manufacture, the Department failed to use the recalculated GNACV and the renamed INTEXCV. (3) The Department erroneously converted PACKU into U.S. dollars twice. (4) The Department revised respondent's total cost of manufacture for CV purposes using the variable name ''TCOM.'' Subsequently, the Department failed to use the variable ''TCOM,'' using ''TOTCOMCV'' instead.

For plate: The Department revised respondent's total cost of manufacture for CV purposes using the variable name TCOM. However, when the Department recalculated CV profit and total CV, the Department failed to use the variable name TCOM, using ''TOTCOMCV'' instead.

Department's Position: We agree with petitioners and have made the appropriate modifications to the Department's margin calculation programs. *See Stelco's Final Results Analysis Memorandum for Corrosion-Resistant Products,* pp. 3 and 4 and *Stelco's Final Results Analysis Memorandum for Plate,* pg. 3.

Final Results of Review

As a result of our review, we determine the dumping margin (in percent) for the period August 1, 1995, through July 31, 1996 to be as follows:

Manufacturer/exporter	Margin (percent)
Corrosion-Resistant Steel:	
Dofasco	0.72
CCC	0.54
Stelco	3.48
Cut-to-Length Plate:	
Algoma	[1] 0.44
MRM	0.00
Stelco	[1] 0.23

[1] *Deminimis.*

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

Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates stated above; (2) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate made effective by the final results of the 1994–1995 administrative review of this order (*See* Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews 62 FR 18448 (April 15, 1997)). As noted in those final results, these rates are the ''all others'' rates from the relevant LTFV investigations which were 18.71 percent for corrosion-resistant steel products and 61.88 percent for plate (See Final Determination, 60 FR 49582 (September 26, 1995)). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

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(c)(5).

Dated: March 9, 1998.

Robert S. LaRussa

Assistant Secretary for Import Administration

[FR Doc. 98–6689 Filed 3–13–98; 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 September 9, 1997, 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 collapsed entity which was a manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), August 1, 1995, through July 31, 1996. 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: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Samantha Denenberg or Linda Ludwig, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0414 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1993, the Department published in the **Federal Register** (58 FR 37091) the final affirmative antidumping duty determination on Certain Cut-to-Length Carbon Steel Plate from Brazil. We published an antidumping duty order on August 19, 1993 (58 FR 44164). On September 9, 1997, the Department published in the **Federal Register** (62 FR 47436) the preliminary results of the administrative review (*Preliminary Results*) of the antidumping duty order on Certain Cut-

to-Length Carbon Steel Plate from Brazil. On December 24, 1997, we published in the **Federal Register** (62 FR 67345) an extension of the time limit (*Extension of Time Limit*) for conducting this review. 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 Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations as codified at 19 CFR part 353, as they existed on April 1, 1996.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 1998 WL 3626 (Fed.Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See Section* 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Investigation'' section of this notice, below, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

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.

The POR is August 1, 1995, through July 31, 1996. This review covers entries of certain cut-to-length carbon steel plate by Usinas Siderurgicas de Minas Gerais (''USIMINAS'') and Companhia Siderurgica Paulista (''COSIPA''). These two producers/exporters have been collapsed (''USIMINAS/COSIPA'') and are being treated as one entity for the purpose of this review.

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 (USIMINAS/COSIPA) 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). Based upon our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

Comment 1: Respondent objects to the fact that, in the preliminary determination, the Department did not deduct PIS and COFINS taxes from normal value, arguing that while the Department did not state its reason for denying this adjustment, neither of the reasons it can conceive of is a valid reason for doing so. USIMINAS/COSIPA states that the relevant statutory provision, 19 U.S.C. 1677b(a)(6)(B)(iii), calls for the Department to reduce the starting prices for normal value by the amount of home market taxes which meet three criteria: (1) they are ''directly imposed'' on the foreign like product or components thereof, (2) they are rebated or not collected on the subject merchandise, and (3) they are added to or included in the price of the foreign like product. Because the second requirement has never been an issue in any case involving PIS and COFINS, USIMINAS/COSIPA state, the Department could only refuse to make this adjustment due to concerns as to whether these taxes were ''directly imposed'' or ''included in the price'' of the merchandise used to determine normal value.

With respect to the ''directly imposed'' prong, USIMINAS/COSIPA notes that in *Silicon Metal from Brazil*, 62 FR 1954, 1968 (Jan. 14, 1997), the Department declined to deduct PIS and COFINS from home market prices on the grounds that because these taxes are ''gross revenue taxes'' they are not ''directly imposed.'' Respondent notes that, prior to the determination in *Silicon Metal from Brazil*, the Department had a long history of finding that these taxes *were* ''directly imposed.'' Further, respondent argues that the Department's reliance in that case upon the precedent in *Silicon Metal from Argentina*, 56 FR 37891, 37893 (Aug. 9, 1991), for the principle that gross revenue taxes cannot be ''directly imposed'' is misplaced for three reasons. First, the Argentine tax at issue is distinguishable from the PIS

and COFINS taxes. Second, the Argentine notice cites another Brazilian case (in which PIS and the predecessor of COFINS were adjusted for) as an example of circumstances in which it *would* adjust for taxes. Third, respondent argues that, although these taxes are not itemized on the invoices, from the standpoint of mathematics, accounting and public finance there is no difference between a tax imposed on an invoice-specific basis and one imposed on an aggregate basis when the same rate is applied to both.

