affect the calculation of margins in administrative reviews. This new provision of the law is not intended to provide for the treatment of antidumping duties as a cost.''); *see also* H. Rep. No. 103–826(I), 103rd Cong., 2nd Sess. (1994) at 60.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/ exporter	Period of review	Margin (percent)
Hoogovens Staal B.V.	8/1/94–7/31/95	4.33

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate for that firm as stated above; (2) if the exporter is not a firm covered in this 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 (3) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 19.32 percent. This is the ''all others'' rate from the amended final determination in the LTFV investigation. *See Amended Final Determination Pursuant to CIT Decision: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 61 FR 47871. These 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 § 353.26 of the Department's regulations 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 a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with § 353.34(d) of the Department's regulations. Timely 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 this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: April 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9427 Filed 4–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–817]

Certain Cut-to-Length Carbon Steel Plate From Brazil: 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 October 4, 1996, 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 Brazil. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), August 1, 1994, through July 31, 1995. 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 15, 1997.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–0405 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1996, the Department published in the **Federal Register** (61 FR 51904) the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Brazil (58 FR 44164, 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 Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of This Review

The products covered by this administrative review constitute one ''class or kind'' of merchandise: certain cut-to-length carbon steel 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 Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060,

7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 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.

On April 2, 1997, the Department determined that ''profile slab'' produced by Companhia Siderúrgica de Tubarão (CST) constitutes a type of plate and therefore falls within the scope of the antidumping order on carbon steel plate from Brazil. Memorandum to Holly A. Kuga, Regarding the Final Scope Ruling—Antidumping and Countervailing Duty Orders on Certain Cut-to-Length Carbon Steel Plate from Brazil—Request by Wirth Limited for a Ruling on Profile Slab.

The POR is August 1, 1994, through July 31, 1995. This review covers entries of certain cut-to-length carbon steel plate by Companhia Siderúrgica de Tubarão (CST).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from the respondent (CST) and petitioners (Bethlehem Steel Corporation, U.S. Steel Company (a Unit of USX Corporation), Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company).

Comment 1

Respondent argues that the Department incorrectly excluded home market credit costs from its margin calculations. In respondent's view, the *taxa referential* (TR), is the Brazilian equivalent to a benchmark interest rate, such as the prime rate or the LIBOR rate, and the Department erred in rejecting the TR as a useful surrogate for short-term interest rates in Brazil.

Respondent notes that CST did not have any short-term Brazilian currency borrowing during the POR and in its original Section B response it proposed using CST's borrowing rate in connection with coal purchases as a surrogate for short-term interest rates. Respondent adds that the Department rejected this approach and asked CST to provide published home market prime rates, such as the rates for the Bank of Brazil or the Bank of Minas Gerais, and use these rates for the calculation of credit costs.

Respondent states that in its supplemental response it provided TR rates during the POR and provided background materials on the TR which state that the TR is a referential interest rate and not an inflation index. Respondent notes that the Department did not raise any questions about the use of the TR or any discrepancies associated with the TR during verification, in the verification report or elsewhere during the proceeding, prior to the September 25, 1996, decision memorandum. Respondent argues that the Department's conclusion in this memorandum that the TR is an inflation index, not an interest rate, was not supported and the Department did not explain its departure from past findings. CST objects on procedural grounds to the Department's decision not to make a home market credit adjustment as the Department did not inform respondents of questions it had regarding submitted information. *See Bowe-Passat* v. *United States*, 17 CIT 335, 343 (1993).

CST alleges that the TR is an appropriate rate to measure the cost of credit because it is a rate calculated and published by the Bank of Brazil similar to the prime rate. Respondent also notes that the Department, after extensive verification, used the TR as the surrogate home market interest rate in *Ferrosilicon from Brazil*, 59 FR 732, 735 (Jan. 6, 1994). Respondent attached an excerpt from a Brazilian treatise on financial markets which states that the TR was created to serve as a basic referential rate of interest to be charged in the month of issuance and ''should function as the LIBOR or prime rate.''

Petitioners support the Department's denial of CST's claimed deduction for home market credit expenses without elaboration.

