities when analyzing the selling activities for channel three sales, we find that an analysis of the selling activities offered for all three channels of trade shows that all HM sales have been made at the same LOT.

In the *Preliminary Results*, the Department first noted that KSC and Kawahan sold subject merchandise to two types of customers: (1) Trading companies (affiliated or unaffiliated), and (2) end-users, which represent two different points in the chain of distribution between the producers and the final end-user. See *Preliminary Results*, 64 FR at 44485. As a result, we noted that these sales to different points in the distribution chain to appear to represent different levels of trade in the home market.

Next, the Department examined the selling activities reported for each type of customer. Specifically, the Department noted that certain differences existed with respect to the selling activities KSC and Kawahan performed in making sales to these two types of customers (*i.e.*, trading companies and end-users). As a result, the Department concluded the following:

Based on the different points in the chain of distribution and the differences in selling functions between the trading companies and the end-users, the Department preliminarily finds that two levels of trade exist for KSC's sales in the home market.*Id.*

For this final results, we have reconsidered our preliminary findings. Specifically, we agree with KSC that it is appropriate for the Department to also

consider the selling activities offered for the reported sale, which, in the case of channel three sales, includes any selling activities performed by Kawasho, the affiliated reseller. As a result of consideration of these additional selling activities, we now find that the selling functions among all three channels of trade are sufficiently similar to warrant a determination that there exists only one level of trade in the home market.

In our analysis to determine that there was one level of trade in the home market, we examined the following twelve selling activities: market intelligence, end-user information, end-user contact lead role, marketing services, credit checks, end-user price negotiations, daily issues end-user contact, warehousing, processing, arranging for freight, payment collection, and evaluating warranty claims.

For channel one (KSC or Kawahan sales to unaffiliated trading companies), we determine that eleven of the twelve selling activities were performed, with the following seven selling activities being performed at a low level: market intelligence, end-user information, end-user contact lead role, marketing services, credit checks, end-user price negotiations, and daily issues end-user contact. Finally, KSC and Kawahan do not perform payment collection.

For channel two (KSC or Kawahan sales to end-users), we determine that all of the above twelve selling activities are performed; however, credit checks, end-user price negotiations, and payment collection are performed at a low level.

For channel three (the selling activities of KSC and Kawasho or Kawahan and Kawasho combined), all twelve selling activities are performed.

Based on the above selling activities, all or virtually all of the selling activities are performed in all three channels, although at somewhat different levels in certain cases. Thus, on an overall basis, it appears that all three channels offer similar selling activities.

We wish to stress that while the Department may consider differences in the distribution chain, equally important in making a level of trade determination is the level of selling activities. This principle was explicitly noted in the preliminary results, in which we stated that: "To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer." See *Preliminary Results*, 64

FR at 44484; *see also* 19 C.F.R. § 351.412(c)(2).

KSC cites several cases in support of its argument that channels one and two should be in one LOT and channel three in a separate LOT. KSC's reliance on *Final Determination for Hot-Rolled Steel from Japan*, *Preliminary Determination for Cut-To-Length Steel from France*, and *Final Determination for Stainless Steel from France* is without merit. We examined record evidence from the *Final Determination for Hot-Rolled Steel from Japan*, and have determined that while KSC had the same three HM channels as in the instant case, we did not determine that KSC's sales through Kawasho (channel three) represent a separate LOT, as KSC had requested. Instead, we determined that sales to end-users, either direct (channel two) or via Kawasho (channel three), were at one LOT and sales to unaffiliated trading companies (channel one) were at another LOT. We made this determination based on the KSC's selling activities, which are at different levels when compared to the selling activities in the instant case. We also examined record evidence regarding the *Preliminary Determination for Cut-To-Length Steel from France* and *Final Determination for Stainless Steel from France* cases, and we have confirmed that we created separate LOTs for sales through affiliates. However, in those cases, we determined to create separate LOTs for sales through affiliates because those sales were made at a more remote marketing stage than other sales, and there were significant distinctions in selling activities between the LOTs, which is not the case here. Accordingly, all the cases relied upon by KSC are distinguishable from the instant case.

