public version of the petition has been provided to the representatives of the government of Kazakstan. We will attempt to provide a copy of the public version of the petition to the exporter named in the petition.

International Trade Commission (ITC) Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by April 28, 1996, whether there is a reasonable indication that imports of beryllium from Kazakstan are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

Dated: April 3, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations.

[FR Doc. 96–8824 Filed 4–8–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–401–805]

Certain Cut-to-Length Carbon Steel Plate From Sweden; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On September 19, 1995, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Sweden. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period February 4, 1993, through July 31, 1994. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: April 9, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth Patience or Jean Kemp, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1995, the Department published in the Federal Register (60 FR 48502) the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Sweden (58 FR 44168 August 19, 1993). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of this Review

The products covered by this administrative review constitute one ''class or kind'' of merchandise: certain cut-to-length plate. These products include 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 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular 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 is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The periods of review (POR) are February 4, 1993, through July 31, 1994.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from SSAB Svenskt Stål AB (SSAB), exporter of the subject merchandise, (respondent), and from 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, petitioners. At the request of petitioners and respondent, the Department held a hearing on November 1, 1995.

Comment 1: Respondent contends that the Department has verified information on the record to enable the Department to make HM freight adjustments for one SSAB subsidiary, SSAB Oxelosund (SSOX). Respondent reported its freight expenses based on a standard to actual ratio. Respondent claims that the Department verified actual freight costs incurred by SSOX but could not verify SSOX's standard freight costs. Respondent argues that if the Department refuses to accept the SSOX standard freight adjustment, the Department should take actual SSOX verified HM freight expenses and calculate a HM freight adjustment by dividing the actual aggregate SSOX freight expenses by total tons sold during the POR to obtain an actual, per metric ton freight adjustment for SSOX HM sales.

Respondent contends that the Department should not disallow the freight adjustment entirely for SSOX home market (HM) sales. Instead, respondent asserts, the Department should assign values for this adjustment based on verified SSOX actual freight costs. Respondent claims that because SSAB incurred freight costs in Sweden, using a zero adjustment in the home market and the full adjustment in the U.S. market heavily penalizes SSAB. Respondent also claims that applying a zero freight adjustment in the home market and a full freight adjustment in the U.S. market is contrary to law because doing so prevents apples-to-apples price matches between the two markets.

Respondent argues that the Department should not apply punitive best information available (BIA) rates for

freight adjustments to SSAB. Respondent contends that the Department should recognize SSAB's cooperation in this review when selecting BIA. Respondent claims that the BIA selected in this review must, as a matter of law, lead to the calculation of fair and accurate margins.

Petitioners cite to *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France,* 57 Fed. Reg. 28360, 28380 (June 24, 1992) (''*AFBs 1992*'') to argue that SSAB bore the burden of demonstrating that it was entitled to any adjustments. Petitioners contend that the Department's consistent practice is to disallow a favorable HM expense or adjustment when the respondent fails to meet this burden, as they contend SSAB failed here. Petitioners maintain that it is the Department's practice to disallow an unverified expense in the home market while using BIA for the corresponding U.S. expense. Petitioners argue that the purpose of the BIA provision is not to lead to calculation of fair and accurate margins, but to enable the Department to complete its calculation within the statutory deadlines and to encourage full and accurate reporting by respondents. Petitioners assert that respondent's suggestion to use SSAB's actual freight expenses should be rejected as these averages of the actual costs would bear no correlation to the actual, transaction-specific costs requested by the Department.

Department's Position: We agree with respondent in part and have made a BIA adjustment for HM freight. While SSAB could not support its reported freight adjustment, the Department was presented with evidence that SSAB had incurred freight expenses in the home market. At verification, we tied actual freight expenses to the actual expense SSAB used in its actual-to-standard freight ratio to calculate the reported freight expense. *See* Verification Report at 17 and 26. However, the company was unable to support the standard portion of the ratio. Therefore, we were unable to use the reported freight expense. Instead, we have used the average actual SSOX freight charge, per metric ton by rail and by truck, in our final results as best information available.

Petitioners' citation to *AFBs 1992* supports our position that an adjustment should be made if respondent can show that it did incur the expense in question. SSAB did this, even though their reported adjustment was not adequately supported. Thus petitioners' references to *Timken Company v. United States,* 673 F. Supp. 495, 513 (CIT 1987), *LMI–LA Metalli Industriale, S.p.A. v. United States,* 712 F. Supp. 959, 965 (CIT 1989) and *Zenith Electronics Corp. v. United States,* 755 F. Supp. 397, 415 (CIT 1990) are irrelevant because they refer to the use of BIA when respondent did not make this basic showing. As BIA, we chose to use the average actual freight charge. While this is adverse to respondent, it represents a reasonable alternative in the absence of supporting information from respondent. *See Rhone Poulenc Inc. v. United States,* 899 F. 2d 1185, 1191 (Fed. Cir. 1990), *Olympic Adhesives v. United States,* 899 F. 2d 1565, 1572 (Fed. Cir. 1990) and *Tianjin Machinery Import and Export Corporation v. United States,* 806 F. Supp. 1008, 1016 (Ct. Int'l Trade 1992).

Comment 2: Respondent argues that the Department should apply a packing adjustment to SSOX sales in both the U.S. market and the home market based on verified packing costs for another SSAB subsidiary, SSAB Tunnplat (SSTP). Respondent contends that a zero HM packing adjustment is contrary to law as U.S.-HM price comparisons are not being made based on an apples-to-apples comparison, citing to *Lasko Metal Products, Inc. v. United States,* 43 F.3d 1442 (Fed. Cir. 1994) (''*Lasko Metal*'') and *Koyo Seiko Co., Ltd. v. United States,* 746 F. Supp. 1108, 1110 (CIT 1990) (''*Koyo Seiko*''). Respondent contends that the failure to apply a BIA packing charge to both markets would also be inconsistent with the Department's obligations to obtain fair and accurate results in the calculation of antidumping duty margins, citing *Oscillating Fans and Ceiling Fans From the People's Republic of China,* 56 Fed. Reg. 55271, 55276 (October 25, 1991) (''*Oscillating Fans*'') and *Certain Cased Pencils From the People's Republic of China,* 59 FR 55625, 55634 (November 8, 1994) (''*Cased Pencils*''). Respondent contends that the Department should not equate SSOX's inability to produce complete packing data through a packing department with a failure of SSOX to substantiate its packing costs. Respondents offer as appropriate BIA the average cost per metric ton incurred by SSTP for home market and export packing that is most comparable to the type of packing engaged in by SSOX for HM and U.S. sales. Respondent argues that the Department should not use the highest verified SSTP packing charge as the SSOX U.S. packing adjustment and a zero BIA rate for SSOX sales in Sweden. Respondent considers the Department's preliminary methodology ''punitive'' and cites *AFBs 1992* and *Rhone Poulenc* to argue against use of ''punitive'' BIA. Respondent asserts that the Department should use the verified average SSTP packing costs for SSOX sales in both markets that are most similar to the type of packing done by SSOX.

Petitioners contend that the Department should select the highest verified HM SSTP packing cost as BIA for U.S. packing.