Department's Position

We agree in part with respondent and have allowed a credit adjustment in the final results. We note that the original materials about the TR provided by respondent (see CST's February 29, 1996, submission) were unclear as to whether the TR is a pure short-term interest rate. These documents, taken from the provisional bill establishing the TR and the ''Collor Plan'' Manual prepared by the Economy Ministry, describe the TR as calculated by the Central Bank of Brazil from ''the average of monthly net revenue by deposits with fixed terms raised by branches of commercial banks, investment banks or multiple banks with commercial or investment divisions, and/or federal public bonds. * * *'' (CST's translation.) This takes into account all deposits with fixed terms, including those in investment banks, and federal public bonds, not just short-term deposits. However, the information submitted by respondent as an attachment to its November 4, 1996, case brief states that the TR was initially calculated based on the weighted average of the rates on 30–35 day bank deposit certificates issued by a subgroup of 20 financial institutions, and since May 1, 1993, was calculated on a daily basis.

The TR is further described in the original materials we received as ''a type of interest rate which is based on the market rate, including the expectation of economic agents with regard to the future revenue of financial assets.'' The phrase ''a type of interest rate *which is based on the market rate*,'' suggests that there is some kind of adjustment from an actual interest rate. Respondent's more recent submission states that a part of the actual interest rate is deducted in calculating the TR so as to discount the cost of taxes on the bank deposit certificates.

Finally, we note that beyond issuing a supplemental questionnaire, the Department is not required to give prior notice before disallowing a claimed adjustment. Our supplemental questionnaire clearly requested CST to use published Brazilian prime rates in its calculation of home market credit expenses. CST substituted the TR without explanation. There is no indication that the respondent in *Ferrosilicon* was asked to use a bank rate for its home market credit calculation. The Department is not obligated to make additional requests for information showing that the data respondent submits meet the requirements imposed by the Department. However, because we have determined that the TR does, in fact, appear to be a benchmark comparable to a prime rate and is published by the Bank of Brazil, we have used the submitted TR data in calculating CST's credit adjustment.

Comment 2

Respondent argues that the Department should calculate CST's home market imputed credit costs using gross price. CST claims that its liability for taxes is not contingent on customer payment. CST submitted credit costs based on net price and gross price. Respondent states that in previous decisions the Department has calculated credit costs based on a gross price

inclusive of taxes. (*See Stainless Steel Angles from Japan,* 60 FR 16608, 16615 (March 31, 1995).)

Petitioners counter that if the Department were to include a deduction for home market credit expenses, it should base this deduction on net price. Petitioners argue that imputed credit costs should reflect the cost to CST of the time value of money and that in this case, there is no opportunity cost to CST of carrying the tax amounts as receivables, since they will not be paid to the Brazilian government until after the receipt of payment from the customer (*Furfuryl Alcohol from South Africa,* 61 FR 22550, 22552 (May 8, 1995)).

Department's Position

We agree with petitioners that credit expenses should be calculated on the basis of net price. *See Final Determination of Sales at Less than Fair Value; Steel Wire Rope from Korea,* 58 FR 11029, 11032 (February 23, 1993), where the Department stated:

> It is not the Department's current practice to impute credit expenses related to VAT payments. We find that there is no statutory or regulatory requirement for making the proposed adjustment. While there may be a potential opportunity cost associated with the respondents' prepayment of the VAT, this fact alone is not a sufficient basis for the Department to make an adjustment in price-to-price comparisons. We note that virtually every charge or expense associated with price-to-price comparisons is either prepaid or paid for at some point after the cost is incurred. Accordingly, for each pre- or post-service payment, there may also be an opportunity cost or gain. Thus, to allow the type of credit adjustment suggested by the respondents would imply that in the future the Department would be faced with the virtually impossible task of trying to determine the potential opportunity cost or gain of every charge and expense reported in the respondents' home market and U.S. databases. This exercise would make our calculations inordinately complicated, placing an unreasonable and onerous burden on both respondents and the Department, without necessarily ensuring a more accurate dumping margin calculation.

The comment in the *Stainless Steel Angles* case cited by the respondent refers to pre-shipment advance payment for the merchandise, rather than taxes, and is not contrary to the Department's position with respect to basing credit calculations on a price net of taxes.

Comment 3

Respondent observes that the Department failed to make an upward adjustment to U.S. price for CST's duty drawback adjustment, which the Department must do under U.S. law. CST notes that it calculated and submitted and the Department verified a per-ton duty drawback adjustment. Respondent states that the Department should correct this error in its final determination.

Department's Position

We agree with respondent and have made the suggested correction in the final results.