The Department's concentration on examining differences in selling activities when making level of trade determinations is well-established, including in cases involving this respondent. *See e.g., Final Determination of Stainless Steel from Japan*, 64 FR at 30580 ("Based on the above-referenced distinctions between the selling functions of KSC to end-users and those of KSC to affiliated trading companies, and then to unaffiliated customers, we consider the respondent's request that the Department treat KSC's sales to all end-users as one level of trade to be unpersuasive."); *Preliminary Determination for Hot-Rolled Steel from Japan*, 64 FR at 8298 (upheld at final) ("Based upon our analysis, we found a difference in the selling functions performed on EP sales as compared to sales at each of the two distinct levels of trade in the home market. Therefore,

the Department preliminarily determined that the information on the record justifies treating KSC's EP sales as having been made at a different LOT from the two home market levels of trade"). Therefore, in keeping with recent Departmental practice, we consider the similarities in selling activities to all home market customers are significant enough to preclude a determination that separate levels of trade exist with respect to sales made through different distribution channels.

With regard to KSC's discussion of indirect selling expenses, we examined indirect selling expenses and we agree with KSC that Kawasho's weighted average indirect selling expenses as a percentage of gross unit price, for channel three sales, is approximately double the same corresponding figures for channels one and two, and that the figures for channels one and two are relatively close. We also agree with KSC that the Department has stated that substantial differences in the amount of selling expenses associated with two groups of sales may indicate that the two groups are at different levels of trade. However, we determine, in the instant case, when comparing Kawasho's and KSC's/Kawahan's indirect selling expenses, that the difference is not significant enough as a percentage of total sales to consider reversing our decision that channel three is in a separate LOT than channels one and two. In addition, any differences in indirect selling expenses among the three channels are outweighed by the overall similarities in selling activities.

Finally, KSC's argument regarding an LOT adjustment based on a finding of a consistent pattern of price differences among HM LOTs is moot because we have determined that there is only one HM LOT.

As stated in *Preliminary Results*, we determined that the sole U.S. sale in channel one (unaffiliated trading company) was at the same LOT as the HM sales to trading companies. However, for the final results, we have determined that the U.S. selling activities are different from the HM LOT. Based on record evidence, KSC reported that, for the sole U.S. sale, KSC only performed (or may perform) two of the twelve selling activities: end-user price negotiations and evaluating warranty claims. Based on the differences in the selling activities performed in the HM LOT and U.S. LOT, we determine that record evidence justifies treating KSC's U.S. EP sale as having been made at a different LOT than the HM LOT.

If the comparison-market sales are at a different LOT and the difference affects the 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. Here, we have determined that there is one LOT in the HM, and that this HM LOT is at a different LOT than in the United States. However, KSC has not established that the difference had an effect on price comparability by demonstrating a pattern of consistent price differences in the home market. *See* 19 C.F.R. § 351.412(d), and 351.401(b)(1). Furthermore, we have independently examined additional information reasonably available to us, including information from the other respondent in this review (NSC), but have been unable to identify information which could establish a pattern of consistent price differences. Therefore, because we have no information to establish that the difference in LOT affected price comparability, we did not adjust NV for the U.S. sale comparison to HM sales made at a different LOT.

*Comment 7:* KSC argues that the Department does not have the authority, either in the antidumping statute or in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("*Antidumping Agreement*"), to exclude HM sales to affiliated parties that purchase goods for consumption on the basis of their failure to pass the arm's-length test. KSC argues that the antidumping statute is explicit (both with respect to home market sales and U.S. sales) with regard to which sales the Department may exclude from its margin analysis. Specifically, concerning home market sales, KSC argues that the Department may consider excluding only the following home market sales: (1) sales to affiliates who sell to downstream customers (section 773(a)(5) of the Act); and (2) sales that fail the cost test (section 773(b)(1) of the Act).

Also, KSC argues that the Department's application of the arm's-length test is illegal and, in fact, unconstitutional because it eliminates sales to affiliates (irrespective of whether for consumption or resale) if there are no sales of an identical product to unaffiliated customers. The Department's exclusion of these unmatched affiliated sales violates the *Antidumping Agreement* and U.S. antidumping laws, KSC argues, without evidence that these sales were not made at arm's length. KSC argues that the

statute instructs the Department to provide a "fair comparison" between the export price or constructed export price and normal value, citing 19 U.S.C. 1677b(a) (1999)(section 773(a) of the Act). KSC further notes that the WTO Antidumping Agreement specifies that the Department must include all sales, unless including certain sales affects price comparability, citing Article 2.4 of the *Antidumping Agreement*.

