

obligation. The CIT's decisions on August 20, 1993, March 4, 1994, and May 24, 1994 constitute decisions not in harmony with the Department's final results.

Pursuant to the decision in *Timken*, the Department will continue the suspension of liquidation of the subject merchandise pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Germany to reflect the amended margins of the Department's redeterminations on remand, which were affirmed by the CIT.

Dated: January 9, 1995.

Susan G. Esserman,
Assistant Secretary for Import
Administration.

[FR Doc. 95-1214 Filed 1-17-95; 8:45 am]

BILLING CODE 3510-DS-P

[A-401-601]

Brass Sheet and Strip From Sweden; Final Results of Antidumping Administrative Review

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

ACTION: Notice of final results of
antidumping duty administrative
review.

SUMMARY: On March 23, 1994, the Department of Commerce (the Department) published the preliminary results of its 1991-92 administrative review of brass sheet and strip from Sweden. The review covers exports of this merchandise to the United States by one manufacturer/exporter, Outokumpu Copper Rolled Products AB (OAB), during the period March 1, 1991 through February 29, 1992. The review indicates the existence of dumping margins for this period.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have adjusted OAB's margin for these final results.

EFFECTIVE DATE: January 18, 1995.

FOR FURTHER INFORMATION CONTACT:
Valerie Turoscy, Chip Hayes, or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration,

U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5253.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1994, the Department published in the **Federal Register** the preliminary results of its 1991-92 administrative review of the antidumping duty order on brass sheet and strip from Sweden (59 FR 13698). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review are sales or entries of brass sheet and strip, other than leaded and tinned brass sheet and strip, from Sweden. The chemical composition of the products under review is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C20000 series. This review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. The merchandise is currently classified under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review period is March 1, 1991 through February 29, 1992. The review involves one manufacturer/exporter, OAB.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of OAB, we held a hearing on May 9, 1994. We received case and rebuttal briefs from OAB and from the petitioners, Hussey Copper, Ltd., The Miller Company, Olin Corporation-Brass Group, and Revere Copper Products, Inc.

Comments are addressed in the following order:

1. Value Added Tax (VAT) Adjustment Methodology
2. Unpaid U.S. Sales
3. Model Match Methodology
4. Clerical and/or Programming Errors

VAT Adjustment Methodology

Comment 1: OAB argues that the Department's current VAT adjustment methodology, in which the Department, in its calculation of United States price

(USP), applies the home market *ad valorem* VAT rate to USP, results in a "multiplier effect" which serves to artificially inflate the respondent's antidumping margin. OAB requests that the Department alter its methodology for the final results of review in accordance with footnote 4 of the United States Court of Appeals for the Federal Circuit's (Federal Circuit) decision in *Zenith Electronics Corp. v. United States*, 988 F.2d 1573, 1577 (Fed. Cir. 1993) (*Zenith*) and the Court of International Trade's (CIT) decision in *Hyster Co. v. United States*, CIT Slip Op. 94-34, Court No. 93-03-00133 (March 1, 1994) at 11 (*Hyster*), and eliminate the "multiplier effect" by applying the actual home market VAT amount rather than the *ad valorem* home market VAT rate to USP. Citing *Zenith*, OAB claims that the Federal Circuit, in footnote 4 of this decision, clearly indicated that the Department is free to eliminate the multiplier effect by applying to USP the actual home market VAT amount. Furthermore, OAB points out that such a methodology has also been recognized in *Hyster*, in which the CIT, relying on footnote 4 of *Zenith*, upheld the Department's earlier application of the actual home market VAT amount to USP. OAB also contends that while the CIT in *Federal-Mogul Corporation and the Torrington Company v. United States*, 813 F. Supp. 856 (October 7, 1993) (*Federal-Mogul*), elected to disregard the position of the Federal Circuit in footnote 4 of *Zenith*, the *Federal-Mogul* decision has been appealed, and, absent any final statement by the Federal Circuit on this issue, the *Federal-Mogul* view of footnote 4 is entitled to little, if any, weight (*Federal-Mogul Corp. v. United States*, Court No. 94-1097 (Federal Circuit), and *Federal-Mogul Corp. v. United States*, Court No. 94-1104 (Federal Circuit)).

Next, OAB argues that because the Department's current VAT methodology serves to artificially inflate the respondent's antidumping margin, it violates the Department's obligation under section 722(d)(1)(c) of the Act to protect against the creation or inflation of dumping margins due to taxes assessed on home market sales but forgiven on export sales, and the Department's obligation to calculate fair and accurate margins (see *Koyo Seiko, Ltd. v. United States*, 14 CIT 680, 746 F. Supp. 1108, 1110 (1990), and *Oscillating Ceiling Fans from the People's Republic of China*, 56 FR 55271, 55275). Finally, OAB contends that because the Department's VAT methodology subjects countries with

higher VATs, such as Sweden, to disproportionately and artificially higher dumping margins than countries with lower VATs, the methodology is clearly discriminatory, and, as such, constitutes a violation of the Department's obligation pursuant to Articles I and VI of the General Agreement on Tariffs and Trade (GATT) to collect antidumping duties on a non-discriminatory basis.