Comment 4

Respondent argues that the Department should correct its home market tax deduction. Respondent claims that to achieve tax neutrality, the Department should deduct from normal value the full amount of the IPI tax assessed on CST's home market sales but not on export sales. Instead, the Department deducted only five percent of the IPI tax assessed, because CST is eligible for an incentive rebate of 95 percent of the IPI paid to the government. CST claims that this is not in accordance with antidumping law and that the Department has no authority in an AD proceeding to net any subsequent receipts under a fiscal incentive program against taxes imposed. Citing *Huffy Corp.* v. *United States,* 632 F. Supp. 50, 55 (CIT 1986), respondent argues that if the Department were to limit its adjustment in this case to reflect the provision of a subsequent incentive to CST, it would in effect be increasing the amount of AD duties by the amount of a possible (though not proven) subsidy, without ever determining whether such a subsidy were even countervailable. Respondent claims that in previous AD investigations involving companies entitled to the IPI fiscal incentive rebate, the Department has never reduced the IPI tax adjustment.

Petitioners argue that the Department correctly calculated the IPI deduction. Petitioners state the Department's methodology was consistent with the URAA and cite the URAA's Statement of Administrative Action (SAA):

> The deduction from normal value for indirect taxes constitutes a change from the existing statute. The change is intended to ensure that dumping margins will be tax-neutral. The requirement that the home market consumption taxes in question be ''added to or included in the price'' of the foreign like product is intended to insure that such taxes actually have been charged and paid on the home market sales used to calculate normal value. * * * It would be inappropriate to reduce a foreign price by the amount of the tax, unless a tax liability had actually been incurred on the sale.

Petitioners argue that because the Department found that, although the IPI amounts were paid to the government, all but 95 percent of these amounts were immediately credited back to CST in the form of fiscal incentives, the Department correctly declined to deduct the full amount of the reported adjustment.

Petitioners reject CST's argument that the Department should make an adjustment on the full amount of the IPI because the full amount is the amount that was ''paid.'' Petitioners note that in every instance part of the IPI is immediately credited back to CST in a percentage that is known beforehand, limiting CST's real tax liability to the small portion that is paid but not credited back. Thus, they state that the Department correctly calculated CST's home market tax deduction and that were the Department to do otherwise it would violate the SAA's requirement that dumping margins ''be tax neutral.''

Petitioners also reject respondent's argument that the Department should not be investigating fiscal incentive credits in the context of an AD review because the credits may also be countervailable subsidies. Petitioners claim that *Huffy* fully supports the Department's course of action. In that case, according to petitioners, the CIT stated that the Department must refrain from making a subsidy determination in the context of a dumping investigation, and that in a dumping investigation the Department is not seeking the same information or asking the same questions as it would in a countervailing duty investigation. Petitioners conclude that whether it is possible that the IPI fiscal incentives may also be countervailable subsidies should not be considered in this proceeding.

Department's Position

Because the reported home market sales are IPI-inclusive, we agree with the respondent that, given the particular circumstances of this case, the entire amount of IPI tax paid should be deducted from normal value, rather than the amount paid minus the amount rebated. Although respondent refers to the IPI rebate only as a ''possible (though not proven) subsidy,'' the Department has already made a determination that the IPI rebate at issue, which is provided only to steel companies, is a countervailable subsidy. *See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil,* 58 FR 37295, 37298–99, 37301 (July 9, 1993). Benefits received on respondent's sales of carbon steel plate pursuant to the IPI rebate program at issue are currently being countervailed based on the countervailing duty order issued in that

companion case. *Countervailing Duty Order and Amendment to Final Affirmative Countervailing Duty Determination: Certain Steel Products from Brazil,* 58 FR 43751, 43751–52 (August 17, 1993). Section 773(a)(6)(B)(iii) of the Act, (19 U.S.C. 1677b (a)(6)(B)(iii)) provides for reducing normal value by ''the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product.'' This provision embodies the principle of GATT Article VI(5) that the simultaneous implementation of companion AD and CVD orders may not result in a double remedy. If the rebate were offset, it would reduce the amount of the IPI tax deduction from normal value by the amount of the rebate, thus increasing the margin and thereby correcting a second time for the rebate, which has already been countervailed under the companion CVD order.

