petitioner never requested a COP investigation as set out in section 773(b) of the Act; and 2) the use of COP as a matching criterion is contrary to both the Department's practice and section 773(b) of the Act.

DOC Position

We agree with the respondent. We have rejected the petitioner's argument for initiating a COP investigation for the reasons stated below.

According to 19 CFR 353.31(c)(ii), in an administrative review, the Department will not consider any allegation of sales below the COP that is submitted by the petitioner more than 120 days after the date of publication of the notice of initiation of the review, unless a relevant response is considered untimely or incomplete. If the response is received more than 120 days after initiation, however, the Department may use its discretion in determining what constitutes a reasonable amount of time for the petitioner to make a sales below cost allegation.

In this case, on June 9, 1994, the petitioner submitted a letter expressing its concern that specific home market models appeared to be sold at below COP. We spoke with the petitioner's counsel on June 14, 1994, and asked whether the letter was a sales below cost allegation (see June 15, 1994, memorandum from Brian Smith to the file). Rather than answer the question, the petitioner's counsel simply urged the Department to consider cost when making its LTFV comparisons. The petitioner made a submission on that same day which stated, among other things, that it was not making a "typical" allegation of sales below cost. Because the petitioner said it was not making a typical allegation of sales below cost, the Department did not investigate whether initiation of such an inquiry would have been appropriate. We disagree with the petitioner's suggestion that the June 9, 1994, letter 'could have been'' considered a sales below cost allegation.

Even if the March 9, 1994 letter could have been considered an allegation of sales below cost, the letter did not contain sufficient information to support initiation of a COP inquiry. For example, the petitioner made no attempt to provide fixed cost information for the two specific models it mentioned in its letter. Rather, the petitioner merely claimed there was "reason to question" whether sales of these two models were made above the COP.

Moreover, if the petitioner's case brief was intended to represent such an allegation, the allegation was untimely, and could not serve as the basis for

initiating a sales below cost investigation. In the Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From the United Kingdom, 58 FR 3253, 3255-56 (Comment 2)(Jan. 8, 1993), the petitioner had access to the raw data necessary to support a sales below cost allegation, but chose not to make an allegation until it filed its case brief. The Department noted that the petitioner could have filed an allegation after receiving the respondent's supplemental response, and that the allegation would not necessarily have been considered untimely. Because the petitioner waited to make the allegation until it filed its case brief, the Department found the allegation to be untimely.

We disagree with the petitioner's argument that the Department should have self-initiated a COP inquiry based on the June 9, 1994 letter. As the CIT has stated,

[G]iven the burdens placed on ITA by the statute it is not reasonable to expect ITA in every case to pursue all investigative avenues, even such important areas as less than cost of production sales, without some direction by petitioners. It should be remembered that cost of production need not be investigated in every case, but only where reasonable grounds are present. Part of whether ITA has "reasonable grounds to believe or suspect" that a less than cost of production analysis is needed is whether it has been requested.

Floral Trade Council v. United States, 704 F. Supp. 233, 236 (CIT 1988). In this case, the petitioner did not request a sales below cost investigation; in fact, it affirmatively stated that its June 9, 1994 letter was not a typical allegation. The CIT has stated that the Department "may be relieved of its duty to utilize certain information potentially favorable to a party, if that party has acted in a manner which directs the investigation in another direction." Floral Trade Council of Davis v. United States, 698 F. Supp. 925, 926 (CIT 1988).

Finally, we disagree with the petitioner's argument that the Department should have considered cost as a factor in choosing between various home market models in making its FMV calculations, because cost is not a criterion for determining what is most similar merchandise under the statute. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada, 59 FR Reg. 18791, 18793 (Apr. 20, 1994); Policy Bulletin 92/4, The Use of Constructed Value in COP Cases 3–4 (Dec. 15, 1992).

Comment 3: Improper Use of CV

The petitioner contends that the Department improperly used CV because it placed undue importance on the twisted/untwisted criterion. The petitioner argues that in the second administrative review, the Department indicated that all crankshafts were one "such or similar" category and that crankshafts would be compared if reasonable adjustments could be made for physical differences in merchandise. In this case, the petitioner argues that the Department resorted to CV even though there were untwisted home market models (which passed the difmer test) which the Department could have matched to the U.S. twisted model. The petitioner argues that the Department's resort to CV in this case is inconsistent with its clear preference for price-to-price comparisons found in its own regulations.

The respondent maintains that comparing twisted to untwisted crankshaft models is contrary to the law of this case. The respondent points out that in the second administrative review of crankshafts, the Department declined to match twisted and untwisted models and used CV as the basis for FMV because it could not adjust for the difference between twisted and untwisted crankshafts.

DOC Position

We agree with the respondent. We have not compared twisted with untwisted cranshafts and vice-versa because we cannot adjust for physical differences between twisted and untwisted crankshafts. In the original LTFV investigation, we examined the issue of whether a twisted crankshaft was sufficiently similar to a non-twisted crankshaft to allow comparison. See Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts from the United Kingdom, (52 FR 32951, 32952, 32954, September 1, 1987). In the Second Review, we revisited the issue. We determined in both cases that it was inappropriate to compare twisted with untwisted crankshafts. Furthermore, we concluded in the second review that we could not adjust for the physical differences between twisted and untwisted crankshafts.

We disagree with the petitioner's argument that the Department was unjustified, because of the statutory preference for price-to-price comparisons, in resorting to CV rather than match a twisted to an untwisted crankshaft. Section 773(a)(2) of the Act specifically provides that when neither identical merchandise nor similar