With respect to the ''included in home market price'' prong, USIMINAS/COSIPA argues that the Department's determinations prior to January of 1997 support the position that these taxes are included in home market price, and that the Department has long held that it may, under the dumping law, presume that a company includes the full amount of home market taxes in its home market price and thus passes the tax through to its home market customers. USIMINAS/COSIPA notes that the Department has made no finding in this review that such tax pass-through does not occur, and has not raised this issue in the course of the review. On February 18, 1998, USIMINAS/COSIPA submitted further tax legislation, court documentation, and fuller translation of previously submitted documents, as requested by the Department.

Petitioners argue that the Department correctly did not deduct PIS and COFINS taxes from the home market prices in calculating normal value, claiming that they are not ''directly imposed'' on the foreign like product because they are calculated on all of the gross monthly receipts of USIMINAS/COFINS. They note that in three recent final determinations regarding Brazilian products the Department did not deduct PIS and COFINS taxes from home market price. *Silicon Metal from Brazil*, 62 FR 1954, 1968 (1992–1993 review) (Sept. 5, 1996); *Silicon Metal from Brazil*, 62 FR 1983 (1993–1994 review) (January 14, 1997); and *Ferrosilicon from Brazil*, 62 FR 43,504, 43,508 (Aug. 14, 1997). Thus, petitioners argue that respondent's reliance on earlier cases is unwarranted, because it is clear that the Department now recognizes that taxes that are levied on gross revenues, rather than solely on a company's sales, are not ''directly imposed'' on home market sales. For example, they point out that the Brazilian law in effect during the period of review stated that PIS is to be imposed on financial revenue as well as sales revenue. Finally, petitioners state that the statutory language on tax deductions is clear and that respondent was given adequate opportunity to comment on this approach in their case briefs by virtue of the Department's position in *Silicon Metal from Brazil* and by the position taken in the preliminary determination in this case.

At the request of the Department, the petitioners commented further on this issue in response to USIMINAS/COSIPA's February 18, 1998 PIS/COFINS submission. Petitioners reiterate that the Department should not adjust for PIS and COFINS taxes because, they claim, these taxes are not directly imposed on the subject merchandise and are not consumption taxes. Petitioners recall the basis upon which the PIS and COFINS taxes are levied, highlighting that both are gross revenue taxes. Petitioners state that as a consequence, the PIS and COFINS taxes are not imposed directly on the foreign like merchandise. Petitioners also note that the Department very recently reaffirmed in the 1995–1996 review of *Silicon Metal from Brazil* that these taxes cannot be tied directly to sales and therefore do not qualify for an adjustment. *See Final results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*, 63 FR 6899, 6910 (Feb. 11, 1998). Petitioners continue to rely on section 773(a)(6)(B)(iii) of the Act and the SAA at pg. 827–828 (discussing the requirement that taxes be directly imposed on the subject merchandise and referring to ''consumption taxes''). Petitioners cite the Department's determination in the 1993–1994 review of *Silicon Metal from Brazil*, 62 FR 1954, 1968 (Jan. 14, 1997) for the proposition that PIS and COFINS are not ''consumption taxes,'' arguing that the Court of Appeals for The Federal Circuit has defined ''indirect taxes'' as ''consumption taxes'' in *United States* v. *Zenith Radio Corp.*, 562 F.2d 1209, 1233 n.20 (1997).

Department's Position: As in the most recent review of *Silicon Metal from Brazil*, the Department has determined that a deduction of the PIS and COFINS taxes is not correct in the calculation of NV. Commerce has determined that since these taxes are levied on total revenues, except for export revenues, the taxes are direct taxes and thus akin to taxes on profit or wages. Since the Department has determined these taxes are not indirect taxes, there is no basis to deduct them in the calculation of NV, according to section 773(a)(6)(B)(iii) of the Act. The Department finds that it is not the sale of the merchandise that is being taxed but rather USIMINAS/COSIPA's revenue, and as such, the PIS and COFINS taxes should not be adjusted for in the calculation of normal value.

Comment 2: USIMINAS contends that the Department failed to deduct one component of its home market movement expenses from the gross home market price. Both USIMINAS and COSIPA originally included an extra letter in the Department's computer code variable for inland freight. In its post-verification submission, COSIPA conformed its field name to the one used by the Department. Thus, the Department's SAS program correctly deducted the inland freight expense for COSIPA because it corresponded to the Department's field name.

USIMINAS also used the incorrect variable name in its submissions. However, unlike COSIPA, USIMINAS did not change the variable name of this field in its post-verification submission. Consequently, the Department failed to deduct USIMINAS'' home market freight expense. USIMINAS urges the Department to revise its computer program so that inland freight expenses are deducted from the gross home market price.

Department's Position: We agree with USIMINAS and have revised the computer program so that USIMINAS'' home market inland freight expense is deducted from the gross unit price in these final results.

Comment 3: USIMINAS believes that the Department incorrectly deducted related party commissions from the U.S. price. Based on USIMINAS'' relationship with its wholly-owned subsidiary, USIMINAS Overseas, the nature of the commissions, and the Department's treatment of intracompany commissions, USIMINAS believes that the Department's decision to deduct these commissions was incorrect.