Citing section 722(d)(1)(c) of the Act, the petitioners state that the plain language of this section requires that the amount of taxes to be added to USP is the amount of taxes that would be imposed upon the exported merchandise, not the home market merchandise. Furthermore, the petitioners argue that OAB has misinterpreted both *Zenith* and *Hyster*. The petitioners claim that the Federal Circuit, in *Zenith*, despite footnote 4, clearly recognized that the legislative intent of the statute was not to eliminate the multiplier effect. Rather, the multiplier effect was recognized by the Federal Circuit to be the direct result of Congress' intent that the USP tax adjustment was to be based on the amount of taxes forgiven on the exported merchandise. Petitioners also contend that not only did the CIT correctly determine that footnote 4 of *Zenith* was contrary to the statute, but the CIT, in *Hyster*, did not uphold a tax methodology based on footnote 4 of *Zenith*. Rather, petitioners state that the CIT only remanded the VAT issue to the Department, which on remand applied the same VAT methodology used in the preliminary results for this administrative review (see the Department's April 11, 1994, Remand Results in *Hyster Co. v. United States*, Court No. 92-03-00133). Petitioners contend that in another case, *Avesta Sheffield, Inc. v. United States*, 18 CIT _____, Slip Op. 94-53 (March 31, 1994) (*Avesta*), the CIT speaks more clearly to the VAT issue. The CIT, as in *Hyster*, remanded the VAT issue to the Department, but in *Avesta* the CIT directly instructed the Department to apply to USP the home market VAT rate rather than the actual amount of home market tax. The petitioners comment that, on remand, the Department complied with these instructions and again applied the same methodology as used in the preliminary results for this administrative review (see *Avesta Sheffield, Inc. v. United States*, 17 CIT _____, 838 F. Supp. 608, 615 (1993) and *Avesta* at 2). Petitioners argue that the Department's application of the *ad valorem* home market VAT rate is therefore lawful and in direct accord

with the language and legislative intent of section 722(d)(1)(c) of the Act. As a result, the Department should not alter its VAT adjustment methodology for the final results of review, but rather should rely on its current methodology in accordance with *Federal-Mogul*, *Avesta*, and the body of the *Zenith* decision.

Department's Position: We agree with the petitioners. In addressing the treatment of taxes under existing U.S. law, the CIT in *Federal-Mogul* rejected the Department's VAT methodology of adding the actual home market VAT amount to USP and held that the adjustment to USP for imputed tax should be calculated by applying the foreign market tax rate to USP (see *Federal-Mogul* at 12). In addition, the CIT explicitly rejected a VAT-adjustment methodology based on adding the actual amount of the home market tax to USP stating that such an approach "is clearly at odds with the body of *Zenith* and the language of the statute." The Department has conformed its current practice to the CIT's decision in *Federal-Mogul*, and the CIT has upheld this approach in *Torrington Co. v. United States*, 854 F. Supp. 446 (1994), *Independent Radionic Workers of America v. United States*, Slip Op. 94-144 (CIT 1994), *Zenith Electronics Corp. v. United States*, Slip Op. 94-148 (CIT 1994), *Samsung Electronics Co., Ltd. v. United States*, Slip Op. 94-146 (CIT 1994), and *Zenith Electronics Corp. v. United States*, Slip Op. 94-146 (CIT 1994).

In accordance with the CIT's decision in *Federal-Mogul*, we have multiplied the foreign market tax rate by the price of the U.S. merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales, and have added the product to USP. In order to prevent our methodology from creating dumping margins where no margins would exist if no taxes were levied upon foreign market sales, we have also deducted from the USP and FMV those portions of the respective home market tax and USP tax adjustments attributable to expenses included in the foreign market and U.S. bases of tax if we deduct those expenses later to calculate FMV and USP.

This margin creation effect is due to the fact that the bases for calculating both the amount of tax included on the price of the foreign market merchandise and the amount of the USP tax adjustment include many expenses which are later deducted when calculating USP and FMV. After these deductions are made, the amount of tax included in FMV and the USP tax adjustment still reflects the amounts of

these expenses. Thus a margin may be created that is not dependent upon a difference between adjusted USP and FMV, but is the result of differences between the expenses in the United States and the home market that were deducted through expenses. The Department's policy to avoid the margin creation effect is in accordance with the Federal Circuit's statement that the USP tax adjustment should not create an antidumping margin if pre-tax FMV does not exceed USP. (See *Zenith* at 1,581.) In addition, the CIT has specifically held that an adjustment should be made to mitigate the impact of the expenses that are deducted from FMV and USP upon the USP tax adjustment and the amount of tax included in FMV. (See *Daewoo Electronics Co., Ltd. v. United States*, 760 F. Supp. 200, 208 (CIT 1991) (*Daewoo*)). However, the mechanics of our adjustment to the USP tax adjustment and the foreign market tax amount as described above is not identical to those suggested in *Daewoo*.

In sum, we believe that the application of the home market VAT rate to USP and the subsequent adjustment of expenses addresses the concerns of the courts regarding the adjustment of USP for VAT under section 772(d)(1)(C) of the Act.

Finally, while the GATT requires that we treat all member countries equally in trade matters, there is no requirement under the GATT that the results of our actions affect each country equally. Since the adoption of this VAT adjustment methodology, we have applied the same methodology in each case regardless of the country or respondent involved. Therefore, our methodology is not discriminatory but rather is applied equally to all antidumping duty administrative review proceedings (see, e.g., *Color Television Receivers from the People's Republic of Korea; Final Results of Antidumping Administrative Review*, 59 FR 13701 (March 23, 1994)).

Comment 2: OAB contends that the Department's recent change in its VAT adjustment methodology is premature and in violation of the Administrative Procedure Act (APA) (5 U.S.C. 551). OAB argues that before making such a fundamental change to an established practice, the Department must conduct a rule-making procedure in accordance with the APA (see *Carlisle Tire and Rubber Co. v. United States*, 634 F. Supp. 419 (CIT 1986) (*Carlisle*), and *IPSCO, Inc. v. United States*, 687 F. Supp. 614 (CIT 1988) (*IPSCO*)). OAB further contends that because the Department's new VAT rule is clearly subject to the requirements of 5 U.S.C.