Department's Position: We disagree with respondent and have used the highest reported U.S. packing expense as BIA. Only SSOX calculated the packing expense on U.S. sales because only SSOX had sales of subject merchandise to the United States. However, SSOX could not support its reported U.S. packing expenses at verification. Therefore, we disallowed the U.S. packing expenses as reported but instead used SSOX's highest reported U.S. packing expense as BIA.

Respondent's cites to *AFBs 1992* and the tier system outlined in that case are offered as an argument against the Department's use of ''punitive'' BIA. The tier system in *AFBs 1992* refers to the Department's use of total BIA. In fact, our treatment of packing in this case is supported by the definition of partial BIA in *AFBs 1992,* (''Where any adjustments . . . were missing from the sales listings, we have denied claims for the adjustments . . . because the respondent has failed to satisfy its burden of proof to be entitled to the adjustment. We have assigned a value of zero to the claimed adjustments where such information is missing . . . If other U.S. adjustment information were missing, we used other transactional information in the response to estimate these expenses'').

SSOX did not support its reported HM packing expenses at verification. SSTP was able to support its reported HM packing expenses. Therefore, we disallowed SSOX's packing expenses for HM sales but allowed SSTP's packing expenses as reported.

Rhone Poulenc, a case cited by Respondent, articulates the key justification for using adverse assumptions in our BIA determinations. In *Rhone Poulenc,* the Court recognized that ''[i]n order for the agency's application of the best information rule to be properly characterized as 'punitive,' the agency would have had to reject low margin information in favor of high margin information that was demonstrably less probative of current conditions. . . The agency's approach fairly places the burden of production on the importer, which has in its possession the information capable of rebutting the agency's inference.'' SSOX failed to provide

evidence that it was entitled to a packing adjustment. As BIA, we allowed no adjustment for home market packing and applied the highest reported U.S. packing expense to all U.S. sales. While this information is adverse to respondent, it represents a reasonable alternative in the absence of supporting information from respondent. *See* Analysis Memorandum.

Respondent's reference to *Oscillating Fans* is not relevant here because it is a non-market economy case where the Department did not have the relevant information regarding selling expenses in the surrogate country. Respondent's cite to *Cased Pencils* is not relevant here because it refers to the use of petition data instead of reported actual expenses.

Comment 3: Respondent argues that the Department should not adjust all ''via'' sales prices upward. ''Via'' sales are SSAB sales in which Tibnor AB (TAB), a related distributor, functions as a sales agent. Respondent contends that the Department should adjust the prices of only the ''via'' sales determined at verification to have higher commission rates than those originally reported to the Department. Respondent maintains that not all ''via'' sales incurred the same percent commission increase and that the two ''via'' sales that did show above reported commissions were against company policy and were aberrational.

Assuming, arguendo, the Department determines it should make an upward adjustment to all ''via'' sales prices, respondent contends, citing *Stainless Steel Bar From Spain,* 59 FR 66931, 66935 (December 28, 1995) (''*Stainless Bar 1994*''), that the adjustment should be based on the ratio established at verification on all sales traces. Respondent maintains the Department should apply a ratio based on the verified sales traces which reflects the number of sales which the Department might reasonably conclude have included a higher commission charge. In the alternative, respondent argues that the upward adjustment to all ''via'' sales prices should be based on the average variances in the commission rates found at verification. Respondent contends that such an adjustment would recognize the fact that not all of TAB's commissions on ''via'' sales were greater than the percentage originally reported.

Petitioners contend that the Department should use as BIA the highest reported sale price in each control number sold by TAB. Petitioners argue that the error rate of nearly 40 percent in the reported price on TAB ''via'' sales, combined with the fact that the extent of the misreporting on any given sale is unknown, should lead to the rejection of the entire TAB ''via'' database. Petitioners cite *Bicycle Speedometers From Japan,* 48 FR 42289, 42290 (August 9, 1993) (''*Bicycle Speedometers*'') and *Gray Portland Cement and Clinker From Mexico,* 55 FR 29244 (July 18, 1990) (''*Mexico Cement 1990*'') to argue that the Department should apply as BIA the highest price on any sale by TAB.

Department's Position: We disagree with respondent and have applied an upward adjustment to all ''via'' sales consistent with our preliminary results of review. In all of its questionnaire responses, SSAB claimed that TAB's commission on ''via'' sales was a set percentage. *See, e.g.,* October 6, 1994 Questionnaire Response at Exhibit Z, November 21, 1994 Questionnaire Response at 14, January 13, 1995 Questionnaire Response at 38 and 39, and February 24, 1995 Questionnaire Response at 17. At verification we found that TAB's commission was not always this percentage. *See* Sales Verification Report at 12 and 24. Since the calculation of the reported gross unit price on the ''via'' sales assumed a constant commission percentage, the discrepancy in the commission rate also indicated a discrepancy in the reported gross unit price. As BIA, we made an adjustment to the reported gross unit prices on ''via'' sales that is consistent with both the reported information and the information learned at verification. See Analysis Memorandum. While this is adverse to respondent, it represents a reasonable alternative in the absence of supporting information from respondent.

We disagree with respondent's reliance on *Stainless Bar 1994,* in which the Department discovered a surcharge on one of six sales examined at verification and applied its adjustment to only one of every six reported sales. In that case, the Department chose its methodology because only one discrepancy was found. In the instant case, the Department's verfication indicated discrepancies in the manner gross unit price was reported by respondent. Additionally, in the instant case, discrepancies were found in a higher proportion of the sales reviewed than in *Stainless Bar 1994.*

We disagree with petitioners' suggestion to apply as BIA for all ''via'' sales the highest price on any sale by TAB. Petitioners have been unable to demonstrate that the Department has used their suggested BIA in comparable circumstances. Petitioners' cite to Bicycle Speedometers is not relevant here because in that case BIA was applied to missing sales which were rejected at verification as untimely. Petitioners' cite to *Mexico Cement 1990* is not relevant here because in that case BIA was applied to unreported home market sales.

Comment 4: Respondent argues that SSAB sales to TAB are at arm's length and must be used by the Department to calculate foreign market value (FMV). According to respondent, the record demonstrates that TAB pays the same price for subject merchandise, regardless of supplier, and prices the resale of plate without regard for supplier. Therefore, respondent asserts, it is impossible for SSAB and TAB to mask sales at less than fair value by artificially lowering the FMV. Respondent maintains that TAB is a company with significant operations and sales of a variety of steel and non-steel products throughout Sweden and therefore not a shell company. Respondent provided affidavits from SSAB and TAB company officials claiming that SSAB and TAB conduct their negotiations at arm's length, that SSAB attempts to obtain the highest prices possible for subject merchandise sold to TAB, and that TAB attempts to obtain the lowest possible price from SSAB for the subject merchandise. Additionally, respondent contends that the Department should consider the prices at which TAB purchases steel plate from SSAB compared to the prices at which TAB purchases steel plate from unrelated suppliers, citing *Washington Red Raspberry Comm. v. United States,* 657 F. Supp. 537 (CIT 1987) (''*Washington Red Raspberry*'').