USIMINAS notes that the Department has a long-standing practice of not deducting commissions to related parties. Pursuant to the Federal Circuit's decision in *LMI-La Metalli Industriale v.* United States (''LMI''), 912 F. 2d 455 (Fed. Cir. 1990), the Department will only make an adjustment for related party commissions when it is demonstrated that (1) the commissions are arm's length, and (2) they are directly related the underlying sale (*see Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Finland (''Grounwood Paper''),* 56 FR 56363, 56372 (Nov. 4, 1991)).

USIMINAS cites two cases in support of its contention that, absent a demonstration to the contrary, the Department presumes that related party commissions are not at arm's length (*see Outokumpu Copper* v. *United States*, 850 Supp. 16, 22 (CIT 1994) and *Brass*

Sheet and Strip from the Netherlands, 61 FR 1324, 1326 (Jan. 19, 1996)).

USIMINAS suggests that the Department's preliminary determination to deduct these commissions was incorrect because (1) there were no allegations by petitioners that the commissions to USIMINAS Overseas were directly related or made at arm's length; (2) there are no bench mark commissions to compare to the commissions granted to USIMINAS Overseas, and (3) the record demonstrates that the commissions are not directly related to sales.

Petitioners rebut USIMINAS'' claim that related party commissions should not be deducted from U.S. price. Petitioners state that documentation presented in USIMINAS'' response to the Department's questionnaire and the method by which the commissions were calculated clearly suggest that commissions to USIMINAS Overseas were directly related to sales. Petitioners further argue that the commissions were arm's-length transactions, relying upon the holding in *LMI* that a commission is at arm's length if the recipient is a bona fide sales agent. Petitioners state that the Department's practice is to consider the totality of the circumstances surrounding the commission in order to determine whether or not the recipient is considered a bona fide agent (*see Groundwood Paper* at 56372). Petitioners note that it is the Department's practice to analyze contracts and agreements between producers and affiliated agents. An analysis of the proprietary contract presented to the Department and USIMINAS'' narrative response to the Department's supplemental questions cause petitioners note that USIMINAS Overseas has contracted to and assumed multiple duties in connection with USIMINAS sales. See USIMINAS A/B/C Response to the Department's Second Supplemental Questionnaire (May 30, 1997), Exh. 15 at 1–2 and narrative at 18–19 (APO Version)). In addition, information received at the sales verification adds to the list of responsibilities taken on by USIMINAS Overseas (see USIMINAS Sales Verification Report at 3–5).

Department's Position: We agree with the respondent. Further analysis of the related party commission confirms that it should be classified as an intracompany transfer of funds. Due to the proprietary nature of the contractual arrangements between USIMINAS and USIMINAS Overseas, see Final Analysis Memorandum of March 9, 1998, for further discussion of the Department's rationale with respect to this issue.

Comment 4: The petitioners claim that the respondent improperly reported home market credit expense for the following reasons: first, USIMINAS/COSIPA used a tax-inclusive gross unit price as the basis for its submitted credit calculation; second, USIMINAS/COSIPA made two improper adjustments to the short-term interest rate reported.

The petitioners note that the Department's longstanding practice is to exclude taxes from the basis of the home market imputed credit expense calculation. They cite the final results of the previous review in support of their position (*see, Certain Cut-to-Length Carbon Steel Plate from Brazil; Final Results of Antidumping Duty Administrative Review,* 62 FR 18486, 18488 (April 15, 1997)). The petitioners request that the Department follow its longstanding practice in this review, and recalculate home market imputed credit expense, deducting IPI, ICMS, PIS, and COFINS taxes from the home market gross unit price before using it as the basis for this calculation.

The petitioners also maintain that, in calculating home market credit expense, USIMINAS/COSIPA incorrectly changed the rate actually received from the bank two times. According to petitioners, by failing to explain how or why it changed the nominal rate to the discount rate, USIMINAS/COSIPA has not met its burden of demonstrating why the adjustment embodied in the credit calculation USIMINAS/COSIPA submitted should be allowed. Accordingly, the petitioners urge the Department to reject this adjustment.

The petitioners conclude that the respondent's distortion of the discount rate requires the Department to use an alternative: the ''taxa referential'' (TR). The petitioners note that this short-term lending rate is a benchmark similar to the prime rate and was used in the last administrative review of this proceeding. Therefore, the petitioners conclude that the Department should use the TR to calculate home market credit expenses. However, if the Department decides not to use the TR, the petitioners maintain that it should at least utilize the nominal rate during the month of the U.S. sale to calculate home market credit expenses.

Regarding the use of gross price inclusive of taxes in calculating imputed credit costs, respondent disagrees with petitioners. USIMINAS/COSIPA points to *Stainless Steel Angles From Japan,* 60 F.R. 16608 (March 31, 1995) as evidence that the Department has previously calculated imputed credit costs using a tax inclusive gross price. USIMINAS/COSIPA states that the Department was incorrect in the previous review of this case when it dismissed the relevance of the Japanese case (see Certain Cut-to-Length Carbon Steel Plate from Brazil, 62 FR 18486, 18487–88 (April 15, 1997)). In the previous review, the Department found that imputed credit costs should be calculated on net price, not gross price. USIMINAS/COSIPA maintains that there is no complication in this review in recognizing that the seller is extending payment terms for both the underlying goods, and for tax liability associated with the sale.

