and (4) in the ordinary course of trade. Thus, the statute does not explicitly provide that below-cost sales be disregarded in the calculation of profit. The detailed nature of this sub-section suggests that any requirement concerning the exclusion of below-cost sales in the calculation of profit for CV would be explicitly included in this provision. Accordingly, it would be inappropriate for the Department to read such a requirement into the statute. See *AFBs III* (at 39752).

Furthermore, contrary to Torrington's assertions, under current law, as expressed in section 771(15) of the Tariff Act, the definition of "ordinary course of trade" does not exclude or even mention sales below-cost. Until the changes resulting from the GATT 1994 agreements are implemented by the United States, we must follow the above section of the Tariff Act.

Consequently, we have used the greater of the rate of profit provided in the response or the statutory minimum of eight percent unless we applied a different profit rate resulting from calculations in those situations where HM related-party sales were found not to be at arm's length. See *Comment 3*.

Comment 5: Torrington argues that since the Department requested profit data for total sales made during the POR and for the sample sales, it should compute respondents' profits on the basis of the sample sales reported or the average profit on all sales, whichever is greater. Torrington states that given that the Department has relieved respondents of reporting all sales for the period through the use of sampling, it is appropriate to use the higher of the two available rates. However, Torrington argues that if a single rate is adopted, it should be the sample sales profit rate since this rate is a representative profit tailored to the U.S. sample weeks.

Torrington further contends that for respondents that withheld data, the Department should apply the highest profit rate earned by any other respondent during the POR. For respondents that did not provide data, Torrington believes the Department should apply 19 U.S.C. 1677e(c) to supply the missing information. Alternatively, Torrington argues that for all sales that would otherwise be compared with CV, the Department should apply the dumping margin calculated in the original LTFV investigation as BIA.

Respondents maintain that profit on any sample of sales, including sales of such or similar merchandise, is not representative of profit on a general class or kind of merchandise and, therefore, should not be used as profit for CV.

Department's Position: With the exception of those firms which had related-party sales at prices which were less than arm's-length prices, we disagree with Torrington's contention that profit should be computed on the basis of the sample sales reported or the average profit rate of all sales, whichever is greater. We requested information only on sales of such or similar merchandise. Because the profit on the sales of such or similar merchandise may not be representative of the profit for the general class or kind of merchandise, we requested profit information based on the class or kind of merchandise.

In the case of firms which needed profit adjustments to eliminate sales made to related parties which were not at arm's length, we found it necessary to make the adjustment based on the reported HM sales, which was the only information available.

With respect to Torrington's proposed BIA applications for firms that withheld profit data in this review, we found no cases where respondents withheld such data.

## 5C. Related-Party Inputs

Comment 6: NSK and Koyo claim that the Department violated the antidumping law by never establishing the grounds for collecting cost data from related-party suppliers. NSK argues that the Department must have a specific and objective basis for suspecting that the transfer price paid to a particular related supplier for a major input is below that supplier's costs before the Department can collect cost data from that party. Citing 19 USC 1677b(e)(3), NSK claims that the Department violated the antidumping law by not establishing "reasonable grounds to believe or suspect" that the transfer price paid to related-party suppliers was below cost. NSK claims that the quoted language of this provision matches 19 USC 1677b(b), which grants the Department the authority to conduct cost investigations. On this premise NSK argues that the "same threshold standard must be applicable to both provisions." Koyo argues that not only did the Department not have any statutory authority to request COP information for inputs that it purchased from related suppliers, but also that there have been no allegations by petitioners in this review, or in any prior AFBs proceeding, that such parts were purchased at less than COP. NSK and Koyo claim that since the Department has violated the antidumping law, all cost data for parts

purchased from related suppliers must be removed from the administrative record. NSK further requests that counsel for Torrington and for Federal-Mogul return this information to counsel for NSK.

Torrington and Federal-Mogul argue that the Department properly applied 19 U.S.C. 1677b(e)(3) by collecting cost data from related-party suppliers. Torrington and Federal-Mogul maintain that because respondents engaged in below-cost sales, the Department had reasonable grounds upon which to collect cost data from related suppliers. Torrington argues that given that the foreign producers do sell below cost, it is reasonable to infer that their losses are passed back to related-party suppliers, who are forced to transfer materials and components at a loss. Torrington argues that 19 U.S.C. 1677b(b), which provides the standard for analyzing below-cost sales, does not imply that any particular party has to submit the evidence of below-cost transfer prices of inputs and, therefore, does not suggest that the burden of proof should be placed upon the petitioner, as suggested by NSK. Federal-Mogul and Torrington claim that the best evidence concerning related-party production cost is not accessible to domestic parties and that the burden to submit the evidence should be placed upon the respondents. Torrington and Federal-Mogul maintain that NSK's position would essentially nullify 19 U.S.C. 1677b(e)(3).

Department's Position: We disagree with NSK and Koyo that the Department violated the antidumping law by requesting cost data from related suppliers. In calculating CV, the Department does not necessarily accept the transfer prices paid by the respondent to related suppliers as the appropriate value of inputs. Related parties for this purpose are defined in section 773(e)(4) of the Tariff Act. In accordance with section 773(e)(2) of the Tariff Act, we generally do not use transfer prices between such related parties unless those prices reflect the market value of the inputs purchased. To show that the transfer prices for its inputs reflect market value, a respondent may compare the transfer prices to prices in transactions between unrelated parties. A respondent may provide prices for similar purchases from an unrelated supplier or similar sales by its related supplier to unrelated purchasers. If no comparable market price for similar transactions between related parties is available, we may use the actual COP incurred by the related supplier as an indication of market value. If the transfer price is less than