Respondent argues, citing *NEC Home Electronics, Ltd. v. United States,* 54 F. 3d 736 (Fed. Cir. 1995) (''*NEC 1995*''), that the Department's arm's-length test, as it applies to SSAB, is an abuse of the Department's discretion, is arbitrary and capricious and contrary to law. Respondent contends that given TAB's position in the home market, the burden imposed on SSAB under the Department's arm's-length test is ''almost inherently impossible to satisfy.'' Respondent maintains that there is no justification for the Department to resort to its statistical arm's-length test. Respondent also argues that the Department, by using the current arm's-length test, is not following its prior decisions, citing *Citizen Watch Co. v. United States,* 733 F. Supp. 383 (CIT 1990), *Timken Co. v. United States,* 673 F. Supp. 495 (CIT 1987), *Citrosuco Paulista, S.A. v. United States,* 704 F. Supp. 1075, 1088 (CIT 1988) and *Carlisle Tire & Rubber Co. v. United States,* 634 F. Supp. 419 (CIT 1986).

Petitioners argue that the Department's arm's-length test is lawful

and the Department should continue to exclude sales to TAB. Petitioners assert that price comparability is the single criterion for determining whether to use related party sales. Petitioners maintain that the Department's related party methodology is a reasonable means of effecting the intent of the statute and the regulation. Petitioners contend that by adjusting prices for all of the statutorily required adjustments, and by making comparisons between related and unrelated buyers at the same level of trade, the Department's test takes into account all identifiable factors that could result in differences in prices between related and unrelated buyers. Petitioners argue that the respondent's affidavits were subjective and cannot establish that the prices charged by SSAB to TAB were at arm's length. Petitioners assert that whether SSAB can manipulate TAB's resale prices is irrelevant to the determination required by the Department's regulations and that the only relevant inquiry concerns the comparable levels of prices on SSAB's sales to TAB and to persons not related to SSAB. Petitioners maintain that the Department's related party methodology represents a reasonable interpretation of the regulation. Petitioners argue that the Department's determination not to include SSAB's sales to TAB in the calculation of FMV was correct and should be adhered to in the final results.

Department's Position: We agree with petitioners. The CIT held in *Usinor Sacilor v. United States,* 872 F. Supp. 1001, 1003–1004 (CIT 1994) that ''[g]iven the lack of evidence showing any distortion of price comparability, the court finds the application of Commerce arm's-length test reasonable.'' The arm's-length test compares the prices of related and unrelated party sales. All identifiable factors that could result in price differences are considered (*e.g.,* level of trade, rebates, discounts, taxes, freight, insurance, credit, packing), ensuring that the resulting prices are comparable.

We disagree with respondent's argument that the Department is not following its prior decisions by using this test. This test was established in the original investigation of the flat-rolled steel cases and has been applied in subsequent reviews and investigations since that time. *See, e.g., Certain Flat-Rolled Carbon Steel Products from Canada,* 58 FR 37099, 37117 (July 9, 1993), *Certain Hot-Rolled Carbon Steel Flat Products from Japan,* 58 FR 37154, 37158 (July 9, 1993) (''*Japan Flat-Rolled*'') and *Certain Corrosion-Resistant Carbon Steel Flat Products from Germany,* 60 FR 65264 (December 19, 1995).

Additionally, we disagree with respondent's argument that the test is too stringent. Because of the Department's inherent and well founded reluctance to rely on prices between related parties in its analysis, the Department's test must be stringent. *See Japan Flat-Rolled.*

Respondent's reference to *NEC 1995* is not relevant here. In *NEC 1995,* the CAFC determined that the standard for proving entitlement to a level-of-trade adjustment unreasonably precluded respondent from proving the adjustment. However, the arm's-length test uses SSAB's own data, not that of an unrelated party and/or a competitor, as was required in proving the level-of-trade adjustment in *NEC 1995.*

By way of contrast to the 1987 case, *Washington Red Raspberry,* which SSAB cited to argue that we should compare SSAB's prices to TAB with other suppliers' prices to TAB, we refer to the 1989 case, affirmed by the CIT in 1994, *Television Receivers, Monochrome and Color From Japan,* 54 FR 35517, 35522 (August 28, 1989) (''*Televisions 1989*'') (affirmed in *NEC Home Electronics v. United States,* Slip Op. 94–70 (CIT 1994)). In *Televisions 1989,* the Department stated ''prices charged by other manufacturers to unrelated distributors do not demonstrate that sales were at arm's length because products and production costs may differ from company to company.'' There are many variables that control a company's pricing behavior, including the size, location, cost structure, and financial condition of a firm as well as its specific strategy to favor its own related suppliers.

Comment 5: Respondent argues that the Department should not disregard any SSAB HM sales on the grounds that the sales are below the cost of production (COP). Respondent asserts that the cost test used in the preliminary determination is based upon narrow ''model'' costs and prices in a way that is inconsistent with the application of the ''10–90–10'' test the Department has historically used for disregarding below-cost sales. Respondent maintains that the Department should broaden the base for comparing costs and prices. Respondent points out that if there is only one sale of a particular control number in one month of the POR, and that sale is below-cost, the sale is automatically excluded because it was sold over an ''extended period of time,'' and, this sale was made ''in substantial quantities'' because it exceeded the Department's ten-percent threshold. Respondent suggests that the Department can correct this anomaly by reducing the number of product characteristics it uses to differentiate control numbers. Alternatively, respondent asserts that the Department can modify its ''substantial quantities'' test to account for the fact that certain control numbers may have only a few transactions during the POR. Respondent also suggests that the Department could apply a threshold percentage, such as a minimum 20 percent of all sales, before disregarding any below cost sales. Respondent claims that the current methodology does not give a respondent notice or fair opportunity to take steps to ensure there are no sales below cost.

Petitioners maintain that the Department is correct in conducting its analysis on a model-specific basis. Petitioners assert that the Department has wide discretion in defining models and that the Department has not abused this discretion. Petitioners argue that SSAB's argument regarding the ''over-detailed'' nature of the model definition is without merit and should be rejected.

Department's Position: We disagree with respondent and applied our cost test in a manner consistent with Department practice, *i.e.,* on a model-specific basis. *See* Department's Policy Bulletin 92/3. The Department has followed this practice consistently for over three years. The cost test is intended to avoid basing FMV on below-cost sales. Because FMV is determined on a model-specific basis, the Department applies the cost test on a model-specific basis, as well.

Comment 6: Respondent argues that the Department should either disregard the value-added tax (VAT) or apply a tax-neutral VAT methodology to SSAB sales. Respondent maintains that its customers do not incur any additional costs for VAT as the VAT they ''pay'' is reimbursed to them by the government. Respondent requests that the Department disregard the VAT or adjust for the VAT by using the actual amount of the VAT, rather than the VAT rate, thereby applying a tax-neutral methodology. Respondent contends that the current methodology artificially inflates the absolute dollar margins that would have to be paid by respondent, even though the percentage margin remains the same.

Petitioners argue that the Department's preliminary results methodology remains a reasonable interpretation of the statutory language. Petitioners contend that the methodology conforms to the statute and it does not contravene legislature intent or place the domestic industry at a disadvantage.