Huffy Corp. v. *United States,* 632 F. Supp. 50, 55 (CIT 1986), upon which both parties rely, does not govern the situation in this case. In *Huffy,* the CIT rejected a claim by petitioner that a subsidy should not be allowed to lower an AD margin and that therefore ITA improperly increased United States Price for a rebate of import duties on inputs. In reaching this decision, the *Huffy* court pointed to a specific statutory provision calling for the adjustment for the import duty rebate at issue and added that the Court should not preempt the countervailing duty statute and make determinations as to whether a subsidy exists in the context of an antidumping case. There was no companion CVD order in the administrative proceeding underlying the decision in *Huffy.* In this case, the determination that the IPI rebate constitutes a subsidy has already been made in the CVD case. The only question is therefore how to obtain a tax-neutral dumping margin and no double remedy for subsidies and dumping; this is achieved by countervailing the IPI rebate under the CVD order and deducting the full amount of IPI paid from normal value pursuant to section 773(a)(6)(B)(iii).

Comment 5

Respondent alleges that the Department incorrectly determined that CST's date of sale in the home market should be the order confirmation date. CST states that many sales had multiple order acknowledgments and that the prices and terms set forth in any given order acknowledgment could be and were changed at will. Respondent claims that the Department does not recognize an event in the sales process as a reliable date of sale if there is a chance that the terms and conditions of sale can and will change after that event. Respondent cites *Certain Cut-to-length Carbon Steel Plate from Brazil,* 58 FR 37091, 37093 (July 9, 1993) (Final), arguing that in this case the Department rejected one respondent's U.S. date of sale methodology because it found evidence of changes in the material sales terms after the reported date of sale in a small quantity of sales. Respondent also cites to *Canned Pineapple Fruit from Thailand,* 60 FR 29553 (June 5, 1995) (Final) in which respondent claims the Department asked respondents to indicate whether changes could occur after the order date.

Respondent acknowledges that CST does issue a new order acknowledgment when terms are changed, but argues that new order acknowledgments can be issued until the date of shipment and that changes can and do occur after an order acknowledgment is issued. Respondent also notes that the price in local currency is not known until the date of invoice and cites the Department's new draft regulations in support of using date of invoice.

Petitioners argue that the Department correctly determined the home market date of sale to be the order acknowledgment date. Petitioners respond to CST's argument that a sale may have multiple order acknowledgment dates, and that the terms are not definitively set until shipment, by noting that if terms were changed a new order acknowledgment would be issued. Petitioners add that the mere fact that changes might occur is irrelevant, since CST admits that if there are changes a new order acknowledgment is issued.

Petitioners distinguish this case from the cases cited by respondent. With respect to *Certain Cut-to-length Carbon Steel Plate from Brazil,* 58 FR 37091, 37093 (July 9, 1993) (Final), petitioners note that USIMINAS's reported date of sale was rejected because the Department found evidence that there were changes in the terms of sale after the respondent's date of sale. Petitioners argue that even if CST's claim that the Department selected the invoice date as the date of sale in *Pineapples* is correct, that case is distinguishable from this proceeding, because in this case there is no possibility that there were changes in material terms after respondent's reported date of sale.

Petitioners also reject CST's argument that the order acknowledgment date cannot be the date of sale because the price in local currency is not known until the date of invoice. Petitioners state that the law is clear—''the essential terms of price and quantity are firm when they are no longer within the control of the parties to alter.'' (*See Polyvinyl Alcohol from Taiwan,* 61 FR at 14067.) Petitioners, citing the Department's analysis memorandum and verification report, add that by CST's own admission, at the time of order acknowledgment the parties agree on both the price in dollars and on the exchange rate to be used on the date of invoice. Thus, in petitioners'' view, price and quantity are set on the date of order acknowledgment, as the final invoice price is outside the control of either party and is effectively fixed for purposes of determining the date of sale.

Department's Position

We agree with petitioners. CST stated at verification that if there are changes to an order acknowledgment, a new order acknowledgment always is issued. This is fully consistent with our findings at verification; we found no instances in which any terms were changed after the final order acknowledgment was issued. Thus, while respondent may not know in advance if an individual order acknowledgment will be the final one, in retrospect it can always do so. As petitioners note, this fact distinguishes the facts of this case from the cases cited by respondent.