533 (b) and (c), and because it does not constitute an "interpretive rule" or "general statement of policy," both of which constitute exceptions to the APA's rule-making procedures, the Department should have published in the **Federal Register** an advance notice of its proposed VAT methodology and should have given interested parties an opportunity to comment. OAB argues that by not doing so, the Department has violated 5 U.S.C. 533 and should postpone issuance of final results of this administrative review pending completion of the APA rule-making procedures.

Petitioners state that, contrary to OAB's arguments, the Department's method for adjusting for VAT constitutes an interpretive policy designed to implement and interpret section 722(d)(1)(c) of the Act. Petitioners contend that *Carlisle* and *IPSCO* represent two cases in which the Department, for administrative purposes, created rules that had no basis in the statute. As a result, rule-making procedures were in order. Petitioners claim that the Department's VAT adjustment methodology was developed specifically to implement section 722(d)(1)(c) of the Act, and, as a result, is an interpretive rule which serves to clarify or explain existing law, rather than create new law, rights, or duties (see *Timken Co. v. United States*, 11 CIT 786, 673 F. Supp. 495, 514 (1987) (*Timken*), citing *Cabia v. Egger*, 690 F.2d 234, 238 (D.C. Cir. 1982)). As such, it constitutes an exception to the APA's rule-making procedures. Petitioners argue that the Department is, therefore, not in violation of 5 U.S.C. 533 and that APA rule-making procedures are unwarranted in this case.

Department's Position: We agree with the petitioners. The Department's VAT adjustment methodology was developed in accordance with the CIT's decision in *Federal-Mogul* in which the CIT held that the addition to USP under section 772(d)(1)(c) of the Act should be the result of applying the foreign market tax rate to the price of the U.S. merchandise. As a result, our VAT methodology represents a methodology developed by the Department for the purpose of implementing section 722(d)(1)(c) of the Act in accordance with the CIT's decision in *Federal-Mogul*. Unlike the methodologies contested in *Carlisle* and *IPSCO*, our VAT adjustment methodology does not create a new rule, right, duty, law, or standard. Rather, our VAT methodology, because it interprets the law, is not subject to the APA (*Cf. Timken*, 11 CIT at 514, agreeing with the Department that its 10-90-10 sales- below-cost

methodology was not subject to the APA since it interpreted current law rather than made new law). The Department's methodology is the means by which we interpret, implement, and administer section 722(d)(1)(c) of the Act, not a new rule or law.

Comment 3: OAB contends that, if the Department does not alter its VAT methodology, it should change the way in which it determines the amount of antidumping duties to be assessed on merchandise subject to this administrative review. Respondent argues that when assessing duties on imports of brass sheet and strip from Sweden, the Department, rather than relying on its current assessment methodology, should apply the *ad valorem* margin to the actual entered value, which is not inflated by the VAT. OAB points out that not only is there no case law prohibiting such an assessment approach, but this approach would also eliminate the artificial inflation of respondent's margins caused by the Department's current VAT methodology. OAB concludes by stating that the Department would thereby meet its fundamental obligation to calculate fair and accurate margins.

Petitioners argue that the assessment methodology proposed by the respondent is simply another method by which the multiplier effect can be eliminated from the Department's margin calculations and by which tax neutrality can be achieved. As such, this assessment approach would be in violation of section 722(d)(1)(c) of the Act and contrary to both *Zenith* and *Federal-Mogul* for the same basic reasons as argued in Comment 1. Petitioners contend that the Department should, therefore, reject OAB's argument and not alter its assessment methodology.

Department's Position: We disagree with the OAB's contention that if we do not alter our VAT adjustment methodology, we should then ensure that our assessment methodology eliminates the multiplier effect. As explained by the Federal Circuit in *Zenith*, it was not the intent of Congress to eliminate the multiplier effect or for the Department to seek tax neutrality. Rather, the exporters themselves, by engaging in dumping, are responsible for any artificial inflation of their dumping margins due to the operation of section 722(d)(1)(c) of the Act. Therefore, as the Federal Circuit has held in *Zenith*, the elimination of the multiplier effect is not necessary. The Federal Circuit's holding in *Zenith* is just as applicable to our assessment methodology as it is to our VAT adjustment methodology or to any other

methodology used in our analysis that can potentially be manipulated to eliminate the multiplier effect. Therefore, we will not adopt an assessment policy, or any other methodology, for the sole purpose of eliminating any multiplier effect caused by the application of our VAT adjustment methodology.

Furthermore, our policy is to base assessment on the entered value of sales, and when we do not have the entered value of sales, we will base assessment on the total calculated USP. Because we do not have entered value of sales information for this review, we will base the duties to be assessed on imports of Swedish brass sheet and strip on the total USP calculated from OAB's response.