USIMINAS/COSIPA also objects to the petitioners' comments on procedural grounds because they waited a year to object to USIMINAS/COSIPA's credit methodology and it is too late in the proceeding for the Department to accept alternative credit costs calculations.

Concerning the petitioners' complaint that USIMINAS/COSIPA used an overstated interest rate in its home market imputed credit costs calculations, USIMINAS/COSIPA contends that the petitioners fail to understand the distinctions between a conventional loan and discounting receivables. However, USIMINAS/COSIPA agrees with petitioners that it used incorrect interest rates to the extent that there is no justification for adjusting the interest rate twice to derive an effective rate from a nominal rate. Therefore, USIMINAS/COSIPA suggests that the Department revise imputed credit costs and, if necessary, inventory carrying costs, using USIMINAS/COSIPA's actual borrowing experience during the POR, and not the TR, as proposed by the petitioners.

Department's Position: The Department agrees with petitioners that imputed credit expense should be calculated on the basis of a price net of taxes, rather than a gross price basis. The Department has found previously in several cases that it is impossible for it to determine the opportunity cost of every expense for each sale reported. For example, in the *Final Determination of Sales at Less than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the United Kingdom,* 58 FR 3235 (Jan. 8, 1993), Commerce determined that ''[w]hile there may be an opportunity cost associated with the prepayment of [taxes], that 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 is also an opportunity cost (or gain).

Thus, to allow the type of adjustment suggested by respondent would imply that in the future the Department would be faced with the impossible task of trying to determine the opportunity cost (or gain) of every freight charge, rebate and selling expense for each sale reported in a respondent's database. In order to make a price-to-price comparison, this exercise would make our calculations inordinately complicated, placing an unreasonable and onerous burden on both respondents and the Department.'' *See also Final Determination of Sales at Less than Fair Value: Steel Wire Rope from Korea,* 58 FR 11029, 11032 (Feb. 23, 1993); *Ferrosilicon From Brazil: Final Results of Antidumping Duty Administrative Review,* 61 FR 59407, 59410 (Nov. 22, 1996); *Certain Cut-to-Length Carbon Steel Plate From Brazil: Final Results of Antidumping Duty Adminstrative Review,* 62 FR 18486, 18487 (Apr. 15, 1997)).

The respondent's reliance on *Stainless Steel Angles from Japan* is not on point. As the Department found in the previous review of this case, ''[t]he 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' (*see Certain Cut-to-Length Carbon Steel Plate from Brazil,* 62 FR 18486 (Apr. 15, 1997)).

For these final results, we have recalculated credit expense and used a price net of taxes for the basis of the recalculation. *See Final Analysis Memorandum* of March 9, 1998.

With respect to the selection of interest rates for use in calculating credit expense, the Department agrees with petitioners that the nominal rate should be used. The Department does not have information on the record of this proceeding with respect to nominal rates for each week of the POR. However, such information was not requested by the Department. Accordingly, on the basis of the facts available, we are using the weekly nominal rates for the weeks for which such information is on the record. For all other weeks, we are using the simple average of the available weekly nominal rates. Because the Department finds that USIMINAS/COSIPA has acted to the best of its ability in providing information relating to credit expenses, we are not making an adverse inference. *See Final Analysis Memorandum* of March 9, 1998. Because we are eliminating the adjustments to the interest rate in question and instead are using the nominal rates, we have not used the ''taxa referential'' are suggested by petitioners.

Comment 5: The petitioners object to USIMINAS/COSIPA's use of all plate products, including non-subject merchandise, in calculating its home market inventory carrying costs. The petitioners state that any inventory expenses associated with non-subject merchandise ''may not be used in calculating deductions of expenses from FMV for in-scope merchandise'' (*NSK Ltd.* v. *United States,* 896 F.Supp. 1236, 1272 (CIT, 1995) *aff'd in relevant part* 115 F. 3d 965, 973 (Fed. Cir. 1997). The petitioners conclude that if the respondent could not develop a viable method to separate inventory carrying costs of subject merchandise from non-subject merchandise, the Department must deny the adjustment altogether. Petitioners close by stating that if the Department decides to allow the inventory carrying cost adjustment, the Department should recalculate the cost using the ''taxa referential'' instead of the discount rate.

In response, USIMINAS/COSIPA characterizes the inventory carrying cost adjustment as irrelevant in this review because there are no U.S. commissions and, therefore, no need to calculate a commission offset which would include inventory carrying costs.

Nevertheless, assuming arguendo that the inventory cost adjustment is relevant, USIMINAS/COSIPA states that the petitioners have confused ''selling out of inventory'' and ''having an inventory.'' ''Selling out of inventory,'' from USIMINAS/COSIPA's viewpoint, is based on a decision by a producer to manufacture and inventory products without a specific customer request for the products. COSIPA and USIMINAS contend that having an inventory is a natural consequence of selling to order for several reasons: (1) export shipments are often held until the entire order is produced; (2) overruns, a natural consequence in steel production, are inventoried; (3) materials are held at distribution warehouses.

Finally, USIMINAS/COSIPA urges the Department to reject the petitioners' suggestion that the Department deny this adjustment altogether.