Department's Position: In light of the Federal Circuit's decision in *Federal*

Mogul v. United States, CAFC No. 94–1097 (1995), the Department has changed its treatment of HM consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith v. United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul v. United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of HM consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements to which the United States is a party, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the URAA (Uruguay Round Administrative Action) explicitly amended the antidumping law to remove consumption taxes from the HM price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to U.S. price rather than subtracted from HM price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Comment 7: Respondent argues that TAB resales of subject merchandise in Sweden require a level-of-trade adjustment if compared with SSOX sales in the United States. Respondent contends that if TAB resales are used in the final results, it must be recognized that a third level of trade exists for SSAB in Sweden, *i.e.*, indirect sales out of inventory by TAB to small end-users. Respondent maintains that there are no sales by SSAB in the United States that are at the same level of trade as TAB's sales. Respondent contends that if the Department finds that TAB sales to small end-users must be used to match sales in the United States, the Department must apply a level-of-trade adjustment to the TAB prices, citing *Stainless Steel Bar From Spain*, 59 FR 66931 (December 28, 1994) (''*Stainless Bar 1994*''). Respondent maintains that significant additional costs are incurred with respect to TAB sales to small end-users. Respondent argues that there are correlations between selling expenses and level of trade and between prices and level of trade as in *Stainless Bar 1994*.

Respondent suggests that the Department should make the level-of-trade adjustment based on the weighted-average price differential, in Sweden, between levels of trade. Alternatively, respondent suggests that the adjustment should be cost-based, reflecting the additional expenses incurred by TAB in handling, stocking and reselling the subject merchandise. Respondent maintains that SSAB provided supporting documentation regarding these additional costs that the Department verified.

Petitioners contend that SSAB has not overcome the presumption that its end-user customers are at the same level of trade. Petitioners argue that evidence shows that SSAB also incurs the same types of expenses in selling merchandise to certain end-users as TAB does selling to its customers. Petitioners maintain that the Department has held that the number of sales is not a determinant of level of trade. Additionally, petitioners argue that differences in quantities sold are not a factor in distinguishing level of trade, but rather are addressed by statute through a quantity discount adjustment. Petitioners assert that SSAB also failed to show that any differences in the selling functions of SSAB and TAB at each claimed level of trade affected the prices charged or the expenses incurred. Petitioners argue that SSAB has provided insufficient information to rebut the presumption that its functionally indistinguishable end-user customers should be classified at a single level of trade. Petitioners maintain that SSAB has failed to demonstrate that there is little or no overlap between SSAB and TAB. Petitioners argue that because the end-user purchasers in this case are functionally equivalent and the functions performed by SSAB and TAB in selling to them are identical, the Department should continue to classify all end-users at the same level of trade for the final results.

Additionally, petitioners argue that even if a level of trade distinction is incorrectly made, no adjustment is warranted. Petitioners maintain that to be granted a level-of-trade adjustment, SSAB must show that differences in the selling functions of SSAB and TAB at each level of trade affected the prices charged or the expenses incurred. Petitioners assert that SSAB also failed to meet its burden of quantifying the amount of its claimed level-of-trade adjustment.

Department's Position: We agree with petitioners. Respondent has failed to support its contention that the Department should distinguish between ''small'' and ''large'' end-users. To grant a level-of-trade adjustment, there must be a significant correlation between prices and selling expenses on one hand, and levels of trade on the other. *See* ''Matching at Levels of Trade,'' Import Administration Policy Bulletin 92/1, Department of Commerce (July 29, 1992) (''Policy Bulletin 92/1''). In addition, respondent failed to show that SSAB and TAB have different types of customers.

Respondent cites to *Stainless Bar 1994* to support its arguments. However, in that case, there was ''little or no overlap'' between the customers falling into each category of end-user. In the instant case, SSAB was unable to provide a consolidated customer list to show ''little or no overlap'' between

SSAB and TAB customers. SSAB's and TAB's customer code lists include some of the same customers. *See* TAB's November 21, 1994 Questionnaire Response at Exhibit 1, SSAB's November 21, 1994 Questionnaire Response at Exhibit 17 and SSAB's January 13, 1995 Questionnaire Response at Exhibit 19.

In addition, respondent's assertion that SSAB and TAB perform different functions with respect to end-user customers is not supported by information on the record. Respondent argues that TAB incurs additional expenses by maintaining inventory and marketing and distributing the merchandise. SSAB also incurs these expenses when selling to end-users. *See* SSAB's October 6, 1994 Questionnaire Response at 15–16. In *Carbon and Alloy Steel Wire Rod From Canada*, 59 FR 18791, 18794 (April 20, 1994) the Department stated that comparisons are made at distinct, discernable levels of trade based on the function each level of trade performs, such as end-user, distributor and retailer. SSAB failed to prove that end-use is associated with functional differences.

As the Department's standard for making a level-of-trade adjustment is based on price and selling expense differences, SSAB's argument regarding differences in average quantity and number of sales is irrelevant here. *See Antifriction Bearings from France, et al*, 60 FR 10900, 10940 (February 28, 1995) (''*AFBs 1995*'') and ''Policy Bulletin 92–1.'' In *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*, 58 FR 64720 (December 9, 1993), the Department did not grant a respondent a level-of-trade adjustment because ''although Koyo demonstrated that net prices vary between levels of trade, it did not provide evidence that this variation in price was the result of different costs incurred at different levels of trade.'' *See* also *AFBs 1995* and *Laclede Steel Co. v. United States*, Slip Op. 94–160 (decided October 12, 1994). We repeatedly requested information supporting SSAB's claims for a distinction between the different levels of trade at verification which SSAB did not provide. *See* Sales Verification Report at 37.

Because we did not make a level-of-trade distinction, we are not addressing respondent's and petitioners' arguments regarding the quantity of such an adjustment.

Comment 8: Respondent argues that the Department should adjust FMV for SSAB sales that incurred a small-quantity surcharge. Respondent maintains that the quantity surcharge should be removed from the HM price to reflect the quantity differential between the sales in the U.S. and home market, thereby ensuring an apples-to-apples comparison. Respondent contends that there is no requirement that respondent apply a quantity surcharge to all qualifying sales. Respondent maintains that it reported each of the quantity surcharges on a transaction-by-transaction basis, and the amount of the surcharge is reflected on each customer invoice.

Petitioners argue that SSAB has not demonstrated that its sales satisfied the requirements for a quantity discount. Petitioners assert that a respondent must show that it consistently applied the discount or quantity surcharge. Petitioners maintain that SSAB has also failed to demonstrate that the quantity extras reflect production cost savings. Petitioners assert that in the final results, the Department should deny SSAB's requested adjustment.

Department's Position: We agree with petitioners. Respondent was unable to demonstrate that it met either criteria required by 19 CFR 353.55(b). We found at verification that the surcharge was not consistently applied, as required by 19 CFR 353.55(b)(1). *See* Verification Report at 11–12, 16, and 24–25. SSAB was also unable to provide documentation demonstrating that the different quantities are directly associated with cost differentials. *See Hussey Copper, Ltd.* v. *United States*, 834 F. Supp. 413, 428 (CIT 1993) and *Brass Sheet and Strip From Germany*, 60 FR 38542, 38544 (July 27, 1995). Therefore, we did not adjust FMV for SSAB sales for a quantity surcharge.

Comment 9: Respondent argues that Plåt Depån sales are outside the ordinary course of trade and must be disregarded by the Department, citing *Gray Portland Cement and Clinker From Mexico*, 60 FR 26865, 26868 (May 19, 1995) (''*Mexico Cement 1995*''). Respondent maintains that the ordinary course of trade for SSAB in Sweden, including the ordinary course of trade for TAB, involves the sale of prime merchandise at premium prices. Respondent contends that Plåt Depån was established primarily to sell non-prime plate or odd-size prime plates at low prices. Respondent asserts that the demand for merchandise sold by Plåt Depån in Sweden is marginal when compared with mainstream sales by SSAB and TAB.