Unpaid U.S. Sales

Comment 4: Petitioners claim that during verification the Department discovered that, due to financial difficulties, one of OAB's U.S. customers has yet to pay OAB for merchandise it purchased during the review period and took delivery for, and that OAB has left its books open for these unpaid sales. In addition, the petitioners point out that when the Department requested that OAB identify these unpaid U.S. sales, OAB stated that it would be too difficult to accomplish during the verification (see the Department's Home Market Verification Report for OAB (March 9, 1994) (Verification Report)). Petitioners contend that because the Department was unable to completely verify these sales, because at verification these sales had not yet been paid for, and because there is no evidence on the record that OAB has since received payment for this merchandise, the Department should not rely on OAB's reported invoice prices for these unpaid sales. Rather, because OAB failed in its questionnaire responses to report that there were problems with these sales and failed to identify these sales at verification, petitioners urge the Department to follow its past practice in similar circumstances. Specifically, the petitioners argue that, as complete BIA for these unpaid U.S. sales, the Department should use the highest calculated margin for an individual sale subject to the administrative review, as it did in *Certain Stainless Steel Cooking Ware from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 56 FR 38114 (1991) (*SS Cooking Ware*).

Petitioners also contend that if the Department decides to base USP on OAB's reported invoice prices for its unpaid U.S. sales, then the Department

should not rely on OAB's reported fictional payment dates and fictional payment periods and should reject the credit expense amounts OAB claimed for its unpaid U.S. sales. Petitioners argue that the Department should follow its past practice and recalculate OAB's credit expense for these unpaid sales using as partial BIA the date of the notice of the final results for this administrative review as the date of payment (see *Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium; Final Determinations of Sales at Less than Fair Value*, 58 FR 37083, 37087 (July 9, 1993) (*Belgian Steel*), and *Certain Stainless Steel Wire Rods from France; Final Determination of Sales at Less than Fair Value*, 58 FR 68865, 68871 (December 29, 1993) (*SS Wire Rods*)).

OAB contends that there is no justification for the application of either complete or partial BIA to these unpaid sales. First, OAB argues that because the cases cited by petitioners involve entirely different facts than those in the case at hand, they are inappropriate precedents. Not only did *SS Cooking Ware, Belgian Steel*, and *SS Wire Rod* not involve sales to bankrupt customers, but in all three cases respondents either failed to report any data whatsoever regarding unpaid sales or they failed to provide an explanation as to why payment had not been received on those sales. OAB contends that it has responded to all information requests regarding U.S. sales, has reported invoice prices which were successfully verified by the Department, and has provided a clear explanation why its sales to a certain U.S. customer are still unpaid. Furthermore, OAB points out that *SS Cooking Ware* involved unpaid sales which constituted an entire market, whereas the unpaid sales in this case only represent a limited number of sales to a single customer, not sales to an entire market. Furthermore, OAB argues that the prerequisites for the use of BIA, as outlined in sections 776 (b) and (c) of the Act and the Department's regulations implementing section 776 (b) and (c), do not exist in this case, as they did in the others cited by the petitioners. Therefore, OAB contends that the Department should not reject the invoice prices, payment periods, or credit expenses OAB reported for its unpaid U.S. sales. Rather, citing various decisions, OAB urges the Department to act in accordance with its prior practice in a variety of cases where a customer failed to pay a respondent for merchandise it purchased, accept the

reported invoice prices, and calculate credit expenses for the unpaid sales using an average credit period based on similar sales or some other non-punitive measure (see, e.g., *New Minivans from Japan; Final Determination of Sales at Less than Fair Value*, 57 FR 21937, 21945 (May 26, 1992)).

The respondent argues that the Department's use of the date of the final results notice as the payment date for unpaid sales in both the *Belgian Steel* and *SS Wire Rod* original investigations was not punitive, whereas such a decision in this review would be punitive. OAB explains that both of these cases were original investigations, which, unlike administrative reviews, were of a shorter duration and subject to stricter statutory deadlines. Because this proceeding is not only an administrative review, but an administrative review that has taken longer than normal to complete, a decision by the Department to use the date of the notice of the final results of review as the payment date for these sales would create some payment periods in excess of three years, and as such would result in an extremely unwarranted punitive outcome.

Finally, the respondent contends that, in accordance with the Federal Circuit's decision in *Olympic Adhesives v. United States*, 899 F.2d 1573 (Fed. Cir. 1990) (*Olympic Adhesives*), to the extent that the actual payment dates for these unpaid sales do not exist, the Department may not penalize OAB by using as BIA payment dates which would grossly distort any reasonable credit calculation.

Department's Position: We agree in part with both the respondent and the petitioners. Prior to verification OAB had not indicated in its original questionnaire response or its subsequent supplemental responses that it had not yet received payment for certain of its U.S. sales to a particular customer. Nor did OAB indicate that it had reported estimated payment dates and corresponding payment periods for these unpaid sales, which it knew when it submitted its questionnaire response were not actual payment dates and periods. It was only because one of the sales we selected in the sales trace portion of our verification happened to be an unpaid U.S. sale that we discovered at verification (1) that OAB had unpaid U.S. sales, (2) that OAB had reported estimated payment dates for these sales and that these dates had already passed without payment, (3) that OAB had left its books open on these sales, and (4) that one of OAB's U.S. customers had been unable to pay OAB for merchandise it purchased