Department's Position: As the Department has determined that there were no U.S. commissions, there is no need to consider how inventory carrying costs might affect a commission offset in this case.

Comment 6: The petitioners state that the COSIPA verification team found that the IPI tax, an indirect home market tax of 5% of the gross unit price, was incorrectly reported for February through April 1995. However, the petitioners claim that USIMINAS/COSIPA did not submit the correct values in a revised database, as instructed by the Department. Since the Department may deduct taxes from normal value ''only to the extent that such taxes are added to or included in the price of the foreign like product'' pursuant to 19 U.S.C. 1677b(a) (6) (B) (iii), the petitioners urge the Department to recalculate the IPI tax to reflect the correct amount of 5% of the gross unit price.

USIMINAS/COSIPA counters that the petitioners' comments are based on a confused understanding of how IPI is calculated and how it is presented on COSIPA's sales listing. USIMINAS/COSIPA states that petitioners' proposal that the Department divide the IPI adjustment in the sales listing by the gross price in the sales listing fails to account for: (1) the need to adjust the IPI base for the ICMS rate, and (2) the fact that the IPI base is not net of discounts. The respondent concludes that the Department should reject petitioners' comments with respect to the IPI because COSIPA'S IPI adjustments are correct in its post-verification sales listing.

Department's Position: We agree with the respondent. At the start of COSIPA's verification, the respondent presented the Department officials with a list of corrections (see COSIPA Sales Verification Report, Exhibit 1). The list of corrections makes a brief mention of miscalculated IPI taxes. This correction was not directed at COSIPA's sales database. Rather, this correction was directed toward Exhibit 23 of respondent's April 10, 1997 Supplemental Questionnaire Response, wherein COSIPA misreported the monthly payments of IPI tax for the months of February through April of 1995. In an effort to provide accurate information to the Department, COSIPA sought to correct this mistake in the questionnaire response at the beginning of verification. No change was made to the IPI tax field as reported in the pre-verification sales tape because this tax field was never incorrect. As further proof of this point, Department officials verified the IPI tax reported from an invoice dated during the February—April period (see COSIPA Verification Exhibit 7).

Comment 7: The petitioners maintain that the Department must disallow COSIPA's claimed warranty expenses because they represent credits to customers for a defective product or a price adjustment. According to petitioners, COSIPA had the burden of demonstrating which ''warranty''

expenses related to quality problems and which related to price adjustments. Since COSIPA could not directly relate the post-sale price adjustments (''PSPAs'') to specific transactions, the petitioners believe the Department should disallow COSIPA's claimed ''warranty'' expense. The petitioners argue that since the reported ''warranty'' expense included post-sale price adjustments, COSIPA's warranty claim should be rejected because while warranty expenses may be allocated, petitioners argue that post-sale price adjustments may not be allocated. Petitioners cite *Torrington Co.* v. *United States (''Torrington''),* 82 F.3d 1039, 1050 (Fed. Cir. 1996) and *Timken Company* v. *United States,* 930 F. Supp. 621, 632 (Ct. Int'l Trade 1996).

The respondent states that the Department should dismiss petitioners' comments because they are tardy, and mischaracterize the law and Departmental practice. The respondent notes that the petitioners have waited until the record is effectively closed and verification has been completed to attack COSIPA's warranty expense and urge the Department to reject this adjustment. The respondent requests the Department to discourage such tactics and reject petitioners' comments on procedural grounds.

The respondent also challenges petitioners' statement that PSPAs may not be based on allocations. The respondent maintains that the petitioners' cite to the Federal Circuit's holding in *Torrington* in support of their position ignores the Department's application of the *Torrington* holding in recent investigations. The respondent notes that in a final results of *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, Final Results of Antidumping Duty Administrative Reviews and Termination in Part (''Tapered Roller Bearings''),* 62 FR 11825 (March 13, 1997), the Department rejected the petitioners' interpretation of *Torrington* and stated that it would accept adjustments for PSPAs based on allocation if : (1) The respondent acted to the best of its ability to report the adjustment in the most specific manner, and (2) the allocation methodology was not unreasonably distortive. Moreover, the respondent states that the final antidumping regulations published on May 19, 1997, specifically permit allocations for price adjustments (62 FR 27296, 27410 (section 351.401(g)).

In addition, the respondent states that the Department verified that COSIPA's warranty calculation was based on the most specific allocation permitted, given COSIPA's record-keeping system and the Department did not perceive any distortions in COSIPA's adjustment (*see* COSIPA's Sales Verification Report at 16). The respondent concludes that the Department was correct to allow COSIPA's warranty adjustment in its preliminary results and should continue to do so in the final results.

Department's Position: We agree with the respondent. At verification, the Department officials found that COSIPA was unable to link credit notes to specific *notas fiscais* (invoices). Therefore, COSIPA could not link the credit notes to the specific sales of merchandise, nor discriminate between warranties and post-sale price adjustments. We found COSIPA's methodology to be reasonable. In the *Tapered Roller Bearings* case cited by respondents, the Department allowed adjustment for post-sale price adjustments that had been allocated, provided that it was not feasible for the respondent to report the adjustment on a more specific basis, and provided that the allocation methodology was not distortive. Department officials verified that these adjustments could not be more specifically reported and also verified the allocation methodology for COSIPA. We do not find it to be distortive. Thus, allowance of COSIPA's PSPAs is consistent with the Department's practice (see section 351.401(g) of the Department's new regulations (62 FR 27296, May 19, 1997).