Petitioners argue that the Department cannot analyze any of the factors normally considered because SSAB chose not to report Plåt Depån's sales. Petitioners assert that because there is no evidence that these sales were made outside the ordinary course of trade, they must be considered sales made in the ordinary course of trade. Petitioners contend that the Department should consider respondent's failure to report these sales in determining whether to use total BIA.

Department Position: We agree with petitioners in part and have treated Plåt Depån prime sales as sales within the ordinary course of trade. Company officials indicated at verification that certain sales of prime merchandise were made through Plåt Depån during the POR. Additionally, company officials did not provide requested information supporting their claim that these sales were outside the ordinary course of trade. *See* Verification Report at 29. Without additional information, which was not provided by respondent, we were unable to conclusively determine that SSAB sales through Plåt Depån's were outside the ordinary course of trade. Moreover, *Mexico Cement 1995* was a case in which the Department applied total BIA to a company which was unable to supply basic information about whether its sales were in the ordinary course of trade, not a case asking for the exclusion of particular sales. Hence, it is not pertinent to the issue raised in this comment.

As in the preliminary results, we assumed that any unmatched U.S. sales would have matched to the unreported home market sales, including Plåt Depån's sales of prime merchandise. As BIA, we applied SSAB's final margin determined in the LTFV investigation to any unmatched U.S. sales. *See* Comment 11 and Analysis Memorandum.

Comment 10: Respondent argues that the Department's computer program executes the COP test after merging the SSOX and SSTP sales with the TAB sales. As a result, respondent contends that the pool of unrelated sales to which the price of a related-party sale is being compared includes not only the sales of SSOX and SSTP, but also the downstream sales by TAB. Respondent maintains that this is contrary to the logic of the statistical test, and not in keeping with the Department's practice. Respondent asserts that the Department should execute the arm's-length test in two steps to correct the error.

Department's Position: We agree with respondent that an error was made in combining the SSAB and TAB databases and have corrected this error for these final results. *See* Analysis Memorandum.

Comment 11: Petitioners argue that the pervasive defects in SSAB's HM

database require application of total BIA. Petitioners contend that the errors cannot be corrected using information on the record and that when viewed cumulatively, these errors render SSAB's data unusable and require the use of total BIA. Petitioners argue that SSAB failed to include a significant, but unknown, number of HM sales in its reported HM sales database. Petitioners assert that the Department did not consider the possible effect of the unreported sales on the FMV of the individual products. Petitioners contend that correct reporting might have led to changes in model matches and/or FMVs of the matched products. Petitioners maintain that the Department cannot be certain that the calculated FMVs represent SSAB's sales prices in the home market, or that any dumping margin it may calculate based on such prices is accurate.

Petitioners argue that the Department could not verify twelve of the 24 HM sales examined at verification due to errors in gross unit prices, discounts, commissions, ''via'' sales, and credit documentation. Petitioners also assert that large portions of SSAB's other HM sales and cost data were unverifiable including unverified inland freight costs, unverified packing charges, misreported rebates and missing costs of production.

For these reasons, petitioners argue that the Department must apply total BIA. Petitioners maintain that to do otherwise would conflict with the Department's practice in the past and current investigations, violate the Department's statutory mandate to use verified information and to obtain representative, undistorted results, and invite respondents to control the outcome of investigations by selectively providing the Department with information.

Respondent argues that the sales and cost data submitted to the Department were, with few and minor exceptions, verified as reported by SSAB to the Department. Respondent contends that the record evidence does not support a decision by the Department to discard the database provided by SSAB and to resort to total BIA in this review. Respondent argues that while it did not report certain HM downstream sales, these sales were of minor importance and were not needed to find matches to SSAB sales in the United States. Respondent contends that the Department views downstream sales as expendable in situations where the volume of downstream sales is minor when compared with total HM sales and the ''main'' sales by a respondent can be expected to provide adequate comparisons to U.S. sales. Respondent asserts that it is clear that limited omissions from the downstream sales listing are of correspondingly limited importance in accurately calculating any antidumping margins that may exist. Respondent maintains that this is particularly true considering the Department's decisions in other steel reviews to completely excuse respondents from reporting any HM downstream sales.

Respondent also contends that the fact that TAB dropped inactive customers from the database is evidence of the fact that these customers could not have accounted for any significant portion of total SSAB sales during the POR, or of total TAB sales, of subject merchandise. Respondent maintains that the fact that TAB did not manually search through its files to locate purged customer sales to determine if some sales included subject merchandise cannot support the use of total BIA in this review.

Additionally, respondent argues that the fact that downstream sales by SSAB subsidiaries Plåt Depån and Dickson were not reported does not justify the use of total BIA. Respondent argues that Plåt Depån sales are limited to seconds and odd-size prime plate and are outside the ordinary course of trade. Respondent asserts that any Dickson resales were of non-subject merchandise. Furthermore, respondent argues that the volume of Plåt Depån and Dickson sales is very small when compared with total downstream sales.

Respondent asserts that all twenty-four HM sales traced by the Department were verifiable, allowing for minor deficiencies, none of which, either individually or in the aggregate, support petitioners' argument that SSAB reported sales should be disregarded and total BIA should be used by the Department. Respondent argues that all gross unit prices reported to the Department by SSAB were accurately and consistently reported, and supported at verification by, SSAB's records kept in the normal course of business. Respondent maintains that the record does not support petitioners' argument that SSAB's sales were unverifiable and cannot support the use of total BIA in this review. Respondent also maintains that its database does not contain pervasive errors.

Department's Position: We disagree with petitioners' argument for application of total BIA. Section 776(c) of the Tariff Act requires the Department to use BIA ''whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation.'' Respondent generally cooperated with our requests for information and provided the information requested in a timely manner and in the form required. Therefore, application of total BIA was not warranted in this case. However, we applied partial BIA where respondent failed to satisfy its burden of proof to be entitled to an adjustment and where errors were found at verification. *See e.g.,* Comments 1, 2, 3, 13, and 20 and Analysis Memorandum. This BIA methodology is consistent with Department practice. *See e.g., AFBs 1992.*

The bulk of petitioners' arguments refers to errors in the downstream database. The errors in the downstream database identified by petitioners have been corrected, where possible (*e.g.,* missing COP information). *See* Analysis Memorandum. However, due to the flaws of the downstream reporting methodology, the Department rejected respondent's allocation methodology. *See* our preliminary results at 48503. In addition, some of the errors were not correctable (*e.g.,* unreported sales through Plåt Depån and TAB). Finally, the record indicates that for the overwhelming majority of U.S. sales, the unreported downstream sales would not have been potential matches. For these reasons, the Department has applied BIA to all U.S. sales for which there is no HM match. *See* Analysis Memorandum.

Comment 12: Petitioners contend that there are export sales in the HM sales database. Additionally, petitioners assert that SSAB selected sales regardless of whether the sale was in a foreign currency and even if the billing address was abroad. Petitioners maintain that the standard for whether to include sales as HM sales is whether the respondent knew that the sales were to be exported at the time of the sale.