during the review period due to financial difficulties (i.e., bankruptcy). When we asked the respondent at verification to identify all of its unpaid U.S. sales, OAB indicated that only a few sales to this bankrupt customer were unpaid, and explained that it would be too difficult to isolate these sales in the time allotted for verification. As a result, because we were only first aware of the nature of these sales at verification and because the respondent was unable to identify these unpaid sales at verification, we were unable to verify the extent of these unpaid sales and unable to verify the accuracy of OAB's explanation why the sales were unpaid. However, by means of our sales traces, we were able to verify some limited information concerning sales to the U.S. customer, such as the invoice prices OAB reported for them. After verification we conducted our own analysis of OAB's sales to this U.S. customer and discovered that only one sale did not have an estimated payment date and corresponding estimated payment period. As a result, we determined that all but one of OAB's sales to this customer were unpaid. Based on these facts, we disagree with the respondent's contention that the prerequisites for the application of BIA do not exist in this instance and that, based on *Olympic Adhesives*, we cannot use BIA for information that simply does not exist. Although we recognize that OAB included these sales in its original U.S. sales listing, the fact remains that OAB failed to inform us of the nature of these sales, and failed to inform us that the "estimated" payment dates and payment periods it reported were not actual payment dates and periods. This, along with the fact that OAB was unable to identify these sales at verification and only first offered at verification any explanation why these sales were unpaid, impeded our ability to accurately and completely verify these sales. Therefore, because OAB provided incomplete and inaccurate information concerning the nature of these sales, and because at verification we were able to verify only a limited amount of information concerning these sales, we have determined for these final results, in accordance with section 776(b) and 776(c) of the Act, that the application of BIA to these sales is warranted. Furthermore, *Olympic Adhesives* is not applicable in this case because the Department is not applying BIA because OAB failed to provide non-existent payment dates. Rather, we are applying BIA because the payment information OAB provided in its questionnaire responses was incomplete

and inaccurate and because we were unable to verify the extent of these unpaid sales.

Although we have determined that BIA is warranted in this case, we do not agree with the petitioners' contention that we should reject the invoice prices OAB reported for these sales and apply as BIA the highest calculated margin for any sale in the review. At verification we were able to verify that the invoice prices OAB reported for these sales matched those on *pro forma* invoices, on "call-off" invoices, and in OAB's ledgers. Because we are satisfied that the prices reported and the prices we observed are the same prices agreed to by OAB and its customer, we have no reason to question the accuracy of these prices. As a result, for these final results we have accepted OAB's reported invoice prices. In accordance with our policy, we have determined that partial BIA, based on a recalculation of the payment periods and credit expenses OAB reported for its unpaid U.S. sales, is more appropriate and more in accordance with the facts in this case.

Due to the differences in duration and statutory deadlines between the investigative and administrative review processes, we disagree with the petitioners' contention that we should use the date of the notice of the final results of review as the date of payment. Rather, because of the extended passage of time between the actual sales being reviewed and the conclusion of the administrative review process, as compared to the original investigative process, we have determined that the use of the last day of our verification as the payment date for OAB's unpaid sales is reasonable. Based on the record for this review, the last day of verification is the last day that we can determine with any certainty that these sales were still unpaid and that OAB was still extending credit to this customer. Therefore, for these final results we have determined to use for the payment period for each unpaid U.S. sale the time elapsed from the date of shipment reported by OAB to the last day of verification. Accordingly, we have also recalculated the credit expenses OAB reported for these unpaid U.S. sales, based upon this payment period.

Model Match Methodology

Comment 5: Petitioners contend that length is the most important distinguishing characteristic between brass sheet and brass strip, and that if the length of the merchandise sold is in excess of 10 feet, the merchandise is brass strip rather than brass sheet, and should be identified accordingly.

Petitioners argue that because OAB has not submitted any information regarding the length of the merchandise it sold, but instead has relied solely on width to distinguish between sheet and strip, the Department cannot be certain that OAB properly identified the form of its sales as brass sheet or brass strip. Petitioners claim that the Department should require OAB to substantiate its claim that all of its U.S. sales were of brass sheet. Petitioners argue that this is especially important for this administrative review because (1) the Department, accepting OAB's assertion that all of its U.S. sales were of sheet, in this review based its model matches on only two criteria, alloy and gauge, rather than on the four criteria, alloy, gauge, width, and form, that it used in previous administrative reviews of this order, and (2) based on one of the *pro forma* invoices contained in exhibit 2 of the Department's verification report, it appears that OAB has misidentified a U.S. strip sale as a sheet sale in its U.S. sales listing. Therefore, petitioners infer that by not using width and form, the Department risks comparing sales of sheet to sales of strip.

The petitioners state that because the Department has the authority under 19 C.F.R. 353.31(b)(1) to request information even after the preliminary results of a review, the Department should obtain information regarding the length of all products sold by OAB during the review period. In this way the Department would be able to determine with certainty whether all of OAB's U.S. sales were indeed sales of brass sheet. The petitioners argue that, based on the information the Department receives from OAB regarding product lengths, the Department should then reexamine its model matches to ensure that U.S. and home market sales are properly matched.

The respondent argues that there is nothing on the record to substantiate the petitioners' claim that length is the most important distinguishing characteristic between brass sheet and strip or that products in excess of 10 feet in length are by definition strip and not sheet. OAB contends that it has correctly identified its sales as strip or sheet based on the recognized industry standard of whether the merchandise was sold as cut-to-length or coiled. OAB argues that as a result the Department has properly relied on alloy and gauge in its model matches, since only these characteristics are necessary for comparing sales of sheet. Because all of OAB's U.S. sales were of sheet, the Department correctly used only home market sheet sales in its analysis. Thus,

all sales were already matched as to form prior to any further comparisons by the Department. Furthermore, because the Department has already collected all of the data necessary to develop an appropriate model-match methodology and because it has applied an appropriate model-match methodology in this review, there is no reason for the Department to reopen the issue by obtaining information regarding length of the products sold, or to re-examine its model-match methodology.