Comment 8: USIMINAS/COSIPA challenges the Department's exclusion of inter-company transactions between USIMINAS and COSIPA from the denominator in the calculation of the cost of goods sold of USIMINAS. Respondent points out that this adjustment is irrelevant for purposes of the consolidated financial expense ratio, but increases the consolidated G&A ratio. First, USIMINAS/COSIPA maintains that the exclusion of inter-company sales is unfounded from an accounting and economic perspective. In USIMINAS/COSIPA's view, if the manufacture and sale of a category of products generates any of the expenses in the numerator, like other sales, there is no justification for excluding that category from the denominator. USIMINAS/COSIPA argues that its accounting department must perform its services regardless of whether the product is manufactured for sale t o an unaffiliated distributor, an affiliated distributor, or to COSIPA. USIMINAS/COSIPA conjectures that the Department's concern with including sales to COSIPA may be based on a suspicion that these sales are not normal. However, USIMINAS/COSIPA notes that the denominator of the G&A ratio is the cost of goods sold which is incurred regardless of the ultimate destination of the product. Therefore, according to USIMINAS/COSIPA, there is no basis for the exclusion from the cost of goods sold, of the costs associated with sales of products by USIMINAS to COSIPA.

Secondly, USIMINAS/COSIPA maintains that the Department currently requests the respondent to calculate financial ratios on a consolidated basis, while the Department's questionnaire requires respondents to calculate G&A ratios on a non-consolidated basis (*see* the Department's September 19, 1996 Questionnaire at D–21–22). USIMINAS/COSIPA supports the calculation of the G&A ratio on a non-consolidated basis, stating that according to Department practice, neither the numerator nor the denominator in the G&A ratio calculation should be adjusted for the effects of any consolidation.

Petitioners state that the Department was correct in deducting costs associated with inter-company transactions from cost of goods sold. Petitioners state that since the Department has declared USIMINAS and COSIPA to be affiliated and collapsed them into one entity for the purposes of this review, their costs must be treated as if they were consolidated. Therefore, petitioners state that the deduction of costs associated with inter-company transactions is necessary in order to avoid double-counting. Petitioners cite *Certain Corrosion-Resistant Carbon Steel Plate From Canada,* 62 FR 18464 (Apr. 15, 1997) as evidence of precedent for the Department's decision.

Department's Position: We agree with petitioners. As indicated in the preliminary results of this review, we have treated USIMINAS and COSIPA as a collapsed, single entity for purposes of our antidumping analysis. *Preliminary Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Brazil,* 62 FR 47436 (Sept. 9, 1997). We have determined that USIMINAS/COSIPA should be considered a single producer of certain cut-to-length carbon steel plate.

The decision to treat affiliated parties as a single entity necessitates that transactions between such parties also be viewed in terms of a single, consolidated whole. The Department has determined it would be inappropriate to combine the cost of goods sold by USIMINAS and COSIPA without adjustment, because this would

recognize income/expenses which would not be recognized in the context of consolidation. When treating companies as consolidated, the Department eliminates profits/losses from intercompany transactions in order to recognize profits/losses from transactions only with unaffiliated companies. For the final results, therefore, the Department has eliminated intercompany transactions from the calculation of cost of sales.

Comment 9: USIMINAS notes that in reformulating financial expenses for USIMINAS and COSIPA, the Department did not deduct financial expenses associated with exports or home market sales from total financial expenses. Since the Department found the financial expenses of both parties to be de minimis, this error is irrelevant. However, USIMINAS/COSIPA requests that in the event the Department revises its financial expense calculations, and in the event constructed value comparisons are used, the Department ensure that it includes these deductions from financial expenses for purposes of any comparison of U.S. price to constructed value.

Petitioners state that the Department correctly omitted from its financial expense recalculation amounts for ''Excluded Export Expenses'' and ''Excluded Financial Expenses on Sales''. Petitioners cite *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders,* 60 FR 10900 (Feb. 28, 1995), as illustration of the Department's practice in this matter.

Department's Position: This issue is moot because we continue to find the financial expense rate to be de minimis. However, we disagree with respondent. The Department's normal practice is to compute the actual net financial expenses of the entire company in arriving at the financial expense ratio used in constructed value. The statute directs Commerce to calculate selling, general and administrative costs, including interest expenses, based on the actual experience of the company. See section 773(b)(3)(B) and section 773(e)(2)(A) of the Act of 1930, as amended.

Comment 10: The petitioners maintain that under section 773(f)(2) and (3) of the Tariff Act, major inputs purchased from affiliated parties must be valued at the highest of market value, transfer price, and the affiliate's cost of production (COP). The petitioners note that the respondent failed to report the cost of iron ore provided by Companhia Vale do Rio Doce (CVRD), an affiliate of USIMINAS. Further, they state that CVRD declined to release the cost of production information because they claimed it was business proprietary information, regardless of whether or not they were affiliated with USIMINAS.