KSC continues that the Department, by automatically excluding these non-matched sales, violated its due process, as guaranteed under the Fifth Amendment to the U.S. Constitution, in not allowing KSC to demonstrate that these non-matched sales were made at arm's length, citing *NEC Corp. v. United States*, 151 F.3d 1361, 1370 (Fed. Cir. 1998), *cert. denied*, 119 S.Ct. 1029 (1999); and *Techsnabexport, Ltd. v. United States*, 795 F. Supp. 428, 435-36 (CIT 1992). KSC claims that the Department's exclusion of these non-matched affiliated party sales amounts to an irrebuttable presumption of fact that violated KSC's due process, citing *Rogers v. United States*, 575 F. Supp. 4, 9-10 (D. Mont. 1982); and *Universal Restoration, Inc. v. United States*, 798 F.2d 1400, 1406 (Fed. Cir. 1986). According to KSC, the Department has presumed that these non-matched sales were made at less than arm's-length prices. However, KSC argues that not all sales to affiliates were made at less than arm's-length prices; hence, the Department's presumption that all non-matched sales to affiliates were not at arm's-length prices cannot be universally true, citing *Steven M. v. Gilhool*, 700 F. Supp. 261, 264-65 (E.D. Pa. 1988) (an irrebuttable presumption can only survive if the proposition on which it is based is universally true).

Finally, KSC argues that the Department, in its arm's-length test, analyzed sales to certain customers by customer-facility rather than by customer. KSC argues that where a customer has multiple delivery locations, the Department should collapse those facilities into a single comparison for the customer.

Petitioners argue that the statutory language cited by KSC in fact provides the Department with the discretion to use affiliated party sales in determining normal value. Specifically, petitioners note that the statute states that: "If the foreign like product is sold \* \* \* through an affiliated party, the prices at which the foreign like product is sold \* \* \* by such affiliated party may be used in determining normal value." 19 U.S.C. 1677b(a)(5)(section 773(a)(5) of the Act)(emphasis by petitioners). Petitioners continue that the SAA states

that: "[S]ection 773(a)(1)(B) permits (but does not require) Commerce to base normal value on sales to related (now affiliated) parties in the home market. However, Commerce will continue to ignore sales to affiliated parties which cannot be demonstrated to be at arm's length prices for purposes of calculating normal value." See SAA at 827, *reprinted* in 1994 U.S.C.A.N., 4040, 4166.

Petitioners also argue that the Department's regulations, including 19 C.F.R. 351.403(c), 351.403(d), and 351.102, outline the circumstances under which it will exercise its discretion to include or exclude certain sales made to or through affiliated parties. Specifically, petitioners note that 351.403(c) states that the Department will use sales to affiliated parties "only if [the Secretary is] satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller."

Petitioners continue that the CIT has upheld the Department's application of the arm's-length test in a number of cases, including, *e.g.*, *Sanyo Elec. Co. v. United States*, Slip Op. 99-49 (CIT June 4, 1999); *NTN Bearing Corp. v. United States*, 905 F. Supp. 1083, 1100 (CIT 1995); *SSAB Svenskt Stal AB v. United States*, 976 F. Supp. 1027, 1030-31 (CIT 1997); *Micron Tech. Inc. v. United States*, 893 F. Supp. 21, 38 (CIT 1995); and *Usinor Sacilor v. United States*, 872 F. Supp. 1000, 1004 (CIT 1994).

Finally, petitioners argue that, contrary to KSC's argument, section 773(a)(5) grants the Department the authority to include (not exclude) the sales of affiliated resellers. Petitioners argue that the statute does not limit the Department's authority to exclude sales to affiliates simply because these affiliates consume the merchandise; in fact, petitioners argue that sales to affiliates for consumption may be as unrepresentative of normal selling practices as sales to affiliates for resale. Therefore, petitioners argue that, in *Preliminary Results*, the Department properly excluded sales which failed the arm's-length test.

With respect to the exclusion of non-matched home market affiliated party transactions, petitioners note that it is the Department's practice to exclude sales to affiliated parties if there were no non-affiliated party sales of identical merchandise. Without non-affiliated party sales of identical merchandise, petitioners note, the Department has stated that it is unable to determine whether these sales were made at arm's length, citing, *e.g.*, *Certain Cold-Rolled*

*Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993); *Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 64 FR 48775, 48776 (September 8, 1999); *Certain Cut-to-Length Carbon-Quality Steel Plate from France*, 64 FR 41198, 41201 (July 29, 1999); and *Stainless Steel Wire Rod from Sweden*, 63 FR 40449, 40454 (July 29, 1998). Petitioners note that section 351.403(c) of the Department's regulations state that the Department may use sales to affiliated parties if these prices are comparable. Petitioners argue that the courts are supportive of the proposition that it is the respondent's burden, and not the Department's burden, to prove that a sale to an affiliated party was made at arm's length, citing, *e.g.*, *Sanyo Elec. Co.*, Slip Op. 99-49 (CIT June 4, 1999); and *NEC Home Elecs., Ltd. v. United States*, 54 F.3d 736, 744 (Fed. Cir. 1995)).