Department's Position: We agree with OAB. The Department's understanding in this review, as it has been in all previous reviews of this order, is that form is the distinguishing factor between brass sheet and brass strip. While brass sheet is sold flat and cut-to-length and is packed and shipped in this form, brass strip is sold coiled or traverse-wound and is packed and shipped in its coiled form. In past reviews we did not include the length of the merchandise as a model-match criterion or as a defining characteristic between strip and sheet. In this review the petitioners have provided insufficient evidence for us to make a determination that length is a reliable criterion upon which to distinguish sheet from strip, or that length should be included as a model-match criterion or should replace the form criterion in our model-match methodology. As a result, for this review, as in all past reviews, we have based the difference between brass sheet and brass strip on the form of the merchandise, not its length.

We disagree with the petitioners' contention that we excluded the form and width criteria from our product comparisons in this review and did not adhere to our established model-match methodology. As in all past reviews, we have again included the form and width criteria in our analysis. However, for several reasons, it was not necessary for us to explicitly include these criteria in the model-match portion of our computer program. For example, upon determining that all of OAB's U.S. sales were sheet sales, we excluded from our analysis all home market strip sales as a means to ensure proper product comparisons. As a result, because only sheet sales remained (meaning that all home market and U.S. sales were of the same form), it was not necessary for us to specifically include the form criterion in the model-match portion of our computer program.

We specifically used width as a criterion in all past reviews because our analysis addressed sales of both brass strip and brass sheet. Due to the additional costs associated with cutting

strip to meet a specific width requirement, width is extremely relevant when comparing one strip sale to another strip sale. However, because there are no additional costs associated with variations in the width of sheet, width is irrelevant when one sheet sale is compared to another sheet sale. As previously stated, based on our determination that all of OAB's U.S. sales were of sheet, only sheet sales were subject to our product comparisons. As a result, although we considered the width criterion in our methodology, it became irrelevant to our analysis and unnecessary for the model-match portion of our computer program.

After excluding all home market strip sales from our analysis we also excluded all home market sheet sales which were under 15 inches in width. In doing so we did not intend to create width groups (sheet over and under 15 inches in width), or distinguish between the widths of sheet sales. As OAB explained in its response, during the review period, it produced all subject merchandise in two different mills, one of which was a more modern, state-of-the-art mill. Because of the way OAB casts and rolls its sheet in the more modern mill, all sheet produced in this mill is always greater than 15 inches in width. As a result, due to the modern mill's production process, differentiation according to the width of the merchandise corresponds to differentiation of the merchandise according to form. Because all of OAB's U.S. sales (which OAB identified, based on form, as all sheet sales) and nearly all of OAB's home market sheet sales were produced in the more modern mill, all of OAB's U.S. sales and nearly all of its home market sheet sales also happen to be over 15 inches in width. Our preliminary results revealed 1) that the small quantity of home market sheet sales which were produced in OAB's older mill (under 15 inches in width) were all of the 1063 alloy, and 2) that when we compared OAB's U.S. sheet sales of alloy 1063 (which were all produced in the modern mill) to home market sheet sales for contemporaneous such or similar matches, every one of OAB's U.S. 1063 sheet sales matched to a contemporaneous such or similar home market sheet sale which was also produced in the modern mill. In other words, although OAB had home market sheet sales of the 1063 alloy produced in the older mill, none of these sales were contemporaneous to OAB's U.S. sheet sales of the 1063 alloy. As a result, we determined that it was unnecessary to include home market sheet sales produced in the older mill in our

analysis. Because home market sheet sales produced in the older mill are under 15 inches in width, we used width to identify these sales and eliminate them from our analysis.

Based on our verification, we disagree with the petitioners that OAB based its determination of a sale as sheet or strip on width. We verified that OAB clearly relied on the form of the merchandise (i.e., whether it was flat and cut-to-length or whether it was coiled or traverse-wound) when identifying its sales as either sheet or strip in its response. As noted above, because of the way OAB casts and rolls its sheet in the more modern mill, all sheet produced in this mill is always greater than 15 inches in width. As a result, due to the modern mill's production process, differentiation according to the width of the merchandise corresponds to differentiation of the merchandise according to form. Because all of OAB's U.S. sales (which OAB identified, based on form, as all sheet sales) and nearly all of OAB's home market sheet sales were produced in the more modern mill, all of OAB's U.S. sales and nearly all of its home market sheet sales also happen to be over 15 inches in width. Therefore, OAB did not use width as a means to define its merchandise, nor did it use width as a distinguishing characteristic. Rather, in this review, the width of nearly all of OAB's sheet sales correlates to the form of the merchandise.

We agree with petitioners that there is a discrepancy concerning one of OAB's U.S. sales. We re-examined the invoice for this sale contained in exhibit 2 of our verification report and the invoice describes the merchandise sold as brass strip, whereas OAB reported this sale as a sheet sale in its U.S. sales listing. For the purposes of this review, we have determined that this is a sheet sale and we have treated it accordingly in our analysis. Our determination that this sale is a sheet rather than a strip sale is based on the fact that the merchandise sold was over 20 inches in width. Although we have clearly stated that width is not a defining characteristic, the fact remains that, for Customs' purposes, brass sheet is subject merchandise over 20 inches in width while brass strip is subject merchandise under 20 inches. This is evident in the HTS where a distinction is made between subject merchandise over 500 mm in width and under 500 mm in width. As a result, due to the fact that the width of the merchandise sold, as reflected on the *pro forma* invoice for this sale, was over 20 inches, this merchandise was entered as sheet. Therefore, we have determined that

because this sale was entered as a sheet sale, it should be treated as such in our analysis. For these final results of review, we have thus used the same methodology as in our preliminary results of review in that our analysis of OAB's U.S. sales is based on our determination that all of these sales were of brass sheet.