The petitioners state that this same situation existed in the recent 1994–1995 review of *Silicomanganese from Brazil; Final Results of Antidumping Duty Administrative Review (''Silicomanganese from Brazil''),* 62 FR 37869 (July 15, 1997). According to petitioners, in that case the Department rejected CVRD's argument that the information was confidential, noting that the information could have been submitted directly to the Department. According to petitioners, in *Silicomanganese from Brazil,* the Department also rejected CVRD's and USIMINAS' argument that the profits reported by these parties proved that they were not transferring major inputs to affiliated parties at below-cost prices. The Department stated that the record showed that the company earned an overall profit, but did not establish that specific products were sold above cost to affiliated parties.

The petitioners note that, in *Silicomanganese from Brazil,* CVRD's and USIMINAS/COSIPA's refusal to provide COP data led the Department to apply adverse facts available with respect to the major input in question. Petitioners argue that the Department should also apply adverse facts available in this case.

The petitioners contend that the conditions required by section 776(a) of the statute for the application of facts available have been met. Specifically, petitioners claim that CVRD's refusal to provide the requested information on two occasions (*i.e.*, in its response to the Department's initial questionnaire and in the supplemental questionnaire) is imputable to the respondent, and that, thus, respondent has ''withheld information'' within the meaning of section 776(a)(2)(A). Moreover, the petitioners state that under section 782(d) of the Tariff Act, once notice of a deficiency is provided and the response is unsatisfactory, the Department may reject all or part of a respondent's original and subsequent responses subject to the provisions of section 782(e), which outlines the five criteria under which the Department cannot decline to consider submitted information. In the petitioners' view, CVRD and the respondent failed to comply with one of the criteria when they repeatedly failed to supply the necessary COP data in response to the Department's requests for information. For this reason, the petitioners urge the Department to apply adverse facts available.

The respondent rejects these arguments, stating that petitioners' analysis is flawed by misinterpretation of the statute and a misplaced reliance on the Department's recent decision in *Silicomanganese from Brazil,* 62 FR 37869 (July 15, 1997). The respondent maintains that the petitioners fail to recognize that application of the major input provision requires ''reasonable grounds'' to believe that an input is being supplied at below cost prices. 19 U.S.C. 1677b(F)(3). The respondent states that the Department verified that the CVRD prices for iron ore were above prices from unaffiliated suppliers and that CVRD was a highly profitable company. According to USIMINAS/COSIPA, this provides the Department with reasonable grounds to conclude that CVRD was selling iron ore to the respondent at prices above its costs and above market prices.

Respondent argues that the major input provision includes a ''reasonable grounds'' requirement identical to the clause that requires petitioners to submit information that provides sufficient ''reasonable grounds'' to initiate a below cost investigation. The respondent states that the petitioners did not even attempt to submit information to establish reasonable grounds to believe that CVRD sold to USIMINAS or COSIPA at below-cost prices in this proceeding and, therefore, they are not positioned to argue that the Department should have invoked its authority under the major inputs provision. Thus, the respondent states that the record supports the conclusion that there is no reason to suspect that CVRD is providing iron ore at prices below its COP, and below market price.

In addition, the respondent claims that the petitioners incorrectly state that the Department ''must'' use the highest of market value, transfer price, and cost of production. In the respondent's opinion, the Department's authority under the major input provision is discretionary because the statute states plainly that even if there are reasonable grounds to believe that below cost sales of a major input exist, the Department ''may'' seek an affiliated suppliers' COP for major inputs and use that value in lieu of transfer prices for the inputs at issue.

Department's Position: We agree, in part, with both the petitioners and respondent. Pursuant to sections 773(f)(2) and (3) of the Act, the

Department may value major inputs purchased from affiliated suppliers at the higher of market value, transfer price or the affiliated supplier's cost of production. In the Department's original questionnaire, supplemental questionnaires and at verification, officials requested CVRD's cost of production information for iron ore, which is a major input in carbon steel plate.

USIMINAS/COSIPA argues that the petitioners did not provide ''reasonable grounds'' for the Department to invoke the major input rule and therefore to seek cost information on this input. However, it is the Department's position that a separate sales-below-cost allegation need not always be filed and accepted before we can investigate whether prices of major inputs purchased from affiliated suppliers were below COP. Specifically, in those instances in which we conduct an investigation of sales below cost under section 773(b) of the Act, it is our practice to analyze production-cost data for major inputs purchased by a respondent from its affiliated suppliers (*see, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 37871 (Apr. 15, 1997)). In such situations, the ''reasonable grounds'' provision of section 773(f)(3) of the Act is met by the evidence on record that the respondent may be selling below cost in the home market, since this may be linked to major inputs obtained at below cost transfer prices from affiliated parties. Because a COP investigation was properly initiated with respect to USIMINAS/COSIPA in this review, Commerce properly requested that USIMINAS/COSIPA provide cost of production data for the iron ore it obtains from its affiliate CVRD.

Of the three elements which may be compared in determining the value of major inputs supplied by affiliates (transfer price, market value and cost of production), USIMINAS/COSIPA provided the transfer price of iron ore from CVRD to USIMINAS/COSIPA in its submissions. In addition, at verification, the respondent provided market price data from unaffiliated iron ore suppliers. In most instances, the market price was much lower than the transfer price from the affiliated supplier.