In addition, petitioners argue that KSC did not provide evidence that these sales to affiliated parties were at arm's length, nor that the Department's exclusion of these sales would violate the U.S. Constitution and the "fair comparison" provision of the antidumping statute. Finally, petitioners argue that the Uruguay Round Agreements, including the WTO Antidumping Agreement, are not self-executing and thus their legal effect in the United States is governed by the implementing legislation; and furthermore, that the WTO Antidumping Agreement does not trump U.S. legislation, where there is regulatory and legal support for the exclusion of non-matched sales, citing *Hyundai Elecs. Co. v. United States*, 53 F. Supp. 2d 1334, 1343 (CIT 1999); and *Suramerica de Aleaciones Laminada, C.A. v. United States*, 966 F.2d 660, 668 (Fed. Cir. 1992).

*Department's Position:* We disagree with KSC in part. Departmental regulation 19 C.F.R. 351.403(c) is clear that the Department will include sales to an affiliated party only if we are satisfied that the price is comparable to the price sold to a person who is not affiliated with the seller. No distinction has been made in this section of the regulations with regard to the final disposition of the merchandise sold to the affiliated party. The statutory authority stems directly from section 773(a)(1)(B) of the Act, which (as noted above by petitioners) the SAA has explicitly clarified to mean that Commerce "will continue to ignore sales to affiliated parties which cannot be demonstrated to be at arm's-length prices for purposes of calculating normal value." See SAA at 827,

reprinted in 1994 U.S.C.C.A.N., at 4166. Furthermore, we agree with petitioners that the courts have upheld the Department's authority to exclude sales, either for consumption or resale, that have not been established to be at arm's-length prices pursuant to our arm's-length test. See, e.g., *Sanyo Elec. Co. v. United States*, Slip Op. 99-49 at 16-17 (CIT June 4, 1999). There are no matching sales to unaffiliated parties in this case which would allow us to determine whether the sale to the affiliated party was made at arm's length. Therefore, we find that the Department has the authority to exclude these sales to affiliated parties, whether consumed or resold, because it has not been established that they were made at arm's-length prices.

With regard to KSC's argument that the exclusion of unmatched sales to affiliated parties violates the Fifth Amendment to the Constitution, we disagree. As petitioners have noted, the burden of proving that affiliated party prices are at arm's length does not rest with the Department. In fact, the Federal Circuit has specifically stated, in *NEC Home Elecs.*, that the CIT properly rejected NEC's suggestion that "Commerce must carry the burden of proving that NEC's related party price is not an arm's length price." *NEC Home Elecs.*, 54 F.3d at 744. As petitioners have noted, KSC has provided no such evidence.

The presumption, as upheld by the courts, is that respondent must carry the burden of showing that transactions between affiliated parties should be used in calculating normal value. This presumption is carried through in the Department's regulations, at 19 C.F.R. 351.403(c). This regulation states that we may use sales to affiliated parties if these prices are comparable to sales to non-affiliated party sales. *Id.* (emphasis added). Therefore, because we were unable to determine if these sales to affiliated parties were comparable to sales to unaffiliated parties, we properly excluded them from our calculation of normal value in the *Preliminary Results*. Of course, the Department's authority to exclude such sales has indeed been exercised in numerous cases. See, e.g., *Stainless Steel Wire Rod from Sweden*, 63 FR 40449, 40454 (July 29, 1998).

Finally, we agree with KSC that, for sales of merchandise to affiliated parties for which we could make an appropriate unaffiliated party comparison, in the *Preliminary Results*, we did not perform the arm's-length test on a customer-specific basis, but inadvertently analyzed certain sales on the basis of divisions or delivery points within a single customer. Also, we agree with

KSC that, at verification, it provided unique identification numbers so that the Department could collapse customer's divisions or delivery points into a single customer code. See *Sales Verification Exhibit 24*. Therefore, for the final results, we collapsed those customer codes which represent divisions or delivery points into a single customer, because it is the Department's practice to analyze sales on a customer-specific basis.