We also reject CST's argument that the order acknowledgment date cannot be the date of sale because the price in local currency is not known until the date of invoice. We found at verification that CST and its customer agree on both the price in dollars and on the exchange rate to be used on the date of invoice at the time the order acknowledgment is issued. Thus, price and quantity are set on the date of order acknowledgment, as the final invoice price is outside the control of either party and is effectively fixed for purposes of determining the date of sale. It is immaterial if the exact price in local currency is not known at this time as long as the mechanism for determining this price is set—which it is in this case.

Comment 6

Respondent argues that the Department incorrectly determined that CST is affiliated with USIMINAS and COSIPA. Respondent notes that the Bozano Group only owned 20.3 percent of the stock of CST and 8 percent of the stock of USIMINAS. Respondent notes that with respect to CST there were two other shareholders with a percentage

ownership of CST that was equal to Bozano's and there were two other shareholders which each owned almost 13 percent of CST's stock.

Respondent claims that there is no evidence to support petitioners'' claim that Bozano was part of a controlling shareholder group consisting of Bozano and CVRD. Respondent cites to the Shareholders'' Agreement in Verification exhibit 4A, which speaks of a core group, consisting of the Bozano Group, CVRD plus UNIBANCO and Kawasaki. Citing the Shareholders'' Agreement, respondent argues that no single member of the group would be in a position to exercise control, as actions must have the support of parties holding at least 60 percent of the shares. Respondent further notes that Bozano and CVRD, even together, only appoint four of the nine members of CST's Board of Directors, known in Brazil as the Administrative Council.

Respondent claims that Julio Bozano's position as president of CST's Administrative Council did not permit him to exercise restraint or control over CST. Again citing to the Shareholders'' Agreement, respondent argues that the purview of the Administrative Council is limited to large corporate and financial decisions, rather than setting product pricing or production decisions.

Respondent claims that the Department determined that CST was affiliated with COSIPA solely because of USIMINAS' stockholdings in COSIPA. Respondent does not discuss whether USIMINAS and COSIPA are affiliated because of its contention that CST is not affiliated with USIMINAS. Respondent argues if it is not affiliated with USIMINAS, it is also not affiliated with COSIPA.

Petitioners counter that the Department's determination that CST is affiliated with USIMINAS AND COSIPA is correct and fully supported by the record. Petitioners note that the Department's decision was based on the following: Julio Bozano is both President and Chairman of CST's Board and President of USIMINAS's Board; Banco Bozano provided substantial financing to all three steel producers; the Bozano Group has a significant minority shareholding interest in all three steel producers; the combination of Julio Bozano's role as President of USIMINAS, USIMINAS' ownership of almost half of COSIPA's voting stock, and the Bozano Group's minority ownership of COSIPA place Bozano in a position of influence over COSIPA. Petitioners state that CST does not challenge the Department's conclusion regarding Bozano's control over USIMINAS and COSIPA.

Petitioners argue that the legislative history of the URAA makes it clear that the statute does not require majority ownership for a finding of control, and cites to prior Department control decisions in which a party did not have the power to appoint a majority of the board (*Certain Cold-Rolled Carbon Steel Flat Products from Korea,* 60 FR 65284 (Dec. 19, 1995). Petitioners claim that in addition to its substantial ownership stake in CST and its ability to name two board members, Banco Bozano was the largest private lender to CST throughout the POR. Thus, in petitioners' view, CST's argument that Bozano did not control CST ignores ''business and economic reality,'' the standard in the SAA.

Petitioners also disagree with respondent's claims regarding the Administrative Council. They note that CST acknowledges that its Administrative Council's jurisdiction includes power over: consolidations, mergers and splitting operations involving CST, and approval of, and changes in CST's long-term business plans. Petitioners argue that these are precisely the types of power that a producer's management exercises in restructuring manufacturing priorities, such as would be involved in shifting production between CST and USIMINAS. Petitioners further argue that the Administrative Council's powers are more extensive than CST concedes. Citing CST's Bylaws, petitioners claim that additional powers of the Council include: monitoring the performance of the directors; examining the Company's books; requesting information on contracts; setting the general orientation for Company business; establishing the basic guidelines for executive actions, as well as issues relating to technical aspects of production and marketing; and authorizing the opening, transfer or closing of offices, affiliates, subsidiaries, or other Company establishments. Petitioners also explain that on a day-to-day basis the Administrative Council exercises control over CST through an executive management group called the executive directorate, selected by and responsible to the Administrative Council. Thus, petitioners conclude that the Council does have legal power to exercise restraint and direction over CST's operations.

