report the sales was demonstrably not clerical. Rather, petitioners state that it was based on KSC's substantive error that Kawasho did not make any direct sales to a U.S. customer. Thus, petitioners concluded that the Department cannot accept the new sale as a clerical error. These petitioners recommend that the Department apply adverse facts available to the quantity of this sale. As adverse facts available, petitioner urges the Department to apply the highest calculated margin on KSC's other sales to the unreported sales and include the unreported sales in the overall weighted-average margin.

Department's Position: We disagree with petitioners that the three unreported sales disclosed at verification by KSC are not minor. During verification, while the Department was conducting various completeness tests, KSC voluntarily disclosed that it had found a previously unreported sale to the United States made by Kawasho. Since this sale comprised three individual shipments, and we are defining a sale as a single shipment in this investigation, we concluded that there were actually three unreported sales disclosed at verification. These sales, which were made by Kawasho directly to an unaffiliated Japanese trading company that in turn sold the CTL plate to its U.S. affiliate, are properly classified as EP sales through Kawasho. During verification, KSC provided substantial quantity and value information to support its assertion that there are no additional unreported U.S. sales. We examined this quantity and value information and are satisfied that there are no additional unreported U.S. sales.

The Department's practice is to accept new information during verification only when that information constitutes minor corrections to information already on the record, or when that information corroborates, supports, or clarifies information already on the record. We agree with KSC that these disclosed sales constitute minor corrections to information already on the record. Therefore, we included the information we accepted at verification concerning these three sales in our margin analysis for the final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Japan that were entered, or withdrawn from warehouse, for consumption on or after April 30, 1999 (90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**) for Kobe, Nippon, NKK, and Sumitomo, which received the petition rate of 59.12 as adverse facts available. In addition, we will continue to suspend liquidation of all entries of subject merchandise from Japan that were entered, or withdrawn from warehouse, for consumption on or after July 29, 1999 (the date of publication of the Department's preliminary determination) for KSC and those companies which received the ''all others'' rate. We shall refund cash deposits and release bonds for KSC and ''all others'' companies for the period between April 30, 1999 and July 29, 1999 (*i.e.,* the critical circumstances period). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the NV exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Kawasaki Steel Corporation	10.78
Kobe Steel, Ltd	59.12
Nippon Steel Corporation	59.12
NKK Corporation	59.12
Sumitomo Metal Industries, Ltd	59.12
All Others	10.78

ITC Notification

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

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

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33235 Filed 12–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–826]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Italy

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Maisha Cryor, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5193 or (202) 482–5831, respectively.

The Applicable Statute

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

Final Determination

We determine that certain cut-to-length carbon-quality steel plate products (''CTL plate'') from Italy are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *''Suspension of Liquidation''* section of this notice.

Case History

Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From Italy,* 64 FR 41213 (July 29, 1999) (''*Preliminary Determination*'')), the following events have occurred:

On July 28, 1999, ILVA S.p.A, (''ILVA'') alleged that the Department of Commerce (''the Department'') made a ministerial error in the preliminary determination because it incorrectly

excluded from its analysis all of ILVA's U.S. sales that were entered under a temporary importation bond and subsequently re-exported to a country that is a party to the North American Free Trade Agreement (''NAFTA''). We disagreed with ILVA's allegation because our decision to exclude these sales was intentional and, thus, could not be considered a ministerial error (for further discussion of the ministerial error, see the Memorandum from Howard Smith to Holly Kuga dated August 17, 1999, on file in the Central Records Unit (''CRU'') in room B–099 of the main Department of Commerce building, under the appropriate case number). However, as noted in comment 6 of the comments below, for the final determination we have included these sales in our analysis.

In September 1999, the Department conducted sales and cost verifications of Palini & Bertoli S.p.A (''Palini'') and ILVA, the two respondents in the instant investigation. At verification, both respondents submitted corrections to the data used in the preliminary determination. These corrections are reflected in the data used in the final determination. A list of the corrections can be found in the public versions of the Department's verification reports which are on file in the CRU in room B–099 of the main Department of Commerce building, under the appropriate case number. For ILVA, see the memoranda from Howard Smith and James Nunno to The File dated October 29, 1999 regarding the sales and cost verifications. For Palini, see the memoranda from Maisha Cryor and Zev Primor to The File dated October 29, 1999 regarding the sales and cost verifications.

The petitioners (*i.e.,* Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., and United States Steelworkers of America) and the respondents submitted case briefs on November 5, 1999, and rebuttal briefs on November 12, 1999. On November 10, 1999, the petitioners, the only party to the proceeding to request a hearing, withdrew their request for a hearing. Therefore, we did not hold a public hearing.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular 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. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.,* USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1998, through December 31, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the *''Scope of Investigation''* section, above, and sold in Italy during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance (which are identified in Appendix V of the Department's March 1999 questionnaire): painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

Because neither Palini nor ILVA had sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons (*see, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden* 63 FR 40449, 40450, (July 29, 1998) (*''SSWR''*)).

Changes From the Department's Preliminary Determination

Except where noted in the comments below, we reached our final determination using the same methodology as that used in the preliminary determination. However, we made certain adjustments to the reported data based on our verification findings. Specifically, with respect to ILVA's sales data, we recalculated home market credit expenses, temporary importation bond's (''TIB'') and indirect selling expenses, and reclassified as entries under TIB certain U.S. sales which ILVA had incorrectly reported as having been entered for consumption. In addition, we revised the international freight expense reported for one U.S. sale. With respect to ILVA's cost data, we recalculated general and administrative expenses and revised the cost of iron pellets included in the reported costs. For Palini, we recalculated home market credit expenses, inventory carrying costs, home market warranty expense and indirect selling expenses and reclassified warranty expenses as direct selling expenses for sales in the home and U.S. markets. In addition, we revised the quantity and commission reported for one U.S. sale. With respect to Palini's cost data, we recalculated general and administrative expenses and recalculated the value of scrap and scale. For details regarding these adjustments, see the company-specific memoranda to The File dated December 13, 1999 regarding the calculations for the final determination.