The Department has determined that USIMINAS/COSIPA did attempt to obtain cost of production information from its affiliate, CVRD, and otherwise complied with the Department's information requests. Further, the Department has determined that, due to the nature of its affiliation with CVRD, USIMINAS/COSIPA could not compel CVRD to provide such information to the Department. Thus, the Department will not impute CVRD's refusal to provide the requested cost information to USIMINAS/COSIPA. In *Silicomanganese from Brazil,* the Department determined that USIMINAS and CVRD, which together wholly owned the respondent Ferro Ligas Group, were to be considered ''interested parties'' to the case. Given these facts, the Department held that the burden of supplying information to the Department fell not only to the wholly owned subsidiary, but also to these ''parent'' companies. The Department stated, ''[b]ecause the Department requires such data and because the business of the parent entity is clearly affected by its ability to ensure that its subsidiary avoids or lessens the effect of antidumping duties on U.S. sales, the consolidated or parent entity must be considered an ''interested party'' for purposes of responding to requests for information.'' The current proceeding is distinguished from *Silicomanganese from Brazil* by the degree of ownership involved. Public data on the record of the current proceeding indicates that CVRD holds only 15 percent of USIMINAS' stock, and CVRD's interest in USIMINAS constitutes only a small portion of CVRD's total operation. Thus, USIMINAS/COSIPA could not compel CVRD to supply its cost of production information, nor is CVRD an interested party as in *Silicomanganese from Brazil.* Instead, CVRD holds only a minor interest in USIMINAS. *See Roller Chain, Other Than Bicycle, From Japan: Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review,* 62 FR 60472 (Nov. 10, 1997), in which the Department determined that a respondent could not compel an affiliate to supply downstream sales information due to similar ownership circumstances. Adding to the difficulty faced by USIMINAS/COSIPA in obtaining CVRD's cost information was the fact that CVRD was in the process of privatization throughout most of this review. Some aspects of the privatization may have prevented CVRD from releasing cost information even to the Department, let alone to USIMINAS/COSIPA. In addition, USIMINAS' major competitor in Brazil, CSN, was part of the group involved in the privatization of CVRD.

Finally, as the petitioners point out, the fact that USIMINAS/COSIPA submitted the profitable financial statements of CVRD at verification does not negate the possibility that CVRD was selling major inputs to USIMINAS and COSIPA at prices below CVRD's cost of production (*see Silicomanganese from Brazil*). However, at verification, Department officials noted that CVRD's metals mining line of business appeared to be profitable. We note that, while not dispositive, the fact that not only CVRD as a whole, but also its metals mining division, were profitable during the period during which USIMINAS/COSIPA purchased iron ore from CVRD, constitutes some evidence that CVRD's sales of iron ore to the respondent likely were at above-cost levels.

Because USIMINAS/COSIPA did not provide CVRD's cost of production data, the Department has made a determination with respect to the appropriate value for iron ore on the basis of the facts available. Because the Department finds that USIMINAS/COSIPA has acted to the best of its ability in attempting to obtain the CVRD cost data, however, we will not make an adverse assumption in selecting from the facts available. Therefore, because the transfer prices for iron ore are generally higher than the market prices for iron ore, and because the record contains no indication that the cost of production of the iron ore would be higher than the transfer prices for that input, we are using the reported transfer prices for this major input as facts available in these final results. Therefore, we made no changes to the major input calculations employed in the preliminary determination, which were also based on the use of transfer prices.

Final Results of Review

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

Manufacturer/exporter	Time period	Margin (percent)
USIMINAS/COSIPA	8/1/95–7/31/96	11.54

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.

We will calculate importer-specific duty assessment rates on a unit value per pound basis. To calculate the per pound unit value for assessment, we summed the margins on U.S. sales with positive margins, and then divided this sum by the entered pounds of all U.S. sales.

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 the rate for that firm as stated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, 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 rate will be 36.00 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 Germany*, 58 FR 44170 (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 section 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 section 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 section 353.22 of the Department's regulations.

Dated: March 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–6713 Filed 3–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On November 7, 1997, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on extruded rubber thread from Malaysia. This review covers four manufacturers/exporters of the subject merchandise to the United States (Filati Lastex Elastofibre (Malaysia), Heveafil Sdn. Bhd./Filmax Sdn. Bhd, Rubberflex Sdn. Bhd., and Rubfil Sdn. Bhd.). The period of review is October 1, 1995, through September 30, 1996.

We gave interested parties an opportunity to comment on our preliminary results. We have based our analysis on the comments received and have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Fabian Rivelis, AD/CVD Enforcement Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1776 or (202) 482–3853, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1997, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the 1995–1996 administrative review of the antidumping duty order on extruded rubber thread from Malaysia (62 FR 60221). The Department has now completed this administrative review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this review is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1997).

Facts Available

A. Heveafil Sdn. Bhd./Filmax Sdn. Bhd. (Heveafil)

In accordance with section 776(a)(2) of the Act, we determine that the use of facts available is appropriate as the basis for Heveafil's dumping margin because the Department could not verify the information provided by Heveafil, as required under section 782(i) of the Act, despite the Department's attempts to do so.

Specifically, we were unable to verify the cost of production (COP) and constructed value (CV) information provided by Heveafil because we discovered at verification that the company had destroyed the source documents upon which a large portion of its response was based. The destruction of these source documents raises particular concern, as Heveafil should have been aware of the necessity of retaining these documents based