Comment 6: The petitioners argue that when the Department was unable to find an identical home market match for U.S. sales of alloy 1085, it correctly searched for contemporaneous home market sales of the most similar alloy 1080, but incorrectly also searched for contemporaneous home market sales of the less similar home market alloy 1070. Petitioners contend that because home market alloy 1090 is clearly more similar in copper content to the U.S. 1085 alloy than the home market 1070 alloy, the Department should use home market sales of alloy 1090 rather than alloy 1070 for the purpose of comparison. As a result, petitioners urge the Department to change its model-match methodology to ensure that when it is unable to find an identical home market match for a U.S. sale of alloy 1085, the U.S. sale of alloy 1085 should be matched to a contemporaneous home market sale of alloy 1080 or alloy 1090.

OAB argues that because its home market sales of alloy 1090 were of unique and very expensive merchandise and, therefore, wholly inappropriate candidates for price comparisons to U.S. sales, the Department, when unable to find an identical home market match to U.S. sales of alloy 1085, correctly searched for contemporaneous matches of home market alloy 1080 and alloy 1070 sales. Respondent further argues that the petitioners' contention that the Department should match U.S. sales of alloy 1085 to contemporaneous home market sales of alloy 1090 rather than alloy 1070 only reflects the petitioners' preference which is unsupported by any evidence on the record. Since the Department has broad discretion in designing its model-match methodology and has already developed an appropriate methodology for this review, OAB argues that the Department should not allow the petitioners to determine what constitutes most similar merchandise (see *NTN Bearing Corp. of America v. United States*, 747 F. Supp. 726, 736 (CIT 1990), *Ceramica Regiomontana S.A. v. United States*, 636 F. Supp. 961, 966 (CIT 1986), and *Timken Co. v. United States*, 630 F. Supp. 1338 (CIT 1986)). Rather, the Department should use the same methodology in its final results as it did in its preliminary results and match U.S. sales of alloy 1085 to

contemporaneous home market sales of alloy 1080 or alloy 1070.

Department's Position: In the model matches for our preliminary results of review, because all of the sales we analyzed were in the same form and because the width criterion was irrelevant in this review, for each U.S. sheet sale, we first searched for a contemporaneous home market sheet sale of merchandise identical to each U.S. product based on an identical alloy and an identical gauge. If we found no match of identical merchandise, we then searched for a contemporaneous home market sale of merchandise that was most similar to the U.S. product based on an identical alloy but a different gauge. If we were still unable to find a match, we then searched for a contemporaneous home market sale based on a different alloy but an identical gauge. At this stage in the model matching we determined that the two home market alloys that were most similar to the U.S. 1085 alloy were the home market 1080 and 1070 alloys. As a result, for those U.S. sales of the 1085 alloy for which we were unable to find a contemporaneous home market match based on an identical alloy and gauge, or a contemporaneous home market match based on an identical alloy but a different gauge, we then searched for a contemporaneous home market sale of the 1080 alloy and of the same gauge. If at this point we were still unable to match the U.S. 1085 sale to a contemporaneous home market sale, we searched for a contemporaneous home market sale of the 1070 alloy and the same gauge.

Based on comments from both the respondent and the petitioners and our reexamination of the respondent's arguments against including home market 1090 alloy sales in our analysis, we determined that for these final results, when we were unable to match a U.S. 1085 alloy sale to a home market sheet sale of identical merchandise, to a home market sheet sale of an identical alloy but a different gauge, or a home market sheet sale of the 1080 alloy and the same gauge, we would search for a contemporaneous home market sheet sale of the 1090 rather than the 1070 alloy.

Our decision to alter our model-match program and to replace home market 1070 sales with home market 1090 alloy sales is based on the following reasons. First, due to the fact that all of OAB's U.S. sales were of brass sheet over 15 inches in width, we used only home market sales of sheet over 15 inches in width for our analysis and based the computer program portion of the model match on only the alloy and gauge

criteria. Of these two criteria, we determined that alloy was the most important criterion upon which to base our determination of home market such or similar merchandise. We also determined that when selecting the two home market alloys most similar to the U.S. 1085 and 1090 alloys, the only two U.S. alloys for which sufficient such or similar matches were not available, we would base our choice on similarity of alloy compositions. In our preliminary results we determined that, due to their similarity in copper content, the home market 1085 and 1080 alloys were the two most similar alloys to the U.S. 1090 alloy. Likewise, we determined that the two home market alloys most similar to the U.S. 1085 alloy were the 1080 and 1070 alloys. However, because we agree with petitioners that the home market 1090 alloy is closer in copper content to the U.S. 1085 alloy than is the home market 1070 alloy, we have determined for these final results that the ranking of home market 1090 alloy sales over home market 1070 alloy sales is more appropriate.

Furthermore, we disagree with the respondent's argument in its questionnaire response and its preliminary results comments that because OAB's home market 1090 alloy sales entailed only a few, small quantity sales of expensive, unique merchandise to only a limited number of customers, these sales are not in the ordinary course of trade and are inappropriate for price-to-price comparisons. After examining OAB's home market sales of sheet over 15 inches in width, we discovered that OAB's sales of other alloys at certain gauges were made in even smaller quantities and constituted even fewer transactions than OAB's 1090 alloy home market sales. In addition, we also discovered that OAB's weighted-average home market prices of other alloys were similar to the weighted-average home market price for OAB's 1090 sales, and one home market alloy was sold at a weighted-average price that even exceeded that of the 1090 alloy. As a result, we have determined that not only is there no evidence on the record that OAB's home market 1090 alloy sales were outside the ordinary course of trade, but that the evidence on the record refutes OAB's original claims that its home market sales of the 1090 alloy were smaller in quantity, less frequent, and more expensive. Therefore, because we have determined that OAB's home market 1090 alloy sales should not be excluded from such or similar merchandise comparisons, and because it would be neither distortive nor unreasonable to

use the 1090 alloy, we have changed our model matches for U.S. 1085 alloy sales and have relied on 1080 and 1090 alloy sales as similar comparisons where home market 1085 sales are not available for comparison.