Department's Position

We agree with petitioners that CST is affiliated with USIMINAS and COSIPA. Section 771(33) of the Act, which governs which entities shall be considered ''affiliated,'' requires the Department to base its findings of control on several factors, not merely the level of stock ownership. In commenting on this section, the SAA states that: ''The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm 'operationally in a position to exercise restraint or direction' over another even in the absence of an equity relationship.'' SAA at 838, quoting section 771(33). Our decision regarding affiliation was based on the following: Julio Bozano is both President and Chairman of CST's Board and President of USIMINAS's Board; Banco Bozano provided substantial financing to all three steel producers; the Bozano Group has a significant minority shareholding interest in all three steel producers; the combination of Julio Bozano's role as President of USIMINAS, USIMINAS' ownership of almost half of COSIPA's voting stock, and the Bozano Group's minority ownership of COSIPA place Bozano in a position of influence over COSIPA.

Respondent's argument against affiliation focuses on: Bozano's minority shareholder role; under the terms of the Shareholders' Agreement support of 60 percent of the shareholdings is required; Bozano does not appoint a majority of the members of the board; and that Julio Bozano's position as President of CST's Administrative Council did not permit Bozano to exercise restraint or control over CST.

As petitioners state, the legislative history of the URAA makes it clear that the statute does not require majority ownership for a finding of control. Even a minority shareholder interest, examined within the context of the totality of other evidence of control, can be a factor that we consider in determining whether one party is operationally in a position to control another. In this case, the Bozano Group has a minority shareholder interest in all three steel companies in question, and this can appropriately be considered in our affiliation analysis. As respondent's only argument with respect to Bozano's control over USIMINAS and COSIPA was that Bozano's minority shareholding was not a sufficient basis for control, and respondent did not address the other factors considered by the Department, we continue to support our original decision with respect to these companies.

With respect to CST's Shareholders' Agreement, we note that despite multiple submissions from parties on the issue of affiliation and petitioners' specific allegations regarding the existence of a ''control group,'' the first

time respondent even identified the existence of this agreement was at verification. It is true that this agreement is currently between the four parties identified by respondent. However, the Shareholders' Agreement indicates that it was originally an agreement between CVRD and Bozano (as of December 1, 1993). UNIBANCO became a party to the agreement on April 25, 1994. Kawasaki did not enter the agreement until May 25, 1995—close to the end of the POR.

Respondent acknowledges that its Administrative Council's jurisdiction includes power over: consolidations, mergers and splitting operations involving CST, and approval of, and changes in CST's long-term business plans. However, respondent has taken this list of functions from the Shareholders' Agreement, not CST's Bylaws. As petitioners correctly state, CST's Administrative Council has substantial additional functions under the terms of CST's Bylaws. Taken together, these are precisely the types of power that a producer's management exercises in restructuring manufacturing priorities, such as would be involved in shifting production between CST, USIMINAS and COSIPA. While it is true that the support of 60 percent of the shareholdings is required to make decisions under the terms of the Shareholders' Agreement, Julio Bozano's position as president of CST's Administrative Council allows him to chair Council meetings, help set the agenda for meetings, vote and voice his opinion on proposals before the Council. This clearly gives him the potential to influence pricing and production decisions with respect to CST. *See Certain Cold-Rolled Carbon Steel Flat Products from Korea,* 60 FR 65284, 65284–5 (December 19, 1995),

Thus, for the reasons originally enumerated in the Department's September 10, 1996, memorandum, we continue to find that CST is affiliated with USIMINAS and COSIPA.

Comment 7

Petitioners argue that the Department must apply partial facts available because CST withheld crucial information regarding its affiliates. Specifically, petitioners state that the Department was not able to obtain sufficient information to confirm that CST was affiliated with a certain Brazilian steel reseller until verification. Petitioners state that this failure was crucial, because CST's sales to this affiliated party matched a majority of its U.S. sales, but failed the arm's length test and therefore could not be used by the Department in price-to-price comparisons. Furthermore, downstream sales to unaffiliated customers had not been reported. Petitioners claim that under the Department's regulations, it must use the facts otherwise available where a party withholds information requested by the Department. Petitioners note that CST did not identify this reseller as an affiliate, report its downstream sales to unaffiliated customers or contact the Department about the reporting of these sales. In petitioners' view, the Department should apply an adverse inference in its selection of facts available and apply the highest rate from the petition to the U.S. sales which were matched to CST's sales to this affiliate before application of the arm's length test.