Respondent argues that it did not include export sales in the HM database. Respondent contends that the two verified sales cited by petitioners as evidence that the HM sales database includes export sales are sales clearly delivered in the home market and do not support petitioners' position. Respondent argues that as with the fact that it invoiced certain sales in a currency other than the Swedish Kronor (SEK), the fact that certain HM sales may include an exporter's declaration does not establish that SSAB knew the sales were for consumption outside Sweden. Respondent argues that a review of the verified sales, the reasons for reporting HM sales in non-SEK currency and the fact that the

Department fully verified the completeness and destinations of the HM sales reported by SSOX and SSTP demonstrates that the HM sales database does not include export sales. Accordingly, respondent contends, the configuration of the HM sales database does not support the use of total BIA in this review.

Department's Position: We agree with petitioners and have excluded SSAB's foreign currency sales for these final results. A review of the SSOX HM sales traces revealed that only the sales made in currencies other than SEK contained exporter declarations certifying country of origin. *See* Verification Exhibits OX–27 and OX–29. None of the SEK-denominated sales had this declaration. *See* Verification Exhibits OX–25, OX–26, OX–28, OX–30–OX–33. The fact that the declarations appeared only on the non-SEK sales verified by the Department, and not on any of the SEK sales verified by the Department supports the contention that SSAB knew or should have known that these sales were destined for locations outside of Sweden. However, our exclusion of these sales does not call into question the completeness of SSAB's reporting. We verified that SSAB coded these sales in its database as domestic sales because the domestic sales code was based on SSAB's shipping destination.

Comment 13: Petitioners argue, citing *AFBs 1995,* that the Department should not treat SSAB's unverified HM rebates as post-sale price adjustments, because the Department has indicated that post-sale price adjustments are generally corrections to the price resulting from clerical or other data input errors. Moreover, petitioners assert that such a reclassification undermines the Department's policy of requiring a respondent to demonstrate that such a rebate is justified. Therefore, petitioners conclude that SSAB's claimed adjustments must be denied.

Respondent argues that the Department properly deducted SSAB rebates from the HM price. Respondent contends that to the extent rebates are offered, the rebates are negotiated and the customer becomes aware of the rebates through these negotiations that occur before the sales. Respondent argues that the fact that no documents were available to establish that the customers were aware of the terms and conditions before the sales cannot be used as a basis for penalizing SSAB by totally disregarding HM rebates. Respondent maintains that to totally disregard the rebates would, in effect, create a zero BIA rate for rebates in the HM because certain documents requested at verification do not exist and that this would be contrary to law. Respondent asserts that the Department is fully justified in treating SSAB's HM rebates as post-sale price adjustments.

Department's Position: We agree in part with respondents. While petitioners have asserted that post-sale price adjustments are ''generally corrections to the price resulting from clerical or other data input errors,'' they have failed to note that in the case which they cite, the Department also allowed post-sale price adjustments which were not data input errors, because they reflected the respondent's ''normal business practice.'' *See AFBs 1995.* As SSAB has argued, the post-sale price adjustments in this instance do reflect its normal business practice. The Department reviewed numerous documents at verification which confirmed this, and petitioners have not suggested otherwise. *See* Verification Exhibits OX–22 and TP–16. Additionally, the existence of the rebates since the beginning of the administrative review indicates that the use of these ''rebates'' reflects SSAB's normal business practice. Nevertheless, in *AFBs 1995,* the Department stated that ''as a general matter, the Department only accepts claims for discounts, rebates and price adjustments as direct adjustments to price if actual amounts are reported for each transaction.'' Information on the record of this review indicates that these adjustments were made and reported on a customer-specific, not transaction-specific, basis. *See Verification Report* at Exhibits OX–22 and TP–16. Accordingly, the Department will treat them as indirect selling expenses.

Finally, the Department disagrees with petitioners' assertion that reclassification undermines the Department's policy with respect to rebates. Rebates are typically granted as a fixed and constant percentage of sales. The Department's policy is to treat them as direct adjustments if they are reported on that basis. *See AFBs 1995.*

Comment 14: Petitioners maintain that the Department erroneously calculated HM credit expense. Petitioners argue that because SSAB failed to give the Department appropriate interest rates and failed to provide any suitable alternative, the Department must disallow SSAB's reported HM credit expense, citing *Light-Walled Welded Rectangular Carbon Steel Tubing From Taiwan,* 54 FR 5532, 5536 (February 3, 1989) (''*Steel Tubing*''). Petitioners contend that if the Department does not disallow the credit expense and instead recalculates the expense using BIA, it must select an appropriately adverse BIA interest rate. Petitioners contend that a consolidated interest rate should be used. Petitioners suggest that the Department use as BIA the lowest HM rate reported by SSAB during each of the three years covered by the POR.

Respondent argues that it fully cooperated with the Department and reported actual borrowing rates incurred for each SSAB company involved in the sale of subject merchandise during the POR. Respondent argues that the Department used SSAB's internal borrowing rate because it was lower than the prevailing market rate in Sweden. Respondent maintains that if the Department decides to modify the methodology used in the preliminary results, it should use the prevailing external Swedish borrowing rates to calculate SSAB's imputed credit expenses in the home market. Respondent also maintains that it could not report any other interest rate as no other interest rate existed, and therefore, the Department may not resort to adverse or punitive BIA interest rates.

Department's Position: We disagree with petitioners' argument that we should deny SSAB's credit expense entirely. Petitioners' cite to *Steel Tubing* is not relevant here. In that case, the Department disallowed the reported credit expense because respondent was unable to determine and document which HM sales incurred credit expense, and we determined that the use of any average expense for all sales would be highly distortive. In the instant case, SSAB's subsidiaries were able to prove that SSAB was entitled to a credit adjustment. We also disagree that we should select the lowest reported interest rate, as requested by petitioners, because adverse BIA is not called for here. *See U.H.F.C. Co. v. United States,* 916 F. 2d 689, 701 (Fed. Cir. 1990). The only short-term borrowing data that existed in this review was short-term borrowing data based upon interest rates extended by SSAB-Stockholm. *See* Verification Report at Exhibits OX–23, TP–14 and TABS–3.

However, we agree with petitioners' argument that we should have used a consolidated interest rate in our recalculation of SSAB's credit expense, rather than separate rates for each subsidiary. One lending institution, SSAB-Stockholm, provided all funds to the subsidiaries. Therefore, a consolidated rate for the lending institution as a whole more accurately reflects SSAB's interest expense than the individual rates granted on specific loans to subsidiaries. As we stated in *Ferrosilicon from Brazil,* 59 FR 732, 736 (January 6, 1994), the cost of capital is

fungible, therefore, calculating interest expense based on consolidated statements is the most appropriate methodology. We have used the average reported interest rate during each of the three years as a reasonable surrogate for the consolidated interest rate in our recalculation of the credit expense.

Comment 15: Petitioners argue that the Department should classify mill-edge plate from the SSOX plant as prime merchandise. Petitioners maintain that the Department has identified several factors that indicate whether a product is secondary or non-prime merchandise and SSOX's sales of mill-edge plate do not meet these criteria for non-prime merchandise. Petitioners maintain that there were price differences between SSOX's mill-edge plate and otherwise identical prime trim-edge plate. Petitioners assert that there is no evidence that mill-edge plate is defective. Petitioners note that SSAB has complete records for all sales of SSOX mill-edge plate. Petitioners also note that SSOX mill-edge plate is a significant portion of the total quantity of subject merchandise from SSOX reported on the HM sales database.