Clerical and Programming Errors

Comment 7: OAB states that because the Department has determined for this review that OAB paid commissions in the U.S. market but not in the home market, the Department should grant OAB a commission offset and deduct from FMV home market indirect selling expenses up to the amount of the U.S. commission. OAB contends that while the Department correctly applied the offset to certain sales, it did not apply the offset to an overwhelming number of sales. As a result, OAB requests that the Department re-examine its preliminary calculations and correct this error.

Department's Position: We agree with the respondent. Because we inadvertently omitted certain programming language in a portion of our preliminary results computer program, a majority of the values OAB reported for its home market indirect selling expense variable were not retained in our calculation of FMV. As a result, when we applied the commission offset, we used missing values rather than actual home market indirect selling expense values. For these final results we added programming language which prevents the creation of missing values and ensures that the commission offset is properly applied to all appropriate sales.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margin exists for OAB for the period March 1, 1991, through February 29, 1992:

Manufacturer/exporter	Percent margin
Outokumpu Copper Rolled Products AB (OAB)	8.60

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the USP and FMV may vary from the percentage stated above. The Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the

publication date of these final results, as provided for by section 751(a)(1) of the Act:

(1) The cash deposit rates for OAB will be the rate outlined above;

(2) For previously reviewed or investigated companies not listed above, 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 prior review, or the original less-than-fair-value (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) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all others" rate of 11.96 percent established in the LTFV investigation.

All U.S imports of subject merchandise by the respondent will be subject to the deposit rate found in this proceeding. The cash deposit rates have been determined on the basis of the selling price to the first unrelated customer in the United States. The Department will use the total value of USP calculated from OAB's response to determine the appraisement rate.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. 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 orders (APOs) 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 of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 9, 1995.

Susan G. Esserman,
Assistant Secretary for Import
Administration.

[FR Doc. 95-1215 Filed 1-17-95; 8:45 am]

BILLING CODE 3510-DS-P

[A-588-054]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Affirmation of the Results of Redetermination Pursuant to Court Remand

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

SUMMARY: On June 8, 1994, the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department's) redetermination on remand of the final results of administrative review of the antidumping finding on tapered roller bearings, four inches or less in outside diameter, and certain components thereof (TRBs) from Japan (56 FR 26054, June 6, 1991) (*The Timken Company v. United States* (Slip Op. 94-41 (March 7, 1994)) (*Timken*). The results covered the period August 1, 1987, through July 31, 1988, and TRBs produced by Koyo Seiko Co., Ltd., and distributed by its subsidiary, Koyo Corporation of U.S.A. (collectively, Koyo), and by NSK Ltd., and distributed by its subsidiary, NSK Corporation (collectively, NSK).

EFFECTIVE DATE: June 18, 1994.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482-5253.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1994, the CIT issued an order remanding to the Department the final results of administrative review of the antidumping finding on TRBs from Japan (56 FR 26054, June 6, 1991).

In its decision in *Timken*, the CIT remanded the final results to the Department to allow the Department to determine whether it has statutory authority to adjust foreign market value (FMV) for pre-sale inland freight in light of the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Ad Hoc Comm. of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States*, No. 93-1239 (Fed. Cir., January 5, 1994) (*Ad*

Hoc Comm.). In response to that order, we explained that we adjust FMV for post-sale movement expenses as differences in circumstances of sale (19 CFR § 353.56(a)) and we consider pre-sale freight to be appropriate expenses to include in the exporter's sales price (ESP) offset under 19 CFR § 353.56(b)(2), because they are post-production expenses borne in preparation to sell the merchandise. We further clarified that § 353.56(b)(2) of the Department's regulations allows the Department to deduct from FMV all expenses, other than direct selling expenses enumerated in § 353.56(a), incurred in selling such or similar merchandise up to the amount of expenses incurred in selling the merchandise in the United States. Consequently, the Department has determined it will evaluate claims of pre-sale inland freight expenses for home market (or third-country) sales using the ESP offset provision in the regulations.

Subsequent to the Department's explanation of the treatment of pre-sale freight expenses in *Timken*, we have determined that there are circumstances when pre-sale movement expenses may be direct expenses. Since direct expenses are adjusted for under the circumstance-of-sale provision, the Department evaluates whether the pre-sale movement expenses are direct expenses by examining each respondent's pre-sale warehousing expenses, since the pre-sale movement charges incurred in positioning the merchandise at the warehouse are, for analytical purposes, linked to pre-sale warehousing expenses. If the pre-sale warehousing expenses constitute indirect expenses, the expenses involved in getting the merchandise to the warehouse also must be indirect.

In its affirmation of June 8, 1994 (Slip Op. 94-95), the CIT accepted the Department's explanation of its methodology and ordered its implementation for this review period.

In its decision in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken I*), the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Departmental determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Timken* constitutes a decision not in harmony with the Department's final results of review. This notice fulfills the publication requirements of *Timken I*.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise.