Torrington claims that the change in approach was prompted by the fact that related-party sales are excluded when FMV is based on HM sales. Torrington also cites Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled, Cold-Rolled, Corrosion-Resistant and Cut-to-Length Carbon Steel Flat Products from Korea, 58 FR 37176 (July 9, 1993), as a recent example of this practice. Finally, Torrington contends that this exclusion is in accordance with 19 U.S.C. 1677b(e)(2).

Respondents assert that sales to related parties which are not at arm's length are in the ordinary course of trade and should be included in the calculation of the profit component of CV. They also contend that the Department has consistently rejected Torrington's argument in prior AFB reviews. FAG argues that, although the Department has reconsidered this issue in Certain Stainless Steel Wire Rods from France and declined to include such related-party sales in the profit component of CV, such change in policy is unwarranted given the lack of any statutory mandate to disregard relatedparty sales that are in the ordinary course of trade. FAG argues that should the Department reject such related-party sales, the Department should then perform the equivalent of a "10-90-10 test," as it does in disregarding belowcost sales where FMV is based on price.

Department's Position: We agree in part with Torrington. Contrary to Torrington's contention, there is no basis for automatically excluding, for the purposes of calculating profit for CV, sales to related parties that fail the arm's-length test.

Section 773(e)(2) of the Tariff Act provides that a transaction between related parties may be "disregarded if, in the case of an element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration." The arm's-length test, which is conducted on a class or kind basis, determines whether sales prices to related parties are equal to or higher than sales prices to unrelated parties in the same market. This test, therefore, is not dispositive of whether the element of profit on related party sales is somehow not reflective of the amount usually reflected in sales of the merchandise under consideration. However, related-party sales that fail the arm's-length test do give rise to the possibility that certain elements of value, such as profit, may not fairly reflect an amount usually reflected in sales of the merchandise. We considered whether the amount for profit on sales

to related parties was reflective of an amount for profit usually reflected on sales of the merchandise. To do so, we compared profit on sales to related parties that failed the arm's-length test to profit on sales to unrelated parties. If the profit on sales to related parties varied significantly from the profit on sales to unrelated parties, we disregarded related-party sales for the purposes of calculating profit for CV.

We first calculated profit on sales to unrelated parties on a class or kind basis. If the profit on these sales was less than the statutory minimum of eight percent, we used the eight percent statutory minimum in the calculation of CV. If the profit on these sales was equal to or greater than the eight percent statutory minimum, we calculated profit on the sales to related parties that failed the arm's-length test and compared it to the profit on sales to unrelated parties as described above. Based on this methodology, we found only one instance in which the profit on sales to unrelated parties was greater than eight percent—specifically, sales of CRBs by ĪNA.

Profit on INA's sales of CRBs to unrelated parties varied significantly in comparison to profit on its sales of CRBs to related parties. Therefore, we conclude that the profit on INA's sales to related parties did not fairly reflect the amount usually reflected on HM sales of this merchandise. Accordingly, we used INA's profit on sales to unrelated parties in the calculation of profit in determining CV for CRBs.

With regard to FAG's contention that the Department should apply a 10-90-10 test in this situation, we note that the 10-90-10 test is a practice we established to implement the statutory requirement, as provided in section 773(b) of the Tariff Act, that HM sales at less than COP be disregarded if, among other things, they have been made in substantial quantities. The 10-90-10 test is not germane to the issue of whether the element of profit fairly reflects the amount usually reflected in sales in the market under consideration, which is provided for under section 773(e) of the Tariff Act. Furthermore, we have not based our determination to disregard related-party sales that fail the arm's-length test for the purposes of calculating CV on whether such sales are in the ordinary course of trade. Rather, as discussed above, our decision to disregard such sales is based on whether, pursuant to section 773(e)(2) of the Tariff Act, the amount for profit on such sales was reflective of an amount for profit usually reflected on sales of the merchandise.

Comment 4: Torrington contends that below-cost sales should be excluded for purposes of calculating statutory profits. Torrington argues that the same rationale for the decision in Certain Stainless Steel Wire Rods from France applies equally to below-cost sales that are disregarded under 19 U.S.C. 1677b(b) and contends that if sales below cost are excluded for price-to-price comparisons, these sales cannot be included for determining profit for the calculation of CV.

Torrington also argues that below-cost sales excluded under 19 U.S.C. 1677b(b) are not in the ordinary course of trade. The petitioner contends that the definition of CV specifies that statutory profits should be calculated on the basis of sales in the ordinary course of trade. 19 U.S.C. 1677b(e)(1)(B). Thus, below-cost sales, when made in substantial quantities over an extended period of time, must be disregarded in calculating CV profit.

Torrington further points out that the United States has taken the position that disregarded below-cost sales are not to be considered sales in the normal course of trade as referred to in Article VI of the General Agreement on Tariffs and Trade (GATT) and the Antidumping Code. Finally, Torrington maintains that its view of ordinary course of trade conforms to international practice and is supported by the Final Act of the Uruguay Round, dated December 15, 1993, in which parties to the negotiation agreed to the principle that CV should incorporate actual profits earned on sales in the ordinary course of trade.

Respondents maintain that it would be incorrect for the Department to disregard below-cost sales in the calculation of CV because such action is not supported by a proper reading of the statute. Furthermore, respondents maintain that the international agreement cited by Torrington is not relevant to the administration of current U.S. antidumping law. Respondents claim that the statute and Departmental practice implicitly recognize that sales below cost are in the ordinary course of trade and should be included in calculating profit for CV.

Department's Position: We disagree with Torrington's contention that the calculation of profit should be based only on sales that are priced above the COP. Section 773(e)(1)(B) of the Tariff Act specifically imposes a variety of requirements on the calculation of profit in determining CV. Namely, the profit should be equal to that usually reflected in sales: (1) Of the same general class or kind of merchandise; (2) made by producers in the country of exportation; (3) in the usual commercial quantities;