be the rate indicated above; (2) for merchandise exported by SFTC, the cash deposit rate will continue to be the rate published in the final LTFV determination; and (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate of their suppliers. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Upon completion of this review, we will direct Customs to assess an ad valorem rate of 53.65 percent against the entered value of each entry of subject merchandise during the POR for all firms except those firms excluded from the order or entitled to a separate rate.

Notification to Interested Parties

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

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return, destruction, or conversion to judicial protective order of APO materials is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675(a)(1)) and 19 CFR 351.221.

Dated: January 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–694 Filed 1–12–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822, A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part

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

ACTION: Notice of final results of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada and determination to revoke in part.

SUMMARY: On July 10, 1998, the Department of Commerce (''the Department'') published the preliminary results of its administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. These reviews cover six manufacturers/exporters of the subject merchandise to the United States (three manufacturers/exporters of corrosion-resistant carbon steel and four manufacturers/exporters of cut-to-length carbon steel plate), and the period August 1, 1996, through July 31, 1997. We gave interested parties an opportunity to comment on our preliminary results. As a result of these comments, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor (Dofasco, Inc. and Sorevco Inc. (collectively, Dofasco)); Eric Scheier (Continuous Colour Coat (CCC)); Lesley Stagliano (Algoma Inc. (Algoma)); Gideon Katz, (Gerdau MRM Steel (MRM)), A.J. Forsyth and Co., Ltd. (Forsyth) and Stelco, Inc. (Stelco) corrosion resistant); Laurel LaCivita (Stelco plate); or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

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

Background

On July 10, 1998, we published in the **Federal Register** (63 FR 37320) the preliminary results of the administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada (Preliminary Results). We gave interested parties an opportunity to comment on our preliminary results. We received written comments from Algoma, CCC, Dofasco, Stelco, and Forsyth, and from the petitioners (Bethlehem Steel Corporation, U.S. Steel Group (a unit of USX Corporation), Inland Steel Industries, Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company). We have now completed these administrative reviews in accordance with section 751(a) of the Act.

Scope of Reviews

The products covered by these administrative reviews constitute two separate ''classes or kinds'' of merchandise: (1) Certain corrosion-resistant carbon steel flat products, and (2) certain cut-to-length carbon steel plate.

The first class or kind, certain corrosion-resistant steel, includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000,

7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The second class or kind, certain cut-to-length plate, includes hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 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. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X–70 plate. Also excluded is cut-to-length carbon steel plate meeting the following criteria: (1) 100% dry steel plates, virgin steel, no scrap content (free of Cobalt-60 and other radioactive nuclides); (2) .290 inches maximum thickness, plus 0.0, minus .030 inches; (3) 48.00 inch wide, plus .05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, 0.3 to 0.8 (maximum).

With respect to both classes or kinds, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of these reviews.

Fair Value Comparisons

To determine whether sales of subject merchandise from Canada to the United States were made at less than fair value, we compared the Export Price (EP) to the Normal Value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of the preliminary results of review notice. On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 133 F.3d 897 (Fed Cir. 1998). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. See section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' We will match a given U.S. sale to foreign market sales of the next most similar model when all sales of the most comparable model are below cost. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. 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, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

Determination Not To Revoke in Part: Stelco Cut-to-Length Carbon Steel Plate and Corrosion-Resistant Carbon Steel Flat Products, and Determination To Revoke in Part: Algoma Cut-to-Length Carbon Steel Plate

On August 28, 1997, Algoma submitted a request, in accordance with 19 CFR 351.222(b), that the Department revoke the order covering cut-to-length carbon steel plate from Canada with respect to its sales of this merchandise. On August 29, 1997, Stelco submitted a request that the Department revoke the orders covering cut-to-length carbon steel plate and corrosion-resistant steel from Canada with respect to its sales of this merchandise. In accordance with 19 CFR 351.222(b)(2)(iii), these requests were accompanied by certifications from Algoma and Stelco that they had not sold the subject merchandise at less than NV for a three-year period, including this review period, and would not do so in the future. Algoma and Stelco also agreed to their immediate reinstatement in the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, they sold the subject merchandise at less than NV.

The Department conducted verifications of Algoma's and Stelco's responses for this period of review. In the two prior reviews of this order we determined that Algoma and Stelco sold cut-to-length carbon steel plate from Canada at not less than NV or at *de minimis* margins. We determine that

both Algoma and Stelco sold cut-to-length carbon steel plate at not less than NV during the instant review period.

On August 10, 1998, petitioners submitted argumentation opposing Algoma's and Stelco's revocation requests. On December 4, 1998, we placed on the record of this review the results of research that we conducted to help us determine the likelihood of resumed dumping, and opened the record for further comment on this issue. See memorandum to the file, dated December 4, 1998.

In determining whether to revoke an antidumping order in part, we must conclude pursuant to § 351.222(b)(2), that: (1) The company has sold subject merchandise at not less than normal value to the United States in commercial quantities for three consecutive reviews; (2) it is not likely that the companies eligible for revocation will in the future sell the subject merchandise at less than NV; and (3) the company agrees to its immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV.

In the present case, the Department has found that Stelco has had zero or *de minimis* dumping margins for three consecutive reviews. However, in determining whether the three years of no dumping are a sufficient basis to make a revocation determination, the Department must be able to determine that the company has continued to participate meaningfully in the U.S. market during each of the three years at issue. *See Pure Magnesium from Canada*, 63 FR 26147 (May 12, 1998). This practice has been codified by § 351.222(d)(1) of the Department's regulations, which state that, ''before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, *during each of the three (or five) years*, there were exports to the United States *in commercial quantities* of the subject merchandise to which a revocation or termination will apply.'' 19 CFR 351.222(d)(1) (emphasis added). For purposes of revocation, the Department must be able to determine that past margins are reflective of a company's normal commercial activity. Sales during the POR which, in the aggregate, are an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping.

Based on the current record, we find that Stelco did not sell merchandise in the United States in commercial quantities during the second administrative review (one of the three consecutive reviews cited by Stelco to support its request for revocation). During the POR covered by that review (August 1994 though July 1995), Stelco made only one sale in the United States. Moreover, this sale was only for 36 tons of subject merchandise. By contrast, during the period covered by the antidumping investigation, which was only six months long, Stelco made several thousand sales totaling approximately 30,000 tons. In other words, Stelco's sales for the *entire year* covered by the second review period were only 0.12% of its sales volume during the *six-months* covered by the investigation. Similarly, during the current POR, Stelco sold approximately 2000 tons of subject merchandise in the United States. While this amount is small in comparison to the amount sold prior to issuance of the order, it is over 50 times greater than the amount sold during the period covered by the second administrative review. Consequently, although Stelco received a *de minimis* margin during the second administrative review, this margin was not based on commercial quantities within the meaning of the revocation regulation. The number of sales and total sales volume is so small, both in absolute terms, and in comparison with the period of investigation and other review periods, that it does not provide any meaningful information on Stelco's normal commercial experience. Therefore, we find that Stelco does not qualify for revocation from the order on steel plate under § 351.222(b)(1)(i) and (d)(1).

We find that Algoma has met all of the requirements for revocation under § 351.222(b)(1) of the Department's regulations. As we explained in *Dynamic Random Access Memory Semiconductors of One Megabyte or Above From the Republic of Korea, Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part*, 62 FR 39809, 39810 (July 24, 1997) (*DRAMS from Korea*), in evaluating the issue of likelihood, the Department has considered three years of sales in the United States with no dumping margins, plus an agreement to reinstatement in the order, to be indicative of expected future behavior. Absent other evidence, the Department considers such facts to be determinative of the likelihood issue.

Algoma has sold merchandise in the United States at not less than NV for three consecutive reviews. Moreover, during each of these periods, Algoma's aggregate sales were made in commercial quantities. Algoma has also agreed to its immediate reinstatement in the order if we conclude, subsequent to the revocation, that Algoma has sold the subject merchandise at less than NV. Finally, no party has argued that Algoma is not eligible for revocation based on likelihood under § 351.222(b)(2)(ii), and we find that there is not sufficient support for such a conclusion. Therefore, based on its consecutive years of zero or *de minimis* margins, and reinstatement agreement, and in the absence of evidence to the contrary, we conclude that it is not likely that Algoma will sell subject merchandise in the United States at less than fair value.

Regarding Stelco's request for revocation with respect to corrosion-resistant steel, we note that in the last two administrative reviews we determined that Stelco sold corrosion-resistant steel at less than NV. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 12725 (March 16, 1998) and *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18448 (April 15, 1997)(*1994/95 Canadian Steel*). Although the final results of these reviews are subject to litigation, that litigation is not yet complete. Additionally, as discussed below, we have determined that Stelco sold corrosion-resistant steel at less than NV during the period covered by this review. Consequently, we determine that because Stelco does not have three consecutive years of zero or *de minimis* margins on corrosion-resistant steel, Stelco is not eligible for revocation of the order on corrosion-resistant steel under 19 CFR 351.222(b).

Facts Available

As we explained in the preliminary results, we determine that the use of facts available is appropriate for Forsyth in accordance with section 776(a) of the Act, because it failed to report all of its home market sales made during the POR.

Where necessary information is missing from the record, the Department may apply facts available under section 776 of the Act. Further, where that information is missing because a respondent has failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the Department to use facts available that are adverse to the interests of that respondent, which may include information derived from the petition, the final determination, a

previous administrative review, or other information placed on the record. Forsyth did not respond to our repeated requests that it report all of its home market sales; rather, it presented arguments as to why it could omit many of those sales. As we explained in the preliminary determination, we disagree with these arguments. Therefore, we conclude that Forsyth has failed to cooperate to the best of its ability.

As adverse facts available for Forsyth, we are using the highest dumping margin from any segment of this proceeding, 68.70 percent. This is the rate used as facts available in the LTFV final determination, and is found in the petition. *See Memorandum to the File ''Preliminary Results of Cut-to-Length Carbon Steel Plate from Canada; Corroboration of Antidumping Duty Margin Used as Facts Available for A.J. Forsyth''* July 2, 1998 (Corroboration Memo).

Section 776(c) provides that the Department shall, to the extent practicable, corroborate ''secondary information'' by reviewing independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) accompanying the URAA at 870, clarifies that ''secondary information'' includes information from the petition in the LTFV investigation, the final determination, or information from a previous section 751 review of the subject merchandise. The SAA also provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *Id.*

In accordance with this requirement, we corroborated the LTFV margin to the extent practicable. We examined the basis of the rates contained in the petition. Petitioners based both U.S. price and normal value on actual prices from price quotations to U.S. customers and price lists for plate sold by respondents. *See Petition Requesting the Imposition of Antidumping Duties on Imports of Cut-to-Length Carbon Steel Plate from Canada*, June 30, 1992 and July 14, 1992 (amended petition). The price lists and price quotes that support the petition margin are independent sources. Furthermore, the Department did not receive any information or comment from the respondent or other interested parties in this review concerning the U.S. prices and normal values contained in the petition, and is aware of no other independent sources of information that would enable us to further corroborate the margin calculated in the petition. We note that the SAA, at 870, specifically states that where ''corroboration may not be practicable in a given circumstance,'' the Department may nevertheless apply an adverse inference. Based on these reasons, the Department considers the LTFV rate used as adverse facts available to be corroborated.

Changes From the Preliminary Results

The Department is implementing a change in this review in the calculation of U.S. credit expense for Algoma, CCC, MRM, and Dofasco, to be consistent with the Department's current practice, as outlined in *Import Administration Bulletin 98.2: Imputed Credit Expenses And Interest Rate* (February 23, 1998) (Policy Bulletin 98.2).

It is the Department's practice to calculate the U.S. credit expense using a short-term interest rate tied to the currency in which the sales are denominated. This interest rate should be based on the respondent's weighted-average short-term borrowing experience in the currency of the transaction. In cases, such as these, where Algoma, CCC, MRM and Dofasco have no short-term borrowings in the currency of the transaction, we will use publicly available information to establish a short-term interest rate applicable to the currency of the transaction. Since we are addressing the U.S. dollar transactions for these companies, for these final results we have used the average short-term lending rates calculated by the Federal Reserve to impute credit expenses. Specifically, we have used the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made. *See* Final Analysis Memoranda for Algoma, CCC, MRM, and Dofasco, on file in room B–099 of the Commerce Department.

Interested Party Comments

Algoma

Comment 1: Credit Expenses

Petitioners allege that the errors found in the reported credit expenses at verification indicate that the information cannot be verified. Petitioners also contend that Algoma did not report credit expenses to the best of its ability and that, therefore, the Department should apply adverse facts available. Petitioners argue that the Department cannot rely on Algoma's data to conclude that the credit expense errors were isolated because, rather than the Department verifying this assertion itself, the Department relied on Algoma to independently verify that there were no other errors in its reporting of payment dates. Petitioners argue that, unlike in *Melamine Institutional Dinnerware from Indonesia: Final Determination of Sales at Less Than Fair Value*, 62 FR 1719, 1723 (January 13, 1997), where the Department corrected errors found at verification after verifying that the errors were isolated, the Department did not verify that the errors in Algoma's reporting of credit expenses were isolated.

Petitioners contend that the errors discovered by the Department during verification were significant because Algoma reported credit expenses where it actually received advance payments. Thus, petitioners argue, Algoma failed verification, and the Department should apply facts available, as it did in *Stainless Steel Bars from Spain; Final Results of Admin. Review*, 59 FR 66931, 66935 (December 28, 1994), *Circular Welded Non-Alloy Steel Pipe and Tube from Mexico; Final Results of Admin. Review*, 62 FR 37014, 37016 (July 10, 1997), and *Svenskt Stal AV* v. *United States*, Ct. No. 96–05–01372 Slip Op., 97–123 (August 29, 1997). Petitioners also cite section 776(a) of the Act, which states that if information provided by a respondent cannot be verified, the Department shall use facts available in reaching its determination.

Petitioners assert that Algoma failed to report to the best of its ability at verification because it did not disclose the errors in its reported credit expenses for the affected home market sales either prior to, or at the outset, of verification. Citing 19 U.S. C. 1677e(b), petitioners state that if a party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may draw an adverse inference in its selection of facts otherwise available. *In Cut-to-Length Steel Plate from South Africa: Final Results of Admin. Review*, 62 FR 61731, 61739 (November 19, 1997), the Department applied the highest credit expense reported on a U.S. sale to all U.S. sales when the respondent failed to report to the best of its ability.

Algoma disagrees with petitioners. Algoma notes that the Department found two discrepancies at verification involving reported payment dates, neither of which was significant. The first error was a typographical error in the reported date of payment for a pre-selected home market sale. In the second error, Algoma's accounting department posted the payment against the date on which the amount was due instead of the date on which the cash was received for a sale in which there was an advance payment by the customer. Algoma argues that, contrary to petitioners' allegation, the other advance payment errors were not uncovered by the Department's verification team, but were discovered

when Algoma searched its entire submission for transactions where the customer prepayment was received. Algoma determined that other errors of the same type existed and voluntarily disclosed this information to the Department on its own initiative during verification.

Algoma argues that the Department's Sales Verification Report at pages 13–14 shows that the Department verified the extent of Algoma's credit errors by examining the results of a computer query conducted on the sales database, and verified the corrected information. Algoma points out that the errors could not have been included in the corrections memorandum provided at the beginning of verification because Algoma was not aware of them at that time. Algoma further argues that the errors at issue were both small in effect and isolated in scope. Algoma argues that, because the Department corrected the transactions at issue, verified the remainder of Algoma's file, and used the corrected information in its preliminary results of review, no further action by the Department is appropriate or necessary.

Department's Position: We agree with Algoma. At verification, we reviewed the method by which Algoma searched its database for the payment date errors, and we examined the full universe of sales in which these errors occurred. Since all of these credit expense errors occurred in sales where there were advance payments, we consider these errors to be isolated in nature. Therefore, we are making no changes to our calculations for the final results of review other than permitting Algoma to correct the errors. For further discussion of this issue, refer to the November 3, 1998 *Memorandum to the File: Final Results of the Antidumping Administrative Review of Cut-to-Length (CTL) Carbon Steel Plate from Canada (Algoma's Issues Memo).*

Comment 2: Freight Expenses

Petitioners argue that there are a number of U.S. sales for which Algoma reported having received freight revenue but for which it did not report a corresponding freight expense. Petitioners state that the Department should apply to these sales the highest U.S. freight expense reported for any U.S. sale as adverse facts available.

Petitioners argue that it was only after verification was underway that Algoma ran an ''internal edit check'' and identified deleted freight expense data for some of these sales. Petitioners argue that Algoma should have reported this data to the Department before verification, since the freight charges for these sales were reported in Algoma's November 21, 1997 sales tape, but were ''inexplicably'' deleted from its later submissions. Petitioners allege that when Algoma deleted the freight charges from its sales tapes in its subsequent responses, it did not report the freight expenses to the best of its ability. As with Algoma's credit expenses, petitioners argue that Algoma's independent analysis of its database provides no justification to conclude that the error is ''isolated,'' and that the sample of sales verified cannot be considered to be representative of Algoma's reporting as a whole. Petitioners contend that because Algoma failed to report to the best of its ability, the Department should draw an adverse inference and apply the highest U.S. freight expense reported for any U.S. sale to the sales in question. Petitioners cite *Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Administrative Antidumping Review,* 61 FR 69067, 69073 (December 31, 1996), and *Foam Extruded PVC from the United Kingdom: Final Results of Administrative Antidumping Review,* 61 FR 51411, 51414 (October 2, 1996).

Algoma contends that the Department has already rejected petitioners' argument that U.S. freight expenses were misreported. Algoma explains that, in unusual instances, a carrier may neglect to bill Algoma for transport provided. In these instances, Algoma incurs no freight expense, and the proper accounting treatment is to show no freight expense. The proper treatment of freight revenue is to report it whenever the customer pays for freight. Therefore, Algoma claims, for some of the sales petitioners reference, freight expense and revenue were correctly reported.

With respect to sales for which a freight expense was incurred but not reported, Algoma further maintains that it was not aware of the computer error prior to verification because none of the sales preselected by the Department raised the issue. Algoma did not discover the error until it began preparing its response to petitioners' allegations, after verification commenced. On the night before verification, it received petitioners' letter asking the Department to examine certain transactions where no freight charges were reported. Algoma found that in one of the transactions mentioned in the letter, freight revenue was reported, but there was no corresponding freight expense. Algoma then conducted a search to identify other such transactions. Algoma maintains that the correct information was verified by the Department and that no ''discrepancy'' existed because the correct data was on the record prior to verification.

Department's Position: We agree with Algoma. Algoma reported the freight expense errors to the best of its ability at verification and disclosed them to the Department on its own initiative. At verification, we examined the method by which Algoma determined that the reported freight expense was in error, and found no reason to believe that the errors were indicative of a corrupt database. We also found that some of the sales in question were indeed reported correctly, and that other sales at issue were correctly reported prior to verification. Finally, reliability of these expenses is enhanced by the fact that Algoma reported all of them in its initial submission, which is on the record. The apparently inadvertent omissions only showed up in later submissions of the same information. Since the Department found Algoma's database to be reliable, we believe that the freight expense errors were isolated in nature. Therefore, we will include the corrected data for the freight expense in our final calculations. *See Algoma's Issues Memo* for further discussion of this issue.

Comment 3: Inclusion of Certain Sales

Petitioners argue that certain sales should be included as part of the sales database due to a date of sale issue, the details of which are proprietary.

Algoma contends that the Department should continue to exclude certain transactions as part of its margin calculation because the product type and quantity shipped for these sales (under an agreement) was not fixed until the date of shipment (and invoicing). Algoma states that these transactions were removed from the original sales tape and thereafter reported in a separate data file because their dates of sale (invoice date) fell outside of the contemporaneous reporting window. Algoma argues that it originally included these sales in its November 21, 1997 sales listing in the belief that they had been made pursuant to a long-term contract that fixed the material terms of sale (e.g., product description, price, and quantity) on the date of initial agreement between the parties. Algoma alleges, however, that as demonstrated at verification, the material terms of sale (i.e., the product description and quantities) were amended several times after that date.

Algoma maintains that, in accordance with the Department's long-standing ''date of sale'' methodology, it is improper to use the date of initial agreement as the date of sale for these

transactions because the material terms of sale were not established with finality on that date.

Department's Position: We agree with Algoma. The material terms of these sales were amended, and the date on which these terms became fixed (i.e., the date of sale), falls outside of the period of review (''POR''). Because this issue is not subject to further summarization, see *Algoma's Issues Memo* for a more detailed proprietary discussion.

Comment 4: Date of Sale

Petitioners argue that Algoma's date of sale is the order entry date rather than the invoice date, because, they claim, both price and quantity terms of sale are fixed on the order entry date for both U.S. and home market sales. Petitioners maintain that, under § 351.401(i) of the Department's regulations, the Secretary may use a date of sale other than the date of invoice if the Secretary is satisfied that an alternative date more accurately reflects the date on which the exporter or producer established the material terms of sale. Petitioners base their contention on a reference in the Department's verification report to a chart examined at verification in which Algoma compared the quantity of merchandise ordered to the quantity of merchandise shipped. The report stated, ''there does not appear to be a significant difference between the number of pieces shipped and the number of pieces ordered.'' (*Memorandum to the File: Report on the Sales Verification of Algoma Steel Corporation in the 8/1/96–7/31/97 Administrative Review of the Antidumping Duty Order on Cut-to-Length Carbon Steel Plate from Canada* (May 22, 1998) (*Algoma Sales Verification Report*)). Petitioners also cite *Stainless Steel Bar from India: Final Results,* 63 FR 3536, 3537 (January 23, 1998), in which the Department used the purchase order date as the date of sale because no material changes occurred between the purchase order date and the invoice date. Petitioners also cite *Canned Pineapple Fruit from Thailand: Final Results,* 63 FR 7392, 7394 (February 13, 1998), and *Circular Welded Non-Alloy Steel Pipe from Korea: Final Results*, 63 FR 32833, 32836 (June 16, 1998), in which the Department used the contract date as the date of sale.

Algoma argues that the Department's presumption in favor of using the invoice date as the date of sale in the preliminary results notice is justified. Algoma disagrees with petitioners' argument in favor of the order entry date because it relies exclusively on a statement made by the Department in the Algoma Sales Verification Report relating to a chart that Algoma prepared, and it ignores the facts on which the Department based its conclusion. Algoma asserts that the verification report also states that the verifiers ''found no discrepancies with their (Algoma's) date of sale.'' According to Algoma, the data show that the quantity shipped differs from the quantity ordered on a regular basis, which is sufficient to sustain the use of invoice date in accordance with the Department's practice. Algoma cites the preamble to the Department's regulations, published in the **Federal Register** on May 19, 1997, in which the Department stated:

> A preliminary agreement on terms, even if reduced to writing, in an industry where renegotiation is common does not provide any reliable indication that the terms are truly ''established'' in the minds of the buyer and seller. This holds even if, for a particular sale, the terms were not renegotiated.

62 FR 27349.

Algoma concludes that, because the terms of sale, in particular the quantity shipped, are commonly subject to further negotiation up to the date of shipment, the Department's use of the invoice date as the date of sale is justified in this case.

Department's Position: We agree with Algoma. As stated in § 351.401(i) of the Department's regulations, we normally use the invoice date as the date of sale. At verification, we examined a chart comparing the quantity ordered to the quantity shipped/invoiced for a certain number of sales, and found that the quantity changed between the order date and the invoice date for a number of sales; *see* Exhibit 40, page S6506, of the *Algoma Sales Verification Report.* Therefore, we have continued to use Algoma's invoice date as the date of sale in accordance with our normal practice. *See Memorandum to the File: Analysis for Algoma Steel Inc. for the Final Results of the Fourth Administrative Review,* on file in room B–099 of the Commerce Department.

Comment 5: Imputed Credit

Algoma argues that the Department should include banking fees in the Canadian dollar-denominated interest rate used to impute credit expenses for home market sales, even though Algoma did not include them in its calculations prior to verification. Algoma points out that, at the outset of verification, it disclosed to the Department that it had omitted certain banking fees that were paid in connection with the short-term revolving credit facility from its calculation of the Canadian dollar short-term interest expense factor. Algoma claims that page 36 of the annual report submitted as part of its Section A Response identifies the following bank charges related to short-term borrowing made during the POR under Algoma's ''revolving credit facility'' which opened in 1995: an amortized ''issuance cost,'' ''annual fees,'' and ''fees determined by the amount of the unused portion of the facility during the course of a given month.''

Algoma claims that the Department should not consider this information as ''new'' because Algoma established on the record well before verification that it incurred such banking fees as part of its actual total cost of short-term Canadian borrowings under the credit facility in question. Algoma claims that it identified the total amount of such ''interest and fees on operating line'' incurred during the 1997 calendar year (overlapping half of the POR) in its first supplemental questionnaire response, and reconciled the reported amount of these bank charges to its audited financial statement in the second supplemental questionnaire response.

Algoma maintains that petitioners were aware of the credit line, and specifically asked the Department to examine the issue at verification, and to place the entire credit agreement on the record. Furthermore, Algoma argues that the information is not ''new'' because not only is it on the record, but it was examined at verification. Algoma cites both the Department's sales verification report and cost verification report in making its claim that the amount of the bank fees was verified in order to reconcile the reported interest payment amounts to Algoma's audited financial statements at verification. Algoma states that the Department examined and verified the bank fees in the cost verification for six of the twelve months of the POR.