*Comment 8:* KSC argues that the Department correctly used KSC's and Kawahan's invoice date as the date of sale in the *Preliminary Results*. KSC asserts that the Department verified that KSC's and Kawahan's material terms of sale can and do change between the order date and the invoice date. KSC argues that using the invoice date is more efficient than using other dates as the date of sale because invoice dates are used by KSC, Kawahan, and Kawasho in their books and records, and that, moreover, these companies either do not issue order confirmations or do not maintain order confirmation records. KSC also argues that the use of invoice date is consistent with the other dumping cases in which KSC has been involved, citing *Final Determination of Stainless Steel from Japan*, 64 FR at 30586-30587; *Preliminary Determination for Hot-Rolled Steel from Japan*, 64 FR at 8294; and *Final Determination of Hot-Rolled Steel from Japan*, 64 FR at 24334. In this regard, KSC argues that it uses the same invoicing system and sales processes for the steel products from the above two cases as with subject merchandise. Furthermore, KSC argues that the above two final determinations serve as the Department's reaffirmation of its practice of using invoice date as the date of sale if the material terms of sale can change between order date and invoice date, even if changes are not frequent, and the reporting company uses invoice date in its internal records.

KSC also notes that the Department's regulations state that it will normally use for the date of sale the invoice date as recorded in the exporter or producer's records kept in the ordinary course of business, as long as the Department does not find that some other date is more appropriate, citing 19 C.F.R. 351.401(i). KSC notes that the selection of invoice date as date of sale has been justified under this regulation in numerous instances, citing, e.g., *Final Determination of Stainless Steel from Japan*; *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and*

*Determination to Revoke in Part*, 64 FR 2173, 2178 (January 13, 1999); *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand ("Canned Pineapple Fruit From Thailand, 95-96 Final")*, 63 FR 43661, 43668 (August 14, 1998); *Carbon Steel Wire Rope from Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 46753, 46755 (September 2, 1998).

In addition, KSC argues that the Department's Preamble to its regulations ("*Preamble*"), 62 FR 27296, 27348 (May 19, 1997), supports the proposition that the Department prefers to use a single date of sale for each respondent to simplify the reporting and verification of information. Thus, KSC argues that because it uses invoice date in its books and records, using the invoice date as the date of sale simplifies the reporting of information and its verification, which results in an efficient use of KSC's and the Department's resources. KSC then argues that the Department has stated in the Preamble, and has demonstrated in practice, a presumption that the date of sale is the invoice date unless there is satisfactory evidence that the terms of sale were finally established on a different date, citing the *Preamble*, 62 FR at 27349; *Canned Pineapple Fruit From Thailand, 95-96 Final*; and *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 63 FR 55578, 55587-88 (October 16, 1998).

Petitioners argue that the record does not support KSC's assertion that the invoice date should be the date of sale. Petitioners note the Department's preference for using the invoice date as the date of sale; however, petitioners also point out that the section 351.401(i) of the Department's regulations state that another date may be used if the Department is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. Petitioners argue that the Department will not use the invoice date where the "material terms of sale usually are established on some date other than the date of invoice," citing *Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 7392, 7394 (February 13, 1998); *Preamble*, 62 FR at 27349; and *Canned Pineapple Fruit From Thailand, 95-96 Final*. Also, petitioners note that the Department has stated that: "If [the] invoice date does not reasonably approximate the date on which the material terms of sale were made in either of the markets under

consideration, then its blanket use as the date of sale in an antidumping analysis is untenable," citing *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 63 FR 32833, 32835-36 (June 16, 1998).

Petitioners argue that, based on KSC's case brief and response, KSC's and Kawahan's selling processes demonstrate that the material terms of sale are established at the order confirmation date. Petitioners argue that KSC has stated that its and Kawahan's customers agree to the material terms of sale at the time of order confirmation, and that subject merchandise is made-to-order, then invoiced and shipped.

Thus, petitioners argue that the invoice date would be used as the date of sale only if the record demonstrates that there are frequent changes to the material terms of sale between the order confirmation date and the invoice date/shipment date. Petitioners note that the Department has stated that it will use the order confirmation date if, for a large majority of sales, the essential terms of sale do not change between order date and invoice date, citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 64 FR 30664, 30682 (June 8, 1999).