Respondent argues that the Department should not apply partial facts available for CST's sales to this reseller. Indeed, respondent argues that it is not affiliated with this reseller. CST argues that the Bozano Group is not in a position to exercise operational control over both CST and USIMINAS, and that even if USIMINAS and CST are affiliated, the Department would have to undertake a separate analysis with respect to the reseller in question. While noting that USIMINAS does control this reseller, respondent claims that there is no basis for finding that this company is affiliated with CST or that it is controlled by Bozano.

Respondent argues that the Department's questionnaire initially leaves it up to the respondent to identify affiliated parties. Respondent states that in this case, the affiliated issue was complex, involving multiple submissions from interested parties and extensive analysis by the Department. Respondent also notes that this is the first case addressing the issue of mutual control/affiliation under the new law. Because CST did not purposely deceive the Department, in respondent's view, there are no grounds for punishing CST with the application of facts available. Respondent argues that even if the Department determines that this reseller is affiliated with CST, the Department should simply perform the arm's length test. Respondent claims that sales to this reseller are not overly significant in terms of margin calculations, and that all U.S. sales that are potentially matched to sales to this customer also match sales to other home market customers. Respondent argues that downstream sales made by this reseller are to end-users, while U.S. sales and other home market sales are to distributors/resellers. Finally, respondent argues, because it does not control the reseller in question, it could not have obtained resale information from this party.

Department's Position

As noted in our response to comment 6 above, we continue to find that CST and USIMINAS are affiliated. Given that the reseller in question is 100 percent owned by USIMINAS, a separate affiliation analysis is not required. While it is true that affiliation is a new concept, since the issue of affiliation was raised early in this proceeding, respondent would have been well advised to seek guidance on its reporting of this reseller's downstream sales. Respondent did not do so.

The Department applied the arm's length test to CST's sales to its affiliated reseller. These sales failed the test. Consequently, we did not use these sales in the preliminary results. Because these sales were only a small portion of CST's reported home market sales, we did not ask CST to report sales made by the affiliated reseller to the first unaffiliated customer (downstream sales). There were sufficient remaining home market sales to match to U.S. sales for the purpose of determining the dumping margin. All the sales to the affiliated reseller had the same CONNUMH and date of sale. Without these sales we found identical matches for the same CONNUM and sale month. Omitting these sales did not have a distorting effect on the margin calculation. Therefore, we have determined for these final results that there is no need to use facts otherwise available.

Comment 8

Petitioners argue that the Department should use facts available for the difference in merchandise (difmer) adjustment. Petitioners argue that CST was required to provide variable and total cost on a product-specific basis to allow calculation of the difmer adjustment. However, petitioners state that CST only reported two sets of costs—one for high manganese products and another for low manganese products. Petitioners argue that for partial facts available, the Department should select a difmer adjustment of 20 percent of total cost of manufacturing in each case where similar (rather than identical) products are matched. *See Porcelain-on-Steel Cookware from Mexico,* 61 FR 54616, 54617 (October 21, 1996); *Certain Cold-Rolled Carbon Steel Flat Products from Korea,* 60 FR 65284, 65287 (December 19, 1995) and *Cemex, S.A.* v. *United States,* Slip Op. 96–132, at 9 (CIT August 13, 1996).

Respondent counters that the Department decided early in this

proceeding that CST's cost system was adequate for its dumping calculations. Respondent states that it submitted cost data in accordance with its existing cost accounting system. While petitioners requested that CST provide additional data, respondent notes that the Department did not ask it to do so and did not solicit CST to develop difmers outside its cost system. Respondent notes that the Department used the difmer data submitted by CST to analyze petitioners' cost allegation and argue that the Department would not have used this data unless the Department believed that CST's existing cost system and its submitted costs were useful and adequate for the purpose of this dumping proceeding. Respondent rejects petitioners' argument that it has a ''duty'' to develop a methodology to report costs that distinguish between product characteristics and claims that petitioners have failed to cite any support in the dumping law or case precedent for the proposition that this duty exists. Respondent also notes the Department's long-standing preference for the use of respondent's existing cost systems and cites *Pineapples,* in which the Department adjusted difmer costs for respondents because they were not based strictly on respondent's cost system.