Algoma adds that the Department's normal practice requires it to include these costs in Algoma's home market credit expenses, and that not doing so would understate Algoma's actual cost of short-term borrowing. Algoma cites *Certain Cold-Rolled Carbon Steel Plate Products from Korea; Final Results of Antidumping Duty Administrative Review, Comment 2,* 62 FR 781801 (January 7, 1998), and *Large Power Transformers from Italy; Final Results of Antidumping Duty Administrative Review,* 52 FR 46806 (December 10, 1987), where the Department included bank charges incurred as part of respondent's credit expense calculation. Algoma also cites *Nylon Impression Fabric from Japan; Final Results,* 51 FR 15816 (April 28, 1986).

Petitioners contend that because Algoma's home market credit expenses failed verification, whether the bank fees are included in calculating Algoma's home market credit expenses is irrelevant.

Petitioners also dispute Algoma's contention that the information regarding bank fees was on the record before verification. Petitioners claim that the information from Algoma's 1996 Annual Report that was included in Algoma's Section A Response did not include data for six months of the POR (January 1997 to July 1997). In addition, petitioners argue that, in its January 29, 1998 supplemental questionnaire response, Algoma referred to the data as ''interest and other fees on the operating line'' without detailing the nature of the ''fees.'' Petitioners also argue that the only figure that was reconciled was Algoma's ''Net Financing Expenses'' for calendar year 1996, and cite Algoma's Response to the Department's Second Supplemental Questionnaire (March 20, 1998) at Attachment D–43.

Petitioners contend that the Department neither accepted the information on the bank fees, nor verified the data during Algoma's sales verification. *See Algoma Sales Verification Report* at 15. Petitioners state that the Department specifically refused to examine the fees because they constituted untimely new information, and cite the Department's *Analysis Memorandum for Algoma for the Preliminary Results of the Fourth Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Canada for the period August 1, 1996—July 31, 1997* (July 10, 1998). Petitioners argue that the fact that the Department examined the bank fees during the cost verification is of no consequence, because the fees were examined solely to confirm Algoma's net financing expenses during the 1996 calendar year, not to confirm Algoma's short-term interest expenses during the POR (July 31, 1997 through August 1, 1997).

Department's Position: We agree with Algoma. The Department considers Algoma's revolving credit facility to be short-term borrowings. Consequently, the banking fees associated with the revolving credit facility are part of the total cost to Algoma of short-term Canadian borrowings and therefore, should be included in the short-term interest rate used to calculate imputed credit expenses. Although the banking fees were not included in Algoma's credit expense calculation prior to verification, information pertaining to the nature of these banking fees was recorded in Algoma's Annual Reports which Algoma submitted prior to verification. In addition, we examined these banking fees during verification. Thus, we do not consider the information pertaining to the banking fees to be ''new'' information. We have recalculated Algoma's imputed home market credit expenses to include these banking fees. When we corrected the home market credit expense, we noted that there were several missing payment dates in Algoma's sales tape. For these sales, we applied the verified average number of days between the shipment date and the payment date.

Comment 7: Clerical Errors

Petitioners claim that the Department made three clerical errors in the preliminary results, and therefore should correct them in the final results. These errors pertain to the calculation of certain credit expenses, the deduction for early payments, and the freight movement calculation. In the home market credit expense calculation, petitioners claim that the Department omitted billing adjustments, freight revenue, and other discounts as part of the gross unit price. Petitioners state that, in the definition statement of the total discounts and rebates in the model match program, the Department omitted early payments. Petitioners point out that, in the margin program, the Department placed the parenthesis in the wrong part of the calculation string for movement expenses.

Department's Position: We agree with petitioners regarding all three ministerial errors. We have corrected these errors for the final results.

Dofasco

Comment 1: Use of ''Partial'' Freight Data

Petitioners argue that, as in the third review, the Department should reject the actual freight data Dofasco submitted for some of its sales in favor of the minimum and maximum freight rates to each destination, which Dofasco has provided for all sales. Petitioner contends that the Department's practice is to disregard sales information reported on a selective basis, as stated in *Stainless Steel Wire Rod from Sweden,* 63 FR 40449, 40455 (July 29, 1998) (*SSWR from Sweden*). Petitioner adds that using such ''partial'' information would ''encourage (respondent) to selectively disclose only that information which would benefit its position.'' (*Final Results of Administrative Review; 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, 63 FR 20585, 20591 (April 27, 1998) (*TRBs 1998*)). Petitioner also states that, if the Department used this information, there would be no incentive for respondents to provide complete information (*TRBs 1998,* citing *Nippon Pillow Block Sales Co., Ltd. and FYH Bearing Units USA, Inc.* v. *United States,* 903 F. Supp. 89, 95 (CIT 1995) and *Persico Pizzamiglio, S.A.* v. *United States,* No. 92–11–00783, Slip Op. 94–61 at 23 (April 14, 1994)).

Finally, petitioner claims that the potential for manipulation requires that the Department reject ''selectively disclosed information * * * even when there is no direct evidence that such manipulation actually occurred.'' In support, petitioner cites *Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Diameter, and Components Thereof, from Japan,* 59 FR 56035, 56049 (November 10, 1994) (*TRBs 1994*), *Final Results of Antidumping Duty Administrative Review; Certain Cold-Rolled Carbon Steel Flat Products from Germany,* 60 FR 65264, 65274 (December 19, 1995) (*Steel from Germany*), and *C.F. Koenig & Bauer-Albert AG* v. *United States,* No. 96–10–02298, Slip Op. 98–83 (CIT 1998) at 6.

Dofasco argues that the Department does not require respondents to report freight on an actual sales-specific basis, but in many instances has allowed respondents to report freight using alternate methodologies when necessary. Dofasco points out that the questionnaire specifically allows respondents to report freight on something other than an actual sale-by-sale basis ''when to do otherwise would create a significant burden because of the manner in which your (the respondent's) accounting records are maintained.'' Dofasco adds that, in the third administrative review of this order, the Department allowed respondents to report estimated freight expenses as long as they were reasonable and any differences between the estimated amounts and actual freight charges were minor. Respondent cites *Final Results of Antidumping Administrative Review; Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 63 FR 12725, 12740 (March 16, 1998) (*Third Review Final Results*) and *Final Determination of Sales at Less Than Fair Value; Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy,* 60 FR 31981, 31987 (June 19, 1995).

Dofasco denies that it has selectively reported actual freight, arguing that it has been consistently forthcoming with the Department about its inability to track actual freight for all of its sales. Dofasco asserts that it has reported actual freight for those carriers that bill Dofasco through an electronic data interface system, which enables Dofasco to calculate via computer the actual cost for each coil shipped to these companies. Because some carriers do not use this system, Dofasco states, it would be burdensome to report actual freight for all those carriers not using the system. Furthermore, Dofasco adds, the Department has verified these facts, and found no discrepancies. Therefore, petitioners' allegations with respect to ''potential manipulation'' are misplaced.

Department's Position: We disagree with petitioners. In the third administrative review, we did not use respondents's actual freight data because we found that the computerized system it used to bill its customers for freight was not working properly, and there was nothing on the record to demonstrate the accuracy of the freight expenses as reported. *See Third Review Final Results*, 63 FR at 12739. In the current review, we verified the accuracy of Dofasco's response regarding its freight billing system and found no discrepancies. Thus, we have used Dofasco's reported actual freight expenses for those sales for which this data was available. Because we verified this expense to our satisfaction, we do not consider Dofasco's data to be ''selective'' or ''partial,'' nor do we believe that Dofasco attempted to manipulate the margin outcome by reporting its freight data in the manner that it did.

We note that in the TRBs cases cited by petitioners, the Department had reason to believe that the respondents' data was incomplete, unlike here. In *SSWR from Sweden*, we found at verification that the respondent could have reported transaction-specific data, but reported average figures instead. We therefore rejected the reported average figures in favor of transaction-specific information. In contrast, we have concluded that Dofasco has reported transaction-specific data for as many sales as possible, as stated above. We therefore have not changed the preliminary results with respect to freight expenses.

Comment 2: EP vs. CEP Sales

Petitioners argue that the Department should treat all sales made through Dofasco's U.S. subsidiary as constructed export price (CEP) sales, in accordance with the Department's practice when an affiliate involved in the sales process as something more than a ''processor of sales-related documentation'' or a ''communications link.'' In support, petitioners cite: *Final Determination of Sales at Less Than Fair Value; Stainless Steel Wire Rod from Spain*, 63 FR 40391, 40395 (July 29, 1998) (*Stainless Steel Wire Rod from Spain*); and *Preliminary Results of Antidumping Duty Administrative Review; Roller Chain Other than Bicycle from Japan*, 63 FR 25457 (May 18, 1998)(*Roller Chain from Japan*). Petitioners detail evidence from the proprietary record, specifically the Department's Report on the Sales Verification of Dofasco Inc. (May 28, 1998) (*Dofasco Sales Verification Report*), which they claim demonstrates that Dofasco USA (DUSA) performed sales functions that render CEP treatment appropriate.

Petitioners point out that, in the *Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea (Steel from Korea*), 63 FR 13170 (March 18, 1998), the Department found that just because the affiliate's role ''is not autonomous with respect to the sales process,'' this does not mean that its ''role in the process is ancillary.'' Thus, petitioners state, even if the Department were to find that DUSA had no independent sales negotiating authority, that fact would not be dispositive. Furthermore, petitioners state, the Department has recently made clear that it will ''consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary.'' (*Steel from Korea*, 63 FR at 13177, 13182–83.) Petitioners conclude that Dofasco has failed to submit any evidence to support such a finding.

Dofasco argues that the Department correctly determined that Dofasco properly classified its U.S. sales through DUSA as export price (EP) sales. Dofasco points out that the Department has made the same determination in all three previous reviews. As the facts during this review are almost exactly the same as in the previous reviews, Dofasco argues, the Department should continue to classify the DUSA sales as EP sales.

Dofasco cites the preamble to the Department's new regulations, which states that the Department considers transactions to be EP whenever: (1) The producer or exporter ships the merchandise directly to the unaffiliated purchaser without it being introduced into the U.S. affiliate's inventory; and (2) the affiliated entity acts only as a processor of documentation and a communication link between the foreign respondent and the unaffiliated purchaser (62 FR 27296, 27351). Dofasco maintains that the last factor has been interpreted by the Department as turning largely upon the extent to which the affiliate is involved in negotiating the sales, a role which the Department has stated must be ''incidental or ancillary.'' *Steel from Korea* at 63 FR 13183. Furthermore, Dofasco states, the Department has never suggested that merely signing contracts is sufficient to characterize the U.S. subsidiary's role as being more than ''incidental or ancillary.'' Rather, the Department has recently elucidated that this threshold is passed only when the U.S. affiliate is ''substantially involved in the sales process (*e.g.*, negotiating prices), or if the affiliate ''played a major role in negotiating and bringing about the sale, from the bidding stage through the final contract.'' *See Roller Chain from Japan*, 63 FR at 25457, and *Certain Cut-to-Length Carbon Steel Plate from Germany*, 62 FR 18390, 18391–92 (April 15, 1997), respectively.

Dofasco states that, unlike the respondents in these cases, the Department consistently has found that DUSA's role in the sales process is not ''substantial'' or more than ''incidental or ancillary.'' Respondent cites the *Dofasco Sales Verification Report* at 4. Respondent argues that petitioners mischaracterized proprietary sections of the verification report in order to support their position that DUSA's role in the sales process was substantial enough to warrant CEP treatment. Dofasco concludes that nothing has changed since the first, second, and third administrative reviews that should alter the Department's previous determination that sales through DUSA were EP sales.

Department's Position: We have not changed our preliminary results with respect to this issue. As we stated in the third review final results, we do not believe that the criteria for CEP treatment as stated in *Steel from Korea* have been met in this case. In that notice, we explain that CEP treatment is appropriate where certain facts indicate ''that the subject merchandise is first sold in the United States by or for the account of the producer or exporter.'' Such a finding requires that: (1) The merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) this was the customary commercial channel between the parties; and (3) the function of the U.S. affiliate is limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the

unrelated U.S. buyer. We also stated that where the factors indicate that the activities of the U.S. affiliate are ancillary to the sale (e.g., arranging transportation or customs clearance, and invoicing), we will treat the transactions as EP sales. Furthermore, when the U.S. affiliate has more than an incidental involvement in making sales (e.g. solicits sales, negotiates contracts or prices) or providing customer support, we treat the transactions as CEP sales. *See Third Review Final Results*, discussing *Steel from Korea*. We do not find that DUSA has more than an incidental involvement in the sales process.