Interested Party Comments

ILVA

Comment 1: Failure to Identify Overrun Sales in the Home Market

The petitioners contend that ILVA's failure to identify all overrun sales in the home market may understate the actual dumping margin because the margin will be calculated based on comparisons of lower-priced overrun sales in the home market to non-overrun sales in the United States. In its response to section B of the Department's questionnaire, ILVA noted that it reported as overrun sales those overrun quantities which it sold as secondary merchandise. However, the petitioners point out that ILVA failed to report as overrun sales those overrun quantities that were sold as prime merchandise to either the customer who placed the order or another customer. In addition, according to the petitioners, ILVA acknowledged that in instances where the original customer agreed to purchase the overrun merchandise, the price may or may not differ from the original price negotiated with the customer. Because ILVA failed to comply with the Department's questionnaire instruction to identify all overrun sales during the POI, the petitioners urge the Department to apply partial facts available in the final determination. As facts become available, the petitioners request that the Department treat as overrun sales all sales where the gross unit price is equal to or less than the maximum gross unit price of sales that ILVA identified as overrun sales.

ILVA claims that it properly reported as overrun sales those overrun quantities that were sold as prime merchandise to someone other than the customer who ordered the merchandise. However, ILVA notes that it could not report as overruns the excess prime merchandise that was sold with the order that generated the excess because its record keeping system does not separately identify such sales as overruns. According to ILVA, the record evidence (*i.e.,* the verification results and home market sales file) supports its claim that it properly reported prime merchandise overruns that were sold to someone other than the customer who ordered the merchandise. Moreover, ILVA claims that the data on the record show that the prime merchandise sales identified as overruns were made within the ordinary course of trade and, thus, should be included in the Department's analysis. Specifically, ILVA compared the price, quantity, sales terms, and product specifications of prime merchandise overrun and non-overrun sales in the home market and submitted statistics[1] which demonstrate, according to ILVA, that its sales of prime merchandise identified as overruns did not involve unusual product specifications or unusual sales terms (*i.e.* aberrational prices, unusual quantities, unusual delivery terms). Regarding prime merchandise overruns that ILVA sold with the order that generated them, ILVA maintains that the prices for these sales are arm's-length prices and that the sales are commercially indistinguishable from, and included as part of, other sales of prime merchandise. Since there is no evidence that any of ILVA's sales of prime merchandise, which may or may not contain overrun quantities, are outside the normal course of trade and, thus, would distort the margin calculation, ILVA submits that these sales should be used in the Department's analysis. Finally, ILVA asserts that the use of facts available is unsupported and unfair given that it reported overruns, where possible, and that the overruns not identified as such were part of commercial sales made within the ordinary course of trade.

DOC Position:

We agree with ILVA. The relevant provisions of section 776 of the Act state that if—

(1) necessary information is not available on the record, or

(2) an interested party or any other person—

(A) withholds information that has been requested by the administering authority or the Commission under this title * * * the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

ILVA reported overrun sales of prime merchandise where it could identify such sales in its records. However, ILVA's record keeping system does not identify as overruns the overrun quantities that were sold with the order that generated them. By not reporting such sales as overruns, ILVA did not withhold information from the Department because such information was not available. Moreover, the overrun information is unnecessary in the instant investigation since there is no evidence on the record that ILVA's failure to identify all overrun sales distorts the Department's margin calculation. Under such circumstances, the facts available remedy suggested by the petitioners is not warranted (*see Olympic Adhesives* v. *United States*, 899 F.2d 1565 (Fed. Cir. 1990); *see also Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 61 FR 13815, 13830–31 (March 28, 1996)). To avoid distortion, the Department will exclude from its analysis sales that are outside the ordinary course of trade. Section 351.102 of the Department's regulations notes that sales outside the ordinary course of trade might include:

Sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price.

The petitioners provided no evidence that any of ILVA's sales, including overrun sales of prime merchandise that may not have been included as overruns, were outside the ordinary course of trade. Therefore, with respect

[1] These statistics, which are proprietary, can be found on page 5 of ILVA's November 12, 1999 case brief.

to these overruns, we have accepted the information as reported.

Comment 2: Market Warehousing Expense

ILVA reported separate weighted-average warehousing expenses for direct sales and sales through resellers. The petitioners urge the Department to reject the warehousing expense reported for sales through resellers because it is not clear from the record that the sales for which the expense was reported are reseller sales. According to the petitioners, the sales file shows that the sales for which ILVA reported the reseller warehousing expense are sales from stock to the customer. If these were reseller sales, the petitioners contend that the file should indicate that the sale was through a service center to the customer, not from stock to the customer. Because of this contradiction, the petitioners request that the Department reject the reported reseller warehousing expense.

ILVA claims that the petitioners are mistaken because it only reported reseller warehousing expense for those sales that were identified as reseller sales in the home market sales file. Furthermore, ILVA claims that such sales were from the stock of the *reseller* and, thus, identifying a sale as being from stock and made by a reseller is not a contradiction. Finally, ILVA notes that contrary to the petitioners' suggestion, the reseller sales in question should not have been classified as sales through service centers because ILVA's resellers are not service centers.

DOC Position: We agree with ILVA. ILVA only reported reseller warehousing expense for those sales that were identified as reseller sales in the home market sales file. Moreover, the fact that ILVA's home market sales file identifies the resellers' sales as being from stock is consistent with information on the record indicating that the resellers sold merchandise from their warehouses. Thus, we have accepted the reseller warehousing expense as reported.

Comment 3: Correcting Data Files in Accordance With Verification Findings

The petitioners request that the Department adjust the reported general and administrative expense ratio and the reported cutting costs in accordance with its verification findings. Also, the petitioners request that the Department recalculate home market credit expense using the correct interest rate identified at verification. ILVA agrees with the petitioners.

DOC Position: We agree with both parties. We adjusted the reported costs and general and administrative expense ratio as appropriate. In addition, for the final determination we recalculated home market credit expense.

Comment 4: Failure To Establish the Market Price of Electricity

The petitioners claim that ILVA was unable to demonstrate that the price it paid to purchase electricity from an affiliated party is an arm's-length price. In addition, the petitioners assert that ILVA did not demonstrate that the affiliated party's price is greater than the cost of production since it did not provide documentation to support the affiliate's reported cost of producing electricity. Therefore, as facts available, the petitioners request that the Department base the electricity cost used in the final determination on the greatest electricity price reported in Appendix D–6(d) of ILVA's June 29, 1999 supplemental questionnaire response.