Department's Position

We disagree with petitioners. Section 773(f)(1)(A) of the Act expresses the Department's preference for using a respondent's existing cost accounting system when it is in accordance with generally accepted accounting practices (GAAP) and reasonably reflects the costs associated with the production of the subject merchandise. The approach used by CST in reporting the costs of its profile slabs, the only subject merchandise it exported during the POR, reasonably reflects CST's costs. Therefore, we did not ask CST to provide more detailed information on its variable and total costs of manufacturing. The reasons for this constitute proprietary information contained in CST's Section B response of November 13, 1995, beginning at B–37. See also the Analysis Memo of March 31, 1997. We verified CST's submitted variable and total costs of manufacturing; no discrepancies were identified. There is no basis to apply partial facts available in making a difmer adjustment under these circumstances.

Comment 9

Petitioners claim that the respondent omitted an initial cost associated with foreign exchange contracts, and argue that the Department should increase the imputed credit cost for each U.S. customer using the ratio of the alleged effective interest rate to the interest rate used in the CREDITU calculation.

Respondent claims that petitioners are confusing the concepts of an exchange rate with an interest rate. Respondent states that there is no one-time fee associated with the foreign exchange contracts, and that the proper rate to be extracted from the contract is the interest rate, which is what CST used in its credit cost calculation.

Department's Position

We agree with the respondent. The rate the petitioners misinterpreted as an additional interest cost is clearly an exchange rate used to convert the value of the foreign exchange contract in dollars into local currency. See Verification Exhibit 13.

Comment 10

Petitioners claim that an adjustment must be made for quality control costs directly associated with U.S. sales and that CST failed to report any such costs. Petitioners state that ultrasonic testing is a condition of sale for U.S. sales, but not for home market sales. Petitioners argue that the Department has consistently held that where a quality control expense is a condition of sale and can be tied to a specific market or sale, it should be deducted as a selling expense. *See Oil Country Tubular Goods from Argentina,* 60 FR 33539, 33548 (June 28, 1995); *Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Japan,* 58 FR 30018, 30024 (May 25, 1993); and *Stainless Steel Sheet and Strip Products from France,* 48 FR 19441, (April 29, 1983). As partial facts available, petitioners urge the Department to use the cost identified in USIMINAS' questionnaire response in the third administrative review.

Respondent argues that the Department should not make any deductions for ultrasonic testing. Respondent claims that petitioners' allegation that ultrasonic testing is an unreported selling expense is untimely, as it is based on inferences from CST's technical protocols that were submitted much earlier in the proceeding. Respondent notes that if this argument had been made earlier, CST would have had an opportunity to rebut them in the form of verifiable submissions.

Respondent asserts that ultrasonic testing is not a direct, separately identifiable selling expense because it is a production overhead cost that is reflected in cost of goods sold. While not all of CST's technical protocols require ultrasonic testing, CST notes that all profile slab is subject to ultrasonic testing as an internal quality control measure. Respondent also denies that ultrasonic testing was a condition of sale on U.S. sales. Respondent argues that there is no indication on the mill certificates or U.S. customers' orders indicating otherwise.

Department's Position

We agree with the respondent. Neither the U.S. purchase orders nor the mill certificates include any notations concerning ultrasonic testing as a specification.

Comment 11

Petitioners claim that the Department should correct a ministerial error in the calculation of the ICMS tax on home market sales. Petitioners argue that the Department should calculate this amount on gross price, not net price.

Respondent states that ICMS is applied on net price plus freight, not gross price. Respondent argues that to attain tax neutrality the Department is calculating the ICMS tax on the home market sale as if it had been exported and that no taxes other than the reduced ICMS tax are applied to an export sale.

Department's Position

We agree with respondent. The ICMS tax is not applied to gross price. Moreover, as respondent correctly notes, no tax other than ICMS is applied to export sales.

Final Results of Review

As a result of our review, we have determined that no margin exists for Companhia Siderúrgica de Tubarão (CST) during the period 8/1/94–7/31/95. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of plate from Brazil 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 rates for the reviewed company will be zero; (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, 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 review, the cash deposit rate will be 75.54 percent. This is the ''all others'' rate from the LTFV investigation. *See Antidumping Duty Order and Amendment of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate From Brazil,* 58 FR 44164 (August 19, 1993). These 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 § 353.26 of the Department's regulations 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 a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with § 353.34(d) of the Department's regulations. Timely 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 this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: April 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

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