Petitioners disagree, based on the record, that KSC has met the standard set by the Department's regulations and practice to use the invoice date as the date of sale. Petitioners note that KSC stated that it was unable to determine whether the changes between the order confirmation date and the invoice date were material, citing Kawasaki's Response to the Department's Supplemental Section B Questionnaire, dated January 11, 1999, at pp. B-1-2 (Public Version) (in which KSC stated that it and Kawahan's record systems do not allow KSC to "determine the types of changes that occurred (*i.e.*, whether the change is to significant terms, such as price and quantity) or to insignificant terms"). Petitioners note that KSC reported that it was unable to determine which specific term(s) of the order changed or whether changes after an order confirmation were major or insignificant, citing Kawasaki's Response to the Department's Supplemental Section A Questionnaire, dated December 4, 1998, at pg. 4 (Public Version). Thus, petitioners argue that the percentage figures regarding the frequency of changes cannot be relied on for date of sale purposes, noting that the revisions to the orders could have involved immaterial items, such as

payment terms, packing method, or a change in the spelling of a customer's name. In addition, petitioners note that KSC has reported that, for KSC, Kawahan, and Kawasho, changes to the terms of sale between the order confirmation date and the invoice date/shipment date are infrequent, citing KSC's October 28, 1998 response, at pp. A-41-A-42. Finally, petitioners argue that, at verification, the Department verified the percentage figures regarding the frequency of changes based on KSC's computer system, and did not examine the nature of the changes.

*Department's Position:* We agree with KSC that the invoice/shipment date is the most appropriate date on which the material terms of sale (*e.g.*, price, quantity, or material specification) is established. Therefore, for the final results, and consistent with the *Preliminary Results*, we determine that the invoice/shipment date best reflect the date on which the material terms of sale is established.

As stated in the *Preliminary Results*, it is the Department's current practice normally to use the invoice date as the date of sale. See *Preliminary Results*, 64 FR at 44486. However, we may use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i).

At verification, we confirmed that KSC's and Kawahan's material terms of sale (*e.g.*, price, quantity, or material specification) can and do change between the order or order confirmation date and the invoice date/shipment date. While we agree with petitioners that the percentage change figures provided by KSC in their questionnaire response submission of March 22, 1999, at pg. 6, are not instructive because they include changes which were non-material in nature, we agree with KSC that the Department verified that the material terms of sale can and do change after order confirmation date. Specifically, we note that the information obtained at verification, including specific information gathered for ten HM verification sales trace exhibits, supports KSC's record statements that material terms of sale can and do change. Based on our examination of this information, we believe that KSC's invoice/shipment date is the most appropriate date to use as the date of sale. Because the results of our analysis contain proprietary information, see *Final Analysis Memo for KSC*.

*Comment 9:* KSC claims that the Department's decision, in the *Preliminary Results*, to excuse KSC from

reporting certain downstream sales is consistent with its regulations and practice, and requests that the Department affirm its decision in the final results, citing, *e.g.*, *Extruded Rubber Thread From Malaysia*, 57 FR 38465, 38468 (August 25, 1992) (Final Determination) (where, in an antidumping investigation, the Department stated that it does not need to investigate each and every U.S. sale); and *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19041 (April 30, 1996) (where, in an antidumping investigation, the Department stated that it is not required to examine every sale).

KSC notes that the Department does not normally require the reporting of downstream sales if total sales of the foreign like product by a firm to all affiliated customers account for five percent or less of the firm's total sales of the foreign like product. Additionally, KSC notes that the Department stated, in the *Preliminary Results*, that imposing the burden of reporting small numbers of downstream sales often is not warranted, and that the accuracy of determinations generally is not compromised by the absence of such sales.

KSC argues that in a factually similar case, the Department did not require the reporting of an affiliate's downstream sales where such reporting would represent a significant or impossible burden, citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews ("Antifriction Bearings")*, 63 FR 33320, 33341 (June 18, 1998) (where, KSC argues, the Department stated that the respondent attempted to obtain affiliated downstream sales but was unable to because the affiliates were small companies with unsophisticated computer systems that do not permit them to retain the sales data required by the Department).