Respondent argues that SSOX mill-edge plate is second-choice merchandise and should not be reclassified as prime merchandise. Respondent contends that petitioners have miscalculated record data related to SSOX HM sales in their price and quantity arguments. Respondent asserts that SSOX mill-edge plate accounts for only a small portion of total SSOX sales. Respondent asserts that the record evidence demonstrates that SSOX mill-edge plate is defective and that SSOX does not have complete records on mill-edge plate.

Department's Position: We agree with petitioners in part and have reclassified certain mill-edge plate sales as sales of prime merchandise. Mill-edge plate is plate with edges that have not been further processed after rolling in the mill, in contrast to trim-edge plate which is created by shearing or flame-cutting the edges of mill-edge plate to produce a product with trimmed edges. Generally, identical prime (or identical non-prime merchandise) could have either a mill edge or a trim edge. In our preliminary results, we determined that all sales of SSOX mill-edge plate should be regarded as sales of secondary merchandise. We included in this decision all downstream sales of SSOX mill-edge plate. For these final results, only SSOX's direct sales of mill-edge plate to unrelated parties were considered non-prime merchandise.

SSOX company officials explained how they determined which of the reported sales were prime and non-prime or secondary merchandise. *See* Verification Report at 6. SSOX does not keep records for rejected plate and keeps limited records for mill-edge plate. SSOX does no testing on mill-edge plate and does not give customers quality certifications for mill-edge plate. *See* Verification Report at 7. Additionally, SSOX does not maintain records on certain characteristics of mill-edge plate.

On the other hand, TAB does not maintain inventory of non-prime merchandise for quality assurance reasons. *See* Verification Report at 28. Instead, TAB established Plåt Depån to inventory and sell its non-prime merchandise. Because TAB cannot sell non-prime merchandise, we concluded that any sales of mill-edge plate through TAB must be sold as prime merchandise. For the final results, we have treated sales of SSOX mill-edge plate through TAB as prime plate in our calculations.

Comment 16: Petitioners contend that U.S. credit expenses must be recalculated correctly using a HM interest rate. Petitioners argue that both the Department's practice and the holdings of reviewing courts confirm that the use of a U.S. interest rate to calculate credit is appropriate only where a party had U.S. borrowings from an unrelated party or has otherwise shown that it had access to funds at U.S. interest rates. *See LMI-LA Metalli Industriale v. United States,* 912 F. 2d 455, 460 (Fed. Cir. 1990), *Gray Portland Cement and Clinker from Japan,* 60 FR 43761, 43767 (August 23, 1995) and *Certain Carbon Steel Flat Products from France,* 58 FR 37125, 37133 (July 9, 1993). Moreover, petitioners maintain that the Department should use an adverse BIA rate. Petitioners argue that SSAB failed to give the Department acceptable data, yet it was rewarded with a favorable BIA rate. Petitioners contend that if the Department does use a U.S. interest rate as BIA, the U.S. prime rate would be a more appropriate selection.

Respondent contends that for purposes of calculating an imputed credit expense on U.S. sales, the Department correctly used the average commercial paper rate for the POR. Respondent maintains that SSAB companies had access to the lower U.S. interest rates through the related U.S. subsidiary, Swedish Steel, Inc. Respondent asserts that the Department should use the same credit adjustment to U.S. sales that was used in the preliminary results.

Department's Position: When a respondent has no U.S. borrowings, it is no longer the Department's practice to substitute home market interest rates when calculating U.S. credit expense and U.S. inventory carrying costs. Rather, the Department will now match the interest rate used for credit expenses to the currency in which the sales are denominated. The Department will use the actual borrowing rates obtained by a respondent, either directly, or through related affiliates. Where there is no borrowing in a particular currency, the Department may use external information about the cost of borrowing in that currency. *See Brass Sheet and Strip From Germany* 60 FR at 38545,46 (1995)). Because respondent did not supply the Department with an actual U.S. borrowing rate, for the preliminary results, we turned to external information and applied the average of the *Federal Reserve Statistical Release* one-month commercial paper rates in effect during the POR to calculate U.S. credit expenses and inventory carrying costs.

For the final results, we have reconsidered our use of the commercial paper rate. SSAB provided no evidence that it would have had access to commercial paper rates in the United States during the POR. There is no clear evidence on the record of this review that SSAB had access to specific U.S. rates.

In the of U.S. dollar borrowings, we need to arrive at a reasonable surrogate for imputing U.S. credit expense. There are many and 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. Without actual U.S. dollar borrowings and without substantial evidence on the record indicating what rates a firm is likely to have received if it had borrowed dollars, it is impossible to predict the rate at which a company would have borrowed dollars. Therefore, we chose the average short-term lending rate as calculated by the Federal Reserve. 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 week at all insured commercial banks. This rate represents a reasonable surrogate for an actual dollar interest rate because it is calculated based on actual loans to a variety of actual customers.

For these reasons, we have recalculated SSAB's imputed U.S. credit expense based on the average lending rate during the POR, as published by the

Federal Reserve. *See* Analysis Memorandum.

Comment 17: Petitioners argue that the Department must make an adjustment for SSAB's U.S. selling expenses. Petitioners contend that SSAB reported the amount of its U.S. selling expenses, but failed to include any of these expenses in its computer sales data. Petitioners maintain that SSAB should have included these as direct selling expenses. Petitioners contend that the evidence shows that these expenses (*e.g.*, expenses incurred by Swedish Steel and SSAB's New Orleans-based salesperson) resulted at least in part from, and could have been tied to, specific sales. Petitioners argue that since at least some of SSAB's U.S. selling expenses were direct in nature, the Department should follow its standard practice and make the adverse assumption that all selling expenses in the U.S. market were direct expenses and adjust FMV for U.S. direct selling expenses.

Respondent argues that the Department should not treat SSAB indirect U.S. selling expenses as direct selling expenses. Respondent argues that there is no basis in fact or law upon which the Department could treat SSAB's indirect U.S. selling expenses as direct expenses that require an across-the-board adjustment to the foreign market value. Respondent contends that there is no evidence in this record that any of these expenses are directly related to any SSAB sales in the United States.

Department's Position: We agree with respondent. There is no information on the record to support petitioners' claim that these expenses (*e.g.*, travel expenses incurred by the New Orleans-based salesperson) could be tied to specific sales.

Comment 18: Petitioners argue that the Department must deduct antidumping deposits paid by SSAB or related parties from U.S. price. Section 772(d)(2)(A) states that the purchase price and exporter's sales price shall be reduced by U.S. import duties. According to petitioners, antidumping deposits are ''incident to bringing the subject merchandise from the place of shipment in the country of exportation to the place of delivery in the United States'' and are therefore properly classified as import duties. Furthermore, petitioners claim that antidumping or countervailing duties are considered ''import duties'' in trade laws unless the provision specifically indicates otherwise.

Respondent asserts that there is no evidence in the record to support the claim that SSAB is paying antidumping duties on imports of subject merchandise or reimbursing any party for antidumping duties paid on such imports.