We agree with petitioners' argument that, pursuant to *Steel from Korea*, even if the Department were to find that DUSA had no independent sales negotiating authority, that fact would not be dispositive that DUSA's role in the sales process was ancillary. As in *Steel from Korea*, we have considered the totality of the evidence regarding Dofasco's sales process. Unlike in *Roller Chain from Japan* and *Stainless Steel Wire Rod from Spain*, cited by petitioners, we find that the evidence does not suggest that DUSA's role in the selling process was anything beyond an ancillary role. In those cases we found that the U.S. selling agents' involvement in the sales process was extensive when compared to that of the exporters, and that the majority of selling functions occurred in the United States. As much of the information regarding DUSA's selling functions is proprietary, see the *Final Results Analysis Memorandum* on file in room B–099 of the Commerce Department.

Finally, we note that petitioners have not presented any new arguments with respect to this issue, nor is the fact pattern with respect to sales made through DUSA significantly different from past reviews. We again verified Dofasco's sales and distribution process, and found nothing to support petitioners' arguments. Therefore, we have treated Dofasco's sales to the United States as EP sales in these final results.

Comment 3: Clerical Error—Movement Expenses

Petitioners argue that, for certain sales, the Department failed to include, in U.S. movement expenses per unit freight expenses Dofasco incurred when shipping subject merchandise from a warehouse or processor to its U.S. customers. For certain sales, Dofasco reported these freight expenses in the computer field INLFWCU, a variable petitioners allege the Department failed to include in its calculation of total movement expenses. Respondents agree with petitioners.

Department's Position: We agree that we failed to account for this additional freight variable in the calculation, and have made the necessary correction for the final results of review.

Comment 4: Clerical Error—Freight Expenses

Petitioners claim that, for certain sales, the Department's computer program incorrectly calculates movement expenses. Petitioner states that the program is meant to deduct actual freight in lieu of maximum freight, unless actual freight is set to missing. For certain observations, however, the program fails to correctly execute this operation.

Respondent agrees with petitioners, stating that, for both U.S. and home market variables, Dofasco mistakenly set the actual freight variables to zero instead of setting them to missing in the computer program.

Department's Position: We agree, and have revised the computer program accordingly.

Comment 5: Clerical Error—Packing

Petitioners claim that U.S. packing expenses were twice multiplied by the rate for conversion to U.S. dollars in the Department's margin calculation program. Respondent agrees with petitioners.

Department's Position: We agree, and have revised the computer program accordingly.

CCC

Comment 1: Valuation of Major Input

Petitioners argue that CCC improperly reported the value of steel substrate purchased from Stelco by reporting transfer prices rather than market prices, and that the Department should therefore adjust the value of CCC's steel substrate to reflect market prices. Petitioners claim that CCC's questionnaire response indicates that CCC purchased identical substrate from an affiliated and unaffiliated party. Therefore, petitioners state, section 773(f)(2) of the Act requires the Department to disregard the transfer price paid for the major input, and to base the value of the input ''on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.'' Petitioners argue that the Department should therefore adjust the price reported by CCC to reflect the difference between the transfer and market prices shown on these two invoices, as it did in *Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil*, 61 FR 59411 (November 22, 1996); *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile* (*Salmon from Chile*), 63 FR 31434 (June 9, 1998); and *Final Results of Antidumping Duty Administrative Reviews on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom* (*AFBs January 1997*), 62 FR 2081 (January 15, 1997).

Petitioners claim that the evidence on the record shows that the substrate CCC purchased from Stelco, an affiliated party, and from a third, unaffiliated party were identical. Petitioners argue that CCC has neither explained the differences it claims existed between the Stelco and third-party substrate, nor cited to any part of the record where the differences are reflected.

CCC argues that, as stated in its January 29, 1998 questionnaire response, it does not purchase identical merchandise from Stelco and from other suppliers. CCC claims that the invoices provided in the questionnaire response were the only two that CCC could find that would show the comparability of Stelco and third-party substrate, and argues that one cannot infer from the two invoices alone that all Stelco substrate was sold at below-market prices. Therefore, CCC argues, the Department should continue to use transfer prices to value substrate purchased by CCC.

CCC argues that a closer examination of the two invoices shows that Stelco offered CCC an allowance or discount on this purchase and that, without this discount, the Stelco and the third-party invoice prices are equal. CCC claims that the Department accepted respondent's argument that a price differential between transfer price and market price was due to a verified early payment discount, and continued to calculate costs using the discounted transfer price even though the transfer price was lower than the related market price in *Final Determination of Sales at Less Than Fair Value: Porcelain-On-Steel Cookware from Mexico*, 63 FR 38373 (July 16, 1998) (*Cookware from Mexico*).

Department's Position: We agree with petitioners, in part, and have adjusted all transfer prices reported by CCC to reflect market prices.

Sections 773 (f)(2) and (3) of the Act stipulate that major inputs purchased from affiliated parties may be valued at the highest of market value, transfer price or the affiliate's cost of

production. In *AFBs January 1997*, the Department found that ''in the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing the major input.'' 62 FR 2081; *see also* 19 CFR 351.407(b).

CCC has argued that the substrates on the two invoices it provided are not identical and cannot be compared. It is unclear whether the differences between the products on the invoices are substantial enough that they cannot be compared without adjustment. However, assuming the differences between the merchandise on the two invoices is significant, it is CCC that provided these invoices in order to substantiate its claim that its transfer price from its affiliate Stelco was equivalent to a market price. CCC now attempts to impeach the very comparison of invoices it urged the Department to make. If the differences between the merchandise covered by the two invoices were significant enough that the invoice prices should only have been compared after some adjustment, then CCC should have quantified the difference or provided some other means for the Department to adjust for the difference and make the comparison. *See* § 351.401(b)(1). If the Department cannot make this comparison, then there is no evidence on the record to support CCC's claim that its inputs purchased from Stelco were at or above market value, and this claim must be rejected. If, on the other hand, petitioners are correct that there are no differences between the merchandise on the two invoices which would preclude comparison, then a comparison of the two shows that prices of the Stelco input are lower than the price from the unaffiliated supplier.

With regard to CCC's claim that we should use the price of the input from Stelco because, disregarding a discount Stelco granted, the Stelco price is the same as the price from the unaffiliated supplier, we disagree. The Department has long recognized that discounts must be taken into account in determining what the true price is. For example, in *AFBs January 1997*, 62 FR at 2090, we explained that, in identifying the true starting price, the Department must first adjust the gross price for any discounts, rebates, or other price adjustments. As discussed in adjusting our final regulation, the Department must consider discounts in identifying the ''net outlay of funds by the purchaser.'' *See Antidumping Duties, Countervailing Duties; Final Rule*, 62 FR 27296, 27300 (*Final Rule*) and 19 CFR 351.102 (definition of price adjustment) and 19 CFR 351.401(c). The same principles apply when identifying the actual transfer price for the major input rule; such transfer price must reflect any discounts, rebates or other price adjustments in order to determine CCC's net outlay of funds for the input.

CCC's reliance on *Cookware from Mexico* is misplaced. In that case the Department clearly stated that it was not accounting for price adjustments because it could only determine that they had been offered, and not whether they had actually been granted. By contrast, in the present case it is clear that Stelco actually granted the discount to CCC.

Since the final price for the Stelco invoice is less than the final price on the third-party, market price invoice, we have valued CCC's steel input for these final results by adjusting CCC's reported transfer prices to reflect the ratio between the final prices on these two invoices.

Comment 2: Imputed U.S. Credit

Petitioners argue that the surrogate interest rate used by the Department to value CCC's U.S. credit expense should be increased by a premium to reflect CCC's actual borrowing experience in the home market. Petitioners argue that, in *LMI-LaMettali Industriale, S.p.A.* v. *United States* 912 F.2d 455 (Fed. Cir. 1990) (*LMI*), the Court ruled that the surrogate U.S. dollar-denominated interest rate used by the Department to impute U.S. credit expense must conform with ''commercial reality.'' Petitioners note that the Department's *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Sweden*, 61 FR 15772 (April 9, 1996) explains that determining whether a surrogate rate conforms with commercial reality takes into account the many ''varied factors that determine at what rate a firm can borrow funds, such as the size of the firm, its creditworthiness, and its relationship with the lending bank.'' Petitioners argue that, based on CCC's home market borrowing history (as explained in CCC's November 17 and January 30 questionnaire responses), CCC would not have received the prime rate in the United States, defined by the International Monetary Fund as the ''(r)ate that the largest banks charge their most creditworthy business customers on short-term loans.'' Therefore, petitioners argue that basing CCC's imputed U.S. credit expenses on the prime rate would not conform with ''commercial reality.'' Petitioners argue that the Department should add a premium to the average U.S. prime rate and recalculate CCC's imputed U.S. credit expense accordingly. Petitioners state that in the *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria*, 60 FR 33555 (June 28, 1995) (*OCTG*), the Department used the New York State prime rate plus one percent as a surrogate rate to impute U.S. credit expenses where the respondent had no U.S. dollar-denominated borrowings.

Finally, petitioners claim that the Department's calculation of the average U.S. prime interest rate was erroneous. Petitioners argue that the calculation should be based on a 360-day year, not a 365-day year.

CCC disagrees that the Department should add a premium to CCC's surrogate interest rate and that the Department should use the average U.S. prime rate as a basis upon which to calculate CCC's imputed credit. CCC notes that the Department's Policy Bulletin 98.2 instructs the Department to use ''the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made,'' rather than the prime rate when a respondent has no short-term borrowings in the United States. CCC adds that the Department used the Federal Reserve's weighted-average data for commercial and industrial loans for CCC in the previous review of corrosion-resistant steel from Canada. CCC argues that use of the Federal Reserve's weighted-average data for commercial and industrial loans would conform with petitioners' demands that the rate used ''comport with 'commercial reality,' '' as it was the prime rate's failure to meet with commercial reality that led the Department to reject its use in the Policy Bulletin, and adopt a more realistic average of commercial and industrial loan rates.

CCC states that the Department should also reject petitioners' suggestion to increase the prime rate by a premium. First, CCC argues that the premium was derived from CCC's proprietary home market borrowing rate, and therefore has no bearing on what CCC's rate would be in the United States. CCC cites *LMI* and the Department's Policy Bulletin 98.2, which it claims establishes clear guidelines against the use of an interest rate in the home market as a surrogate for the calculation of credit in the U.S. market. Further, CCC argues that *OCTG* is factually unique in several ways: (1) It was the exporter's U.S. sales agent who customarily charged customers an interest rate of prime plus a one percent premium for late revenue; (2) the rate

had no connection to interest rates offered to the company in the home market; and (3) this rate represented the rate commonly used in the United States at that time. CCC also notes that the Department in *OCTG* rejected the possibility of using the home market interest rate.

Department's Position: We agree with CCC. For these final results, we have used the Federal Reserve's weighted-average data for commercial and industrial loans, instead of the prime rate, which we used for the preliminary results.

As discussed in Policy Bulletin 98.2, prior to a 1990 ruling by the Court of Appeals for the Federal Circuit (CAFC) in *LMI*, the Department had a practice of using a respondent's home market borrowing rates to impute both U.S. and home market credit expenses. In *LMI*, the CAFC ruled that the cost of credit ''must be imputed on the basis of usual and reasonable commercial behavior.'' In ruling on the specific facts of *LMI*, the CAFC did set forth certain general principles; it stated that ''the imputation of credit cost * * * is a reflection of the time value of money,'' that it ''must correspond to a * * * figure reasonably calculated to account for such value during the gap period between delivery and payment,'' and that it should conform with ''commercial reality.''

In developing a consistent, predictable policy establishing a preferred surrogate U.S. dollar interest rate in all cases where respondents have no U.S. dollar short-term loans, we have employed three criteria: (1) The surrogate rate should be reasonable; (2) it should be readily obtainable and predictable; and (3) it should be a short-term interest rate actually realized by borrowers in the course of ''usual commercial behavior'' in the United States. The Policy Bulletin states that the use of unadjusted home market borrowing rates to impute credit expenses on U.S. sales does not recognize the effect of currency changes between date of shipment and date of payment on repatriating revenue and that therefore, unadjusted home market borrowing rates are not an accurate measure of the value of the loan made by the seller to the purchaser if the sale (the loan) is made in U.S. dollars.

In *Steel from Sweden* and in *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 14049, 14054 (March 29, 1996), the Department selected the average short-term lending rates calculated by the Federal Reserve as surrogate U.S. interest rates. Each quarter, the Federal Reserve collects data on loans made during the first full week of the mid-month of each quarter by sampling 340 commercial banks of all sizes. The sample data are used to estimate the terms of loans extended during that quarter at all insured commercial banks. These Federal Reserve rates meet the three criteria discussed above. They represent a reasonable surrogate for respondents' U.S. dollar borrowing rates because they are calculated based on a variety of actual dollar loans to U.S. customers, and because they are readily available to all interested parties and are easy to obtain. Therefore, we have used the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made to impute credit during the POR for CCC.

We disagree with petitioners' argument that CCC's rate should be increased by a premium based on home market borrowings. In support of their claim that the rate should be increased by a premium, petitioners cite to *OCTG*. However, the methodology used in *OCTG* has limited applicability because it was developed using facts specific to that particular case. In *OCTG*, the Department found that the New York prime rate plus one percent reflected the manner in which the respondent's related U.S. sales agent measured the time value of late revenue as an ordinary business practice. Additionally, as stated in the Policy Bulletin, home market borrowings should not be used to impute U.S. credit.

We disagree with petitioners' argument that the calculation should be based on a 360-day year rather than a 365-day year. Petitioners made no substantive argument in favor of a 360-day year or against a 365-day year. Because the Department has no policy that would compel such a change, we have continued to calculate imputed credit based on a 365-day year.

Comment 3: Allocation of Post-Sale Price Adjustments

Petitioners argue that the Department should not accept CCC's post-sale price adjustments (PSPAs) in either the home market or the U.S. market. Petitioners argue that PSPAs must be allocated over only those sales on which they were incurred in order to qualify as an adjustment to price in the Department's antidumping calculations, and that CCC did not comply satisfactorily with the Department's information requests. Petitioners argue that the Department should reject CCC's claim that its PSPAs have been reported on a transaction-specific basis. Petitioners argue that CCC has failed to satisfy its burden to document and support its entitlement to report PSPAs on an allocated basis. They claim that in some cases CCC allocated PSPAs on invoices or work orders regardless of whether the adjustment applied to all transactions recorded on the invoice or work order. Furthermore, petitioners claim that CCC has failed to demonstrate that it was not feasible to report the PSPAs on a transaction-specific basis, and has, in fact, tied some PSPAs to specific sales transactions. Petitioners maintain that because CCC was able to report some of its PSPAs on a transaction-specific basis, CCC could therefore have reported all of its PSPAs in this manner. Because CCC did not do so, petitioners contend that CCC did not act to the best of its ability in responding to the Department's request for information. Petitioners argue that CCC failed to demonstrate its entitlement to those adjustments and, therefore, the Department should deny the PSPAs sought by CCC to home market and U.S. prices based on *Timken Co.* v. *United States*, 673 F. Supp. at 513 (*Timken*) and sections 782(d) and (e) of the Act. Petitioners claim that section 782(d) of the Act allows the Department to disregard information submitted by a respondent when it does not comply satisfactorily with a request for information after being informed of the deficiency and being provided an opportunity to remedy it. Petitioners also state that section 782(e) of the Act provides that the respondent must demonstrate that ''it acted to the best of its ability in providing the information'' and that ''the information can be used without undue difficulties.'' Petitioners claim that when a respondent has improperly allocated PSPAs for home market sales, it is the Department's practice to disallow all claimed adjustments to price for those sales, as indicated in: *Final Results of Antidumping Duty Administrative Reviews; Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom (AFBs 1996)*, 61 FR 66472, 66498 (December 17, 1996); *Final Results of Antidumping Duty Administrative Reviews; Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France*, 63 FR 33320 (June 18, 1998) (*AFBs 1998*); and *TRBs 1998*.

Petitioners maintain that the Court's decision in *AK Steel Corp., et al.* v. *United States*, Court No. 96–05–01312, Slip Op. 98–106 (CIT July 23, 1998) (*AK Steel*) to uphold CCC's method of

reporting PSPAs demonstrates the Court's presumption that allocations of PSPAs are suspect because of the possible distortion to prices and dumping margins caused by such allocations. Petitioners argue that the Court upheld CCC's method of reporting PSPAs only after finding that documentation obtained at verification allowed the Department to analyze the details of the allocations to determine whether they were distortive, and that because no such documentation has been provided in this review, the Department should not allow CCC's reporting methodology.

Petitioners claim that the ability to report some, but not all, PSPAs on a transaction-specific basis creates the potential for manipulation, and cite the CIT's ruling in *Koenig & Bauer-Albert AG* v. *United States,* Court No. 96–10–02298, Slip. Op. 98–83, that the Department may deny favorable adjustments sought by a respondent based not only on actual evidence of price manipulation, but also on the potential for manipulation. Petitioners also cite *Steel from Germany* and *Tapered Roller Bearings, Four Inches or Less in Diameter, and Components Thereof, from Japan,* 59 FR 56035 (November 10, 1994) to this effect. Petitioners assert that, for some customers, CCC applied adjustments across all sales (including subject and non-subject merchandise) when they could only tie the credit or debit note to a particular customer. Petitioners claim that this reporting methodology has increased the potential for distortion.

Petitioners claim that the Department's new regulations (*see Final Rule*, 62 FR 27296) concerning allocated PSPAs are contrary to the Department's longstanding practice and the URAA which, petitioners state, nowhere permits respondents to report inaccurate prices. However, petitioners argue that, even under its new regulations, the Department must continue to deny CCC its claimed PSPAs.

Petitioners claim that an allocation of a PSPA over several sales or invoices could distort the prices if the sales covered were of different control numbers (CONNUMs) or were made in different months. In such a situation, the prices of the sales receiving their share of the allocated credit would not be weight-averaged in calculating normal value for a particular month. Thus, all sales that receive an allocation of credit would have an incorrect gross unit price, which will in turn distort the dumping margin. Petitioners argue that because each of the adjustments is a given percentage of the unit price, all those sales which have had the adjustment allocated to them, even though they were not in the group of sales to which the adjustment is correctly attributed, have been modified by that percentage. Petitioners maintain that the potential for distortion by allowing credit to be allocated over sales with different CONNUMS or months of sale is present in CCC's case as well. Petitioners argue that the criteria applied in *AFBs 1998* is flawed because it puts the burden on the petitioners to prove the existence of distortions.

CCC argues that its reported PSPAs should again be accepted by the Department as they were in the second and third administrative reviews because they are allocated as specifically as possible and are not distortive. CCC notes that the Department rejected petitioners' arguments concerning CCC's PSPAs in the second and third administrative reviews. CCC states that the Department verified CCC's methodology in the second administrative review and found that CCC applied its PSPAs using the most precise methodology possible, and in a manner not unreasonably distortive.

CCC disagrees with petitioners' assertion that CCC never explained why it was able in some instances to tie credit and debit notes to specific invoices and work orders, and in others it was not. CCC notes that it stated in its November 17, 1997 questionnaire response, and its January 29, 1998 and March 23, 1998 supplemental questionnaire responses, that in instances where a credit or debit note is allocated over all sales to a customer rather than to a specific invoice or work-order, it is because the credit or debit note only referenced a customer and did not reference a work order or invoice. CCC maintains that its PSPAs are transaction-specific, stating that when a specific credit or debit note was applied to more than one invoice and/or work order, it was because the credit or debit note applied to those invoices and/or work orders, and that the information available to CCC on the credit or debit note permitted no more specific allocation. CCC cites *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,* 63 FR 2558 (January 15, 1998) as an instance in which the Department accepted respondent's explanations of why more specific reporting was not possible as evidence of fact.

CCC maintains that there is no evidence, as petitioners allege, that CCC is attempting to manipulate that data, and that the record evidence such as the number of positive adjustments in the home market and negative adjustments in the U.S. market shows that, on the contrary, CCC is not trying to manipulate the data. CCC cites the Department's regulations at § 351.401(g)(1) as stating that the Department ''may consider allocated expenses and PSPAs when transaction-specific reporting is not feasible provided (that) * * * the allocation method does not cause inaccuracies or distortions' and at § 351.401(g)(3) as stating that ''(i)n determining the feasibility of transaction-specific reporting or whether an allocation is calculated on as specific a basis as is feasible, the Secretary will take into account the records maintained by the party in question in the ordinary course of business.''

CCC argues that the Department's decision to accept CCC's claimed PSPAs is consistent with its decisions in numerous other cases, including *AFBs 1998*, and *Certain Cut-To-Length Carbon Steel Plate From Brazil: Final Results of Antidumping Duty Administrative Review,* 63 FR 12744 (March 16, 1998).

CCC disagrees that the Court in *AK Steel* upheld the Department's acceptance of the adjustments only after finding that the documentation obtained at verification allowed the Department to analyze the details of the allocations.

Furthermore, CCC argues that such argumentation is moot because it submitted all of the requested documentation in this review, and because a verification was not conducted. CCC states that the Department's methodology was upheld in *The Timken Co.* v. *United States,* Court No. 97–04–00562, Slip. Op. 98–92 (CIT July 2, 1998) (*Timken 1998*). CCC also disagrees with petitioners that the Department's current practice is at odds with the URAA, stating that the Department noted in *AK Steel* that the URAA reaffirmed the Department's practice of allowing allocated post-sale PSPAs. CCC argues that in the *Timken 1998* case, the Department stated that (1) post-URAA law directs it to accept information that may not have met its previous requirements and that (2) it had determined, based in part on previous verifications, that CCC was incapable of providing data on a transaction-specific basis and that CCC's reported data was reliable. CCC concludes that, based on evidence on the record in this proceeding as well as the precedents in this proceeding and the law, the Department should accept CCC's PSPAs.

Department's Position: We agree with CCC. In light of the Department's determinations in recent cases and the

facts on the record, we accept CCC's price adjustments.

Section 351.401(c) of the Department's regulations states that the Department, ''(i)n calculating export price, constructed export price, and normal value (where normal value is based on price), will use a price that is net of any price adjustment, as defined in § 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable).'' PSPAs are defined in the regulations at § 351.102(b) as ''any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale PSPAs, that are reflected in the purchaser's net outlay.''

With regard to the fact that CCC allocated these adjustments, we note that § 351.401(g)(1) of the Department's regulations directs us to ''consider allocated expenses and PSPAs when transaction-specific reporting is not feasible, provided (we are) satisfied that the allocation method used does not cause inaccuracies or distortions.'' This policy has been upheld in *Timken 1998*. Although CCC allocated price adjustments on a customer invoice- or work order-specific basis, we determine that CCC acted to the best of its ability in reporting this information. While the Department stated in *Final Rule* 62 FR at 27344 that respondents should not be ''allowed to eliminate dumping margins by providing PSPAs 'after the fact,' '' there is no evidence on the record in these reviews that demonstrates that this is occurring.

In recent AFBs cases, we addressed the relevance of *Torrington Co.* v. *United States*, 82 F.3d 1039, 1047–51 (Fed. Circ 1996) (*Torrington I*), to the allocation of adjustments. We noted that, while the CAFC in its decision in *Torrington I* questioned whether PSPAs constituted expenses (see *Torrington I* at n.15), the Court maintained that, if the adjustments were expenses, they had to be treated as direct selling expenses. Significantly, ''the CAFC did not find that such PSPAs could not be based on allocations'' (*AFBs October 1997* 62 FR at 54050).

We have not found CCC's allocation methodologies to be unreasonably distortive. During the POR, CCC granted credit or debit notes to certain customers. CCC calculated adjustment factors by dividing the total price adjustments paid to a given customer by the total POR sales to that customer. CCC grants these price adjustments to customers in two ways: (1) On the basis of their overall sales to the particular customer; or, (2) over a specific invoice to a customer.

Where CCC granted the price adjustment to a customer on the basis of its overall sales, then there is no distortion in attributing the adjustment to the sales on which it was earned. *See, Final Rule*, 62 FR at 27347 and *Smith Corona*, 713 F.2d at 1580.

Where CCC granted the price adjustment on an invoice, CCC has claimed that it cannot tie the credit/debit note to the particular invoice. Therefore, it has allocated such notes by customer. First, where a price adjustment is granted on an entire invoice, it is appropriate to attribute the amount of the adjustment to all merchandise on the invoice. Where an invoice covers several articles of merchandise, an adjustment granted on the entire invoice cannot be tied to any specific article.

Further, where a respondent has acted to the best of its ability, and cannot provide information about adjustments on a basis more narrow than customer-specific allocations, the Department has concluded that such an allocation may be reasonable. *See e.g., AFBs January 1997*, at 2096 (comment 9).

We disagree with petitioner's interpretation of the applicability of section 782(d) and 782(e) of the Act to CCC's reporting methodology. In explaining why it was not able to tie credit notes to individual transactions, CCC has complied satisfactorily with the request for that information. Thus, there is no longer a deficiency in CCC's data. CCC also demonstrated that ''it acted to the best of its ability in providing the information.'' Lastly, the information can clearly be used ''without undue difficulties.''

We agree with petitioners that the burden lies with respondents to place necessary information on the record. It is the responsibility of the respondent to demonstrate that its methodology is not unreasonably inaccurate or distortive. However, we believe that CCC has met that burden with the explanations provided in their submissions for this review period, and through verification of sales made in the second administrative review. CCC has stated that adjustments are allocated across the invoices, work orders, or customers to which they apply, and that it cannot report adjustments on a more specific basis. There is nothing on the record to indicate that either of these statements is not based in fact.

With regards to CCC's allocations of these price adjustments over nonsubject merchandise, we have in the past accepted allocations over nonsubject merchandise as provided for in 19 CFR 351.401(g)(4). First, if a respondent grants and reports a price adjustment as a fixed percentage of the sales to which it pertains, the fact that this pool of sales may include non-scope merchandise does not distort the amount of the adjustment the respondent granted and reported on sales of subject merchandise because the same adjustment percentage applied to both scope and non-scope merchandise. Second, with respect to CCC's price adjustments granted on invoices, CCC's in-scope and out-of-scope merchandise is sufficiently similar in terms of its value, physical characteristics, and the manner in which it is sold that we cannot presume the adjustments would be granted disproportionately between the two. Consequently, even if an invoice covered out-of-scope merchandise, CCC's allocation is still reasonable and not distortive. *See Final Rule*, 62 FR at 27348 (May 19, 1997).

We disagree with petitioners argument that the Court's decision in *AK Steel* upholding CCC's method of reporting PSPAs demonstrates the Court's presumption that allocations of PSPAs are suspect because of the possible distortion to prices and dumping margins caused by such allocations. In *AK Steel*, the Court upheld the Department's finding that CCC's allocation of the credit note across sales made pursuant to the work-order identified on the form was sufficiently specific, and that based on the facts on the record, a more specific methodology was not possible. In this review we again conclude, based on the information on the record, that CCC's allocation of the credit note across sales made pursuant to the work-order identified on the form was sufficiently specific.

The Court in *AK Steel* also disagreed with plaintiff's argument that the flaw in CCC's allocation methodology caused it to report all sales involved incorrectly. Plaintiffs in *AK Steel* claimed there that the methodology used by CCC had an averaging effect on prices, i.e., the transactions that did not involve the coil received price reductions when there was in fact no reduction in price, and the transaction that did involve the coil did not receive the full amount of the credit.

The Court, however, found plaintiffs' arguments unpersuasive and agreed with the Department that CCC's PSPA methodology was acceptable under the circumstances.

We disagree with petitioners' claim that because CCC's allocations were not verified in this review, they are not acceptable.

The fact that CCC was not verified in this review does not require an adverse inference in this case. Furthermore, we

found at verification during the second review that CCC's methodology was reasonable and not distortive, and that CCC's reporting was as specific as possible. Since CCC's reporting methodology is the same as it has been in the past, we are accepting CCC's allocations. This concurs with the Court's ruling in *Timken* that the Department may determine, based in part on institutional knowledge attained in previous verifications, that a respondent is incapable of providing data on a transaction-specific basis, and that its data is reliable.

We find that CCC's allocation methodologies are not unreasonably distortive, nor are they potentially distortive, as we are satisfied that each adjustment was granted in proportion to the value of each sale to which it applied.

Comment 4: Currency Conversion Error

Petitioners note that the Department made a currency conversion error in calculating PACKINGU and, as a result, in the calculation of CVPROFIT, TOTCV and FUPDOL.

Department's Position: We agree with petitioners and have corrected the currency conversion accordingly.

Forsyth

Comment 1: Adverse Facts Available

Forsyth claims that the Department's decision to assign the margin based on total adverse FA did not reflect the level-of-trade information that Forsyth provided on the record, and did not take into account any meaningful consideration of either Forsyth's ability to provide corporate sales-specific data on a large number of small transactions or Forsyth's request that the Department conduct verification. Forsyth claims that the Department's rejection of Forsyth's level-of-trade argument, which characterized Forsyth's distribution division services as product-related rather than sales-related, is not supported by the record. Forsyth claims that its distribution division services are intimately linked to the ability of those divisions to sell products to a unique class of customers.

Petitioners argue that the Department correctly applied adverse facts available since Forsyth repeatedly refused to report its distribution division sales. Petitioners argue that the Department only excludes home market sales from a respondent's reporting requirements due to level of trade differences, if ever, in the context of downstream sales, and that Forsyth's distribution division sales are not downstream sales. Petitioners cite *Certain Cut-to-Length Carbon Steel Plate From Brazil: Final Results of Antidumping Duty Administrative Review,* 62 FR 18486, 18491 (April 15, 1997).

While petitioners claim that the Department's level-of-trade analysis was unnecessary, since all home market sales were not reported, they argue that record evidence supports the Department's level-of-trade determination. They cite section 773(a)(7)(A) of the Act and § 351.412 of the Department's regulations to argue that a difference in level of trade can only exist where there is a difference in selling functions. Petitioners further cite *SSWR from Sweden* at 40455, which states that the burden is on respondent to demonstrate that its categorizations of level of trade are correct.

Department's Position: We agree with petitioners. Forsyth failed to report a majority of its home market sales of subject merchandise and did not prove a difference in level of trade between its U.S. sales and its home market distribution division sales. We have thus continued to base Forsyth's antidumping duty margin on adverse facts available. *See* ''Facts Available'' section of this notice, and *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Preliminary Results of Antidumping Duty Administrative Reviews and Intent to Revoke in-Part,* 63 FR 37320, 37327 (July 10, 1998).

Stelco

Comment 1: The Time Frame for Making a Request for Revocation

Petitioners argue that the Department should deny Stelco's request for revocation since Stelco did not file its request for revocation during the anniversary month of the publication of the antidumping order, as required by § 351.222(e) of the Department's regulations. Petitioners argue that § 351.222(f) allows the Department to consider such a request only if the request is timely.

Petitioners argue that *Samsung Elec. Co.* v. *United States (Samsung),* 946 F. Supp. 5, 8 (CIT 1996) establishes the obligation to request revocation during the anniversary month as a ''*mandatory, bright line requirement.*'' (Emphasis added by petitioners.) Petitioners note that not only did Stelco fail to make its request in a timely fashion, but that it also failed to request an extension or provide any explanation for its failure to meet the statutory deadline for a revocation request. Therefore, since Stelco failed to pass the bright line test established in *Samsung,* petitioners argue that the Department should deny Stelco's request for revocation.

Petitioners point out that the Department highlighted the importance of submitting timely requests in *Electrolytic Manganese Dioxide from Japan; Final Results of Antidumping Duty Administrative Review,* 58 FR 28551 (May 14, 1993) *(EMD).* In *EMD,* petitioners failed to file a timely cost of production (COP) allegation because the Department had failed to process their administrative protective order (APO) application in a timely fashion. Although the Department acknowledged the delay in processing the petitioners' APO applications, the Department refused to consider the petitioners' untimely COP allegation because the petitioners could have preserved their right to submit a timely COP allegation by requesting an extension of the regulatory deadline. Since petitioners elected not to request an extension of the deadline for filing a COP allegation, the Department did not examine the untimely allegation, but merely enforced the regulatory deadlines. Petitioners conclude that the Department should reject Stelco's request for revocation as untimely just as it rejected petitioners' cost allegation in the EMD case.

Petitioners note that Stelco contends in its June 12, 1998 submission that the Department considered an untimely request for revocation on the part of Frutopic, a respondent in *Frozen Concentrated Orange Juice from Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review; Revocation in Part of the Antidumping Duty Order,* 56 FR 52510 (October 21, 1991) (*Orange Juice*). Stelco contends that the untimely request was considered because it was filed only four days after the regulatory deadline. Petitioners point out, on the contrary, that Frutopic filed an extension request on the last day of the anniversary month in question, explained why it needed the extension, and was granted an ''explicit extension of time to submit the revocation request.'' *See, Orange Juice,* 56 FR 52510 (October 21, 1991). Petitioners further point out that Frutopic in effect demonstrated ''good cause'' when requesting its extension by explaining in detail why it needed one, even though the regulations explicitly allowing extensions for ''good cause'' was not introduced until 1997.

Petitioners argue that the necessity of showing ''good cause'' to obtain an extension under § 351.302(b) is not a toothless requirement. Petitioners point out that in *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review,* 63 FR

13622 (March 20, 1998), Mukand, the respondent, requested a one-day extension to file its case brief on the day the brief was due. Petitioners note that the Department was not satisfied with Mukand's explanation that it was not able to file the brief in a timely fashion due to ''technical difficulties'' and requested and received a more extensive explanation before granting the extension. Petitioners argue that the Department should not hold Stelco to a lesser standard for requesting a revocation than it held Mukand for filing a case brief.

Finally, petitioners contend that Stelco's September 8, 1998 request for revocation should not be considered an ''amendment'' to Stelco's August 29, 1997 request for an administrative review. Petitioners point out that the Department's regulations [no cite given] allow a timely revocation request to be considered to include a request for administrative review, but there is no similar provision allowing a request for review to automatically include a revocation request.

Therefore, petitioners contend that the Department cannot ignore the time limits imposed by its own regulations. Since Stelco did not comply with the deadlines for requesting a revocation in accordance with § 351.222(e) or requesting an extension in accordance with § 351.302(b) of the Department's regulations, petitioners argue that the Department should reject Stelco's untimely request for a revocation.

Stelco argues that both the antidumping statute and the Department's regulations are silent as to the time frame for accepting requests for revocation. Stelco notes that section 751(d)(1) of the Act, the only relevant statutory provision, states: ''the administrative authority may revoke, in whole, or in part, a countervailing duty or antidumping duty order for finding * * * after a review under subsection (a) or (b) of this section.'' Therefore, Stelco argues that Congress did not specify any procedure, or identify any criteria that must be considered, other than conducting a review, in determining whether to revoke a particular antidumping duty order.

Stelco claims that the regulations are also silent as to the issue of how the Department should handle a revocation request made outside of the anniversary month. They note that § 351.222(e)(1) of the Department's regulations states: ''During the third and subsequent anniversary months of the publication of the antidumping order or suspension of an antidumping investigation, an exporter or producer *may* request in writing that the Secretary revoke an order or terminate a suspended investigation.'' Stelco argues that section provides the month within which an exporter or producer *may* choose to request revocation, and is silent as to how revocation requests received during other months should be handled. Stelco notes that there are no requirements in the regulations that the Department reject an untimely request for revocation.

Stelco argues that the Department has discretion to accept an untimely revocation request. It notes that *Samsung* states that ''Commerce has not *routinely* accepted revocation requests under 19 CFR 353.23 [now 19 CFR 351.222] after the regulatory deadline'' *Samsung*, 946 F.Supp. at 9 (emphasis added), and interprets this passage to indicate that on some occasions the Department does accept late requests for revocation.

Stelco argues that the following cases demonstrate that the Department has discretion to accept untimely requests for revocation: *Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42863 (August 19, 1996), in which the Department declined to revoke not because the request was untimely (emphasis added by Stelco) but because the respondent failed to meet all substantive criteria for revocation; *Polyethylene Terephthalate Film from Korea: Preliminary Results of Antidumping duty Administrative Review, Intent to Revoke the Order in Part and Termination in Part*, 61 FR 36032, 36033 (July 9, 1996), in which the Department permitted the respondent to amend its timely revocation request one year after making the original request; *EMDs*, in which Stelco claims that the Department pointed out that its regulatory deadline ''is a *discretionary, not a mandatory, deadline*'' (emphasis added by Stelco) (*see EMDs*, 58 FR 2855, 28553 (May 14, 1993).

Finally, Stelco notes that petitioners' contention that the Department should reject Stelco's request for revocation rests on procedural technicalities, without providing any substantive factors which the Department should weigh in deciding whether to accept the request for consideration. Stelco notes that the request for revocation was submitted five working days late, and did not pose an administrative burden since it was submitted well before the publication of the notice of initiation. Stelco further notes that petitioners did not raise any objections to the timeliness of the revocation request until June 5, 1998, nine months after the revocation was made.

Department's Position: We disagree with petitioners that the Department should automatically deny Stelco's request for a revocation solely on the basis that the request for revocation was filed one week after the end of the anniversary month.

Petitioners argue that *Samsung* established the obligation to request revocation during the anniversary month as a ''mandatory, bright line requirement'' without distinguishing between the facts in the *Samsung* litigation and in the current review. However, the *Samsung* case involved a revocation request which was four-and-one-half years late. The underlying rationale for the Court's decision was based on administrative efficiency. *Samsung* states ''(t)he burden placed on Commerce by the submission of factual information after a deadline is relatively light compared to the administrative burden imposed on Commerce by an untimely request for revocation.'' The Court goes on to note that in response to a request for revocation, Commerce must initiate and conduct an entire investigation and that ''(i)f the plaintiff could command Commerce to conduct such an investigation at its whim rather than only once per year, Commerce's administrative efficiency would be adversely affected.''

Stelco's situation is clearly distinguished from the plaintiff's in *Samsung*. Unlike the situation in *Samsung*, the reviews of this order have been conducted in a timely fashion. At the time of the initiation of this fourth review, Stelco had established a history of a zero and a *de minimis* margin in the second and third reviews. Both the Department and petitioners were, and had been, aware of that history, and thus were aware that Stelco could be eligible for revocation. Stelco amended its request for review to include a request for revocation five working days, not four-and-one-half years, after a timely request for review. The amendment was accepted by the Department and its timeliness was not even questioned by petitioners until nine months after initiation (*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 62 FR 50292, (September 25, 1998)). On July 10, 1998, the Department issued its preliminary results of review, noting that Stelco made a request for revocation in an amendment to its request for review on September 8, 1998. *See Preliminary Results*, 63 FR at 37321. In that notice, we set forth the arguments and record evidence concerning Stelco's revocation and expressed our intention to revoke the

order with respect to Stelco if the preliminary findings were upheld in the final results of review (*Preliminary Results* at 37321).

Consequently, by initiating the review without rejecting the untimeliness of Stelco's request for revocation, and by giving full consideration to Stelco's request in the preliminary results of review, the Department effectively granted Stelco an extension of its deadline to file its request for revocation as permitted under 19 CFR 351.302(b). In addition, because Stelco's request for revocation was filed well before the review was initiated, it did not impose an additional burden on the conduct of the administrative review and petitioners were not deprived of effective notification of Stelco's request. Finally, the fairness of considering Stelco's untimely request for revocation in the face of two years of de minimis margins, outweighs the burden imposed by Stelco's untimely and unopposed request for revocation.

We disagree with Stelco's contention that both the antidumping statute and the Department regulations are silent as to the time for accepting requests for revocation. Section 351.222 of the Department's regulations clearly specifies that a producer or exporter may request revocation during the ''third and subsequent annual anniversary months of the publication of the antidumping order * * *'' (*Final Rule*, 62 FR 27296 (May 19, 1997).) Section 351.222(f) reinforces the importance of the timeliness of the request for revocation by stating: ''(u)pon receipt of a *timely* request for revocation * * *'' (*Final Rule* 62 FR at 27400). *Samsung* further argues that, ''even if the regulation does not provide a bright line requirement as to the year of filing, it still provides a bright line test as to the month of filing and Commerce also would retain discretion to discount stale information.'' Therefore, both the Department's regulations and practice have established the anniversary month as the time period in which to file a request for revocation. In this instance, however, the Department has effectively granted an extension by accepting Stelco's amended request for review.

Comment 2: The Merits of Stelco's Request for Revocation

Petitioners argue that if the Department considers Stelco's request for revocation, it should deny the request on the merits of its case. Petitioners claim that Stelco cannot demonstrate that it is not likely to sell the subject merchandise at less than NV in the future as required by section 351(b)(2)(ii) of the Department's regulations.

Petitioners allege that before the Department can conclude that Stelco is not likely to dump if the order is revoked, Stelco must show that it can successfully export normal commercial quantities without resorting to dumping. Petitioners note that the preamble to the Department's final regulations states: the underlying assumption behind a revocation based on the absence of dumping or countervailable subsidization is that a respondent, by engaging in fair trade for a specified period of time, has demonstrated that it will not resume its unfair trade practice following the revocation of an order. If the respondent is not selling in commercial quantities characteristic of that company for the duration of the specified period, petitioners argue, this assumption becomes weaker. (*See Final Rule*, 62 FR 27296, 27326 (May 19, 1997).)

Petitioners additionally point out that § 351.222(d)(1) of the Department's regulations requires that ''(B)efore revoking an order * * *, the Secretary must be satisfied that, during each of the three * * * years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation * * * will apply.'' (*See Final Rule*, 62 FR 27296, 27400 (May 19, 1997).) Petitioners contend that Stelco cannot demonstrate that it is not likely to resume dumping in accordance with this regulation because it cannot demonstrate that it made sales in commercial quantities during each of the past three years. Petitioners have provided proprietary charts demonstrating the volume and value of the subject merchandise sold in the United States during each of the four administrative reviews which quantify the extreme decline in Stelco's sales since the original investigation.

Petitioners also note that the Department has refused to revoke an antidumping duty order with respect to a particular respondent because that respondent's U.S. sales of the subject merchandise fell substantially after the imposition of the antidumping duty order. *(See Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part (BSS Germany)*, 61 FR 49727, 49731 (September 23, 1996) and *Pure Magnesium from Canada; Preliminary Results of Antidumping Administrative Review and Notice of Intent not to Revoke Order in Part (Pure Magnesium)*, 63 FR 26147 (May 12, 1998).)

Petitioners point out that the Department's memoranda to the file show that the Bureau of Labor Statistics producer price index (BLS index) for carbon steel plate dropped by 3.2 percent from September to October of this year, and the Statistics Canada producer price index for carbon steel sheet, strip, and plate dropped 2 percent from August to September of this year and remained at a depressed level in October. Petitioners add that this weakening in both the U.S. and Canadian markets occurred just as Stelco is reportedly completing a substantial upgrade of its plate mill that will double its current plate production capacity. Petitioners cite a *Calgary Herald* newspaper article describing the project (''Stelco to Revamp Main Hamilton Mill,'' *Calgary Herald* at D5 (March 19, 1997).) Petitioners claim that Stelco's doubling of capacity at a time when U.S. and Canadian prices are falling places pressure on Stelco to dump plate in the U.S. market. Thus, petitioners argue, revocation of the order would make resumed dumping likely.

Petitioners claim that Stelco cannot demonstrate that it is not likely to resume dumping in the future based on the information which is currently on the record in the instant administrative review. Consequently, petitioners contend that the Department must solicit information from petitioners and Stelco concerning: (1) The total quantity by weight and by value and numbers of Stelco's U.S. plate sales for the second and third review periods and the period for the initial investigation; (2) currency movements between the U.S. dollar and the Canadian dollar; and (3) conditions and trends in the U.S. and Canadian steel industries.

Stelco disputes petitioners' contention that it did not import ''normal commercial quantities'' over the past three successive review periods. Stelco claims that each and every one of its sales made after the imposition of the antidumping order were ''bona fide'' transactions.

Stelco contends that petitioners' argument that the Department must deny Stelco's revocation request because it did not import ''normal commercial quantities'' over the past three successive review periods is incorrect for two reasons. First, Stelco contends that the Department has never defined ''normal commercial quantities'' and has held commercial quantities to constitute as little as a single shipment (*See BSS Germany*). Second, Stelco argues that a decrease in the volume of merchandise following the imposition of an antidumping duty order is relevant only in determining whether a respondent is able to compete in the

U.S. market without dumping, and does not automatically require the Department to reject a revocation request. Stelco argues that the Department's examination of a respondent's ''ability to compete in the U.S. market without dumping'' is only one factor in a multi-factor {revocation} analysis, including the ''respondent's prices and margins in the preceding periods * * *, the conditions and trends in the domestic and home market industries, (and) currency movements.'' (*See Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Order in Part,* 63 FR 6519, (February 9, 1998) (*BSS Canada*); *BSS Germany,* and *Pure Magnesium*.

Stelco argues that the Department has often noted that a respondent's lack of dumping over the course of three years is ''generally predictive of future behavior.'' (*See Pure Magnesium,* 63 FR 26147, 26149 (May 12, 1998).) However, Stelco admits that in some prior cases, the Department has also examined other factors when determining the likelihood of future dumping, such as: (1) Conditions and trends in the domestic and home market industries, (2) currency movements, and (3) the ability of a respondent to compete in the U.S. market without dumping. Stelco argues that the record supports its contention that it is unlikely to resume dumping in the future.

Stelco contends that factual information and forecasts by industry analysis on the record demonstrates unequivocally strong demand in the U.S. and Canadian markets eliminating any economic reason for Stelco to sell the subject merchandise at depressed prices in the U.S. market.

Stelco also argues that exchange rate information on the record indicates that the Canadian dollar has been stable or depreciating, thereby making it unlikely that Stelco will sell merchandise to the U.S. at dumped prices.

Finally, Stelco argues that its recent pricing trends (i.e. its three-year history of not dumping), which is also on the record, indicate that Stelco is able to compete in the U.S. market without selling at dumped prices.

Additional comments and information regarding the likelihood of future dumping by Stelco were added to the record on December 4 and December 9, 1998. See ''Determination Not to Revoke,'' above.

Department's Position: We agree with petitioners that Stelco has not sold subject merchandise in commercial quantities at not less than normal value for three consecutive years, as required by § 351.222(b)(2)(i) and (d)(1) of the Department's regulations. Therefore, we are not revoking the antidumping order on steel plate with respect to Stelco. For further details, see the ''Determination Not to Revoke'' section above.

Stelco's argument that, in *BSS Germany,* the Department determined a single sale to be in commercial quantities is not determinative in the instant case. First, the determination of what constitutes commercial quantities must be made on a case-specific basis. Here, a single sale of only 36 tons of steel plate is so insignificant in comparison with the volume of sales prior to the imposition of the antidumping order, as well as in comparison with subsequent review periods, as to fail to constitute a commercial quantity. Second, the determination in BSS Germany was based on a finding of ''likelihood'' of resumed dumping, and not on a finding that the company did not have three consecutive years of sales in commercial quantities at not less than NV.

Stelco has argued that the Department examines a number of items in determining whether to revoke an antidumping order. However, respondents must meet the threshold criterion of three consecutive years of sales in commercial quantities at not less than NV in order to be eligible for revocation. When that criterion has been met, and the record contains evidence regarding the likelihood of resumption of dumping, then the Department looks to additional indicators, such as the condition of the U.S. and domestic markets. See *BSS Germany* and *BSS Canada.* As noted above, this additional step was not necessary in this case.

Because Stelco is ineligible for revocation under § 351.222(b)(2)(i), based on the fact that it has not had three consecutive years of sales in commercial quantities at not less than NV, we need not address comments regarding U.S. and Canadian market conditions, or Stelco's planned mill expansion.

Regarding Stelco's request for revocation with respect to corrosion-resistant steel, we note that, in the last two administrative reviews, we determined that Stelco sold corrosion-resistant steel at less than NV. *See* Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews, 62 FR 12725 (March 16, 1998) and Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18448 (April 15, 1997)(1994/95 Canadian Steel). Although the final results of these reviews are subject to litigation, that litigation is not yet complete. Additionally, as discussed below, we have determined that Stelco sold corrosion-resistant steel at less than NV during the period covered by this review. Consequently, we determine that, because Stelco does not have three consecutive years of zero or *de minimis* margins on corrosion-resistant steel, Stelco is not eligible for revocation of the order on corrosion-resistant steel under 19 CFR 351.222(b).

Comment 3: Clerical Errors

Petitioners claim that the model match program used to calculate the results of review does not account for all plate qualities that Stelco has reported. Petitioners proposed the addition of two lines of computer code to remedy the omission.

DOC position: We agree and have corrected the error to include all qualities of plate that were reported by Stelco.

Comment 4: Major Input Rule

Stelco argues that there is no factual or legal basis for the Department's decision to increase Stelco's submitted actual costs of production for painting services supplied by Baycoat for corrosion-resistant products. Stelco maintains that the Department erroneously used the transfer price from Baycoat instead of Baycoat's reported cost of production to value Baycoat's painting services. Stelco asserts that the WTO Antidumping Agreement and section 773(f)(1) of the Act provide that the Department must examine and calculate a particular exporter's cost of manufacture.

Stelco also claims that its actual cost for Baycoat's painting services is not equal to the total invoice price, but rather that it is equal to the total invoice price minus half of Baycoat's profits, since Baycoat is jointly owned by Stelco and Dofasco. Stelco points to a draft remand determination on this issue in which the Department states that the return of profit is independent of the number or value of sales of painting services to Stelco.

Stelco argues that the statutory language of the ''major input rule'' does not require the Department to increase an affiliated supplier's actual cost of production in valuing its major inputs. Stelco claims that in *1994/95 Canadian Steel,* the Department determined that the major input rule required the Department to value inputs supplied by affiliates at the transfer price provided

that the transfer price reflects market value and was not below the cost of production. Stelco also refers to the Draft Remand Determination for Article 1904 Binational Panel Review USA–97–1904–03 (August 4, 1998), in which the Department stated that ''the normal application of these provisions dictates that transfer price is the appropriate basis for Stelco's cost of production with respect to the Baycoat inputs.'' Stelco argues that in H.R. Rep. No. 40, 100th Cong., 1st Sess., pt. 1, at 137 (1987), Congress did not intend for this provision to be used to increase costs beyond a company's actual cost of production. In addition, Stelco claims that *Torrington Co.* v. *United States* (''Torrington'') (881 F. Supp 622, 642–643 (CIT 1995)) and *SKF USA Inc.* v. *United States* (''SKF'') (888 F. Supp 152, 156 (CIT 1995)) supports its contention that a COP valuation is appropriate when it is below transfer price.

Stelco further argues that the major input rule does not apply to affiliated suppliers that are collapsed with the respondent. Stelco refers to C. Marsh and J. Miller, *Use and Measurement of Production Costs Under U.S. Antidumping Law* (September 19, 1995) to illustrate that pursuant to consolidation rules under generally accepted accounting principles, companies within a consolidated group record actual costs incurred for inter-company purchases and sales. Stelco also refers to *Certain Forged Steel Crankshafts from the United Kingdom*, 61 FR 54613, 54614 (October 21, 1996) (*Crankshafts*) and *Steel from Korea* in which the Department did not apply the major input rule with regard to transactions between divisions of the same corporation. To show that Department precedent mandates the collapsing of Stelco and Baycoat, Stelco cites *Preliminary Results of Antidumping Administrative Review: Sulfanilic Acid from the People's Republic of China*, 61 FR 25196, 25197 (May 20, 1996); *Final Determinations of Sales at LTFV: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Flat Products from Japan*, 58 FR 37154 (July 9, 1993); *Nihon Cement Co., Ltd.* v. *United States*, 17 C.I.T. 400 (1993).

Finally, Stelco argues that a June 4, 1998 binational panel ruling specifically rejected the Department's use of invoice prices from Baycoat as the value of the painting service that Stelco obtains from Baycoat. *See* Decision of the Panel: North American Free Trade Agreement, Article 1904 Binational Panel Review, USA–97–1904–3 (June 4, 1998) at 10 (*Panel Decision*) (Public Document).

Petitioners argue that the Department correctly used the transfer price to value the painting services received from Baycoat. Petitioners further ague that the statute makes no provision for the rejection of transfer price where such price exceeds the input's cost of production and there is no evidence that the transfer price is below market value. They further argue that the legislative history of the major input rule shows that the phrase ''amount represented as the value of [the] input'' refers to the transfer price, and that a conference committee report gives a similar definition. *See* H. Conf. Rep. No. 100–576 at 595, reprinted in 1988 U.S.S.C.A.N. 1547, 1628. Petitioners also contend that the Court of International Trade, has construed subsections (f)(2) and (f)(3) to require a comparison of market value and cost with transfer price. *See Timken Co.* v. *United States*, Consol. Court No. 96–12–02686, Slip Op. 97–164 (CIT Dec. 3, 1997) at 30–31. Petitioners argue that the binational review unequivocally sustained the discretion of the Department to use the unadjusted Baycoat invoice price as the valuation of Baycoat's painting services.

Petitioners contend that the transfer price is the appropriate valuation under the Department's regulations, specifically 19 CFR 351.407(b), which says that the Department will determine the value of a major input purchased from an affiliated person based on the higher of the price paid, the market value, or the cost of production. Furthermore, petitioners argue that there is no provision in the statute or any precedent that would permit any adjustment for profit made to the transfer price. Petitioners also note that in the normal course of business Stelco records its costs for the Baycoat services at the transfer price.

Petitioners argue that Stelco's assertion that the Department should treat Stelco and its affiliated suppliers as a single entity is baseless. Petitioners state that Stelco has failed to establish that Baycoat is a ''division'' of Stelco, and that the requirements for collapsing Baycoat and Stelco into one entity have not been satisfied. Finally, petitioners assert that there is no precedent for any exceptions to the application of the major input rule.

Department's Position: We agree with petitioners that it is appropriate to use the transfer price to value Stelco's major inputs. Under section 773(f)(2) of the Act, the Department's current practice is to request information on both the transfer price and the market value of the input and to choose the higher of the two valuations. Pursuant to section 773(f)(3) of the Act, the Department may alter this valuation only in those cases where the input is ''major'' and the value determined under section 773(f)(2) is lower than the COP of the inputs. All parties agree that the inputs in question are major inputs within the meaning of section 773(f)(3); we have determined that the value determined under section 773(f)(2) is not lower than the COP of the inputs.

In *Torrington* and *SKF*, which concerned the calculation of CV, the Department had not requested or received information on the transfer prices of the inputs. The CIT did not say that the Department was prohibited from requesting the transfer prices of the inputs; rather, it said that the Department was within its discretion to choose to rely on cost information. Here, because of the Department's current policy, the Department requested and received the transfer prices of the inputs. These transfer prices are greater than Baycoat's COP.

The policy applied here was the policy applied by the Department in the second review of this case and is currently reflected in 19 CFR 351.403(b). The Department held in the second administrative review that the statute directs it ''to value inputs supplied by affiliated persons at the transfer price between the entities provided that such a price reflects the price commonly charged in the market and, for major inputs, is not below the cost of producing the input.'' *See 1994/95 Canadian Steel* at 62 FR 18464.

Stelco also argues that it and Baycoat should be treated as a single entity for determining cost of production. However, Stelco has not established either that Baycoat is a ''division'' of Stelco or that the requirements for ''collapsing,'' under 19 CFR 351.401(f), have been satisfied with respect to Baycoat. In *Crankshafts*, respondent argued that because it and its affiliated supplier were ''both unincorporated operating divisions within a single entity, * * * they are parts of the same company and share a common steel COP.'' The Department ruled that the record evidence indicated that they were divisions of the same corporation, as opposed to distinct, although affiliated, legal entities, and found that the major input rule did not apply on that basis. Unlike the respondent in *Crankshafts*, Stelco does not contend that Baycoat is an actual division of Stelco with no independent legal existence. Rather, Stelco contends that it and Baycoat should be treated as a single entity solely for purposes of the

major input rule. As petitioners point out, the Department rejected a similar argument in *Mechanical Transfer Presses from Japan* 55 FR 335 (January 4, 1990) in which respondent maintained that its wholly-owned subsidiaries ''function(ed) as divisions.'' The Department noted that the ''wholly-owned subsidiaries are separate legal entities,'' as opposed to mere divisions, and thus applied the major input rule. The subsidiary in question here, Baycoat, is clearly a separate legal entity and thus the rule of *Crankshafts* does not apply.

Steel from Korea represents another instance where we have determined that the major input rule does not apply. In that case we disregarded the major input rule for transactions between producers of the subject merchandise where we had determined that such producers should be collapsed for purposes of analyzing sales. The criteria applied for determining whether sales collapsing is appropriate do not apply, however, in cases where the affiliated supplier does not have the capacity to produce the subject merchandise. *See* 19 CFR 351.401(f). In this review, it is clear that Baycoat does not produce subject merchandise. We agree with petitioners that Stelco has not established a basis for the treatment of Stelco's affiliated suppliers as ''collapsed'' entities. Furthermore, a year-end profit distribution does not function as an adjustment to price. The entitlement to a profit distribution arises from the ownership interest, not from the sale.

The binational panel agreed with the Department ''that subsection (f)(3) does not require the rejection of the transfer price'' and ruled that ''on the face of the statute, the Department is within its discretion to utilize the transactions between Stelco and Baycoat'' as the cost for Baycoat's services. *See Panel Decision* at 10. For these reasons, the Department has allowed no adjustments to the transfer price between Stelco and Baycoat.

Comment 5: Clerical Errors

Both Stelco and petitioners claim that the Department made clerical calculation errors in the preliminary determination. Stelco argues that the Department failed to apply reported billing adjustments, the CEP offset adjustment, and appropriate currency conversions for advertising expenses and inventory carrying costs. With regard to the recalculation of Stelco's painting costs, Stelco claims that the Department incorrectly recalculated Stelco's yield loss, used an incorrect TCOM variable, and did not complete the programming language needed to ensure that the Baycoat adjustment was applied only to Baycoat orders.

Petitioners claim that the Department neglected to include the home market interest revenue variable in the arm's length test, incorrectly defined the DIFFCODE variable used for matching in the model match, and incorrectly converted U.S. packing expense into U.S. dollars.

Department's Position: We agree with Stelco and with petitioners and have corrected the clerical errors described above.

Final Results of Review

As a result of our review, we determine the dumping margins (in percent) for the period August 1, 1996, through July 31, 1997 to be as follows:

Manufacturer/exporter	Margin (percent)
Corrosion-Resistant Steel:	
Dofasco	0.98
CCC	2.26
Stelco	2.73
Cut-to-Length Plate:	
Algoma	*0.23
MRM	0.00
Stelco	0.00
Forsyth	68.70

* *De minimis.*

The Department will determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we have calculated importer-specific ad valorem duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. Individual differences between U.S. price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each reviewed company will be the rates stated above (except that no deposit will be required for firms with zero or *de minimis* margins, i.e., margins less than 0.5 percent); (2) for exporters not covered in this review, but covered in the LTFV investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate established in the LTFV investigations, which were 18.71 percent for corrosion-resistant steel products and 61.88 percent for plate (*see* Amended Final Determination, 60 FR 49582 (September 26, 1995)). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

We are revoking the antidumping duty order on certain cut-to-length carbon steel plate from Canada with respect to Algoma and Stelco, in accordance with section 751(d) of the Act and 19 CFR 353.25(a)(2). This revocation applies to all entries of the subject merchandise from Canada entered, or withdrawn from warehouse, for consumption on or after August 31, 1997. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposit or bonds. The Department will further instruct the Customs Service to refund with interest any cash deposits on entries made on or after August 31, 1997.

Notification of Interested Parties

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

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1)(1997). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notices are in accordance with section

751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: January 4, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–691 Filed 1–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the review of certain corrosion-resistant carbon steel flat products from Japan. This review covers the period August 1, 1996 through July 31, 1997. The preliminary results of this review notice was published in the **Federal Register** on September 8, 1998 (63 FR 47465).

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Doreen Chen or Rick Johnson at (202) 482–0408 or (202) 482–3818, respectively; Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

Extension of Final Results

The Department has determined that it is not practicable to issue its final results within the original time limit. *See* Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Robert LaRussa, Assistant Secretary for Import Administration, January 6, 1999. The Department is extending the time limit for completion of the final results until February 5, 1999 in accordance with section 751(a)(3)(A) of the Act.

Dated: Janauary 6, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 99–697 Filed 1–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Natural Bristle Paintbrushes and Brush Heads From The People's Republic of China; Preliminary Results and Partial Recission of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results and partial recission of the antidumping duty administrative review of natural bristle paintbrushes and brush heads from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on natural bristle paintbrushes and brush heads (paintbrushes) from the People's Republic of China (PRC) in response to a request by petitioner, the Paint Applicator Division of the American Brush Manufacturers Association (the Paint Applicator Division) and by a PRC exporter of subject merchandise, the Hebei Animal By-Products Import & Export Corp. (HACO). This review covers shipments of this merchandise to the United States during the period February 1, 1997 through January 31, 1998. We are now rescinding this review in part with respect to the respondent who had no shipments of the subject merchandise during the period of review (POR).

We have preliminarily determined that sales by HACO have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between export price and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Eric Scheier, Laurel LaCivita, or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC. 20230; telephone (202) 482–4052, 482–4236, or 482–3020, respectively.

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 citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (April 1998).

Background

On February 18, 1986, the Department published in the **Federal Register** an antidumping duty order on paintbrushes from the PRC. *See* 51 FR 5580. On February 4, 1998, the Department published in the **Federal Register** (63 FR 5930) a notice of opportunity to request an administrative review of the antidumping order on paintbrushes from the PRC covering the period February 1, 1997, through January 31, 1998.

On February 27, 1998, in accordance with 19 CFR 351.213(b)(1), petitioner, the Paint Applicator Division, requested that we conduct an administrative review of Hunan Provincial Native Produce & Animal By-Products I/E Corporation (Hunan). On February 27, 1998, HACO submitted a request for a review. We published a notice of initiation of this antidumping duty administrative review on March 23, 1998 (63 FR 13837). The Department is conducting this administrative review in accordance with section 751 of the Act.

Partial Rescission

We initiated a review of HACO and Hunan. However, on March 5, 1998, Hunan informed the Department that it had no shipments of the subject merchandise to the United States during the POR. We have independently confirmed with the United States Customs Service that there were no shipments from Hunan during the POR. Therefore, in accordance with § 351.213(d)(3) of the Department's regulations and consistent with Department practice, we are rescinding our review of Hunan (*see, e.g., Certain Welded Carbon Steel Pipe and Tube*