KSC notes that the Department has excused respondents from reporting downstream sales because of the burden of reporting these sales relative to the potential utility of the sales, citing, *e.g.*, *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Preliminary Results of Antidumping Duty Administrative Reviews*, 62 FR 47422, 47424 (September 9, 1997); *Certain Cold-Rolled Carbon Steel Flat Products From Germany: Preliminary Results of Antidumping Duty Administrative*

*Review*, 60 FR 39355, 39356 (August 2, 1995); and *Certain Cut-to-Length Carbon Steel Plate From Brazil: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 47436, 47437 (September 9, 1997).

In this case, KSC argues that it acted to the best of its ability to report downstream sales by Kawasho's affiliates and reported such sales where possible. KSC argues that due to limitations in the record-keeping maintained by most of Kawasho's affiliates, which were noted several times in its response, KSC could not report sales by most Kawasho affiliates. KSC argues that, at verification, the Department compared Kawasho's sales invoices to its affiliates with the invoices from the affiliates' downstream sales, and notes that it was impossible to link the two together, citing the Department's Sales Verification Report, dated August 6, 1999, at pp. 12–13. KSC argues that, as stated in its response, because it is unable to trace the downstream sales to the original coil, it is impossible to report these sales in the form needed by the Department.

KSC additionally asserts that, at verification, the Department was unable to link sales by certain Kawahan affiliates to its downstream customers because there was not enough product characteristic information. KSC noted that, at verification, the Department examined documentation which KSC claims demonstrates that another of Kawahan's affiliates was unwilling to provide downstream sales information.

In conclusion, KSC argues that, based on verified evidence on the record demonstrating the impossibility of reporting downstream sales by certain affiliates, the Department must continue to excuse KSC and Kawahan from reporting such downstream sales.

Petitioners argue that KSC misunderstands the Department's reporting requirements in concentrating on the fact that KSC was unable to trace or link the affiliate's downstream sale to the original coil sold by KSC to the affiliate. Petitioners argue that the only Departmental requirement is that the producer of the merchandise sold downstream be the same producer whose sales are under review, citing section 771(16) of the Act. Petitioners note that the Department's questionnaire required KSC to report the sales from the affiliated resellers to the unaffiliated customers. Thus, petitioners argue that when an affiliated entity of the producer resells the subject merchandise, all resales of this producer's merchandise must be reported. Petitioners argue that there is no requirement that the resale be

limited to sales by that producer to the affiliate.

Petitioners assert that it is irrelevant that KSC was unable to link certain downstream resales to the original coil, and that the Department has never required this linkage as a requirement to report these downstream sales. Petitioners argue that this is not a legitimate basis for failing to report certain downstream sales. In conclusion, petitioners argue that a respondent must report its affiliate's resales of its merchandise to unaffiliated parties during the relevant period to the fullest extent possible.

*Department's Position:* We agree with KSC that it was appropriate to excuse KSC from reporting certain downstream sales. The Department's questionnaire requires the reporting of sales from affiliated resellers to unaffiliated customers, unless the respondent's sales to all affiliated customers constitute less than five percent of the respondent's total sales in the home or third-country markets, or if the respondent is unable to collect information on such resales, in which case the respondent is instructed to notify the official in charge in writing. See the Department's questionnaire, dated September 30, 1998, pg. G–6; see also 19 C.F.R. section 351.403(d). In this case, we believe that the verified facts of the case do not support petitioners' assertion that KSC can report affiliated resales of KSC- and Kawahan-produced subject merchandise.

As stated in our *Preliminary Results*, in certain instances, KSC and Kawahan sell to an affiliate, Kawasho, which then sells the product to affiliated processors/distributors who further process the subject merchandise and sell it back to Kawasho. See *Preliminary Results*, 64 FR at 44487. The Department noted in the *Preliminary Results* that the verification results were consistent with KSC's claim that most of Kawasho's affiliated processors/distributors do not maintain the information necessary to report these downstream sales by Kawasho to the Department. *Id.* Thus, record evidence supports KSC's claim that it was unable to report certain Kawasho downstream sales of KSC- and Kawahan-produced merchandise to non-affiliates. Specifically, neither KSC nor its affiliates were able to determine (through, e.g., identifying information such as Kawasho's invoice number or specific product characteristics) which Kawasho sales of subject merchandise were originally produced by KSC and/or Kawahan, as opposed to other producers.

In addition, as noted in the *Preliminary Results*, one of Kawahan's affiliated customers refused to provide its downstream sales data, despite Kawahan's request. Thus, because this affiliate refused to cooperate, despite Kawahan's attempt to collect this sales data (which the Department reviewed at verification, as noted in the Department's Sales Verification Report, dated August 6, 1999, at p. 11), we conclude that there is no evidence to contradict KSC's claim that it acted to the best of its ability to report this affiliates' downstream sales, despite its failure to report these sales.

Petitioners do not contest the above facts. Instead, they argue that these facts are irrelevant to the issue. We disagree. A respondent must be able to identify sales of subject merchandise it produced in order to accurately fulfill its reporting requirements. In this regard, section 771(16)(A) of the Act requires identification of: "The subject merchandise \* \* \* which \* \* \* was produced in the same country by the same person." In this case, it would be improper for KSC to report all of Kawasho's downstream sales of the merchandise under review, because Kawasho sells subject merchandise from producers other than KSC and Kawahan. Therefore, in order to be able to properly identify sales of KSC's merchandise, Kawasho would have to be able to tie, though identifying information, such as an order confirmation number, its downstream sales back to KSC's or Kawahan's sale to Kawasho. Yet in this regard, KSC was unable to link certain resales to the original coil that it sold to the affiliate.

Thus, based on the above information and in accordance with past practice, we believe that it would not be appropriate to penalize KSC for its inability to report a certain portion of its (downstream) home market sales database, because we determine that, in the instant case, reporting these sales would represent an undue burden. See, e.g., *Antifriction Bearings*, 63 FR at 33341 (where the Department excused a respondent from reporting downstream sales information from its affiliates and accepted respondent's sales data to affiliates in lieu of sales by respondent's affiliates because its affiliates were small companies with unsophisticated computer systems which do not permit them to retain the sales data required by the Department).

With regard to the affiliated company which refused to provide the sales information, we note that the Department has stated, in the *Preamble*, that "in instances where a respondent does not report downstream sales, the

Department will consider the nature of the affiliation in deciding how to apply facts available." *See Preamble*, 62 FR at 27356. As noted above, KSC attempted unsuccessfully to obtain the downstream sales information from this company. Given the level of affiliation (*see* KSC's October 28, 1998, Section A Questionnaire Response, Exhibit 14, which is proprietary information), we find that it is appropriate to simply disregard the downstream sales in question.

#### Final Results of Review

As a result of our review, we determine that the following weighted-average dumping margin exists for the period June 30, 1997, through July 1, 1998:

| Manufacturer/Exporter            | Margin (percent) |
|----------------------------------|------------------|
| Nippon Steel Corporation .....   | 2.47             |
| Kawasaki Steel Corporation ..... | 1.61             |

The Department will determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We will calculate importer-specific duty assessment rates on a unit value per metric ton basis. To calculate the per metric ton unit value for assessment, we sum the dumping margins on U.S. sales, and then divide this sum by the total metric tons of all U.S. sales examined. The Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate listed above (except that if the rate for a particular product is de minimis, *i.e.*, less than 0.5 percent, a cash deposit rate of zero will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the

merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 36.41 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 14, 2000.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 00-4250 Filed 2-22-00; 8:45 am]

**BILLING CODE 3510-DS-P**

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

[A-357-810]

#### Oil Country Tubular Goods from Argentina: Rescission of Antidumping Duty Administrative Review

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

**ACTION:** Notice of Rescission of Antidumping Duty Administrative Review.

**SUMMARY:** On October 1, 1999, the Department of Commerce (the Department) published in the **Federal Register** a notice announcing the initiation of an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Argentina (*see* Notice of Initiation, 64 FR 53318). The review covers the period August 1, 1998 through July 31, 1999, the company, Siderca, S.A.I.C. and its affiliated parties. We are rescinding this review because there were no consumption entries during the POR or OCTG from Argentina produced or exported by Siderca.

**EFFECTIVE DATE:** February 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Maureen McPhillips or Linda Ludwig, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0193 or (202) 482-3833, respectively.

#### 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. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations at 19 CFR Part 351 (April 1999).

#### Scope of the Review

Oil country tubular goods are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited-service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this review are currently classified in the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7304.20.20, 7304.20.40, 7304.20.50, 7304.20.60, 7304.20.80, 7304.39.00, 7304.51.50, 7304.20.70, 7304.59.60, 7304.59.80, 7304.90.70, 7305.20.40, 7305.20.60, 7305.20.80, 7305.31.40, 7305.31.60, 7305.39.10, 7305.39.50, 7305.90.10, 7305.90.50, 7306.20.20, 7306.20.30, 7306.20.40, 7306.20.60, 7306.20.80, 7306.30.50,