Department's Position: We disagree with petitioners. While section 772(d)(2)(A) requires the deduction of normal ''import duties,'' cash deposits of estimated antidumping duties are not normal import duties, and do not qualify for deduction under Section 772. Contrary to petitioners' argument, the CIT in *Federal-Mogul v. United States* 813 F. Supp. 856, 872 (CIT 1993), recognized that the actual amounts of normal duties to be assessed upon liquidation are known because they are based upon rates published in the Harmonized Tariff Schedule and the actual entered value of the merchandise. In contrast, deposits of estimated antidumping duties are based upon past dumping margins and may bear little relation to the actual current dumping margin. Thus, the CIT recognized the distinction between estimated antidumping duties and ''normal'' import duties for purposes of section 772(d)(2)(A).

Petitioners' methodology also conflicts with the holding of the CIT in *PQ Corp. v. United States*, 652 F. Supp. 724 (CIT 1987), in which the court addressed the issue of deduction of estimated antidumping duties under section 772(d)(2)(A). The court cited with approval the Department's policy of not allowing estimated antidumping duties, based upon past margins, to alter the calculation of present margins. The court explained ''[i]f deposits of estimated antidumping duties entered into the calculation of present dumping margins, then those deposits would work to open up a margin where none otherwise exists.'' *Id.* at 737.

Petitioners argue at length that the Department should not distinguish between purchase price and exporter's sales price transactions in deducting antidumping duties. However, because the Department does not deduct estimated antidumping duties from any transaction, this argument is inapposite.

The Department agrees with petitioners that statements made in the URAA are not relevant in this review, which is being conducted under pre-URAA law. However, the policies of other countries, cited by petitioners with respect to this issue, are equally irrelevant.

Comment 19: Petitioners argue that the higher of the margin from the investigation or the highest non-aberrant margin should be selected as BIA for unmatched U.S. sales. Petitioners contend that the Department has a practice of applying the highest non-aberrant margin as BIA in investigations when U.S. sales are unmatched because of the respondent's failure to report HM sales. Petitioners argue that the statutory directive to use BIA serves to compensate for the Department's inability to compel the parties under investigation to respond to its requests for information. Petitioners contend that for BIA to be effective, the BIA margin selected by the Department must be less desirable to the respondent than that which it would have obtained if the party had responded fully. Petitioners argue that the highest non-aberrant methodology is reasonable because it is based on respondents' verified sales data and it induces respondents to report complete and accurate data for all sales.

Respondent maintains that the Department applied the correct BIA margin rate to SSAB's U.S. sales that did not have matching HM sales. Respondent asserts that the Department correctly based the partial BIA rate on the highest margin rate applied to SSAB in the original investigation. Respondent argues that the Department should not use the highest non-aberrant margin as partial BIA in this review because it would unfairly punish SSAB, a cooperative respondent throughout the review, who submitted timely, complete, and accurate information. Respondent maintains that the number of errors in SSAB's submission is small and the number of sales affected are small in quantity, therefore, the Department is not justified in using the highest non-aberrant margin that is the most adverse partial BIA in this review.

Department's Position: We disagree with petitioners. As we determined in the preliminary results, certain sales were not reported in SSAB's downstream database, but the sales affected were minimal in quantity relative to the size of the entire database and to the pool of potential matches. As a result, consistent with Department practice, we did not apply the highest transaction-specific margin as BIA, but instead applied the higher of SSAB's final weighted-average margin from the less-than-fair-value (LTFV) investigation and SSAB's final weighted-average margin from this review to the U.S. sales with no HM matches. *See AFBs 1995*. Contrary to the position taken by the petitioners, this approach was approved by the CIT in *National Steel Corp. v. United States*, 870 F. Supp. 1130 (CIT 1994). *See also Usinor Sacilor v. United States*, 872 F. Supp. 1000, 1007 (CIT 1994). Since the margin from the LTFV investigation was higher, we used that rate as BIA on unmatched U.S. sales for these final results.

Comment 20: Petitioners argue that since all of the sales by SSAB in the United States were purchase price sales, there is no associated inventory carrying expense and therefore, in calculating constructed value for the final results the Department should not reduce the financing expense by a factor for the inventory carrying costs attributable to HM merchandise.

Respondent asserts that recalculation of the constructed value adjustment will have zero effect on the margin. Respondent maintains that the record evidence demonstrates that the Department never used, and should not need to use, constructed value in this review.

Department's Position: We agree with respondent. Due to certain problems in the reported data (*See* Comments 11 and 20), we used BIA instead of constructed value data in our calculations. Therefore, no recalculation is necessary.

Comment 21: Petitioners argue that the Department should reconsider its BIA for the cost of production values for certain products. Petitioners maintain that it is the Department's consistent policy to use the highest reported COP when a respondent has failed to report COP for one or more products. Petitioners maintain that the Department requested COP information and SSAB failed to provide it. Petitioners argue that the Department need not make a second or third request for the same information to apply a suitably adverse BIA.

Respondent argues that the Department correctly calculated COP for the sales with missing cost values. Respondent asserts that there is no basis for any adverse BIA in the Department's calculation of cost for the subset of HM sales with missing COP. Respondent maintains that the control numbers with missing cost data are an insignificant portion of the total sales provided by SSAB. Respondent argues that the use of the average COP based on the most similar HM sales for the control numbers with missing costs is reasonable and unbiased. Respondent asserts that it accurately represents the use of BIA.

Department's Position: We disagree with petitioners. Our methodology produces a reasonable surrogate for the missing values. We did not resort to BIA because respondent did not have the opportunity to correct the cost information.

Comment 22: Petitioners argue that the Department incorrectly entered the percentage of the 1994 adjustment to TAB's sales quantities in its margin calculation program.

Respondent asserts that this change would have zero impact on the antidumping margin calculation.

Department's Position: We agree with petitioners that the Department used the incorrect percentage of TAB's sales quantities in the arm's-length test. We have corrected the error for the final results. *See* Analysis Memorandum.

Comment 23: Petitioners argue that the Department's recoding of certain plate characteristics did not have the desired effect because the Department did not make a similar change to the control numbers. Petitioners contend that the Department must recalculate the COP for each of the newly-collapsed control numbers.

Respondent asserts that the net effect of this change is negligible.

Department's Position: We agree with petitioners that COP should be recalculated to account for the collapsing of certain characteristics. We have made this adjustment to our computer programs for the final results. *See* Analysis Memorandum.

Comment 24: Petitioners argue that the Department inadvertently included certain duty and moving expenses in the incorrect location in the computer program. Petitioners argue that since the statute requires that these expenses be deducted from USP rather than added to FMV, these expenses should be included in the calculation of total foreign movement expenses. *See* 19 U.S.C. Sec. 1677 b(a)(6)(A). Petitioners also contend that the Department did not deduct one duty expense for a merchandise processing fee imposed by the U.S. Customs Service. Petitioners argue that this should be included in the calculation of foreign movement expenses.

Department's Position: We agree with petitioners and have corrected these errors in our final results. *See* Analysis Memorandum.

Final Results of Review

As a result of our review, we have determined that the following margin exists:

Manufacturer/exporter	Time period	Margin (percent)
SSAB	2/4/93–7/31/94	8.28

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of administrative review, for all shipments of the subject merchandise from Sweden that are entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for SSAB will be the rate established above; (2) for previously 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 covered in this review, or the original 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 24.23 percent, the all others rate established in the final determination of the LTFV investigation. See *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Sweden,* 58 FR 37213 (July 9, 1993).

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice 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 this 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 the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of 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.

This administrative review and 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: April 1, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

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