ILVA maintains that the petitioners' claim is without merit because it did, in fact, demonstrate that it paid a market price for electricity and that the price was greater than the affiliate's cost of producing electricity. During the POI, ILVA purchased electricity from both an affiliated and an unaffiliated party. According to ILVA, the disparity in the quantities of electricity purchased from these two parties precludes one from comparing the parties' prices in order to determine whether the affiliated party price is a market price. ILVA notes that it was unable to obtain actual electricity prices that the unaffiliated supplier charged other parties. Likewise, ILVA notes that, for reasons which are proprietary, it was unable to provide electricity prices that the affiliated supplier charged other parties. Thus, in order to provide the Department with a price comparison, ILVA compared the affiliated party price to a constructed unaffiliated party price. Specifically, ILVA used electricity rates published by the unaffiliated party to construct a weighted-average unit price that the party would have charged ILVA if all purchased electricity had been supplied by the unaffiliated party. ILVA points out that during the verification Department officials examined the calculation of the constructed unaffiliated party price and found no indication that the constructed price was based on inaccurate or incomplete information. Moreover, ILVA notes that the constructed price is based on publicly available information and, thus, it is reliable. Furthermore, ILVA submits that the constructed unaffiliated party price overstates the actual price that ILVA would pay for electricity since it is based on published rates that do not take into account the discounts that large consumers of electricity, such as ILVA, are able to negotiate. Finally, ILVA states that during the verification Department officials examined source documents supporting the affiliate's cost of producing electricity and found nothing to suggest that the documents were unreliable. For the foregoing reasons, ILVA urges the Department to accept the reported electricity costs.

DOC Position: We agree with ILVA. Although ILVA was unable to provide evidence of market prices based on actual transactions between unaffiliated parties, in response to the Department's request for a market price, ILVA used electricity rates published by its unaffiliated supplier to construct a weighted-average market price between unaffiliated parties. At verification, we examined the information used to construct that price and found no discrepancies. Moreover, at verification, we accepted the consumption and rate data provided by ILVA's affiliated electricity supplier, which demonstrated that the prices it charged ILVA are greater than its cost of production. Therefore, we have determined that the use of facts available to value electricity is unwarranted for the final determination.

Comment 5: Failure To Establish the Market Price of Iron Pellets

In the preliminary determination, the Department found that ILVA failed to establish that the price it paid to purchase iron pellets from an affiliated party was a market price. Therefore, in reaching its preliminary determination, the Department valued iron pellets using the weighted-average Italian import values of iron ore as provided by the petitioners in their July 8, 1999 submission.

ILVA contends that the Department should not rely on the values submitted by the petitioners for two reasons. First, the value that the petitioners submitted is for iron ore and iron ore concentrates while ILVA only purchased iron pellets. Thus, the value that the petitioners submitted is for a basket of products that is overly broad. Second, it is important to identify the iron content of products before comparing their prices; however, there is no mention of iron content in the information submitted by the petitioners. Therefore, ILVA calls on the Department to reject the petitioners price data, which ILVA characterizes as general and incomplete, and to value iron pellets using verified information.

The petitioners urge the Department to continue to value iron pellets using the Italian import price for iron ores and

concentrates for three reasons. First, ILVA failed to demonstrate that the Italian import value of iron ores and concentrates is unrepresentative of the costs incurred by ILVA for iron pellets. Second, ILVA submitted the ''verified'' information regarding the market price of iron pellets at verification which is after the regulatory deadline for submitting factual information. The petitioners note that section 351.301(b)(1) of the Department's regulations provides that in an antidumping duty investigation, factual information is due no later than:

Seven days before the date on which the verification of any person is scheduled to commence, except that factual information requested by the verifying officials from a person normally will be due no later than seven days after the date on which the verification of that person is completed.

The petitioners assert that there is no evidence on the record that the Department requested this information from ILVA. Therefore, the petitioners maintain that the ''verified'' information is untimely and should be rejected. Finally, the petitioners point out that the ''verified'' information consists of a constructed market price for iron pellets which is based, in part, on costs incurred by a Dutch producer and, thus, this information is not representative of the price ILVA would have actually paid to purchase iron pellets from its suppliers. For the foregoing reasons, the petitioners request that the Department reject the ''verified'' information and continue to value iron pellets using the Italian import value used in the preliminary determination.

DOC Position: We agree with ILVA. During the POI, ILVA purchased iron pellets from an affiliated supplier and a supplier which it identified as an unaffiliated party. In order to demonstrate that the affiliated party price for iron pellets is a market price, ILVA compared the prices that it paid its two suppliers for iron pellets. However, we preliminarily determined that ILVA and the supplier whom ILVA identified as an unaffiliated party are, in fact, affiliated pursuant to section 771(33)(F) of the Act. Thus, as noted above, for the preliminary determination we disregarded the prices that ILVA paid for iron pellets and valued the pellets using, as fact available, the price supplied by the petitioners. However, in making that decision, we stated in the preliminary notice that we were going to disregard the transactions whereby ILVA purchased iron pellets unless ILVA could demonstrate that such transactions reflect a market value. In keeping with this position, our verification outline requested ILVA to provide information regarding its claim that it bought iron pellets from affiliated parties at world market prices. ILVA provided both a constructed market price for iron pellets and an actual iron pellet price that one of its suppliers charged certain other customers during 1998. We have accepted this information because (1) during the verification ILVA provided this information in response to our request and, thus, the information is timely according to section 351.301(b)(1) of the Department's regulations; and (2) there is no information on the record to indicate that the actual price that ILVA's supplier charged certain other customers during 1998 is not representative of a market price for iron pellets. Therefore, for the final determination, we used the information obtained at verification to value iron pellets in accordance with section 773(f)(3) of the Act.

Comment 6: Treatment of U.S. Sales Entered Under Temporary Importation Bond

ILVA alleges that the Department should not have excluded from its preliminary analysis its sales of merchandise which entered the United States under TIB and was subsequently re-exported to Canada.[2] ILVA has taken this position because it believes that the U.S. law implementing the NAFTA requires the Department to assess antidumping and countervailing duties on such entries. Based on article 303(3) of the NAFTA, ILVA contends that merchandise which enters the United States under a TIB and is subsequently re-exported to another NAFTA party is considered ''entered for consumption'' and is therefore subject to all applicable customs duties. Article 303(3) states:

Where a good is imported into the territory of a Party pursuant to a duty deferral program and is subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party, the Party from whose territory the good is exported: (a) shall assess the customs duties as if the exported good had been withdrawn for domestic consumption * * *.

Moreover, ILVA notes that Congress implemented NAFTA article 303 by amending the Tariff Act of 1930 as follows:

[N]o merchandise that is subject to NAFTA drawback * * * that is manufactured or otherwise changed in condition shall be exported to a NAFTA country * * * without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation * * * and the payment of the assessed duty before the 61st day after the date of exportation of the article. * * *.

North American Free Trade Agreement Implementation Act, § 203(b)(5)(B), *codified at* 19 U.S.C. § 81c(a). Furthermore, ILVA notes that 19 U.S.C. § 333, which defines certain imported goods that are not subject to 19 U.S.C. § 81c(a), states that:

Nothing in this section [concerning goods subject to NAFTA duty deferral and drawback] or the amendments made by it shall be considered to authorize the refund, waiver, or reduction of countervailing duties or antidumping duties imposed on an imported good.

Based on these provisions, ILVA asserts that the Department has a statutory mandate to assess antidumping and countervailing duties on goods entered under a TIB and then re-exported to Canada.

Additionally, ILVA points out that in *Oil Country Tubular Goods From Japan: Preliminary Results and Recission in Part of Antidumping Duty Administrative Review*, 64 FR 48589 (September 7, 1999) (*OCTG from Japan*) the Department commented on goods which were imported under TIBs and re-exported to Canada stating that ''the TIB status of such entries does not necessarily insulate [them] from the assessment of antidumping duties'' (*OCTG from Japan*, 64 FR at 48591). However, ILVA also notes that in *OCTG from Japan,* the Department concluded from article 1901.3 of the NAFTA that ''if it is possible to read the NAFTA rules in a manner consistent with the law and practice discussed above [the antidumping law and Departmental practice regarding TIB entries], the entries in question [TIB entries re-exported to Canada] should not be subject to antidumping duties'' (*OCTG from Japan,* 64 FR at 48591). Article 1901.3 provides that:

No provision of any other Chapter of this Agreement shall be construed as imposing obligations on a Party with respect to the Party's antidumping law or countervailing duty law.

ILVA makes the following points regarding the Departments comments in *OCTG from Japan.* First, ILVA maintains that the Department must base its opinion on this issue on U.S.

[2] However, ILVA requests that the Department continue to exclude from its analysis of all ILVA's TIB entries that were re-exported to non-NAFTA parties.

law, not the NAFTA. According to ILVA, the plain language of 19 U.S.C. §§ 81c(a) and 333 unambiguously requires the Department to assess antidumping duties on ILVA's TIB entries that were re-exported to a NAFTA party (''NAFTA TIB entries''). While ILVA acknowledges that the Department may be correct when it observed in *OCTG From Japan* that the NAFTA ''does not compel the assessment of antidumping or countervailing duties that would not otherwise be applied under a party's domestic law,'' ILVA notes that in implementing the provisions of the NAFTA, Congress has required the Department to assess antidumping and countervailing duties on NAFTA TIB entries. Specifically, ILVA points out that the House Report on the NAFTA Implementation Act explains that Congress implemented article 303(3) of the NAFTA because it believed it ''critical to ensure'' that the NAFTA member countries do not become an ''export platform'' for materials produced in other regions of the world (*see* H.R. Rep. No. 103–361 (I), at 39–40 (1993), reprinted in 1993 U.S.C.C.A.N 2552, 2589–2590). According to ILVA, were the Department to adopt a practice of excluding NAFTA TIB entries, the Department's actions would contravene the expressly stated intent of Congress. Finally, ILVA observes that the Department's analysis in *OCTG From Japan* strongly suggests that it may exclude NAFTA TIB entries based on the fact that they are not entries for consumption. However, ILVA maintains that in implementing the NAFTA, Congress simply directed the Department to assess antidumping and countervailing duties on NAFTA TIB entries without defining such entries as being for consumption. Therefore, whether or not the entries are for consumption is immaterial in deciding whether to assess antidumping and countervailing duties on NAFTA TIB entries.

Additionally, ILVA notes that the Court of International Trade (''CIT'') has treated the Department's normal practice concerning TIBs as applying equally to countervailing and antidumping duties. Therefore, ILVA submits that if the Department were to continue to exclude ILVA's NAFTA TIB entries from its analysis in the antidumping duty investigation, it must also do so in the countervailing duty investigation. Nevertheless, ILVA contends that unless advised to the contrary, the U.S. Customs Service (''Customs'') will collect antidumping and countervailing duties on ILVA's NAFTA TIB entries. Therefore, if the Department continues to exclude ILVA's NAFTA TIB entries from its analysis, ILVA requests that the Department instruct Customs to liquidate without liability for countervailing or antidumping duties, all TIB entries by ILVA that are subsequently re-exported to a NAFTA country.

The petitioners assert that the NAFTA and U.S. law are clear on this issue—the TIB entries in question are excluded from dumping margin calculations, but not exempted from the assessment (*i.e.*, collection) of antidumping and countervailing duties.[3] According to the petitioners, ILVA's reliance on article 303(3) of the NAFTA and 19 U.S.C. sections 81c(a) and 333 is misplaced. The petitioners contend these provisions do not address the NAFTA's effect on U.S. antidumping and countervailing law; rather they deal with duty drawback and deferral programs and the collection of customs duties by Customs. The petitioners hold that Customs statutes, regulations, rulings and practices are not binding on the Department and, accordingly, ILVA's reliance on such is not determinative. On the other hand, the petitioners claim that article 1901.3 of the NAFTA is an explicit statement by the parties to the agreement that the agreement does not control the application of each parties antidumping and countervailing law. In addition, the petitioners disagree with ILVA's position that ''U.S. law and not the wording of the NAFTA should control the Department's conduct in this matter.'' On the contrary, the petitioners believe that both the U.S. laws necessary to implement the NAFTA and the NAFTA itself are dispositive of U.S. obligations under the agreement. If this were not the case, the petitioners argue that all of the NAFTA provisions not specifically addressed in the U.S. statute implementing NAFTA would have no effect, leaving the United States in the position of having not adopted the NAFTA in its entirety. Thus, the petitioners contend that ILVA cannot argue that article 1901.3 of the NAFTA is without effect. Moreover, the petitioners maintain that sections 81c(a) and 333 of the statute implementing the NAFTA were included so as to preclude any conflict between the NAFTA and the customs statutes in existence prior to implementation of the NAFTA. According to the petitioners, the absence of specific antidumping and countervailing duty provisions in the statute implementing the NAFTA is proof that, consistent with article 1901.3 of the NAFTA, the current U.S. law and practice controls the treatment of TIB entries for purposes of calculating dumping margins (*i.e.,* excluding such entries from the margin calculation). Moreover, the petitioners state that in *OCTG From Japan*, the Department noted that ''the parties [to NAFTA] made clear that NAFTA did not require any changes in antidumping duty law or practice'' (*OCTG From Japan*, 64 FR at 48590–91). Thus, the petitioners hold that the Department's exclusion of NAFTA TIB entries from its analysis in the preliminary determination is appropriate because it is consistent with existing law and Departmental practice which has been upheld by the CIT (*see Titanium Metals Corp.* v. *United States,* 901 F. Supp. 362, 367 (Ct. Int'l Trade 1995)). Nevertheless, the petitioners note that sections 81c(a) and 333 of the statute implementing the NAFTA and Article 303(3) of the NAFTA compel Customs to collect antidumping and countervailing duties on ILVA's NAFTA TIB entries as though the entries were withdrawn for domestic consumption. The petitioners note that this position is consistent with the Department's analysis in *OCTG From Japan.* Although the implementation of the NAFTA may lead to differing results in the manner in which the Department and Customs treat NAFTA TIB entries, the petitioners assert that the pertinent articles of the NAFTA and the U.S. customs law are unequivocal—NAFTA TIB entries must be excluded from dumping margin calculations, but not exempted from the assessment (*i.e.*, collection) of antidumping and countervailing duties.

DOC Position: Article 303 of the NAFTA addresses duty drawback and duty deferral programs, including TIB. In particular, Article 303(3) provides that merchandise entered into the United States under a TIB and subsequently re-exported to another NAFTA party shall be considered to be entered for consumption and shall be subject to all relevant customs duties. No party in this case disputes the requirement, established by Article 303, that the Department assess antidumping duties on subject merchandise entered under a TIB and re-exported to another NAFTA party. Rather, the petitioners contend that while the Department is required to assess antidumping duties on NAFTA TIB entries, it should nonetheless exclude from the calculation of the dumping margin those U.S. sales that entered under a TIB and

[3] The petitioners note that they assume that ILVA is referring to the Department's margin calculations when it used the term ''assess'' in its arguments. According to the petitioners, to do otherwise would render ILVA's arguments wholly inconsistent.

were subsequently re-exported to a NAFTA party. The petitioners' positions are incongruous.

In accordance with section 733(d)(2) of the Act, the Department can only assess antidumping duties on subject merchandise entered for consumption in the United States. *See Titanium Metals Corp.* v. *United States,* 901 F. Supp. 362 (CIT 1995). Normally, TIB entries are not entered for consumption, and the Department therefore does not assess antidumping or countervailing duties on TIB entries. Consistent with its treatment on assessment of duties, the Department's practice is to exclude those sales that entered under a TIB from its margin calculation because there will be no assessment of antidumping duties on such entries. *See e.g.,* Titanium Sponge From the Republic of Kazakhstan; Notice of Preliminary Results of Antidumping Duty Administrative Review, 64 FR 48793, 48794 (September 8, 1999). By contrast, where, as here, the Department will assess antidumping duties on entries, there is no basis to exclude the relevant sales from the margin calculation. Accordingly, we have included in the margin calculation of all ILVA's U.S. sales to unaffiliated parties that were entered for consumption under Article 303(3) of the NAFTA.

Comment 7: Collapsing Affiliates and Application of the Major Input Rule

During the POI, ILVA produced slabs which it sold to its wholly owned subsidiary, ILVA Lamiere e Tubi S.p.A. (''ILT''). ILT rolled the slabs into quarto plate and sold the plate to ILVA. During the POI, ILT only sold plate to ILVA (*i.e.,* ILT did not sell plate to any one else), which resold the plate to affiliated and unaffiliated customers in the U.S. and home markets. Prior to the preliminary determination, the petitioners argued that the Department should value the slabs that ILVA sold to ILT in accordance with the major input rule of section 773(f)(3) of the Act. ILVA argued that the Department should collapse ILT and ILVA and, in doing so, not apply the major input rule. In the preliminary determination, the Department did not treat ILT as a producer of the merchandise under investigation because it only supplied one service, namely rolling, in a larger production process wherein ILVA supplied all of the other material inputs and services required to produce plate. The Department determined that there was not a significant potential for price manipulation and, thus, no basis for collapsing ILT and ILVA. Since the Department did not collapse ILT with the producer ILVA, it used the major input rule to value ILT's rolling service. For the final determination, both the petitioners and ILVA contend that the Department erred by not treating ILT as a producer of the merchandise under investigation.[4] However, the parties differ as to whether the major input rule should be applied.

According to the petitioners, the record demonstrates that ILT is a supplier and seller of plate and, thus, the Department should apply the major input rule to ILT's purchases of slab from ILVA irrespective of whether it collapses ILT with ILVA. The petitioners note that ILVA reported, and the Department verified, that ILT purchased slabs from ILVA, rolled the slabs into plates, and sold the plates to ILVA. Thus, according to the petitioners, ''there is no tolling arrangement between ILVA and ILT.'' The petitioners submit that transactions between affiliated parties should be valued under the major input rule and, thus, they urge the Department to apply this rule in the instant situation. According to the petitioners, the decision to collapse entities is a sales, not a cost, issue and, therefore, it should have no bearing on the application of the major input rule. Specifically, the petitioners maintain that the purpose behind collapsing is 1) to ensure that all sales of a producer or reseller are reviewed; 2) to ensure that antidumping margins are calculated as accurately as possible; and, 3) to prevent evasion of antidumping duty orders by the establishment of alternate sales channels (*see Queen's Flowers de Colombia et al.* v. *United States,* 981 F. Supp. 617, 622 (CIT 1997). Thus, the petitioners contend that the decision to collapse entities is made in the limited context of ensuring that the Department has included all of a respondent's U.S. sales in its margin calculation. Hence, the petitioners assert that collapsing should not affect the application of the major input rule. Because ILVA failed to provide a market price for slabs, as required by the Department for application of the major input rule, the petitioners request that as facts available, the Department value ILVA's slabs using the market price that the petitioners provided in their July 8, 1999 submission.

ILVA agrees that ILT and ILVA are both producers of the merchandise under investigation, but also contends that they satisfy the regulatory criteria for collapsing. Consequently, ILVA contends that the Department should collapse these two entities and not apply the major input rule. ILVA notes that during the POI, it produced CTL plate from plate in coil while ILT, a separate affiliated legal entity, produced another type of CTL plate, referred to as quarto plate. Based on the independent legal status of ILT, along with the fact that legal title belongs to ILT until ILT sells the plate to ILVA, ILVA maintains that the Department must find that ILT is a producer of plate and not merely a subcontractor as the Department held in its preliminary determination. ILVA believes that the Department's decision not to treat ILT as a producer of plate is wrong for the following reasons. First, ILVA reiterates that ILT cannot be considered a subcontractor because it acquires ownership of the subject merchandise. Second, ILVA argues that even if the Department considers ILT to be a ''subcontractor,'' the Department's regulations preclude it from finding that ILT is not a producer. Specifically, ILVA notes that 19 CFR 351.401(h) states the following:

> (h) *Treatment of subcontractors (''tolling'' operations).* The Secretary will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale of the subject merchandise or foreign like product.

Since ILT acquires ownership of the subject merchandise and both elements of 19 CFR 351.401(h) must be satisfied before a company, even if deemed a subcontractor, cannot be treated as a producer, ILVA claims that the Department must determine that ILVA is a producer.

Third, ILVA alleges that the Department reached its preliminary determination on this matter by improperly focusing on the operational relationship between ILVA and ILT rather than the legal relationship. Again, ILVA notes that the legal relationship involves ILT purchasing slabs from ILVA, holding title to those slabs, using the slabs to produce plates, and selling the plates, for which ILT also holds title, to ILVA. According to ILVA, finding that an entity is not a producer based on an ''operational reality test'' would not withstand judicial scrutiny because it conflicts with the Department's practice of focusing only on legal relationships when employing the major input rule. Specifically, ILVA notes that the Department consistently looks to the legal status of the responding parties rather than their operational relationship in determining whether the ''transactions disregarded'' and ''major input rules'' of the Act are applicable. ILVA contends that the Department

[4] Although the petitioners maintain that ILT is a producer, they did not address the issue of whether the Department should collapse ILT with ILVA.

would be hard-pressed to explain to a Court why it looks at the operational relationship between parties to determine whether an entity is a producer but refuses to look at the operational relationship when employing the major input rule. ILVA adds that this is especially so since the logical consequence of being treated as a ''subcontractor'' based on the ''operational reality test'' leads to the application of the major input rule.

Fourth, ILVA notes that its relationship with ILT is identical to the relationship that existed between two affiliated in the antidumping duty investigation of stainless steel wire rod from Sweden and yet, in that investigation, the Department found that both the affiliates were producers (*see Notice of Final Determination of Sales at Less Than fair Value: Stainless Steel Wire Rod From Sweden,* 63 FR 40449 (July 29, 1998) (*''SSWR From Sweden''*)). ILVA and ILT operate under an agreement whereby, in general, ILT must purchase from ILVA all of the slabs that it uses to produce plates and it must sell the plates that it produces only to ILVA. According to ILVA, its relationship with ILT is identical to the relationship between Fagersta and Sandvik, the two affiliates in *SSWR From Sweden,* because Sandvik, a producer of stainless steel wire rod (''SSWR'') operated under an exclusive purchase and supply agreement with Fagersta whereby Fagersta was ''required to purchase only from Sandvik the billets that it processes into SSWR for sale to Sandvik'' (*see SSWR From Sweden,* 63 FR at 40454). Unlike the Department's finding in the instant investigation, in *SSWR From Sweden,* the Department found that Fagersta was a producer. Moreover, ILVA points out that the Department's preliminary analysis on this issue, which seems to focus on the commercial relationship between ILVA and ILT as described in their exclusive supply and purchase agreement, is flawed because it does not consider certain provisions in the agreement that indicate that ILT is a separate entity that is operationally independent from ILVA. Finally, ILVA argues that the fact that ILT did not export subject merchandise to the United States does not prohibit the Department from treating ILT as a producer and collapsing the two entities. ILVA notes that in *Certain Fresh Cut Flowers From Colombia; Preliminary Results of Antidumping Duty Changed Circumstances Review,* 63 FR 25447, 25448 (May 8, 1998) (*Certain Fresh Cut Flowers From Colombia*), the Department collapsed a potential exporter that was not even producing subject merchandise during the period of review because the company had the capability of producing subject merchandise. For the foregoing reasons, ILVA urges the Department to treat ILT as a producer.[5]

Furthermore, ILVA contends that as producers, ILT and ILVA satisfy all of the regulatory criteria for collapsing. ILVA states that pursuant 19 CFR. 351.401(f), the Department will collapse two producers where the Department finds; 1) the producers are affiliated under section 771(33) of the Act; 2) the producers have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities; and 3) there is a significant potential for the manipulation of price or production. ILVA believes that it meets all of the above criteria for the following reasons. First, ILVA notes that it owns 100 percent of ILT and, thus, ILVA and ILT are affiliated according to section 771 (33)(e) of the Act which states that an organization and any person owning 5 percent or more of the organization are affiliated. Second, ILVA maintains that it produces plates that are the same or similar to the plates produced by ILT. In fact, ILVA notes that using the Department's model-matching characteristics, there are some control numbers that include both ILVA and ILT produced plates. Hence, ILVA concludes that it meets the second of the Department's requirements for collapsing. Lastly, ILVA argues that in the instant situation, there is a significant potential for the manipulation of prices or production. According to ILVA, in order to determine whether a significant potential for manipulation exists, the Department considers; 1) the level of common ownership between the affiliates, 2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and 3) whether the operations of the affiliated firms are intertwined. ILVA believes that it meets each of these criteria because it owns 100 percent of ILT, certain members of its board of directors are also on the board of directors of ILT, and it shares information concerning sales, production and pricing with ILT. Moreover, ILVA contends that given its exclusive purchase and supply agreement with ILT, the two companies intimately coordinate production activities and, thus, their operations are intertwined. ILVA notes that the Department found the exclusive purchase and supply agreement in *SSWR From Sweden* to be a significant factor in its determination to collapse Sandvik and Fagersta. Additionally, ILVA maintains that in the preliminary determination, the Department did not collapse ILVA and ILT because it did not consider ILT to be a producer. However, as noted above, ILVA believes that ILT is a producer and argues that the petitioners agree with that conclusion. Thus, ILVA contends that it should be collapsed with ILT.

If the Department collapses ILVA and ILT, ILVA maintains that precedent requires the Department to disregard the major input rule. *AK Steel Corp.* v. *United States,* 34 F. Supp.2d 756 (CIT 1998); *see Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170, 13185 (March 18, 1998); *see also Certain Cut-to-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Duty Administrative Review,* 63 FR 12744, 12749–50 (March 16, 1998) In fact, ILVA notes that the Department was very specific on this point in *SSWR From Sweden* where it stated that ''because we have collapsed Fagersta, Sandvik, and Kanthal, we find that the major input rule does not apply in this instance and have used Sandvik's billet costs as the basis for COP'' (*see SSWR From Sweden,* 63 FR at 40454). Given the Department's precedents, ILVA urges the Department to collapse ILVA and ILT and to disregard the major input rule.

DOC Position: We disagree with both parties. The two issues at hand are whether to collapse ILVA and ILT and whether to apply the major input rule. With respect to collapsing, section 351.401(f) of the Department's regulations describes the circumstances whereby the Department will treat two or more affiliated producers as a single entity (*i.e.*, collapse the parties). As in the preliminary determination, we do not consider ILT to be a producer because the terms of its exclusive supply and purchase agreement with ILVA require ILT to sell to ILVA all of the plate that it rolls in its facility. In arguing that ILT is a producer, the petitioners focused on the fact that

[5] ILVA also contends that the Department's decision not to collapse ILT because ILT is not a producer nullifies the ''significant potential for manipulation'' provision of the regulations. According to ILVA, ''the fact that the Department determined that ILT is not a producer because of the exclusive supply arrangement with ILVA is simply not dispositive of whether the Department should collapse ILVA.'' ILVA contends that its agreement with ILT could change whereupon ILT would sell subject merchandise and ''this is exactly the situation that the Department's collapsing regulation is intended to address.''

actual sales of slabs and plates took place between ILVA and ILT and, thus, according to the petitioners, ''there is no tolling arrangement between ILVA and ILT.'' ILVA also focused on the legal form of the transactions between ILVA and ILT, noting that ''based on the independent legal status of ILT, along with the fact that legal title [to the plates] belongs to ILT until ILT sells the merchandise to ILVA, the Department must determine that ILT is a producer.'' However, the transfer of legal title is not the only factor that the Department considers when deciding whether an entity that is involved in manufacturing subject merchandise or foreign like product is a producer (*see Notice of Final Determination of Sales of Less Than Fair value: Dynamic random Access Memory Semiconductors of One Megabit and Above,* 64 FR 56308, 56318 (October 19, 1999 (''DRAMs'' From Taiwan)). Significantly, section 351.401(h) of the Department's regulations notes that a subcontractor will not be considered to be a producer where the subcontractor ''does not acquire ownership and *does not control the pertinent sale of the subject merchandise or foreign like product.''* This provision indicates that ownership of the produced merchandise and control of the relevant sale of such merchandise are important considerations in identifying the producer. Contrary to ILVA's claim, however, it does not require the Department to consider an entity to be a producer where one of the two conditions is not satisfied. Moreover, the Department has discretion in both selecting the factors that it considers in order to identify a producer and in determining the importance of those factors. In this case, we find that control of the relevant sale, *i.e.,* the sale of subject merchandise or foreign like product to unaffiliated parties, is a particularly important characteristic for the producer to possess. Under the terms of the exclusive supply and purchase agreement, ILT does not sell plates to unaffiliated parties and, thus, does not control the relevant sale (*i.e.,* the sale to an unaffiliated party). Rather, ILVA controls the first sale of the plates to unaffiliated parties. In essence, ILT only performs a rolling service for ILVA, obtaining slab from ILVA and returning the finished plate to ILVA. Thus, we do not consider ILT to be a producer of subject merchandise. Therefore, because ILT is not a producer, it is not appropriate to collapse ILVA and ILT into one entity under 19 CFR 351.401(f) for purposes of this final determination. Furthermore, there is no other basis on which to collapse ILVA and ILT.

The cases cited by ILVA as support for treating ILT as a producer differ from the instant case with respect to control of the relevant sale. In those cases, there is no indication that the parties which the Department treated as producers were contractually precluded from selling subject merchandise or foreign like product to unaffiliated customers. In fact, in *SSWR From Sweden,* each of the parties which the Department identified as producers and subsequently collapsed sold subject merchandise to the United States during the POI. In the preliminary results of the changed circumstances review in *Certain Fresh Cut Flowers From Colombia,* the Department collapsed Flores El Talle S.A. (''Flores''), the party that requested the review, with the Flores Colombianas Group (''the Group''), and found that the revocation of the antidumping order with respect to the Group also applied to Flores. In that case the Department noted that Flores' shipments would not be subject to suspension of liquidation if it were collapsed with the Group. Thus, unlike ILT, Flores, although not currently producing the subject merchandise due to soil infestation, was a producer of subject merchandise in a position to sell subject merchandise and foreign like product to unaffiliated customers once it resumed production. Thus, the fact that the Department treated Flores as a producer is not inconsistent with the Department's treatment of ILT in the instant case.

Furthermore, we do not find that the provisions which ILVA pointed to in the exclusive supply and purchase agreement sufficiently mitigate the restrictions that the agreement places on ILT's ability to sell plates. The agreement is clear that in the ordinary course of business, control of the relevant sale belongs to ILVA, and, in fact, during the POI, it was ILVA, not ILT, that sold plates to unaffiliated parties.

Finally, we disagree with ILVA's contention that the Department's decision not to collapse ILVA and ILT nullifies the ''significant potential for manipulation'' provision of section 351.401(f) of the Department's regulations. As the Department has noted, it ''does not collapse affiliated companies for margin-calculation purposes unless both companies produce or sell the subject merchandise since the Department collapses affiliated companies only where the potential for price manipulation exists'' (*see Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta From Italy,* 64 FR 6615, 6628 (February 10, 1999)). Thus, rather than nullifying the ''significant potential for manipulation'' provision, in making our decision we have specifically considered whether such potential exists by examining the role that ILVA and ILT played in manufacturing and selling the merchandise under investigation. Moreover, the fact that ILVA and ILT can alter their agreement and change the role that each plays in manufacturing and selling the merchandise under investigation has not escaped our attention. Should we issue an order with respect to ILVA, we intend to revisit this issue if the relationship between ILVA and ILT should change in any future administrative review.

Because we have not collapsed ILVA and ILT and we treated ILVA as the producer, we have continued to apply the major input rule to value the rolling services provided by ILT. In the absence of a market price or a transfer price for rolling slabs, as in the preliminary determination, we constructed a transfer price by increasing the reported rolling costs for quarto plate by ILT's G&A expenses and profit.

Palini

Comment 1: Classification of Warranty Expenses

The petitioners contend that Palini improperly classified as indirect selling expenses the U.S. credit notes issued by Palini pursuant to warranty claims made by U.S. customers. The petitioners argue, citing *Zenith Electronics Corporation* v. *United States,* that the Department's regulations allow for the classification of warranty expenses as indirect selling expenses only where the warranty expenses relate to non-variable costs. 77 F.3d 426, 433–34 (Fed. Cir. 1996). In contrast, in this case, the petitioners assert that Palini's warranty expenses are variable expenses, because the credit notes were issued for defective and non-conforming merchandise and therefore directly relate to specific sales. Therefore, the petitioners request that, for the final results, the Department treat Palini's warranty expenses as direct selling expenses.

Palini claims that it properly reported its warranty expenses as indirect selling expenses. Palini contends that, according to *Tapered 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 (TRB's from Japan),* the Department recognizes that

period of review (''POR'') warranty expenses cannot always be linked to POR sales, because the expenses may result from sales that occurred before the POR. 62 FR 11825 (March 13, 1997). Therefore, Palini asserts that its reported warranty expenses must be allocated because the expenses cannot be reported on a transaction-specific basis. *Id.* Further, in accordance with *TRB's from Japan,* Palini contends that warranty expenses may be classified as indirect selling expenses, when the expenses cannot be reported on a transaction-specific basis. Therefore, for the final results, Palini requests that, because it issued credit notes on a customer-specific basis, as opposed to a transaction-specific basis, the Department should treat its warranty expenses as indirect selling expenses. However, Palini notes, if the Department were to reclassify the company's U.S. warranty expenses as direct selling expenses, it should similarly treat its home market warranty expenses, because the expenses are incurred in the same manner in both markets.

DOC Position: We agree with the petitioners and have treated Palini's warranty expenses as a direct expense in both the U.S. and home markets. Section 351.410 of the Department's regulations states that direct selling expenses are expenses, such as warranties, that result from, and bear a direct relationship to, the particular sale in question. In this case, Palini stated, at verification, that it issued credit notes for customer claims concerning defective or non-conforming merchandise. Thus, these expenses arise directly from the sales of subject merchandise and, consequently, pursuant to section 351.410 of the Department's regulations, we find that Palini's issuance of credit notes relates directly to specific sales.[6]

However, we agree with Palini that to the extent we reclassify its warranty expenses as direct selling expenses in the U.S. market, we should also do so in the home market because evidence on the record indicates that such expenses were incurred in the same manner in both markets. Therefore, for these final results, we have determined that Palini's warranty expenses should be treated as direct selling expenses for both the home and U.S. markets.

[6] We note, as stated in the *Antidumping Manual, Chapter 8, page 17,* and in accordance with Department practice, that ''warranties are included even though the expense can not be tied to a particular sale because of the lapse of time between sale and expense. Yet it is inescapable that had there been no sales, there would have been no warranty expense.''

Comment 2: Minor Corrections

The petitioners contend that Palini's submission of its revised U.S. warranty expense, presented as a minor correction at the beginning of verification, should not be accepted as such by the Department. The petitioners argue that the amount of the reduction from the reported value to the value presented at verification, was such a substantial change that it should be rejected by the Department as an untimely submission of new factual information.

In response, Palini asserts that its revision to U.S. warranty expenses was properly submitted as part of the minor corrections presented at the beginning of verification, pursuant to Department practice, and should be accepted as such by the Department.

DOC Position: We agree with Palini. During our verification of Palini, we examined and traced selected credit notes to Palini's financial records and completed an overall financial reconciliation, which substantiated the validity of Palini's U.S. warranty expense revision. Following Department practice, because the corrections are limited to U.S. warranty expenses and were verified to our satisfaction, we accepted these corrections for purposes of the final results.

Comment 3: Early Payment Discounts

The petitioners argue that Palini did not substantiate its claim that all customers who were offered an early payment discount actually made an early payment. The petitioners assert that pursuant to section 351.308 of the regulations, the Department should disallow all home market early payment discounts as facts available because Palini failed to provide information that distinguished between sales where the discount was granted and sales where the discount was not granted.

Palini argues that its reported early payment discounts were properly treated as a price adjustment in the preliminary determination. Palini states the Department affirmatively verified that when an early payment discount is granted, the amount of the discount is indicated in the invoice price. Therefore, Palini argues that the Department should not apply facts available to its early payment discount, but should treat it as a price adjustment to NV in the final results.

DOC Position: We agree with Palini. During our home market verification of Palini, we conducted thorough sales traces which included ensuring the accuracy of Palini's early payment discounts through an examination of the reported gross unit price and the invoice price. We found no discrepancies. Furthermore, we were satisfied that for those sales transactions reviewed at verification, which included early payment discounts, the customer did utilize the early payment option whenever offered by Palini. Therefore, for these final results, we have continued to allow an adjustment to NV for Palini's reported early payment discounts.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Italy that were entered, or withdrawn from warehouse, for consumption on or after July 29, 1999 (the date of publication of the *Preliminary Determination* in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Palini B Bertoli S.p.A	8.97
Ilva S.p.A	de minimis
All others	8.97

ITC Notification

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

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

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33236 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–D

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–827]

Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From Italy

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Norbert Gannon, Kristen Johnson, or Michael Grossman, Office of CVD/AD Enforcement II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2786.

Final Determination. The Department of Commerce (the Department) determines that countervailable subsidies are being provided to certain producers and exporters of certain cut-to-length carbon-quality steel plate from Italy. For information on the countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation, U.S. Steel Group, a Unit of USX Corporation, Gulf States, Inc., IPSCO Steel Inc., and the United Steelworkers of America (the petitioners).

Case History

Since the publication of our preliminary determination in this investigation (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Italy,* 64 FR 40416 (July 26, 1999) (*Preliminary Determination*)), the following events have occurred:

We issued supplemental questionnaires on July 23, 26, and 27, 1999, to ILVA S.p.A. (ILVA) and ILVA Lamiere e Tubi S.p.A. (ILT) (collectively referred to as ILVA/ILT), Palini & Bertoli S.p.A. (Palini & Bertoli), and the Government of Italy (GOI), respectively. We received the respondents' questionnaire responses on September 3, 1999. We conducted verification of the countervailing duty questionnaire responses from September 13 through September 24, 1999. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 64 FR at 40416), and the final antidumping duty determination was postponed (*see* 64 FR at 46341), the Department on August 25, 1999, extended the final determination of this countervailing duty investigation until no later than December 13, 1999 (*see* 64 FR at 46341). On November 8, 1999, we issued to all parties the verification reports for ILVA/ILT, Palini & Bertoli, and the regional government of Friuli Venezia Giulia. On November 12, 1999, we issued the verification report for the GOI. Petitioners, the GOI, and ILVA/ILT filed case briefs on November 18, 1999. Rebuttal briefs were submitted to the Department by the petitioners and ILVA/ILT on November 23, 1999. The case hearing was held on November 30, 1999.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular 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. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.,* USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.